

**General Terms and Conditions for Sale and Delivery of MIXACO Maschinenbau**  
**Dr. Herfeld GmbH & Co. KG**

**1. Scope of application; deviating conditions**

- 1.1 These General Terms and Conditions of Sale and Delivery (“**GTCs**”) shall apply to all contracts concerning the sale, work and materials, including ancillary agreements, concluded between MIXACO Maschinenbau Dr. Herfeld GmbH & Co. KG („**MIXACO**“) and its customers (each a “**Buyer**”).
- 1.2 These GTCs shall apply, provided that the Buyer is an entrepreneur within the sense of Section 14 of the German Civil Code (BGB) upon conclusion of the contract. They shall also apply to transactions with legal persons under public law or special funds under public law. They shall not apply to transactions with consumers.
- 1.3 Any deviating conditions of the Buyer, which are not explicitly acknowledged by MIXACO, are not applicable. This shall also apply in cases where MIXACO makes its delivery without reservation, although it is aware of the Buyer’s objecting terms or terms deviating from these GTCs.
- 1.4 In ongoing business relationships, these GTCs shall also apply to all future transactions between MIXACO and the Buyer.
- 1.5 Individual agreements with the Buyer and deviating information in MIXACO’s offers shall in any case take precedence over these GTCs.

**2. Conclusion of the contract**

- 2.1 The offers of MIXACO, including the sales prices stated in MIXACO’s price lists, are subject to confirmation, unless they are expressly marked as binding.
- 2.2 The order of the goods by the Buyer shall be deemed a binding offer. Unless otherwise stated in the order, MIXACO is entitled to accept this offer within two weeks after its receipt by MIXACO.

**3. Product documents; execution documents**

- 3.1 Documents, illustrations, drawings, performance specifications as well as weight and dimensional data indicated in catalogues, product sheets and/or on MIXACO’s websites reflect only approximate values. They do not constitute information about the quality of

the goods, unless designated explicitly as binding. MIXACO reserves the right to make improvements and changes to the extent customary in the trade and reasonable for the Buyer.

- 3.2 All illustrations, photographs, drawings and other documents accompanying MIXACO's offers and deliveries shall remain the property of MIXACO and shall be returned to MIXACO after termination of the contract, unless this is included in the scope of delivery of the purchased goods.
- 3.3 In all other cases, the illustrations, photographs, drawings and other documents may not be reproduced or made available to third parties in any form without the prior consent of MIXACO. Unless MIXACO has given its consent, the illustrations, drawings and other documents may only be made accessible to a third party with the simultaneous resale of the goods to the third party. The legal restrictions of the copyright are not affected by this regulation.
- 3.4 If the Buyer has to provide any documents, it shall be responsible for their completeness, correctness and for the timeliness of their provision.

#### **4. Prices; terms of payment; exclusion of offsetting and retention**

- 4.1 Unless agreed otherwise, sale and delivery shall be effected on the basis of the prices stated in MIXACO's offers, based on the cost calculations at the time the offer was made . Unless agreed otherwise, the prices are net prices in Euro ex works, Niederheide 2, 58809 Neuenrade („ex works“ Incoterms 2010), plus applicable VAT and other taxes and duties incurred for the execution of the purchase order.
- 4.2 Unless otherwise agreed by the parties, all invoices for deliveries (or other services) shall be paid within 30 days of the invoice date and without any deduction. As regards the timeliness of the payment, the date on which the amount is received by MIXACO shall be decisive.
- 4.3 If the Buyer is in default of payment, MIXACO may charge interest in accordance with the statutory provisions. The right to claim higher damages caused by delayed performance is reserved.
- 4.4 Cheques (*Schecks*) and bills of exchange (*Wechsel*) are accepted only after special agreement and only on account of performance, whereby any expenses and discounts are charged to the Buyer.

4.5 Irrespective of the term of any cheques and bills of exchange accepted on account of performance, MIXACO's claims become due and payable immediately if the Buyer has seriously breached any contractual agreements and is responsible for such a breach. In this case, MIXACO is entitled to execute or provide any outstanding deliveries or services only against advance payment or security.

4.6 The Buyer is only entitled to offsetting (*Aufrechnung*) against counterclaims if the counterclaims are undisputed, or have been finally and non-appealably established. The Buyer is only entitled to exercise a right of retention (*Zurückbehaltungsrecht*) if the counterclaims are undisputed or have been finally and non-appealably established and if they are based on the same contractual relationship.

## **5. Delivery, passing of risk; consequences of late delivery; force majeure; reservation of self-supply**

5.1 Unless agreed otherwise, deliveries are effected ex works Niederheide 2, 58809 Neuenrade („ex works“ Incoterms 2020). The place of performance for the delivery is also located there. At the request and cost of the Buyer, the goods will be sent to another place of destination (sales shipment). Unless agreed otherwise, MIXACO shall be entitled to determine the type of shipment itself (in particular, the transport company, shipping route, and packaging).

5.2 Delivery periods and/or delivery dates promised by MIXACO are always approximate unless a fixed period or date has been promised or agreed. MIXACO's duty of delivery shall be suspended as long as MIXACO has not received the execution documents as well as all documents and information necessary or useful for the execution of the order, or as long as the Buyer is in default vis-à-vis MIXACO regarding any other liability. In this respect, MIXACO reserves the right to put forward the defence of non-performance of the contract.

5.3 If the Buyer is in default of acceptance or culpably violates other duties of cooperation, MIXACO shall be entitled to have compensated the damage incurred by MIXACO in this respect, including any additional expenses. MIXACO reserves any further claims or rights. The risk of accidental loss or accidental deterioration of the goods shall pass to the Buyer as of the time when the Buyer is in default of acceptance or payment.

5.4 MIXACO is entitled to make partial deliveries as are customary in the trade if: the partial delivery is not precluded by contract, it can be used by the Buyer for the purpose stipulated in the contract, delivery of the remaining goods ordered is ensured and if the Buyer does not incur substantial extra expenditure or additional costs as a result (unless

the seller agrees to pay for these costs). Complaints regarding partial deliveries do not release the Buyer from its obligation to accept the residual quantity of the goods ordered as stipulated in the contract.

- 5.5 In the event of force majeure or other events, which are unforeseeable upon conclusion of the contract and unavoidable in spite of reasonable care applied in accordance with the individual circumstances, such as pandemics, epidemics, war, natural disasters, plant disorders, legal strikes, lock-outs or governmental orders, the delivery periods/dates shall be extended by the duration of the impairment and a reasonable lead time. If such impairments lead to a delay in performance of more than three months, both parties may rescind the contract. If, due to the aforementioned circumstances, delivery becomes impossible or unreasonable, without MIXACO being responsible, MIXACO shall be entitled to rescind the contract in whole or in part with respect to the portion of the contract not yet fulfilled. In this case, the Buyer shall not be entitled to any damage claims against MIXACO. Any statutory rights of rescission shall not be affected thereby.
- 5.6 If the Buyer has to set a reasonable period of grace in order to exercise any rights vis-à-vis MIXACO, this period of grace shall be at least two weeks.
- 5.7 If MIXACO itself is not supplied although MIXACO has placed orders at reliable suppliers, MIXACO shall be released from its performance obligation and may withdraw from the contract. MIXACO is obligated to immediately inform the Buyer of the non-availability of the goods and will immediately reimburse any payment already made by the Buyer.

## **6. Defects; warranty rights (*Gewährleistungsrechte*); limitation period**

- 6.1 Warranty rights are governed by statutory law, as modified by the following provisions of this clause 6. These GTCs do not provide any guarantees.
- 6.2 The Buyer is obliged to carefully inspect the goods delivered immediately after their arrival at the place of destination. The Buyer has to notify MIXACO of any apparent defects within seven working days from delivery, timely dispatch of the notice being sufficient for compliance with this deadline. Hidden defects must be notified to MIXACO immediately, but no later than within seven working days from their discovery. Each notice of complaint must be made in writing. If the Buyer was able to recognize the defect at an earlier time during normal use, this earlier time shall be decisive for the start of the notice period. If the Buyer fails to carry out the proper inspection and/or to report any defects, MIXACO's liability for unreported defects shall be excluded, unless MIXACO maliciously (*arglistig*) failed to disclose the defect.

- 6.3 At MIXACO's request, any defective goods are to be returned to MIXACO, carriage free. In the event of a justified notice of defects, MIXACO will reimburse the costs for the cheapest method of dispatch; this does not apply if the costs are increased because the delivered goods are located at a place other than the place of their intended use. If the notice of defects is unjustified, MIXACO is entitled to request reimbursement of the costs incurred hereby from the Buyer, except the Buyer is not responsible for the unjustified notice of defects.
- 6.4 In the event of a defect reported in time, the Buyer is, at MIXACO's discretion, entitled to rectification (*Nachbesserung*) or substitute delivery of non-defective goods (jointly referred to as "**Subsequent Performance**"). The Buyer must give MIXACO the time and opportunity necessary for Subsequent Performance, in particular hand over the defective goods for purposes of inspection. Subsequent Performance takes place at the place of original delivery or – to the extent MIXACO is of the opinion that it is necessary for proper Subsequent Performance – at MIXACO's premises; it is deemed to have failed, at the earliest, after two unsuccessful attempts. In the event of substitute delivery, the Buyer shall return the defective goods to MIXACO in accordance with the statutory provisions. The defective goods replaced become the property of MIXACO unless they are still the property of MIXACO anyway.
- 6.5 The expenses which are necessary for the purpose of Subsequent Performance, in particular, transport, travel, labour and material costs, shall be borne by MIXACO, provided that a defect actually exists. Otherwise, MIXACO shall be entitled to demand from the Buyer reimbursement of any costs incurred due to the unjustified request, unless the Buyer was unable to recognize that no defect existed. Subsequent Performance does not include the disassembly or the reassembly of the defective goods if MIXACO was originally not obliged to perform the assembly.
- 6.6 Notwithstanding any statutory provisions, no warranty rights (*Gewährleistungsrechte*) shall exist if any damage is the result of inappropriate treatment of the goods. Furthermore, the warranty is excluded in particular if the Buyer modifies the goods or has them modified by a third party without MIXACO's consent and if as a result elimination of defects is rendered impossible or unreasonably difficult. In any case, the Buyer shall bear all additional costs for the elimination of defects caused by the modification.
- 6.7 In the event of defects in components or products of other manufacturers, which MIXACO is unable to remedy for licensing or actual reasons, MIXACO shall, at its option, reimburse its warranty claims against the manufacturers and suppliers for account of the Buyer or assign it to the Buyer. Warranty claims against MIXACO for such defects shall only exist under the other conditions and in accordance with these GTCs if the judicial

enforcement of the aforementioned claims against the manufacturer or supplier was unsuccessful or is futile, for example due to insolvency.

- 6.8 The Buyer is only entitled to claims for compensation for damages due to defects to the extent MIXACO's liability pursuant to clause 7 is not excluded or limited. Any additional claims or claims other than those governed by this clause 6 due to a defect are excluded.
- 6.9 Notwithstanding Section 438 (1) no. 3 BGB, the general limitation period for claims from defects of quality and title is one year from delivery. Insofar as an acceptance has been agreed upon, the limitation period shall begin with the acceptance. However, if the goods relate to a building or an item that is used for a building in accordance with its normal method of use and has caused this building to be defective (building materials), the limitation period is five years from delivery in accordance with statutory provisions (Section 438 (1) no. 2 BGB). Any other special statutory provisions regarding the statute of limitations (in particular, Section 438 (1) no. 1 and (3), Section 445b BGB) shall also not be affected. The aforementioned limitation periods of the law governing purchases shall also apply to contractual and non-contractual claims for damages of the Buyer which are due to a defect in the goods, unless the application of the regular legal statute of limitations pursuant to Sections 195, 199 BGB would lead to a shorter limitation period in the individual case. The Buyer's damage claims due to intent or gross negligence and/or injury to life, limb or health as well as under the German Product Liability Act shall become time-barred exclusively in line with statutory periods of limitation.

## 7. Liability

- 7.1 MIXACO shall only be liable for gross negligence (*grobe Fahrlässigkeit*) and intent (*Vorsatz*) as well as for a breach of duties the performance of which is a prerequisite for the proper execution of the contract and on the compliance of which the Buyer is regularly entitled to rely on ("**Essential Obligations**").
- 7.2 In respect of a slightly negligent breach of an Essential Obligation, MIXACO's liability is limited to the typical damage foreseeable upon conclusion of the contract. In these cases, MIXACO's liability is limited per damaging event to a maximum of EUR 1 million for property damage and to a maximum of EUR 100,000.00 for pure financial losses.
- 7.3 MIXACO is not liable for a slightly negligent breach of contractual duties that are not Essential Obligations.
- 7.4 Insofar as MIXACO's liability is limited or excluded, this also applies to the liability of MIXACO's employees, representatives or vicarious agents.

7.5 The aforementioned limitations or exclusions of liability do not apply if MIXACO has maliciously (*arglistig*) failed to disclose a defect, has assumed a guarantee or a procurement risk, is liable on the basis of the German Product Liability Act, and in the event of bodily injury (injury of life, limb and health). This does not lead to a change in the burden of proof to the detriment of the Buyer.

## **8. Reservation of title**

8.1 The following reservation of title serves to secure all existing current and future claims of MIXACO against the Buyer resulting from the ongoing business relationship between MIXACO and the Buyer, including all balance claims from current accounts (hereinafter referred to as "**Secured Claims**").

8.2 All goods supplied by MIXACO remain the property of MIXACO until the full payment of all Secured Claims. The goods supplied and any goods that replace these and are subject to the reservation of title pursuant to the provisions below are hereinafter referred to as "**Reserved Goods**".

8.3 If the Buyer processes, combines or mixes the Reserved Goods with goods of another origin to new items or a mixed stock, MIXACO is entitled to co-ownership in the proportion of the value of the Reserved Goods (final invoice amount including VAT) at the time of supply to the value of the other goods processed, combined or mixed (final invoice amount including VAT) at the time of processing, combining or mixing. The co-ownership share is deemed to be Reserved Goods within the sense of clause 8.2. In the event that no such acquisition of ownership occurs for MIXACO, the Buyer hereby now transfers as a security its future ownership or – in the aforementioned proportion – its co-ownership in the new item or mixed stock created to MIXACO. MIXACO hereby accepts this transfer.

8.4 If the Reserved Goods are combined or inseparably mixed with other items to a uniform item and if any of the other items can be regarded as the main item within the sense of Section 947 BGB, the Buyer, if it is the owner of the main item, hereby now transfers to MIXACO the proportionate co-ownership in the uniform item in the proportion of the value of the Reserved Goods (final invoice amount including VAT) at the time of supply to the value of the main item (final invoice amount including VAT). MIXACO hereby now accepts this transfer. The co-ownership share is regarded as Reserved Goods within the sense of clause 8.2.

8.5 The Buyer shall retain the Reserved Goods on behalf of MIXACO at no cost. The Reserved Goods may neither be pledged nor assigned as collateral to third parties before payment in full of the Secured Claims.

- 8.6 The Buyer is obliged to handle the Reserved Goods with care. In particular, he is obliged to insure the Reserved Goods sufficiently at his own expense against fire, water and theft damage at reinstatement value. If maintenance and inspection work is necessary for the proper care of the Reserved Goods, the Buyer must perform such work in due time at his own expense. However, this shall only apply insofar as the costs thereby incurred are within the scope of the customary.
- 8.7 The Buyer shall refer immediately to MIXACO's ownership in the event of pledging, seizure or other dispositions or interventions by third parties regarding the Reserved Goods and to notify MIXACO thereof in writing in order to enable MIXACO to exercise its ownership rights, in particular to bring legal action pursuant to Section 771 of the German Code of Civil Procedure (ZPO). The Buyer shall bear all judicial or extra-judicial costs that are necessary to eliminate the intervention and to recover the Reserved Goods, provided that these costs cannot be collected from the third parties.
- 8.8 The Buyer is entitled to sell the Reserved Goods supplied in the ordinary course of business if it is ensured that its claims from the resale pursuant to clauses 8.9 to and including 8.11 have been transferred to MIXACO.
- 8.9 If the Reserved Goods are resold, the Buyer herewith now assigns to MIXACO the resulting claim against the Buyer on account of security as well as the claims that replace the Reserved Goods or that accrue in respect of the Reserved Goods, such as insurance claims or claims resulting from unlawful acts in the event of loss or destruction, including all balance claims under current accounts. MIXACO hereby now accepts this assignment.
- 8.10 If the Customer sells the Reserved Goods together with other goods not supplied by MIXACO, the assignment of the claim from the resale shall only apply to the amount of the value of the Reserved Goods (final invoice amount including VAT) at the time of delivery. In the case of the sale of goods in which MIXACO has co-ownership in accordance with Section 8.3 or 8.4, the assignment of the claim shall apply in the amount of this co-ownership share. The Buyer also assigns to MIXACO to the same extent the claims (including the right to grant a security mortgage) that arise against third parties as a result of the connection of the goods purchased with a land plot. If the Buyer himself is the owner of the land, the advance assignment shall include to the same extent the claims resulting from the sale of the land or of land rights.
- 8.11 The Buyer is revocably authorized to collect the claims resulting from a resale pursuant to the above provisions of this clause 8. MIXACO may revoke the authorization to collection only in accordance with clause 8.12.



- 8.12 If the Buyer fails to meet its obligations under the contract with MIXACO, in particular if it is in default of payment:
- MIXACO may prohibit the resale and combining of the Reserved Goods with other goods;
  - MIXACO may rescind the contract in accordance with the general regulations concerning rescission of Section 323 BGB; the taking back of the goods does not constitute rescission of the contract, except that MIXACO has expressly declared such rescission; in the event of rescission, the Buyer's right of possession of the Reserved Goods lapses and MIXACO may demand return of the Reserved Goods; in coordination with the Buyer, MIXACO shall be entitled to enter the Buyer's business premises and take possession of the Reserved Goods at the Buyer's cost and to sell them in the open market or by auction on the most favourable terms without prejudice to any payment and other obligations of the Buyer; MIXACO will offset the sales proceeds against the Buyer's liabilities after deduction of the costs; any surplus will be paid by MIXACO to the Buyer;
  - the Buyer has to inform MIXACO on request of the names of the debtors of the claims assigned to MIXACO in order to enable MIXACO to disclose the assignment and to collect the claims; all proceeds attributable to MIXACO under the assignments are to be forwarded to MIXACO immediately after receipt, when and as soon as MIXACO's claims against the Buyer have become due and payable;
  - MIXACO shall be entitled to revoke the collection authorization granted.
- 8.13 Should the realisable value of the securities existing in favour of MIXACO exceed MIXACO's claims by more than 10 %, MIXACO will, at the Buyer's request, release the securities selected by MIXACO.
- 8.14 If MIXACO's reservation of title is no longer valid due to deliveries abroad or for any other reasons, the Buyer shall immediately grant MIXACO any other security in the Reserved Goods or other security for its claims, which is valid under applicable laws and comes as close as possible to the securing effect of the reservation of title. The Buyer authorizes MIXACO, to the extent necessary for the effectiveness of the relevant security (including reservation of title), to enter the security in the required form in public registers, books, or similar documents and/or to disclose it in compliance with applicable regulations, or to do this itself, if necessary. If any costs are incurred from or in connection with the circumstances or actions mentioned in this clause 8.14, these shall be borne by the Buyer.

## **9. Duties of cooperation and contribution of the Buyer**

- 9.1 The Buyer must fully inform MIXACO of all facts relevant to the performance of deliveries and/or services within a reasonable period of time. MIXACO is not obliged to check data, information or other services provided by the Buyer for completeness and correctness to the extent that there is no reason to do so under consideration of the respective circumstances of the individual case or the obligation to check was not expressly accepted as a contractual obligation.
- 9.2 Insofar as work is carried out at the Buyer's premises, MIXACO's employees are to be provided with the necessary workplaces (including heating, electricity, water, etc.), the necessary equipment and heavy tools (e.g. lifting gear, compressors) as well as the required items and materials (e.g. scaffolding timber, wedges, documents, lubricants, fuels) free of charge. In particular, the Buyer must also make the material available necessary for adjustment and testing purposes regarding machines or systems supplied by MIXACO. The Buyer must secure the materials and tools supplied by MIXACO against harmful influences.
- 9.3 The Buyer accepts as an Essential Obligation that all cooperation and contribution services agreed upon or resulting from the nature of the object are provided in the required quality and on the agreed dates without additional costs for MIXACO. To the extent necessary, the Buyer shall make his own personnel available for this purpose.

## **10. Software**

MIXACO grants the Buyer a non-exclusive license to use any software and/or firmware contained in or in the scope of delivery of the Goods ("**Software**") and the related documentation in connection with the Buyer's use of the Goods. The source code for the Software shall not be made available to the Buyer and the Buyer may not modify, disassemble, decompile, reverse engineer or create derivative works of the Software. The Buyer may not reproduce the Software or pass it on to third parties and may only transfer it in connection with a transfer of the goods and subject to these restrictions. Certain parts of the Software may be owned by third parties and licensed to MIXACO. MIXACO reserves the right to perform a software update to correct any errors and for stability purposes after properly notifying the Buyer. New software features will be charged separately after consultation.

## **11. Assembly and service performances**

- 11.1 If and to the extent that MIXACO undertakes assembly or service performances (repairs, maintenance), the special assembly and service terms of MIXACO will apply. It is agreed that these GTCs shall apply additionally to such performances in any case.
- 11.2 If assembly or service performances cannot be performed by MIXACO employees on site or can only be performed with a risk for body, life or health due to force majeure, in particular due to the Covid-19 pandemic, MIXACO can – notwithstanding the provision in Section 11.1 in conjunction with Section 5.5 of these GTCs – at its own discretion also provide the performance to be rendered from the distance, i.e. remotely and/or instruct a third party to provide the performance remotely or on site.
- 11.3 Insofar as the remote performance (by MIXACO or a third party) or the performance by a third party on site requires it, the Buyer shall enable the respective performance to be provided and, in particular, shall provide its own personnel for this purpose at its own expense. If the assembly or service performance is such a performance that is explicitly to be provided personally by MIXACO employees according to the contract or if it takes place within the framework of supplementary performance (*Nacherfüllung*), MIXACO will cover the additional costs caused by the deviating performance. If the concrete form of how to provide the performance is not specified in the contract, MIXACO will not cover the additional costs arising from a non-personal provision of the performance, in particular the costs for the provision of own personnel by the Buyer. If the assembly or service performance is not part of a contract, the Buyer has no claim to a specific form of performance.
- 11.4 MIXACO may in particular refrain from providing an assembly or service performance on site by its own employees due to force majeure if (i) due to the Covid-19 pandemic, the German Federal Foreign Office has issued a travel warning for the area in which the performance is to be provided or entry is not possible at all, e.g. due to border closures, (ii) if the area in which the performance is to be provided has been classified as a risk area by the Robert Koch Institute or (iii) if the seven-day incidence in the area in which the performance is to be provided exceeds 50 new infections per 100,000 inhabitants.

## **12. Applicable law and place of jurisdiction**

- 12.1 The contractual relationship between MIXACO and the Buyer, including these GTCs, shall be subject to the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

12.2 The place of jurisdiction for all disputes arising from and/or in connection with the contractual relationship, including these GTCs, – and for lawsuits involving cheques and bills of exchange – shall be the registered seat of MIXACO, if the Buyer is a business person (Kaufmann) as defined by the German Commercial Code (HGB), a legal person under public law or a special fund under public law. In all cases, however, MIXACO shall be entitled to bring an action at the place of performance of the delivery obligation or at the Buyer's general place of jurisdiction. Any overriding statutory provisions, in particular, regarding exclusive places of jurisdiction, shall not be affected.

### **13. Final Provisions**

13.1 Changes or supplements to the contract, including this written form provision, must be made in writing to become effective. The same applies to any ancillary and additional arrangements.

13.2 If these GTCs are provided to the Buyer in various language versions, the German version shall be authoritative.

13.3 If a provision of the contract, including these GTCs, is or becomes invalid in whole or in part, the validity of the remaining provisions of the contract shall not be affected by the invalidity of said provision. The invalid provision is to be replaced by a provision that comes closest to the economic purpose of the invalid provision, without being invalid.