



General Terms and Conditions Dessl Maschinenbau GmbH

as by 05/2021

1. Validity

1.1. These terms and conditions shall apply between us (Dessl Maschinenbau GmbH, Stanser Au 6c, A-6135 Stans) and natural persons and legal entities (in short, the customer) for the present legal transaction and, in relation to business customers, also for all future transactions, even if no express reference is made to them in individual cases, in particular in the case of **future supplementary or follow-up orders**.

1.2. The current version of the General Terms and Conditions on the date of conclusion of the contract shall apply to business customers. The current version is available on our **homepage** (www.dessl-mb.com).

1.3. We contract **exclusively** on the basis of our GTC.

1.4. **Terms and conditions of the customer** or amendments or supplements to our GTC shall require our express consent – in writing towards business customers – in order to be valid.

1.5. The customer's terms and conditions shall not be recognized even if we do not expressly **object to** them after receipt.

2. Offer/Conclusion of contract

2.1. Our offers are **non-binding** and **without obligations**.

2.2. **Promises**, assurances and guarantees on our part or agreements deviating from these GTC in connection with the conclusion of the contract shall only become binding towards business customers upon our written confirmation.

2.3. The design of systems, system parts, components or services may deviate from the illustrations or services shown in catalogs, price lists, brochures, advertisements at trade fair stands, circulars, advertising mailings or other media (information material).

2.4. **Cost estimates** are subject to payment and are prepared to the best of our knowledge, but no guarantee can be given for their correctness. Consumers will be informed of the cost obligation before the cost estimate is prepared. If an order is placed, the fee for the cost estimate will be credited to the invoice in question. Should there be cost increases of more than 15% after the order has been placed, the client will be notified immediately.

3. Prices

3.1. Price quotations are in principle **not** to be understood as **lump-sum prices**.

3.2. For services ordered by the customer, which are **not covered by the original contract**, we are entitled to an appropriate fee.

3.3. Prices quoted are exclusive of the applicable **VAT** and EXW as per Incoterms 2020. Packaging, transport, loading and shipping costs as well as customs duties shall be borne by the customer. Loading and shipping costs as well as customs duties and insurance shall be borne by the customer.

3.4. The customer shall be responsible for the proper and environmentally compatible disposal of **used materials**. If we are separately commissioned to do so, the customer shall be invoiced accordingly.

3.5. The remuneration for continuing obligations shall be agreed as **value-assured** in accordance with the CPI 2010 and the remuneration shall be adjusted accordingly. The month in which the contract was concluded shall be taken as the starting basis.

3.6. In the event of a change in costs, the charges for consumers as customers shall be adjusted in accordance with Section 3.5, and in the case of continuing obligations in accordance with Section 3.6, only in the event of an individual contractual agreement, if the service is to be provided **within two months** of the conclusion of the contract.

3.7. In the case of invoicing according to length, the largest length shall be taken as a basis, both for profiles cut at an angled, notched profiles and for curved profiles, handrails and the like as well as for stair, balcony and protective railings, enclosures and the like. When calculating an area measurement, the smallest rectangle circumscribing the executed area is always taken as a basis. The invoicing by weight is carried out by weighing. If weighing is not possible, the commercial weight shall be decisive. The commercial weight shall be used for shaped steel and sections, and 80 N/m² per mm of material thickness shall be used for sheet steel and strip steel; the rolling tolerance shall be included in each case.

3.8. Costs for travel, daily and overnight allowances shall be invoiced in separately. Travel time shall be considered as working time according to Dessl Maschinenbau GmbH's applicable rates.

4. Provided goods

4.1. If materials are provided by the customer, we shall be entitled to charge the customer a handling fee.

4.2. Components provided by the customer are **not** subject to **warranty**.

4.3. The customer shall be responsible for the quality and operational readiness of the provided components.

5. Payment

5.1. **One third of the remuneration** shall be due upon conclusion of the contract, one third upon commencement of the service and the remainder after completion of the service, with the exception of special agreements.

5.2. The entitlement to a **cash discount** requires an express written agreement.

5.3. **Payment dedications** made by the customer on remittance slips shall not be binding on us.

5.4. Pursuant to § 456 of the Austrian Commercial Code (UGB), we shall be entitled to charge an interest rate of 6 percentage points above the base interest rate to entrepreneurs as customers in the event of a **delay in payment**. Towards consumers we charge an interest rate of 4%.

5.5. We reserve the right to claim further **damages for default**.

5.6. If the business customer is in default of payment within the scope of other contractual relationships existing with us, we shall be entitled to **suspend the performance of our obligations** under this contract until the customer has fulfilled them.

5.7. We shall then also be entitled to **call due all claims** for services already rendered under the current business relationship with the customer. This shall only apply to customers in the event that a service in arrears has been due for at least six weeks and we have unsuccessfully reminded the customer of this consequence by setting a grace period of at least two weeks.

5.8. The customer shall only be entitled to **set off** a claim insofar as counterclaims have been established by a court of law or recognized by us. Consumers as customers shall also be entitled to a right of set-off insofar as counterclaims are legally related to the customer's payment obligation and in the event of insolvency of our company.

5.9. In the event that the payment deadline is exceeded, any **reduction** granted (discounts, deductions, etc.) shall be forfeited and added to the invoice.

5.10. If the payment deadline is exceeded, the customer undertakes to pay **reminder fees** in the amount of Euro 50.00 (see 5.4.) for reminders that are necessary and appropriate for collection.

6. Credit check

6.1. The customer declares his express consent that his data may be transmitted to the state-preferred creditor protection associations Alpenländischer Kreditorenverband (AKV), Österreichischer Verband Creditreform (ÖVC), Insolvenzschutzverband für Arbeitnehmer oder Arbeitnehmerinnen (ISA) and Kreditschutzverband von 1870 (KSV) exclusively for the purpose of creditor protection.

7. Cooperation obligations of the customer

7.1. Our obligation to **perform the service** shall commence at the earliest as soon as the customer has created all structural, technical and legal **prerequisites** for

performance which were rewritten in the contract or in provided information to the customer prior to conclusion of the contract or which the customer should have known due to relevant expertise or experience.

7.2. In particular, the Customer shall provide, without being requested to do so, the necessary information on the location of **concealed electricity, gas and water lines or similar devices**, escape routes, other obstacles of a constructional nature, **boundary lines**, other possible sources of interference, sources of danger as well as the necessary structural data and any planned changes in this respect before the start of the performance of services. Order-related details regarding the necessary information can be requested from us.

7.3. If the customer does not comply with this **obligation to cooperate**, our performance shall not be deemed inefficient – exclusively with regard to the inability to perform fully as a result of incorrect customer information.

7.4. The customer shall arrange for any **consent** by third parties as well as **notifications** and approvals by authorities at his own expense. We shall point these out within the framework of the conclusion of the contract, unless the customer has waived this or the business customer had to have such knowledge due to training or experience.

7.5. **Energy**, water quantities and other media required for the performance of the service, including the trial operation, shall be provided by the customer at the customer's expense.

7.6. The customer shall provide free of charge **lockable rooms** for the stay of the workers as well as for the storage of tools and materials for the time of the performance.

7.7. Order-related details of the necessary specifications can be requested from us.

7.8. The customer is not entitled to **transfer** claims and rights from the contractual relationship without our written consent.

8. Fulfillment of service

8.1. We shall only be obliged to take into account subsequent **requests for changes and extensions** by the customer if they are necessary for technical reasons in order to achieve the purpose of the contract.

8.2. **Minor changes to our performance** that are objectively justified and reasonable for the business customer shall be deemed to have been approved in advance.

8.3. If, for whatever reason, the **order is amended** or supplemented after it has been placed, the delivery/service period shall be extended by a reasonable period of time.

8.4. If, after conclusion of the contract, the customer requests performance within a **shorter period of time**, this shall constitute an amendment to the contract. As a result, overtime may become necessary and/or additional costs may be incurred due to the acceleration of material procurement, and the remuneration shall be increased proportional to the necessary additional expenditure.

8.5. **Partial deliveries** and services that are objectively justified (e.g. size of plant, progress of construction, etc.) are permissible and may be invoiced separately.

9. Performance deadlines and dates

9.1. In the event of **force majeure**, strike, unforeseeable delays on the part of our suppliers for which we are not responsible or other comparable events beyond our control, deadlines and dates shall be postponed for the period of time during which the event in question lasts.

9.2. If the start of the performance or the performance is delayed or interrupted due to circumstances **attributable to the customer**, in particular due to the violation of the cooperation obligations of these GTC, performance periods shall be extended and agreed completion dates shall be postponed accordingly.

9.3. We shall be entitled to charge storage costs for the necessary **storage** of materials, equipment and the like in our company due to reasons according to 9.2, whereby the customer's obligation to pay and his obligation to accept shall remain unaffected.

9.4. Delivery and completion dates shall be **binding** towards business customers only if agreed in writing.

9.5. In the event of **delay** in performance of the contract by us, the customer shall be entitled to rescind the contract after setting a reasonable grace period. The grace

period shall be set in writing (by registered letter for business customers) with simultaneous warning of withdrawal.

10. Reference to limitation of the Scope of services

10.1. In the course of assembly and repair work, damage may occur (a) to existing stock as a result of unrecognizable conditions or material defects (b) during mortising work in boundless masonry. We shall only be responsible for such damage if we have culpably caused it.

10.2. Differences in the color shades of anodized and coated materials are not excluded.

10.3. Protective coatings last for three months.

11. Temporary repair

11.1. In the case of makeshift repairs, there is only a very limited durability corresponding to the circumstances.

11.2. In the event of a makeshift repair, the Customer shall immediately arrange for a professional repair.

12. Bearing of risk

12.1. The risk shall pass to the customer as soon as we hold the object of purchase/work ready for **collection at the factory or warehouse**, or hand it or the material and equipment over to a carrier or transporter. The business customer shall bear the **transport risk**, even if we have assumed the delivery to in individual cases. The customer shall take out appropriate insurance against this risk.

12.2. The customer shall approve any proper **mode of shipment**. We undertake to take out transport insurance at the written request of the customer and at the customer's expense.

12.3. We shall be entitled to collect the packaging and shipping costs as well as the fee for **cash on delivery** from the customer if the customer is in default with a payment from the existing business relationship with us or if a credit limit agreed upon with us is exceeded.

12.4. The customer shall be responsible for the safety of the materials, machines and equipment delivered by us and stored or assembled at the place of performance. **Losses and damage** shall be borne by the customer.

13. Default of acceptance

13.1. If the customer is in default of acceptance, we shall be entitled to **store** the goods at our premises if we insist on performance of the contract, for which we shall be entitled to remuneration.

13.2. This shall not affect our right to demand payment for services rendered and to **withdraw** from the contract after a reasonable period of grace.

13.3. The assertion of a **higher damage** claim shall be admissible. This right shall only exist towards consumers if it is negotiated in the individual case.

14. Withdrawal from contract

14.1. In the event of unjustified withdrawal by the Buyer, we shall be entitled to demand 20% of the purchase price as compensation. This is a lump-sum compensation independent of fault, the amount of which cannot be verified. Furthermore, we shall be entitled to claim any further damage and expenses that can be verified.

14.2. In the event of a withdrawal from the contract, services or partial services already rendered shall be invoiced and paid for in accordance with the contract. This shall also apply insofar as the delivery or service has not yet been taken over by the customer, as well as for preparatory actions performed by us.

15. Retention of title

15.1. The goods delivered, assembled or otherwise handed over by us shall remain our property until payment has been made in full.

15.2. A **resale** shall only be permissible if we have been notified of such resale in good time in advance, stating the name and address of the purchaser, and if we consent to the sale. In the event of our consent, the purchase price claim of the business customer shall already now be deemed to have been **transferred** to us.

15.3. Until full payment of the remuneration or purchase price has been made, the customer shall note this transfer in his books and on his invoices and **draw the attention** of his debtors to it. Upon request, he shall provide the Contractor with all documents and information

necessary for the assertion of the assigned claims and receivables.

15.4. If the Customer is in default of payment, we shall be entitled to demand the return of the Retained Goods after setting a reasonable grace period. We may only exercise this right towards consumers as customers if at least one outstanding payment of the consumer has been due for at least six weeks and we have unsuccessfully issued a reminder threatening this legal consequence and setting a grace period of at least two weeks.

15.5. The customer shall notify us without delay prior to the opening of bankruptcy proceedings against his assets or the seizure of our reserved goods.

15.6. The customer declares his express consent that we may enter the **location** of the reserved goods in order to assert our reservation of title.

15.7. The customer shall bear any **costs** necessary and reasonable for the appropriate prosecution.

15.8. The assertion of the reservation of title shall only constitute a **withdrawal from the contract** if this is expressly declared.

15.9. We shall be entitled to **dispose** of the goods subject to retention of title that have been taken back in the best possible way and on the open market towards **business** customers.

15.10. Until full payment of all our claims, the object of performance/purchase may not be pledged, transferred by way of security or otherwise encumbered with the **rights of third parties**. In the event of seizure or other claims, the customer shall be obliged to point out our right of ownership and to notify us immediately.

16. Third party property rights

16.1. If the customer contributes **intellectual creations** or documents and if third party property rights are asserted with regard to such creations, we shall be entitled to stop the production of the delivery item at the customer's risk until the third party rights have been clarified and to claim compensation for the necessary and appropriate costs incurred by us, unless the unjustified nature of the claims is obvious.

16.2. The customer shall indemnify and hold us **harmless** in this respect.

16.3. We shall be entitled to demand reasonable **advances on costs** from business customers for any legal costs.

17. Our intellectual property

17.1. **Plans, sketches**, cost estimates and other documents provided by us or created by our contribution shall remain our intellectual property.

17.2. The use of such **documents** outside of the intended use, in particular the passing on, duplication, publication and making available, including copying in extracts only, shall require our express written consent.

17.3. The customer further undertakes to maintain **secrecy** towards third parties with regard to any knowledge acquired by him as a result of the business relationship.

17.4. If we have handed over to the customer items within the scope of contract initiation, conclusion and processing which were not owed within the scope of the performance of the service (e.g. color and safety fitting samples, lighting fixtures, etc.), these shall be returned to us within 14 days. If the customer does not comply with a corresponding request in due time, we may demand **compensation for damages**. In the case of an entrepreneur, the obligation to pay damages is independent of fault.

18. Warranty

18.1. The provisions of the statutory warranty shall apply. The warranty period for our services towards business customers shall be one year from handover.

18.2. In the absence of any agreement to the contrary (e.g. formal acceptance), the time of handover shall be the time of completion, at the latest when the customer has taken over the service in its power of disposal or has refused to take over the service without giving reasons.

18.3. If a joint handover is planned and the Customer fails to attend the handover date notified to him, the handover shall be deemed to have taken place on that date.

18.4. Rectification of a defect claimed by the Customer shall not constitute an acknowledgement of the defect claimed by the Customer.

18.5. The business customer shall grant us at least **two attempts** to rectify the defect.

18.6. If the customer's allegations of defects are unjustified, the customer shall be obliged to reimburse us for any **expenses** incurred in determining that the goods are free of defects or in rectifying the defects.

18.7. The business customer must always **prove** that the defect already existed at the time of handover.

18.8. In order to rectify defects, the customer shall make the plant or equipment **accessible** to us without culpable delay and grant us the opportunity to have it inspected by us or by experts appointed by us.

18.9. **Defects** in the delivery item which the business customer has discovered or should have discovered by examination in the ordinary course of business after delivery must be **reported** to us in writing immediately, at the latest 8 days after handover. Hidden defects must also be reported within this reasonable period after discovery.

18.10. Any **use or processing** of the defective object of that threatens further damage or makes it more difficult or impossible to determine the cause of the defect must be discontinued by the customer without delay, unless this is unreasonable.

18.11. If a **complaint** is not made in due time, the goods shall be deemed to have been accepted.

18.12. We may avert a **claim for redhibitory action** by improvement or reasonable price reduction, unless the defect is substantial and non-recoverable.

18.13. If the objects of performance are manufactured on the basis of **information**, drawings, plans, models or other specifications of the **customer**, we shall only warrant for the execution in accordance with the conditions.

18.14. The circumstance that the work is not fully suitable for the agreed use shall not constitute a defect if this is based exclusively on actual conditions **deviating** from the **information** available to us at the time of the performance of the service because the customer does not comply with his obligations to cooperate.

18.15. The defective delivery or samples thereof shall be **returned to us** by the business customer – if economically justifiable.

18.16. The warranty shall be excluded if the customer's technical equipment, such as supply lines, cabling, etc., is not in a technically perfect and operational condition or is not **compatible** with the delivered items, insofar as this circumstance is causal for the defect.

19. Liability

19.1. We shall be liable for breach of contractual or pre-contractual obligations in case of **financial loss** only in cases of intent or gross negligence, in particular due to impossibility, delay, etc.

19.2. Our liability towards business customers shall be **limited** to the maximum liability amount of any liability insurance concluded by us.

19.3. This limitation shall also apply with regard to damage to an item which we have **accepted for processing**. However, this shall only apply to consumers if this has been agreed in an individual contract.

19.4. Claims for damages of business customers shall be asserted in court within two years, otherwise they shall be forfeited.

19.5. The exclusion of liability also includes claims against our **employees**, representatives and vicarious agents due to damage caused to the customer by them without reference to a contract between them and the customer.

19.6. Our liability is excluded for damage caused by **improper handling** or storage, overloading, failure to follow operating and installation instructions, faulty assembly, commissioning, maintenance, servicing by the customer or third parties not authorized by us, or natural wear and tear, insofar as this event was causal for the damage. Likewise, the exclusion of liability exists for omission of necessary maintenance, unless we have contractually assumed the duty of maintenance.

19.7. Those product characteristics shall be owed which can be expected by the customer with regard to the

approval regulations, operating instructions and other product-related instructions and notes (in particular also inspection and maintenance) from us, third party manufacturers or importers, taking into account the customer's knowledge and experience. The customer as reseller shall take out sufficient insurance for product liability claims and shall indemnify and hold us harmless with regard to recourse claims.

20. Severability clause

20.1. Should individual parts of these GTC be invalid, this shall not affect the **validity** of the remaining parts.

20.2. We, like the business customer, are already making a joint commitment – based on the horizon of honest contracting parties – to make a **substitute provision** which comes closest to the economic result of the invalid condition.

21. General

21.1. **Austrian law** shall apply.

21.2. The UN Convention on Contracts for the International Sale of Goods is excluded.

21.3. The **place of performance** shall be the registered office of the company (Stans).

21.4. The place of jurisdiction for all disputes arising from the contractual relationship or future contracts between us and the business customer is the court locally responsible for our registered office.

21.5. The customer shall notify us immediately in writing of any changes of name, company, address, legal form or other relevant information.

21.6. Only the **German version** of this contract shall be legally binding, the English translation serves information purposes only.