General Conditions for the Supply of Machines of Hesser Packaging GmbH

(Based on the conditions recommended by the Verband Deutscher Maschinen- und Anlagenbau e.V.
(Association of German Machinery and Plant Manufacturers Reg. Society (VDMA))

Applicable for business transactions with companies, legal persons under public law, and special funds under public law.

1. General information

1.1 All supplies and services are based on these conditions and on any special contractual agreements; these also include the supply of spare parts, sizeparts and conversion parts. These conditions apply exclusively. Any deviating terms and conditions of purchase of the buyer shall not become the content of a contract even through the acceptance of an order.

1.2 In the absence of a special agreement, a contract shall be concluded with a written order confirmation of Hesser Packaging GmbH (Seller).

1.3 The Seller reserves the intellectual and industrial property rights and copyright in samples, cost estimates, drawings, and similar information of a tangible or intangible kind, including such information in an electronic form; third parties must not be given access to them. The Seller obligates itself to allow third parties access to information and documents designated by the buyer as being confidential only with the consent of the buyer.

2. Prices and payments

2.1 In the absence of a special agreement, the prices quoted are valid ex-works, including loading at the plant, but excluding packing and unloading. All prices are net of any value-added, sales, use taxes or similar taxes, levies, duties, governmental assessments of any nature, assessable by any authority whatsoever including any surcharges and surtaxes thereto ("Indirect Taxes" or, in singular form, "Indirect Tax"). Furthermore, all prices are expressed net of any income taxes, or similar taxes, levies, duties, governmental assessments, assessable by any authority whatsoever (including any surcharges and surtaxes thereto) and to which the Seller is the taxable person ("Direct Taxes" or, in singular form, "Direct Tax").Such Indirect Taxes or Direct Taxes shall be borne by the buyer in addition to the prices outlined in this agreement, if applicable.
The parties will take best efforts to cooperate in tax matters. In particular, but without limitation, each party will promptly inform the other party in writing of any event or situation that affects the tax position of the other party.
If any delays in the consummation of this contract caused by the buyer lead to an increase of any taxes, levies, duties, governmental assessments, assessable by any authority whatsoever to which the Seller is the taxable person, the buyer shall bear, and to the extent possible hold the Seller harmless of, any such taxes, levies, duties, governmental assessments in addition to the prices agreed in this agreement.

2.2 The price was determined upon conclusion of the contract based on the current "GP19-28 Maschinenbauerzeugnisse"-index (source: VDMA [Association of German Machinery and Plant Manufacturers, Engineering Products], contact: serviceteam@vdma.org). The initial value is the index figure as at the date of the conclusion of the contract. Should this index deviate by more than 3% from the initial value on the final invoice date, the parties shall negotiate a corresponding appropriate price adjustment.

2.3 In the absence of a special agreement, payment shall be paid without any deductions, to the Seller's bank account in accordance with the quotation text.

2.4 The buyer is entitled to the right to withhold payments only if its counterclaims are undisputed, legally established or ready for judgment subsequent to being sub judice.

2.5 The buyer is entitled to the right to set-off against counterclaims from other legal relationships only if its counterclaims are undisputed, legally established or ready for judgment subsequent to being sub judice.

3. Delivery time, delivery delay

3.1 The delivery time results from the agreements between the parties to the contract. The Seller's compliance with the delivery time presumes that all commercial and technical queries between the parties to the contract have been clarified and that the buyer has fulfilled all the obligations incumbent on it, such as provision of the requisite official certificates or authorizations or the payment of a down-payment. If this is not the case, the delivery time shall be extended commensurately. This shall not apply, if the Seller is responsible for the delay.

3.2 Compliance with the delivery deadline shall be subject to correct and punctual delivery to the Seller itself. The Seller shall communicate any impending delays as soon as possible.

3.3 The delivery deadline is deemed to be met, if the delivery item has left the Seller's plant or readiness for consignment has been reported, by the date of the delivery deadline. If an acceptance test has to take place, the acceptance test date is decisive, unless there is a justified refusal of acceptance, or alternatively the notification of readiness for an acceptance test is decisive.

3.4 If the consignment or acceptance testing of the delivery item is delayed for reasons for which the buyer is responsible, the buyer shall be invoiced the costs incurred due to the delay, commencing one month after notification of consignment readiness or acceptance test readiness. Any further claims or rights of the Seller, in particular those of the debtor's delay, are reserved.

3.5 Notwithstanding the provisions set out in clause 10, if non-compliance with the delivery time is attributable to force majeure or other events that are beyond the control of the Seller or its subcontractor, the delivery time shall be extended by the duration of the hindrance, however, the amended delivery date shall not exceed 6 months after the original delivery date. This also applies to any industrial action that affects the Seller or its subcontractors. The Seller shall notify the buyer as soon as possible of the commencement and finish of such circumstances.

3.6 The buyer can withdraw from the contract without setting a deadline, if the whole supply or service becomes finally impossible for the Seller prior to the passing of the risk. Furthermore, the buyer can withdraw from the contract, if the execution of a part of the delivery becomes impossible for an order and the buyer has a justified interest in the rejection of the part delivery. If this is not the case, the buyer has to pay the contract price that is attributable to the part delivery. The same applies in the event of the incapability of the Seller. In all other respects, clause 7.2 applies.
If such impossibility or inability to perform occurs during default on acceptance of the buyer or if this default is caused solely or mainly by the buyer, the buyer shall be obliged to pay the consideration in respect of that delivery.

3.7 If the Seller is in default and the buyer suffers damages from this, it is entitled to demand liquidated damages for the delay as set out in this clause 3.7. For each complete week of delay this shall amount to 0.5% in total but to a maximum of 5% of the value of that part of the complete delivery that cannot be used in good time or not in accordance with the contract as a consequence of the delay.

3.8 If, after the due date, the buyer sets the Seller — in consideration of the statutory exception cases — a reasonable time limit for performance and if the time limit is not met, the buyer is entitled within the framework of the statutory regulations to withdraw from the contract. The buyer will notify the Seller within a reasonable time limit, at the request of the Seller, whether it will exercise its right of withdrawal.

3.9 Further claims arising from a delay in delivery shall be determined exclusively in accordance with clause 7.2 of these Conditions.

4. Passing of risk, acceptance test

4.1 The risk passes to the buyer when the delivery item has left the plant, namely even if part deliveries take place or if the Seller has taken on other services, e.g. the forwarding costs or delivery and installation. If an acceptance test has to take place, it is decisive for the passing of the risk. It must be performed without delay on the acceptance test date or alternatively after notification by the Seller as to acceptance test readiness. The buyer is not allowed to refuse the acceptance test, if there is a minor defect.

4.2 If the consignment or the acceptance test is delayed or fails as a consequence of circumstances that are not attributable to the Seller, the risk shall pass to the buyer as of the date of notification of consignment readiness or acceptance test readiness. The Seller obligates itself to take out at the cost of the buyer any insurance cover that the buyer demands.

4.3 Part deliveries are allowed, provided that they are reasonable for the buyer.

5. Reservation of title

5.1 The Seller shall retain title to the delivered item until the receipt of all payments, including the title to any additional services that arise from the supply contract.

5.2 The Seller is entitled to insure the delivery item at the buyer's cost against theft, breakage, fire, water and other damage, unless the buyer has proved it has taken insurance cover.

5.3 The buyer is not permitted to sell, pledge or provide as security the delivery item. In the event of debt attachments, confiscation or other dispositions by third parties it shall notify the Seller immediately thereof.

5.4 In the event the buyer is in breach of the contract, in particular in the event of default in payment, the Seller is entitled to take back the delivery item following a demand and the buyer is obligated to surrender the delivery item.

5.5 On the grounds of reservation of title the Seller can demand surrender of the delivery item only if a party to the contract has withdrawn from the contract.

5.6 An application for the opening of insolvency proceedings shall entitle the Seller to withdraw from the contract and to demand immediate return of the delivery item.

6. Warranty claims

The Seller is liable for material defects and deficiencies in title of the delivery with the exclusion of any further claims — subject to clause 7 — as follows:

Material defects

6.1 All parts that are defective prior to the passing of the risk shall at the Seller's discretion be repaired or shall be replaced to a defect-free condition without payment. The Seller shall be notified in writing immediately, if any such defects are ascertained. Any replaced parts shall become the property of the Seller. The buyer is not entitled to the right of self-performance. The buyer has the right to eliminate the defect itself or to have it eliminated by third parties and to demand from the supplier`s replacement of the requisite expenses only in urgent cases involving the endangerment of operational safety or for the purpose of preventing excessive damage, whereby the Seller shall be notified immediately and the measures shall be agreed with it.

6.2 If the buyer proves that the defect is justified, the Seller shall bear the direct costs of the remedying of the defect or of the replacement delivery including its consignment. It shall also bear the costs of the removal and installation as well as the costs of the provision of any fitters and supporting personnel that are necessary, including their travel costs, if the Seller is responsible for the defect and insofar as this does not result in a disproportionately high burden on the Seller.

6.3 The buyer has a right to withdraw from the contract within the scope of the statutory regulations, if the Seller — in consideration of the statutory exceptions — allows a reasonable time limit to lapse without any outcome that has been set for the Seller for the remedying of a defect or for a replacement delivery on account of a material defect. If there is only a minor defect, the buyer is entitled to a right to reduction of the contract price only. Otherwise, the right to a reduction of the contract price remains excluded.

6.4 Further claims are governed by clause 7.2 of these Terms and Conditions.

6.5 No liability will be assumed in the following cases in particular: unsuitable or improper use, faulty installation or initial startup by the buyer or third parties, natural wear, faulty or negligent handling, improper maintenance, unsuitable operating media, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influences — provided that the Seller is not responsible for them.

6.6 If the buyer or a third party improperly remedies a defect, there is no liability on the part of the Seller for the consequences incurred as a result. The same applies to any modifications to the delivery item performed without the previous approval of the Seller.

Deficiencies in title

6.7 If the use of the delivery item leads in Germany to the infringement of commercial protective rights, the Seller shall at its cost fundamentally procure for the buyer the right to further use or modify the delivery item in a way that is reasonable for the buyer such that the infringement of the property right no longer exists.

If this is not possible subject to commercially reasonable conditions or within a reasonable time limit, the buyer shall be entitled to withdraw from the contract. Subject to the prerequisites stated the Seller is also entitled to the right to withdraw from the contract.
Furthermore, the Seller shall indemnify the buyer against any undisputed or legally established claims of the owners of the respective intellectual or industrial property rights.

6.8 The Seller's obligations as stated in clause 6.7 are conclusive subject to clause 7.2 in cases of the infringement of intellectual or industrial property rights or copyright.
They exist only if

- the buyer immediately informs the Seller of any intellectual or industrial property right or infringements that are asserted,
- the buyer supports the Seller to a reasonable extent in the defense of the asserted claims or makes it possible for the Seller to perform modification measures in accordance with clause 6.7,
- the right to all defensive measures, including out-of-court settlements, is reserved by the Seller,
- the deficiency in title is not based on a directive of the buyer and
- the legal infringement was not caused by the buyer having modified the delivery item without authorization or having used it in a manner that is not in compliance with the contract.

7. Liability

7.1 If the delivery item cannot be used in accordance with the contract as a consequence of culpably omitted or deficient proposals or advice by the Seller that took place before or after conclusion of the contract or due to the culpable infringement of any other secondary contractual obligations — in particular instructions for operation and maintenance of the delivery item — the provisions of clause 6 and clause 7.2 apply accordingly, subject to the exclusion of any further claims by the buyer.

7.2 For damages other than to the actual delivery item itself, the Seller is liable — for whatever legal reasons — only
a). in the case of intent,
b). in the case of gross negligence on the part of the owner/agencies of the company or managerial employees,
c). if there is culpable loss of life, physical injury or harm to health,
d). if there are any defects that it has maliciously withheld,
e). as part of a guarantee promise,
f). if there are defects in the delivery item, provided that there is a liability pursuant to the Product Liability Act for personal injury or damage to property for privately used objects.

7.3 In the event of a culpable breach of essential contractual duties the Seller is also liable for the gross negligence of its non-managerial employees and for any minor negligence; the latter being limited to the reasonably foreseeable damage that is typical for the contract.

7.4 All further claims are excluded.

7.5 If the liability for compensatory damages in relation to the Seller is excluded, this also applies with regard to the personal liability for compensatory damages in relation to the employees, staff, representatives and agents of the Seller.

8. Limitation

All claims of the buyer, for any legal reasons whatsoever, are limited to 12 months. The statutory time limits apply to compensation claims in accordance with clause 7.2 a – f. They also apply to the defects of a structure or to delivery items that have been used in accordance with the normal manner of use for a structure and whose defectiveness they have caused.

9. Use of software

9.1 If any software is included in the scope of supply, the buyer is accorded a non-exclusive right to use the software supplied inclusive of its documentation. It shall be used solely on the delivery item for its intended purpose. Use of the software on more than one system is prohibited.

9.2 The buyer is allowed to duplicate, revise, translate or convert the software from the object code to the source code only to the extent permitted by law (sections 69 a onwards of the Copyright Act (UrhG)). The buyer obligates itself to not remove the manufacturer's specifications, in particular copyright notices, nor to change them without the previous express approval of the Seller.

9.3 All other rights in the software and documentation, including copies, are reserved by the Seller or by the software Seller. The issuing of sub-licenses is not permitted.

10. Force majeure

10.1 Each party is entitled to suspend the performance of its contractual obligations to the extent that such performance is made impossible or unreasonably difficult through no fault of its own due to circumstances beyond the reasonable control of the Seller (or its suppliers) or buyer, such as a fire, armed conflicts, war, general mobilization, insurrection, requisition, confiscation, embargo, pandemic, epidemic, restrictions on energy consumption, industrial actions, supraregional supply chain disruptions and defective or delayed deliveries by subcontractors on account of the circumstances listed in this clause.

10.2 A party to the contract that pleads force majeure shall inform the other party to the contract immediately and in writing of the occurrence and of the end of such circumstances. If force majeure hinders the buyer from performing its contractual duties, it shall compensate the Seller for any costs incurred for the purpose of security and for the protection of the plant.

10.3 Notwithstanding all effects defined in these Conditions, each party to the contract has the right to withdraw from the contract by providing notice in writing to the other party, if the discontinuation of performance of the contract due to force majeure will last longer than six months. In this case the Seller shall be reimbursed with the costs incurred by it up to that point in time (in particular the materials, working hours, supply contracts).

11. Anti-Corruption Clause

11.1 Each Party represents that it will not, directly or indirectly, pay, offer, grant, promise or give, or authorize the payment or grant of, any money or thing of value to any person or entity for the purpose of unlawfully or improperly effecting any decision or obtaining or retaining any business or benefit in connection with this Agreement.

11.2 Buyer agrees to promptly notify Seller in writing if at any time buyer becomes aware that its aforementioned representation is no longer accurate. Buyer shall promptly notify Seller of any known or suspected breach of the foregoing representation. Seller may terminate the contract without notice if it is proven that buyer has breached any of his obligations under this section 11.

11.3 In the event of a termination in accordance with clause 11.2 the buyer is excluded from raising a claim for any damage or other rights on account of the termination.

12. Export control clause

12.1 The supplies and services (the performance of the contract) are subject to the proviso that performance is not opposed by national or international export control regulations, in particular by embargoes or other sanctions. The buyer shall provide all information and documents that are required for export or shipment. Any delays due to export inspections or authorization procedures shall suspend the time limits and delivery times. If any requisite authorizations are not granted or if the supply or service is not able to be authorized, the contract applies as being not concluded in relation to the parts affected.

12.2 The Seller is entitled to terminate the contract without notice, if termination is required for the purpose of complying with national or international legal regulations.

12.3 In the event of a termination in accordance with clause 12.2 the buyer is excluded from raising a claim for any damage or other rights on account of the termination.

12.4 When passing on the supplied goods (hardware and/or software and/or technology and the relevant documents, independently of the manner in which they are provided), or of work, and services provided by the Seller (including technical support of any kind) to third parties domestically or abroad, the buyer shall comply with the applicable regulations of the national and international (re-) export control legislation.

12.5 The buyer is obligated to immediately present any documents that are required to fulfill the official requirements.

13. Export ban into the Russian Federation and Belarus

13.1 The buyer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus or for use in the Russian Federation or Belarus any goods supplied under or in connection with the contract that fall under the scope of Article 12g of Council Regulation (EU) No. 833/2014 or Article 8g of Council Regulation (EU) No. 765/2006.

13.2 The buyer shall undertake its best efforts to ensure that the purpose of clause 13.1 is not frustrated by any third parties further down the commercial chain, including by possible resellers.

13.3 The buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of clause 13.1.

13.4 Any violation of clauses 13.1, 13.2 or 13.3 shall constitute a material breach of an essential element of the contract, and the Seller shall be entitled to seek appropriate remedies, including, but not limited to
(i) termination of the contract; and
(ii) a penalty equivalent to the price/remuneration of the goods and/or services exported.

13.5 The buyer shall immediately inform the Seller about any problems in applying sections 13.1, 13.2 or 13.3, including any relevant activities by third parties that could frustrate the purpose of section 13.1. The buyer shall make available to the Seller information concerning compliance with the obligations under sections 13.1, 13.2 and 13.3 within two weeks of the simple request of such information.

14. Applicable law/place of jurisdiction

14.1 The law of the Federal Republic of Germany, subject to exclusion of the conflict of laws and of the United Nations Convention on Contracts for the International Sale of Goods (CISG), applies exclusively for all legal relations between the Seller and the buyer.

14.2 The place of jurisdiction is the court responsible for the registered office of the Seller. However, the Seller is entitled to bring legal action at the registered head office of the buyer.

Additional provisions for the supply of packaging machines and parts

1. Each machine produces its output only if genuine materials (packaging material, packaging means and the product to be packaged) within the permissible tolerances are used. The buyer shall make the genuine materials needed for setting and proving with specification of the tolerances available to the Seller free of charge at the Seller's request. There is no liability for any damages that arise from the buyer using materials other than genuine materials or genuine materials with tolerances other than those specified. The Seller shall not be responsible for the return of an amount of the original material that is less than the entire amount of the genuine materials provided, nor for the damage or disposal of such genuine materials.

2. It is the duty of the buyer to observe the applicable occupational health and safety regulations in general and, in particular, to take the necessary measures to protect the operating personnel and other persons from the hazards specified in the instruction manual.

3. The Incoterms® 2020 are the basis for supplies to foreign countries.

4. Within the scope of our quality assurance and improvement measures, project-specific satisfaction surveys may be carried out. Participation in these surveys is voluntary.

5. If reservations of title are not effective in a foreign state, the buyer shall collaborate in taking all measures, in particular by submitting all declarations required to obtain suitable guarantees for the Seller that are equivalent to a reservation of title.

6. For all deliveries the buyer shall owe EUROs at official rate of exchange even if foreign currency amounts are stated on the invoices next to the amount in EUROs. Any foreign currency amounts received shall be credited with the EURO revenue at the official rate of exchange that the Seller generates from the foreign currency amount.

7. Partial invoices are permitted for part deliveries.