

## **General Conditions for the supply of spare and wearing parts**

**Updated: April 12, 2017**

### **I. General conditions**

1. These General Conditions exclude any others that may have been issued previously by SW-MACHINES MEXICO, S. DE R.L. DE C.V. (hereinafter "SW"), and they will be valid exclusively for the legal relationship between SW and the client in relation to the supplies and/or services provided by SW related to the spare and wearing parts (hereinafter, the "Deliveries"). The general conditions of the client will only be considered accepted when SW has confirmed them in writing. The volume of the Deliveries will be agreed to in advance in writing by the parties.

2. The sending of goods by SW and/or providing of services after having received the corresponding purchase and/or services order will be considered for all legal purposes as proof of agreement and acceptance by the client of these General Conditions. The above is in the understanding that these General Conditions will be delivered by SW, either electronically or physically to the client, before the first sending of goods takes place.

3. SW reserves its right of use and absolute ownership with respect to the budgets, plans and other documents (hereinafter, the "Documentation"). The Documentation may not be available to third parties without the prior written consent of SW. SW may demand the return of the Documentation; the client must accede to this request without delay within the following 72 (seventy-two) hours from the request the client receives from SE. Lines 1-3 will apply by analogy to the documentation of the client.

4. With respect to the standard software and the firmware, the client has the non-exclusive right to use the functions agreed to in the agreed equipment without alteration. The client may make a backup copy of the standard software without need for an advance express agreement.

5. Partial Deliveries are permitted provide they are reasonable for the client.

6. The term "damages and losses claim" in these General Conditions also includes the requests for reimbursement of costs incurred in vain.

### **II. Prices, payment conditions and set off**

1. The prices are intended as factory set prices except for the packaging, plus the current applicable VAT rate.

2. In the event that SW has made the installation or mounting and unless agreed otherwise, the client shall pay in addition to the agreed price, all the additional necessary costs, such as travel and transportation expenses, as well as startup.

3. Unless agreed otherwise, all payments shall be made immediately and without deduction into the bank account timely indicated by SW, within the next 10 (Ten) calendar days after the date in which the client receives the corresponding invoice. Bills of exchange and checks will be accepted subject to collection and once explicitly agreed to in writing. In case of payment by the client with check, and it is returned for insufficient funds, or for any other reason, SW will have the right to also collect an amount equivalent to 20% (twenty percent) of the amount of the unpaid check. The charges generated for payments with bills of exchange and checks will be borne by the client.

4. The client may only set off the debts agreed to in advance in writing by the parties or legally binding.

5. The costs related to reviews and restocking caused to SW by client returns shall be reimbursed by the latter to SW for an amount equivalent to 10% of the value of the Delivery.

### **III. Reservation of ownership**

1. The goods subject to the Deliveries will continue to be the property of SW until the client has complied with all its payment obligations, at which time the ownership title will be considered transferred to the client with respect to those goods. If the value of all the warranty rights corresponding to SW surpass 10%, SW will release at the request of the client the corresponding part of such warranty rights; SW will choose which of the different warranty rights will be released.

2. The client is prohibited from encumbering or conveying in guarantee the goods during the reservation of ownership. The reserved property may only be resold individually or as part of something with the prior written consent of SW.

3. The client assigns the rights to claim the illegal resale of the goods, with all the accessory rights, to SW, regardless of whether the goods with reservation

of ownership were resold without or after processing. SW expressly accepts this assignment of rights granted by the client from the moment these General Conditions are considered accepted as established in number 1. point 2.

If an assignment of rights is not permissible, the client irrevocably and expressly authorizes SW to instruct third party debtors of the client to make the payments exclusively to SW. Regardless of the above, the amounts recovered and received by the client for illegal re-sales in terms of the above numbers will be delivered immediately to SW.

4. In case of seizures, confiscations and other dispositions or intrusions of third parties, the client shall immediately inform SW within the next 6 (six) hours from when it has knowledge thereof.

5. In the event of a breach by client of its obligations, especially a delay in payment, which has not been remedied within the next 15 (fifteen) days from the written notice of breach that the client receives from SW, SW will be entitled to take possession of the goods involved immediately and without any formality, apart from its right to terminate the contractual relationship with the client without need of a prior judicial declaration by a simple written notice, and SW will reserve the right to claim damages and losses before the competent authority. The client is obligated in the case of a breach and request for SW to take possession of the goods, to make their immediate return. If SW chooses a return, removal or confiscation of the goods, this will not be considered the termination of the agreement unless SW declares this expressly as established in this paragraph.

### **IV. Delivery times; delay**

1. The agreement on the delivery times and dates shall be in writing. The delivery times and dates are subject to change, unless they are expressly indicated as mandatory. The delivery time will begin with the sending of the confirmation of the order by SW, but not before the complete delivery by the client of documents, permissions and approvals, the clarification of all questions, and the reception of any previously agreed advance. The compliance with the delivery time or the supply date requires the timely and adequate compliance with the other obligations of the client. The delivery time will be understood as met once the goods leave the factory or when SW reports that the goods are ready for shipment. Compliance with the delivery times and dates agreed is subject in turn to the timely and appropriate supply by SW.

2. If the delivery times are not met due to Force Majeure (as such term is defined below), the delivery times will be extended. This will also apply in the case of an untimely or inappropriate supply by SW.

3. Client claims for damages and losses caused by a delay in delivery and provision of the services, will be considered expressly excluded in all cases for delay in the delivery or providing of services, including after the expiration of a delivery time established by SW, the client expressly waiving its right to claim damages and losses in such cases. The client may only rescind or terminate the agreement with SW early according to the applicable legal provisions, in the event that SW is directly responsible for the delay in delivery.

### **V. Transfer of risk**

The risk including without limitation for loss, impairment, theft or damages to the goods is transferred to the client, even with free Deliveries, at the moment the goods leave the facilities of SW for their transportation or are picked up. The deliveries may be insured by SW against common transportation risks and those mentioned above at the written request and cost of the client.

## VI. Verification of goods / reception

1. The client must submit the goods to a visual inspection immediately after their reception and report any defect in writing within the next 12 (twelve) hours from their reception. This applies especially when upon receiving the goods, their packaging has visible external damages. If the client fails to make the report, the goods will be considered approved and received to the entire satisfaction of the client. This does not apply, however, in the case of hidden defects.

2. The client may not refuse to receive Deliveries for minor defects.

## VII. Material defects

1. SW will be responsible for material defects as follows:

a) All parts or services that present a defect will be remedied at the discretion of SW; they will be repaired, replaced or provided again, as long as the cause already exists at the time of the transfer of the risk, in accordance with section V. above.

b) Claims for restitution will expire in a period of 12 months from the date of delivery. The same applies for returns and deterioration. The legal provisions in relation to suspension of expiration, suspension and resumption of the statute of limitation periods will not be affected.

c) Client claims must be made immediately and in writing.

d) When defects are reported, the payments may be withheld to the extent that is reasonably proportional to the defects presented. The client may withhold the payments only if a written claim is presented within the above mentioned time periods; there can be no doubt as to its justification. The client does not have the right to withhold the payment if its defect claims have expired. If the complaint was not made with the corresponding authorization, SW has the right to have its expenses reimbursed by the client.

e) The client is obligated to grant SW the opportunity to remedy the defect within a reasonable time period.

f) The claims for defects do not include insignificant deviations from the agreed quality, nor will apply for minor deterioration in functionality, natural wear and tear and damages due to incorrect or negligent handling by the client, excessive use, inadequate equipment or due to special external influences that are not foreseen in the agreement. If the client or a third party made inadequate changes or repair work, in these cases the warranty claims will be invalid, as well as the resulting consequences.

g) Client claims for necessary expenses for purposes of subsequent remedy, in particular the costs of transportation, travel, labor and materials, will be considered excluded if the expenses increase because the object of the claim is subsequently moved to a place that is not the commercial address of the client, unless the move corresponds to the intended use. In all cases, the expenses incurred by the client must be reasonable and approved in advance in writing by SW

h) Claims for damages by the client due to a material defect are excluded. This does not apply in case of fraudulent hiding of the defect, breach of a quality guarantee, harm to life, limb and health and intentional breach or gross negligence of duty by SW. Claims of the client for additional material defects or defects different from those referred to in paragraph VII are excluded.

2. The wearing parts are subject to the warranty only in relation to deviations that are not based on normal wear and tear for that type of piece. For wearing parts the warranty is only valid for the products mentioned in this section and the operating times, but not beyond the 12-month warranty period counted from their reception.

The following components of the machine will be considered mainly but not exclusively as wearing pieces:

- Separator ring in the work area, 4000 hours of service
- Telescopic covers or covers of the operating space, 4000 hours of service
- Lamps, 1000 hours of service

In main spindles the warranty applies for the following period and the following load:

- Cable grip, 2000 hours of service
- Clamp set, spring balances with approx. 1.2 million cycles of tension
- Rotating joints, 3000 hours of service
- Bearing for spindle approx. 8000 hours of service, depending on the collective revolutions

SW agrees to supply spare and wearing parts for at least the next 10 (ten) years from their delivery.

## VIII. Industrial property rights and copyright.

1. Unless agreed otherwise, SW is obligated to make delivery of the goods in the country in question free of industrial property rights and copyrights of third parties ("Property Rights"). If a third party, due to an infringement of the property rights of SW, presents a justified claim against the client for the Deliveries, SW will be liable to the client within the term described in article VII, number 2., first paragraph, in the following manner:

- a) SW will obtain for the corresponding Deliveries a right of use at its election and its cost, to modify them so that they do not infringe the property right, or exchange them. If these conditions are not appropriate for SW, the client has the right of termination of the agreement.
- b) The obligation of SW to indemnify the client for damages and losses under no circumstances may exceed the principal amount of the price of the Deliveries in question, and shall be governed by article X.
- c) The above obligations of SW exist only if the client informs SW immediately in writing of the third party claims, without recognizing a violation and if it grants and confers to SW all the measures for its defense through the legal area of SW. If the client admits the use of the goods delivered, it is obligated to inform the third party that the use does not mean the recognition of the presumed violation.

2. The claims of the client are excluded if it is responsible for the infringement.

3. The claims of the clients are also excluded if the infringement of copyright is caused by the specifications of the client, through an unforeseeable use by SW or caused by the fact that the delivery was changed or it is used with products not supplied by SW.

4. In case of infringements that affect Property Rights, the provisions of article VII apply for the claims of the client regulated in no. 1 a).

5. In the case of other legal defects, the provisions of Article VII consequently apply.

6. Client claims against SW additional to or different from those mentioned in Art. VIII and their indirect agents due to a legal defect are excluded.

7. No order placed with SW implies for the client the acquisition of any right, license, franchise or interest over the industrial and intellectual property rights (distinctive signs, inventions, copyright or other similar rights) that are the property of SW or with respect to which SW has an authorization for use.

8. The client agrees not to take any steps that involve acquiring for itself or encouraging any third party to acquire any right that is identical or confusingly similar to those owned by SW.

#### **IX. Impossibility; adjustment of the agreement**

1. To the extent the delivery is impossible, the client has the right to demand an indemnity, unless SW is not responsible for the impossibility of compliance. However, the indemnity claim will be limited to 10% of the part of the delivery that cannot be adequately put into operation due to the impossibility of compliance. The right of the client to terminate the agreement in this case will not be affected.

2. In the event that the unforeseeable events pursuant to section IV no. 2 substantially change the economic importance or the content of the Deliveries or considerably affect the functioning of SW, the agreement will be adjusted in good faith in that respect. If this is not economically justifiable, SW has the right to terminate the agreement without any liability and without need of an advance judicial order, by a simple written notice to the client. If SW wants to exercise its right of termination, after having learned the scope of this event, it will inform the client immediately, even if initially an extension of the delivery time was agreed with the client.

#### **X. Indemnity claims**

1. The indemnity claims of the client are excluded regardless of the legal basis for the claim, especially for the breach of commitments arising from the obligational relationship and for unauthorized actions.

2. The claim for damages and losses for breach of contract is limited to the typical, foreseeable damages, as long as there is no fraud, gross negligence or harm to life, limb or health.

3. If the client is entitled to indemnity for damages and losses, this expires when the statute of limitations expires according to article VII no. 2. The same applies for the claims by the client in relation to the measures for preventing the damage (for example, from callback).

#### **XI. Force Majeure**

1. No party will be responsible to the other for delay or breach to the extent such delay or breach is caused by an event of Force Majeure.

2. Force Majeure means unforeseen events that occur after entering into a contractual relationship that are beyond the reasonable control of the Parties, which include, among others, wars, acts of government, natural disasters, fires and explosions, to the extent that such event prevents or delays compliance with the obligations of the affected party and such party cannot prevent or remove the Force Majeure without unprecedented expenses. The Party affected by Force Majeure shall immediately take measures to limit or minimize the consequences of such Force Majeure.

3. The Party alleging Force Majeure must notify the other Party in writing and without delay of this circumstance, when it began and its expected duration. The Party alleging Force Majeure must provide evidence of its effects on compliance with its obligations. If compliance with its obligations is delayed more than three (3) months as a result of an event of Force Majeure, either of the Parties may terminate the agreement by sending a written notice to the other Party.

#### **XII. Confidentiality**

1. The client will keep confidential and not disclose to third parties nor use for any purpose that is not defined in the agreement, any confidential information received in relation to its contractual relationship, such as technical information, plans, commercial information, related to the business or finances of the company, designs, budgets, etc.

2. The client will make its best efforts to protect all the confidential information from inappropriate, unauthorized, negligent or involuntary transfers to third parties. The client agrees to protect the confidentiality of the information with at least the same care with which it handles its own confidential information and commercial secrets.

3. Once the commercial relationship ends or if SW requests it, the client will immediately return all the confidential information to SW that is in the possession of the client. The confidentiality obligation will continue in force after the contractual relationship ends for the next 5 (five) years.

#### **XIII. Other Provisions**

1. All communication between the Parties will be made through the representatives appointed by them or their substitutes when the Parties timely notify the other Party in the manner agreed.

2. It will be considered that the notices have been properly given if they are delivered personally in writing, sent by certified mail or sent by email or fax to the respective addresses determined by the parties as their primary headquarters. A notice or document sent by certified mail will be considered received the seventh day after its sending. If the notice is sent by fax or email, it will be considered received the same day.

3. Any modifications and amendments to the General Conditions will be valid only if they are agreed to in writing and are signed by the duly authorized representatives of both Parties.

4. If any provision of these General Conditions is considered unenforceable, in whole or in part, it will not affect the validity of the other provision, unless SW considers that the unenforceable provision is essential for complying with the Deliveries, in which case SW may terminate the agreement effective immediately once the client is notified, without need for an advance judicial order.

#### **XI. Jurisdiction and applicable law**

1. For everything related to the interpretation, performance and execution of these General Conditions of SW, the laws of Mexico City will be applicable.

2. Likewise, the parties agree to submit to the jurisdiction of the competent courts in Mexico City, waiving any other forum that by reason of their present or future domiciles may correspond to them.

3. For the legal relationship under this agreement, the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.