

# General Terms and Conditions of **Post-Venta Carreras,S.A.**

(Status: June 2013)

Only the general terms and conditions set out below shall apply to all business dealings concerning the contractual relationship and all further deliveries and services provided by Post-Venta arreras,S.A. C/Nicolao Copérnico, 2 08787 La Pobla de Claramunt , Spain. (supplier):

**In addition, the following terms shall apply:**

- For **all deliveries**, the Special Terms and Conditions concerning the Reservation of Title of Post-Venta Carreras,S.A.", Status June 2013. Cf. paragraph 11
- For the delivery of **unused machines**, our "Special Terms and Conditions concerning Liability for Defects of Unused Machines", Status: June 2013. Cf. paragraph 12.

These additional terms and conditions are enclosed with this letter on separate sheets and/or they will be sent to the ordering party upon written request. Contradicting general terms and conditions of the ordering party shall not be acknowledged.

## 1. Offer and conclusion of the contract

The order, which is binding for the ordering party for a period of 3 weeks, shall only be deemed as accepted when the supplier has confirmed it in writing. Until this point of time, the offer of the supplier shall be subject to change.

## 2. Scope of services

- a) The scope of deliveries and services is based on the written order confirmation of the supplier
- b) The information contained in our offers and any other documentation concerning the quality of products, in particular the designation of types, the year of fabrication and the technical data, is to be considered as an approximate, non-binding reference only unless it is expressly specified as binding.

## 3. Drawings and other documentation for second-hand machines

If the ordering party receives any drawings, plans or instructions in connection with the delivery of second-hand machines, this shall be done only as a special kind of service and shall not have any binding character for the supplier. In no case shall the supplier grant any warranty or assume any other kind of liability for such documentation. Our specifications relating to weights and measurements, e.g. for the purpose of constructing machine bases, shall not be binding. It shall be the exclusive responsibility of the ordering party to verify the information.

## 4. Supplier protection for second-hand machines

- a) Our information concerning installation sites of the machines and potential sellers are destined for the recipient only and the latter shall not be entitled to forward this information to any third party without our written consent.
- b) If we indicate an object for purchase to the ordering party or a potential buyer, the latter shall agree not to conduct themselves any price or contract negotiations concerning the objects that are for sale in this context, neither directly nor indirectly or via a third party, without our explicit written consent, and to grant us the sole and exclusive responsibility for conducting such negotiations.
- c) In case of non-compliance with the above provision, we shall be entitled to claim damages.

## 5. Prices and other costs

- a) For all orders, the agreed price shall be the net price excluding VAT. The supplier shall be entitled to increase this price if the ordering party exceeds the agreed date for collection for more than one calendar week.
- b) Unless agreed otherwise, prices are quoted ex factory or ex warehouse. Costs for packaging, freight, postage or any other fees shall not be included. The packaging shall be charged at cost price and it cannot be returned unless the supplier is obliged to take it back on the basis of other legal stipulations.
- c) The applicable Value Added Tax rate shall be charged in addition.

## 6. Delivery time and delay

- a) If a time for delivery has been agreed, this shall start on the day when the order confirmation is dispatched, but not before the ordering party has provided the necessary documents, approvals, releases and down payments as stipulated in the contract.
- b) The agreed delivery time shall be extended, also in the midst of the delay, in case of force majeure, industrial disputes and any unpredictable obstacles occurring after the conclusion of the contract which are outside the scope of our responsibility if these circumstances have evidently considerable influence on the delivery, irrespective of whether they occur on our premises or on the premises of our own suppliers. The same shall apply to cases where our suppliers fail to supply the goods in question to us or supply only an insufficient quantity thereof. We shall inform the ordering party about the beginning and the end of such circumstances as soon as possible. The delivery time shall be extended by the period of time during which the obstacle exists.
- c) If the supplier is in delay, the ordering party can assert any claims or rights to which it is entitled under these contractual conditions or by law only after it has set to the supplier, in writing, an appropriate extension of the original term of at least 2 weeks and if the delay of delivery still exists after the expiry of this deadline.
- d) Observance of the delivery time is conditional on the fulfilment of the contractual obligations on the part of the ordering party.

## 7. Dispatch and Acceptance

- a) If not agreed otherwise in writing, the supplier shall be entitled to choose the way and the means for dispatch.
- b) Upon request of the ordering party and at its costs, the supplier shall insure the delivery against theft, breakage, transport/fire/water damage as well as against any other insurable risk.
- c) Partial deliveries shall be admissible.
- d) The ordering party must accept the delivery of the objects even if these are defective, without prejudice to the rights laid down in paragraph 12.

## 8. Passing of risk

- a) At the latest when the delivery items have been dispatched from the factory or the warehouse, the risk shall pass to the ordering party, even in the case of partial deliveries or if the supplier has taken on further responsibilities, such as dispatch costs or transport and installation.
- b) If the dispatch is delayed for reasons which fall within the ordering party's responsibility, the risk shall pass to the ordering party on the day when the goods are ready for dispatch; the supplier shall, however, be obliged to conclude any kind of insurance upon the ordering party's request and at its costs.

## 9. Terms of payment

- a) Our invoices are due for payment without delay and without any deduction.
- b) In case of second-hand machines, the invoices are due for payment before the goods are loaded for dispatch, at the latest however 14 days after the supplier has issued the ready-for-dispatch notice.
- c) If the ordering party is in default with payments, we shall be entitled to request interests on arrears of 4% p.a. above the basic interest rate. This shall be without prejudice to any higher claims because of the default.
- d) The ordering party shall be entitled to set off any such claims or to assert any rights for retention only with claims which are undisputed or conclusively established by court.

10. Deterioration of the ordering party's financial situation

- a) If the supplier gains knowledge about any circumstances which justifiably give rise to doubts concerning the ordering party's capability to fulfil its contractual obligations, the supplier shall be entitled to refuse to perform his obligations until the ordering party fulfils its part of the agreement or provides the relevant securities. If the ordering party does not fulfil its obligation from the contract within an appropriate period of time it has been granted or fails to provide the required securities, the supplier shall be entitled to withdraw from the contract or to cancel it. This shall apply even if the supplier has already provided his services in full or in part.
- b) Under the circumstances stated in a) clause 1, the supplier shall also be entitled to request all claims arising from the business relationship as being due, irrespective of any extensions of the term of payment he may have granted earlier or irrespective of the term of any promises to pay that may have been included.

11. Reservation of title

The delivery shall be made exclusively under a comprehensive, extended reservation of title. The " Special Terms and Conditions concerning the Reservation of Title of Venta", Status: June 2013" shall apply. Upon written request, the ordering party will receive a free copy of these terms.

12. Liability for unused machines

For any defect or lack of a warranted quality in connection with the delivery of unused machines, our "Special Terms and Conditions concerning Liability for Defects of Unused Machines, Status: June 2013" shall be applicable. Upon written request, the ordering party will receive a free copy of these terms.

13. Liability for defects of second-hand machines (general exclusion of warranty)

- a) Used machines shall be sold only as they are and only with the available accessories. The ordering party shall have the right to inspect and check the delivery object before the conclusion of the contract. If the ordering party does not use this right to its full extent or not at all, no matter for what reason, it acknowledges the condition of the goods without inspection.
- b) Second-hand equipment is sold excluding any warranties unless, in exceptional cases, the supplier is liable for a lack of warranted qualities or on the basis of an explicit agreement or for some other reasons.
- c) The agreed warranty that the equipment is free from breakage and without cracks shall be restricted to defects which exclude the functioning of the machine. Even in this case, the supplier's liability shall not cover any defects on toothed wheels and parts that are subject to wear and tear nor any damage caused by breakage, cracks or other reasons which occur after the passing of the risk according to paragraph 8. Machines that have been welded or repaired by means of locking methods shall be considered as free from cracks and breakage.
- d) A prerequisite for any warranty claims on the part of the ordering party is that the latter has appropriately fulfilled its obligation to inspect the goods and to give notice of defects.
- e) Whenever the supplier is liable for defects, the following provisions shall apply:
- ea) It shall be left to the supplier's discretion to either eliminate the defect (repair) or to provide a substitute (replacement delivery).
- eb) If the supplier is not willing or not able to carry out a repair or to provide a replacement or if these are delayed beyond an appropriate period of time or fail to materialize in any other way, the ordering party, at its own discretion, shall be entitled to either withdraw from the contract or to reduce the purchase price.
- ec) If a liability of the supplier for indemnification is to be considered, the supplier shall be liable in as far as he has caused the damage deliberately or by gross negligence or by a wilful violation of an important contractual obligation (material obligation).In addition, he shall be liable for indemnification because of non-fulfilment in case of a lack of warranted qualities and for any consequential damage caused by this lack, but only as far as the warranty of qualities has the objective to protect the ordering party also against consequential damage caused by a lack of these qualities and if the damage is indeed caused by the lack of a warranted quality or as far as he is already liable according to the provisions above.
- Furthermore, the supplier shall be liable under the Product Liability Law.In all other cases, the supplier shall not be liable.Irrespective of the above regulation, the supplier shall not be liable for any unforeseeable and completely untypical damage, except for cases of deliberate action or gross negligence on the part of the owner, the legal representative or an executive of the supplier's company or for cases where the Product Liability Law applies or if a liability can be reasonably expected from the supplier by way of exception.

14. Other liabilities and rights of cancellation

- a) If another liability of the supplier to pay damages can be considered, no matter for what legal cause (e.g. culpa in contrahendo, violation of secondary obligations, product liability), the supplier shall be liable as far as he has caused the damage deliberately or by gross negligence or by a wilful violation of an important contractual obligation (material obligation). Furthermore, the supplier shall be liable under the Product Liability Law. Any further liability on the part of the supplier is excluded.

15. Violation of VAT regulations

Any damage arising for the supplier due to the fact that the ordering party does not comply with the VAT regulations (e.g. wrong VAT identification number) must be reimbursed by the ordering party.

16. Place of performance, legal venue and applicable law

- a) The place of performance for all obligations arising from the contract shall be Barcelona (Spain).
- b) **The legal venue for all disputes arising from the delivery contract shall be Barcelona (Spain)**, if the ordering party is a merchant, a legal entity governed by public law or a special trust under public law. The supplier shall also be entitled to bring an action against the ordering party at the latter's registered place of business.
- c) The contractual language is Spanish. **The contract is exclusively governed by Spanish law**; the UN convention on the sales of goods (CISG) shall not be applicable.