

**1. Scope of application**

These delivery and payment terms apply to all business transactions with the buyer, even if no reference is made to them in later transactions. We hereby expressly object to the buyer's conditions of purchase, if any. These shall not become part of the contract unless we have consented thereto in writing; our acceptance of an order, or delivery by us, shall not constitute a consent. These delivery and payment terms do not apply to private consumers.

**2. Conclusion of the contract, characteristics of the goods**

Our offers are not binding. Contracts will only be made through our written order confirmation, which shall determine the terms of the contract. If we do not confirm an order, the delivery contract is deemed to have been made upon delivery by us.

Descriptions and illustrations of our products shall only be looked upon as approximations. We reserve the right to make alterations to our products prior to delivery, in particular technical changes made in the course of our regular updating of products, which, however, may not unreasonably prejudice the interests of the buyer.

**3. Exclusion of cancellation and return deliveries**

The cancellation or amendment of contracts, once concluded, shall require our express consent. The return of delivered goods requires our prior written consent.

**4. Passage of risk, transport**

Delivery shall be made ex works or ex warehouse. Risk shall pass to the buyer as soon as we have handed the goods over to the carrier, however, at the latest when they leave the works or the warehouse.

We are entitled but in no case, including deliveries abroad, obligated to take out transport insurance. If the goods are damaged or lost in transit, the buyer must promptly have the forwarding agent draw up a report of the circumstances.

Unless the buyer gives written instructions the contrary, it shall be for us to decide on the means of transport, the transport route and the transport insurance, without being responsible for choosing the quickest or cheapest possibility.

**5. Part deliveries**

We are entitled to execute orders in part deliveries, which shall be treated as independent deliveries and which must be paid for separately within the payment terms named in sec. 8. If payment for a part delivery is delayed, we can suspend execution of the remainder of the order.

**6. Delivery period**

Specifications of delivery periods are non-binding, even if contained in our order confirmation, unless we have expressly stated that they are binding. The delivery period commences on the date of our order confirmation, however not before all the details of the order have been clarified, in particular not before the buyer has furnished all the documents, permits and releases required, and not before receipt of an agreed down payment. The delivery period is met if, by the time at which it lapses, the goods have been shipped or notification has been given that they are ready for shipment.

If delivery is made impracticable by force majeure, then the delivery date will be extended automatically by the time of the event constituting force majeure, plus an appropriate start-up period. Unforeseeable circumstances which make delivery unreasonably difficult or impossible for us, such as delays in delivery by suppliers, labour disputes, acts of authority, raw material or energy shortages, plant and transport interruptions of all kinds, etc., shall have the same effects as force majeure. If these circumstances last more than four months, we have the right to rescind the contract. At the buyer's request, we shall state whether we wish to do the later or to deliver the goods within a reasonable period of time to be determined by us. The buyer shall not be entitled to claim damages.

If we are responsible for exceeding a not binding delivery deadline, we shall nevertheless not be in default before the buyer has granted us an additional period for delivery of at least 30 days and this period lapses without avail. Following this the buyer may rescind the contract. Claims for damages are restricted to 5 % of the value of the outstanding shipment, however at least to the typical foreseeable damage.

**7. Price**

The buyer must pay the list price current on the day of delivery. If, contrary to this, a fixed price was agreed upon, we may instead charge the list price current on the day of delivery. If the price increase is more than 5 % of the agreed price, then the buyer may, by informing us in writing, rescind the contract within 14 days after receiving notice of the price increase.

Our prices are in JPY and, as the case may be, ex works or ex warehouse.

Prices shall be calculated according to such quantity or such weight, respectively, as is determined by us. The buyer may nevertheless show that the quantity or weight determined by us is wrong. Value added tax and shipping costs, in particular freight, transport insurance, customs duties and customs clearance duties as well as packing charges shall be borne by the buyer, even if they are not itemized separately.

**8. Payment**

Unless the contrary is agreed upon in writing, our invoices are payable net within 30 days from the invoice date. Payments will always settle the oldest invoice. We are not obliged to accept bills of exchange. If we accept means of payment other than cash or transfer, these will only be accepted on account of performance.

All payments must be effected free of charges for us. Bank charges, discount charges and collection charges shall be borne by the buyer,

even without express agreement to this effect.

If the net payment date has expired, we are entitled to charge interest at a rate of 6 % over the basic rate of interest of the Japanese Central Bank at the latest from 31st day after receipt of the invoice or similar payment demand.

If after conclusion of the contract, the buyer's financial situation is materially impaired, or if any earlier impairment of the buyer's financial situation does not become known to us until after conclusion of the contract, we are entitled to request either advances or the grant of a proper security interest, whichever we wish. If this request is not met, we have right, after expiry of a reasonable period of grace, to withhold performance of the contract.

The buyer cannot offset a counter-claim which is disputed by us and which has not become res judicata, nor may he, in respect of such a counter-claim, exercise any right of retention.

Payments made to our representatives or employees shall only be effective if a written authority to collect is submitted.

**9. Special Productions**

Where products are manufactured by us according to the buyer's requirements, specifications, etc. the buyer shall bear sole responsibility for the correctness of the said requirements and specifications. He shall indemnify us against all claims made against us, or against a firm called upon by us, on the basis of industrial property rights or copyrights.

With products made to order, delivery quantities which deviate by + or - 10 % from the quantity agreed shall be deemed to conform to the contract. Our purchase price claim shall increase or decrease accordingly. The details of these orders must be agreed separately.

**10. Reservation of ownership**

The goods delivered will remain our property until the buyer has paid all claims which we have against him now and in the future. The buyer may in the ordinary course of business process, assemble and sell the goods to which we retain title unless he is in default with or has discontinued payments. He may not pledge, nor create any security interests in the goods. If the buyer sells any of the goods to which we retain title, then he here and now, and until such time as all our claims against him have been paid, assigns to us his rights against his customers from the sales, together with all ancillary rights, security interests and reservations of title. However, the buyer may collect the debts receivable assigned to us, unless he is in default with or has discontinued payments.

If the value of the goods to which we retain title together with all other security interests conferred upon us exceeds our claims against the buyer by more than 20 %, then we are, upon his request, to release this amount.

If in case of export transactions and at the place of the goods' destination, special measures are required for the reservation of title or the assignment to be effective, the buyer must give us notice thereof and must take said measures at his own cost. If, at the place in question, a reservation of title and / or any of the above-mentioned rights are not possible, the buyer must at his own expense make every effort to confer upon us those security interests in the goods delivered which most resemble these rights, or some other appropriate security interest.

**11. Defects**

We are only liable for defects in our goods if the buyer notifies us in writing thereof without delay, at the latest 10 days after receipt of the goods. We are not liable for defects that are not notified within the deadlines mentioned above.

Our liability is either limited to the removal of defects or to a free of cost replacement of defective goods. Upon request, the defective goods or a sample thereof are to be sent to us first for examination.

If it is not possible to deliver defect-free replacements, if we refuse to perform or if there are special circumstances which, after taking both parties' mutual interests into consideration, justify the immediate enforcement of further legal remedies, or if a reasonable deadline set by the buyer for improvement has expired without result, the buyer is then entitled to rescind the contract or demand a reduction of the price.

Any warranty claim of the buyer in regard to defects of quality is subject to a period of limitation of 1 year. The time limitation starts on delivery of the goods.

**12. Claims for damages**

Claims of the buyer for damages resulting from a breach of duty, from tort or for other reasons are excluded unless this is based on intent, gross negligence, injury of a primary fulfilment obligation, the acceptance of a purchasing risk or a guarantee claim or if we are liable in accordance with the provisions of the Product Liability Law or we are responsible for culpable damage which resulted in loss of life, personal injury or damage to health. In all cases claims for damage are restricted to typical foreseeable damage.

In case Groz-Beckert is none or limited liable in accordance with the above paragraph, any Groz-Beckert employee, representative and fellow servant is none or limited liable as well.

**13. Applicable law, place of performance, legal venue**

The legal relations between the buyer and ourselves shall be governed exclusively by the laws of Japan.

The place of performance for the performances of both contracting parties is Osaka, Japan. All disputes arising out of or in connection with these delivery and payment terms shall be settled exclusively by the courts having jurisdiction over Osaka, Japan.

Alternatively, we have the right to file a suit at the buyer's principal place of business or seat.

The following terms and conditions shall additionally apply to the purchase of machinery and components.

**Sec. 2 is supplemented as follows:**

We reserve title and copyright to samples, cost estimates, drawings, usage instructions and similar information of a tangible and intangible nature, including such in electronic format, which we have provided. Such information has to be treated as confidential and may not be made accessible to third parties.

**The following is to be added after sec. 3:**

**3.a Acceptance of performance**

Unless agreed otherwise, the acceptance of performance shall take place in our factory during normal working hours. If the contract contains no provision in relation to the technical details, the customary practice of the industrial sector in question shall be applied for the examinations.

We shall inform the buyer sufficiently early to enable him to arrange for their representatives to participate in the examinations. If the buyer does not arrange to be represented, we shall send him the examination record, the accuracy of which he may not contest.

If an examination (apart from a contractually planned examination at the place of installation) should indicate that the delivery item is defective or does not conform to the contract, we shall endeavour to promptly remedy the defect or to ensure conformity with the contract. The examination shall be repeated at the buyer's request.

Unless agreed otherwise, we shall bear the costs of examinations conducted in our factory, but not the personal expenses of the buyer's representatives.

If an acceptance of performance at the place of installation is scheduled in the contract, the terms and conditions applicable to such examinations shall be separately agreed between the parties.

**Sec. 11 is to be replaced by:**

We are only liable for defects in our goods if the buyer notifies us in writing thereof without delay, at the latest within 10 days after receipt of the goods. We are not liable for defects that are not notified within the deadline mentioned above.

Variations from specifications or covenants relating to the consumption or performance of the machines supplied by ourselves, of up to +/- 10%, shall not constitute defects in the goods.

Our liability is either limited to the removal of defects or to a free of cost replacement of defective goods. Upon request, the defective goods or a sample thereof are to be sent to us first for examination. If it is not possible to deliver defect-free replacements, if we refuse to perform, or if there are special circumstances, which, after taking both parties' mutual interests

into consideration, justify the immediate enforcement of further legal remedies, or if a reasonable deadline set by the buyer for improvement has expired without results, the buyer is then entitled to rescind the contract or demand a reduction of the price.

If a defect is only minor, the buyer shall only be entitled to reduce the contract price. He shall not be entitled to reduce the contract price in any other circumstances.

Any warranty claim of the buyer in regard to defects of quality is subject to a period of limitation of 1 year, provided the defect was not fraudulently concealed, or caused intentionally or through gross negligence by ourselves. The period of limitation shall commence at the time of the acceptance of performance. If no acceptance of performance takes place, the period of limitation shall begin when the goods are handed over to the carrier, albeit at the latest when the goods leave the factory or warehouse.

**Sec. 12 is supplemented as follows:**

Having reached an understanding with us, the buyer must provide us with the necessary time and opportunity to undertake all repairs and replacement deliveries that we deem necessary, failing which we shall be exempted from our liability for the resulting consequences. The buyer shall only have the right to remedy the defect himself, or to arrange for his remedy by third parties and to claim reimbursement of the associated expenses from us, where there is an urgent risk to operational safety, or in order to avert disproportionately high losses, in which case we must be notified immediately.

No liability shall be accepted in the following circumstances in particular:

- unsuitable or inappropriate use;
- defective installation or commissioning by the buyer or by third parties;
- normal wear and tear;
- defective or negligent treatment;
- improper maintenance;
- unsuitable resources;
- defective building work;
- unsuitable building ground;
- chemical, electrochemical or electrical effects, provided we are not responsible for these.

If the buyer or a third party effects inappropriate repairs, we shall not be liable for the resultant consequences. The same shall apply in the event of any changes to the delivery goods without our prior approval.