

Terms of Delivery of Machines of Steinemann DPE AG ("STEINEMANN-TM")

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1. Validity

- 1.1 The STEINEMANN-TM shall apply to deliveries of machines, spare parts and services, (collectively "**Delivery**"), which Steinemann DPE AG ("**STEINEMANN**") provides on the basis of a contract concluded between STEINEMANN and a business customer ("**Customer**"). The Customer and STEINEMANN collectively are hereinafter referred to as "**Parties**" or individually as "**Party**".
- 1.2 Deviating terms from the STEINEMANN Terms of Delivery of Machines shall not apply unless STEINEMANN has expressly agreed to them in writing.
- 1.3 The STEINEMANN Terms of Delivery of Machines shall apply in the context of a continuous business relationship also for future business between STEINEMANN and the Customer, even if, in individual cases, STEINEMANN did not expressly refer to the inclusion of the STEINEMANN-TM at the time of conclusion of the contract.
- 1.4 Amendments to the contract shall be made in writing.

2. Offer

- 2.1 The description of the quality of the Delivery is exclusively and conclusively defined in the respective Technical Specification ("**TS**").
- 2.2 STEINEMANN reserves all rights of ownership and copyright of documents included in the offer – irrespective of the data carrier (e.g. stamping dies, support fixtures).
- 2.3 A pre-contractual performance during the offer stage that STEINEMANN provides on request of the Customer (e.g. design development, artwork, origination, matrices, samples, injection-moulded parts etc.) shall be invoiced by STEINEMANN, even where no contract is subsequently entered into by the Parties.
- 2.4 The offer of STEINEMANN is binding for a period of 90 calendar days from the date of the offer.

3. Terms of Delivery, Transfer of Risk

- 3.1 Delivery shall be EXW from STEINEMANN in St. Gallen as per Incoterms® 2010 ("**Place of Delivery**").
- 3.2 Prices are net prices in CHF (Swiss Francs), including the necessary packaging plus additional costs for packaging on request of the Customer and plus the current value added tax (VAT) in force at the time of delivery without further deductions.
- 3.3 For a Delivery less than CHF 500.00 net price, STEINEMANN charges a minimum quantity surcharge in the amount of CHF 30.00.
- 3.4 A partial delivery is permissible.
- 3.5 The transfer of risk to the Customer shall take place at the time KURZ provides the Delivery at the Place of Delivery. This shall also apply if STEINEMANN has agreed to bear the delivery costs or if the delivery

is dispatched or collected at the Customer's request. In the event the Delivery is dispatched, the Customer shall bear the costs incurred thereby (e.g. transport, insurance, customs).

4. Reservation of Self-Delivery

In the event that the Delivery is not available because STEINEMANN has not received deliveries from its own suppliers or the delivery stock of STEINEMANN is depleted, **STEINEMANN is entitled to make a Delivery, which is equivalent in quality and price to the contractually agreed Delivery. If this is not possible, STEINEMANN may rescind the contract.**

5. Terms of Payment, Offsetting, Right of Retention

- 5.1 Unless otherwise agreed, every invoice from STEINEMANN is due for immediate payment without any deduction.
- 5.2 Insofar as the contract contains no information on the terms of payment, the following shall apply: The Customer will receive a first invoice after receipt of the order confirmation in the amount of 1/3 of the price of the Delivery (down payment), the payment of which is a prerequisite for further processing of the order. As soon as the Customer has been informed that the Delivery is ready for dispatch or collection, the Customer will receive a second invoice amounting to 1/3 of the price of the Delivery, payment of which is a prerequisite for dispatch or collection of the Delivery. The balance will be invoiced to the Customer upon receipt of the Delivery. Invoices for spare parts shall be payable in full upon receipt by the Customer.
- 5.3 The Customer can only offset a counterclaim against a claim of STEINEMANN or exercise the right of retention if its counterclaim is undisputed or confirmed by a final and unappealable judgement.
- 5.4 If the Customer is in default of payment, suspension of payment, opening or applying for bankruptcy, insolvency or composition proceedings or rejection of such due to non-existing assets, protest of a bill, valuation of the Customer with a high business risk by a recognized information or rating agency, or in the event of comparable sustainable reasons which suggest the Customer's insolvency, STEINEMANN is entitled to demand immediate payment of all claims which are not yet due. In addition, STEINEMANN is entitled to make each Delivery subject to an advance payment.

6. Delivery Period

- 6.1 Observance of the agreed delivery period is conditional on the timely receipt of complete documents, necessary permits and approvals, especially of plans to be provided by the Customer as well as fulfilment of the agreed terms of payment and other obligations by the Customer (e.g. advance payment, partial payment). In case these conditions are not fulfilled on time, the delivery period shall be extended accordingly; this shall not apply if STEINEMANN is solely responsible for the delayed Delivery.
- 6.2 If non-observance of the delivery period is due to events such as natural disasters, mobilization, war, terrorist acts, computer virus and further attacks by third parties on the IT-system of STEINEMANN despite compliance of STEINEMANN with the safety precautions of the usual security measures, riot, strike, lock-out, impediments resulting from German, US-American and other applicable national, European or international foreign trade laws, breakdowns in production or other plant interruptions, traffic problems or other comparable circumstances for which STEINEMANN is not responsible ("**Force Majeure**"), the delivery period of STEINEMANN shall be extended reasonably. Should any event of Force Majeure last for a period of more than 60 calendar days, the Customer or STEINEMANN shall be entitled to rescind the contract in whole or in part. In such case no Party shall have a right to seek damages against the other Party. This shall also apply if any event of Force Majeure occurs at the time when STEINEMANN is in delay with the Delivery.
- 6.3 If STEINEMANN is in default of delivery, the Customer may, subject to the following conditions, demand a lump-sum compensation for each completed calendar week of default of 0.5% each, but not more than a total of 5% of the net price of that part of the Delivery which cannot be used by the Customer on time or in accordance with the contract as a result of the default. The obligation to pay the liquidated damages requires proof by the Customer that any damage has occurred, but not of its amount. STEINEMANN shall be entitled to provide evidence that the Customer suffered lower or no damage.
- 6.4 **Further claims and legal remedies of the Customer due to delay in delivery, in particular due to indirect or consequential damages, loss of profit or loss of production beyond the limits specified in 6.3, shall be excluded even after the expiry of any deadline for delivery set by the Customer.** This shall not apply in the event STEINEMANN is subject to mandatory liability on account of intent, gross negligence or due to loss of life, bodily injury or damage to health.
- 6.5 The Customer shall only be entitled to rescind the contract provided that STEINEMANN is solely liable for the delayed Delivery and after reaching the maximum amount of compensation in 6.3 and the Customer has set an adequate delivery period to STEINEMANN within which STEINEMANN has to

supply the Delivery and such delivery period has expired. A change in the burden of proof to the detriment of the Customer shall not be implied hereby.

- 6.6 At the request of STEINEMANN, the Customer shall declare within a reasonable period whether the Customer will rescind the contract due to the delayed Delivery or insist on the Delivery.

7. Retention of Title

- 7.1 The Delivery shall remain the property of STEINEMANN until the delivery price has been paid. ("**Secured Goods**"). The Customer shall not damage, modify, remove, or make illegible any number, sign, nameplate, company and/or brand name or other marking affixed on the Secured Goods by STEINEMANN.

- 7.2 **The Customer agrees that STEINEMANN may have the retention of title entered in the relevant register of retention of title without the Customer's involvement and at the Customer's expense until full payment has been received. The Customer undertakes to surrender unconditionally all declarations necessary for the valid establishment of the retention of title without delay upon first request, to transmit the necessary information and to take necessary action.**

- 7.3 The Customer is prohibited from giving the Secured Goods in pledge or transferring the Secured Goods as security. In case of a seizure of the Secured Goods or other acts or interventions by any third party relating to the Secured Goods, the Customer shall immediately inform STEINEMANN thereof in writing.

- 7.4 **If the Customer resells the Secured Goods, the Customer hereby assigns to STEINEMANN as security any future claims (including value-added tax) against its customers from the resale, including all ancillary rights (assignment by way of security), without the need for any further special declarations.** The provisions in 7.5 remain unaffected. Upon complete payment of the Secured Goods, the assignment by way of security shall lapse (resolutive condition). If the Secured Goods are sold together with other items and no individual price has been agreed with respect to the Secured Goods, the Customer shall assign to STEINEMANN such proportionate fraction of the total price as is attributable to the price of the Secured Goods invoiced by STEINEMANN. STEINEMANN herewith accepts such assignment.

- 7.5 **If the Customer has sold claims against its customers from the sale of Secured Goods within the framework of genuine factoring, the Customer hereby assigns to STEINEMANN as security the Customer's claims against the factor that replace them (assignment by way of security).** STEINEMANN herewith accepts the assignment. Upon complete payment of the Secured Goods, the assignment by way of security shall lapse (resolutive condition).

- 7.6 In the event that the Customer is in breach of an obligation, in particular, a default of payment, STEINEMANN is entitled to rescind the contract and to take back the Secured Goods, after the expiration of a reasonable time limit set for the Customer to rectify the breach. The Customer is obliged to return the Secured Goods to STEINEMANN. The statutory provisions on the dispensability of setting a deadline, in particular in the event of a serious and/or final refusal to perform, and the statutory rights of STEINEMANN in the event of default on the part of the Customer shall remain unaffected.

- 7.7 The provisions on assignment by way of security pursuant to 7.4 and 7.5 shall also apply mutatis mutandis in the case of processing or combining the Secured Goods for a new item. Such assignment is valid only up to the amount that equals the amount invoiced by STEINEMANN for the processed Secured Goods.

- 7.8 The Customer shall be entitled to collect any outstanding receivables from the resale of Secured Goods until revocation by STEINEMANN. STEINEMANN is entitled to revoke the Customer's collection authorisation at any time and to notify the Customer's buyer of the assignment of security. In addition, STEINEMANN shall be entitled to collect the assigned claims after prior warning and subject to a reasonable period of notice.

8. Intellectual Property

- 8.1 No intellectual property rights are transferred to the Customer by the contract or delivery – irrespective of whether such rights already existed when the contract was concluded or only arose later (e.g. within the framework of the performance of the contract).

- 8.2 Insofar as the Delivery contains software, STEINEMANN shall grant the Customer an unlimited, non-exclusive, non-transferable, non-assignable, non-sublicensable right to use the software, including the documentation, for an indefinite period of time, insofar as this is necessary for the intended use of the Delivery. The right of use shall be limited to the Delivery and shall only arise upon full payment of the price and any ancillary claims. A licence fee is part of the price. Subject to the mandatory provisions of the Swiss Copyright Act (URG), the Customer is prohibited from reproducing or decrypting the software. The Customer is prohibited from removing or changing the manufacturer's details – in particular copyright notices – without the express written consent of STEINEMANN.

9. Warranty for Material Defects

- 9.1 **All claims of the Customer against STEINEMANN based on material defects (including damages) shall be governed exclusively by the provisions of 9. and 11. of these STEINEMANN-TM. Any further warranty as well as claims of the Customer other than those provided for in 9. and 11. are excluded.** The limitation of the statutory warranty obligation shall not apply in the event of intent or gross negligence or culpable loss of life, bodily injury or damage to health or fraudulent concealment of a material defect by STEINEMANN.
- 9.2 STEINEMANN warrants that the Delivery will have the quality specified in the respective TS at the time of transfer of risk, subject to the following restrictions: In the case of only insignificant deviation from the quality according to the TS or in the case of only insignificant impairment of usability, there shall be no material defect. To avoid misunderstandings: In the case of, for example, natural wear and tear or damage arising after the transfer of risk as a result of faulty or negligent handling, excessive strain, unsuitable operating materials, unsuitable foundations or due to external influences, there shall also be no material defect. If the Customer or third parties make improper modifications or repair work on the Delivery, there are also no claims for defects in respect of these and the resulting consequences. The Customer is solely responsible for ensuring the suitability of the Delivery for the intended purpose. If the Customer requests further tests from STEINEMANN which do not correspond to those of the respective TS, such tests must be agreed separately in writing and paid for by the Customer.
- 9.3 The Customer is obliged to carefully check the condition of the Delivery immediately upon receipt. STEINEMANN must be notified immediately in writing of any material defects that are identifiable in a proper inspection and these must be substantiated (notice of defects). If the Customer fails to do so, the Delivery shall be deemed approved. All material defects which were not recognisable upon receipt during proper inspection (concealed material defects) shall be notified by the Customer in writing and substantiated immediately after their discovery (notice of defects), otherwise the Delivery shall also be deemed approved with regard to these material defects. The notice of defects must always include the data relating to the Delivery (e.g. offer, delivery note, invoice, blanking plate: batch number, bar code). In the event of an unjustified notice of defects, the Customer is obliged to reimburse STEINEMANN for the resulting expenses.
- 9.4 If a Delivery has a material defect upon transfer of risk and if the Customer gives notice of this in a valid and timely manner, STEINEMANN undertakes to effect subsequent performance **exclusively by repair or (partial) replacement** (at STEINEMANN's discretion). **Warranty claims in excess of this (with the exception of any damages pursuant to 11.) are excluded. Subject to the following provision, the Customer shall in particular not be entitled to cancellation or reduction of the purchase price.** The Customer must give STEINEMANN the time and opportunity required for subsequent performance. If the Customer does not give STEINEMANN the opportunity to remedy the defect within a reasonable period of time, STEINEMANN shall be released from the warranty (including damages). If subsequent performance is not possible, if the period for subsequent performance expires unused or if the material defects cannot be completely remedied after two subsequent improvements, the Customer may rescind the contract or reduce the purchase price. Rescission of contract is only possible if the material defect is significant.
- 9.5 All warranty claims of the Customer against STEINEMANN **shall become statute-barred within 12 months of delivery**, or, if acceptance has been agreed in the contract, within 12 months of acceptance but no later than 18 months after STEINEMANN has notified the Customer that the Delivery is ready for dispatch. **No further period of limitation begins with subsequent performance from STEINEMANN.**
- 9.6 The Customer shall have no claim with respect to expenses incurred for the purpose of subsequent performance, especially transport, road, labour and material costs, to the extent that such expenses increase because the Delivery was subsequently brought to a location other than the Place of Delivery.

10. Warranty for Defects in Title

- 10.1 **All claims of the Customer against STEINEMANN based on defects of title (including damages) shall be governed exclusively by 10. and 11. of these STEINEMANN-TM. Any further warranty as well as claims of the Customer other than those provided for in 10. and 11. are excluded. The limitation of the statutory warranty obligation shall not apply if STEINEMANN has concealed the rights of third parties from the Customer intentionally or with gross negligence.**
- 10.2 STEINEMANN warrants that the Delivery is free from industrial property rights and copyrights of third parties and/or other rights of third parties in Switzerland, which impair the use of the Delivery for the Customer ("**Third-Party Rights**") upon transfer of risk.
- 10.3 The Customer must notify STEINEMANN in writing and substantiate any Third-Party Rights asserted by third parties (notice of defects) immediately upon becoming aware of the same. **The Customer is obliged not to acknowledge any Third-Party Rights asserted and to reserve all protective measures and settlement negotiations for STEINEMANN and to announce the dispute in all court**

proceedings, otherwise the Customer forfeits any claims from warranty for defects in title. If the Customer wishes to discontinue the use of the Delivery in good faith due to the assertion of Third-Party Rights, the Customer must issue a warning thereof to STEINEMANN in good time and have offered STEINEMANN the management of the process without success. **If the Customer voluntarily ceases to use the Delivery without a court order or the consent of STEINEMANN, the Customer shall do so at its own risk; the Customer shall not be entitled to any claims against STEINEMANN.** In any case, the Customer shall point out to the third party that the discontinuation of use does not constitute an acknowledgement of an infringement of Third-Party Rights.

- 10.4 If STEINEMANN is responsible for defects in title, STEINEMANN shall, at its discretion and expense, either obtain a right of use for the Delivery in question, modify the Delivery so that Third-Party Rights are not infringed, or replace the Delivery. If this is not possible for STEINEMANN under reasonable conditions, the Customer shall be entitled to damages in the event of partial privation and a right to rescission of contract in the event of complete privation.
- 10.5 A claim by the Customer against STEINEMANN shall be excluded if the Customer is liable for the infringement of Third-Party Rights, the infringement of Third-Party Rights is caused by specific demands of the Customer, by use of the Delivery not foreseeable by STEINEMANN, or the Delivery being altered by the Customer or being used together with products not provided by STEINEMANN.

11. Other Liability, Damages

- 11.1 **STEINEMANN shall only be liable for damages in the following cases** (irrespective of the legal basis and for contractual as well as non-contractual claims):
- in case of intent or gross negligence,
 - in case of culpable loss of life, bodily injury or damage to health,
 - in case of a claim of the Customer based on product liability.
- In any other case, the Customer shall have no claim for damages against STEINEMANN.**
- 11.2 The Customer acknowledges that any **technical application information** provided by STEINEMANN is free of charge and without obligation. **STEINEMANN accepts no liability whatsoever for the accuracy of the information provided.** Information provided by STEINEMANN is also never a warranted quality of the Delivery. Consulting services provided by STEINEMANN employees are therefore no substitute for consulting services provided to Customers by qualified experts. **The Customer shall not be released from its obligation to examine the intended use of the Delivery at its sole responsibility.** This shall also apply if the Customer's intended use of the Delivery is known to STEINEMANN.
- 11.3 **STEINEMANN is not liable for damage caused by its auxiliary personnel (in particular employees and carriers). The Customer also waives the right to assert any direct claims against STEINEMANN's auxiliary agents. STEINEMANN excludes the principal's liability for slight and medium negligence.**
- 11.4 **All claims for damages on the part of the Customer shall expire 12 months after delivery, subject to the longer limitation periods in Art. 127, 128 and 137 para. 2 of the Swiss Federal Code of Obligations (Obligationenrecht, OR).**

12. Impossibility of Performance, Contract Adjustment

- 12.1 In case the supply of the Delivery is impossible, the Customer shall have the right to claim damages unless STEINEMANN is not responsible for the impossibility. **The right of the Customer to claim for loss or damages shall be limited to 10% of the net price of that part of the Delivery which, due to the impossibility, cannot be put to the intended use by the Customer.** This shall not apply in the event STEINEMANN is subject to mandatory liability on account of intent, gross negligence or due to loss of life, bodily injury or damage to health. A change in the burden of proof to the detriment of the Customer shall not be implied hereby. The right of the Customer to rescind the contract shall remain unaffected.
- 12.2 The contract shall be reasonably adjusted in compliance with the principle of good faith where incidents of Force Majeure substantially change the commercial significance or the content of the Delivery or have a material adverse effect on the business of STEINEMANN. Where this adjustment is not economically justifiable, STEINEMANN shall have the right to rescind the contract. STEINEMANN shall inform the Customer of the exercising of the rescission of the contract without delay upon awareness of the consequences of the incident, even if initially an extension to the delivery period had been agreed with the Customer.

13. Supply of the Customer

- 13.1 The Customer shall incur liability for any transfer to and use by STEINEMANN of the supplies of the Customer agreed in the contract ("**Supply**") – irrespective of the data carrier – which infringes a Third-

Party Right. The Customer shall immediately indemnify and hold harmless STEINEMANN from any corresponding claims of such third party.

- 13.2 The Customer shall deliver its Supply to the Place of Delivery at its expense. The costs of storage, maintenance, repair and disposal for its Supply shall be borne by the Customer.

14. Confidentiality

- 14.1 Each Party shall not, without the prior written consent of the other Party, pass to third parties information, knowledge, templates, including such documents as illustrations, drawings, plans, construction documents ("**Information**") received from the other Party. This shall not apply to Information which at the time of receipt are generally known or were already known by the receiving Party without being obliged to maintain confidentiality or were transferred by a third party lawfully in possession thereof and who has the lawful power to disclose such Information or were independently developed by the receiving Party without using any Information of the disclosing Party. Information shall be returned by the receiving Party without delay if a contract is not awarded. A right of retention by the receiving Party is excluded.
- 14.2 A third party within the meaning of 14.1 shall not be deemed to be a company affiliated with STEINEMANN as well as a person or company entrusted with the task of performance of the contract by STEINEMANN insofar as they have been obliged to keep confidential in an equivalent manner.
- 14.3 Neither Party shall use the Information received from the other Party for purposes over and beyond the scope of the contract between the Parties without the express prior written consent of the other Party.
- 14.4 The obligation of confidentiality shall begin upon receipt of the Information and ends 5 years after the end of the business relationship.

15. Assignment

The assignment of a claim or of a right under the contract is permitted only with the prior written consent of the other Party. This shall not apply to a monetary claim.

16. Corporate Social Responsibility

- 16.1 As a member of the KURZ-Group, STEINEMANN is committed to respect and to observe the KURZ Code of Business Conduct.
- 16.2 The Customer confirms to observe the applicable law and legislation; the Customer shall not tolerate any kind of corruption or bribe and shall respect basic rights and the ban on child labour and forced labour. Furthermore the Customer shall take responsibility for the health and safety of its employees, shall ensure a fair compensation and reasonable working hours, shall act in accordance with the applicable environmental laws and shall use its best efforts to promote the observance of these principles among its suppliers.

17. Applicable Law

The substantive law of Switzerland shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall be excluded.

18. Jurisdiction

The exclusive place of jurisdiction is St. Gallen, Switzerland.