General Conditions of sales and delivery
of Carl Cloos Schweisstechnik GmbH
Version May 2022

§ 1 General Terms, Scope of Application, Data Protection

(1) These General Terms and Conditions of Sale and Delivery (GTSD) apply to all our business relations with our customers ("Purchaser"). The GTSD shall only apply where the Purchaser is acting in the course of his business within the meaning of §14 of the German Civil Code (BGB), is a public law entity or a federal special fund.

(2) These GTSD shall apply in particular to the sales and/or delivery of movable goods (“goods”) irrespective of whether such goods are manufactured by ourselves or procured from suppliers (§§ 433, 651 of the German Civil Code (BGB)). Except where otherwise agreed, the GTSD in force at the time the Purchaser places his order, alternatively the version last provided to the Purchaser in text form, shall constitute the legal framework for all future purchases of a similar kind without us being required to indicate their application for each individual transaction.

(3) Our GTSD shall apply exclusively. Any terms of the Purchaser which contradict or deviate from the terms and conditions below shall only apply where we have expressly agreed to the same. Our consent is required without exception, for example where, on notice of the Purchaser’s general terms and conditions, we execute the supply without reservation.

(4) Legally relevant declarations and notifications to be submitted to us by the Purchaser after the contract has been concluded (e.g. setting of deadlines, notifications of defects, notices of rescission or reduction) must be in text form to be effective.

(5) Insofar as is necessary for the handling of our business we are entitled to store and process the Purchaser’s data in electronic form to the extent permitted by data protection laws (in particular §28 of the German Data Protection Act).

§ 2 Contractual Declarations

(1) The range of products and services we offer is subject to change without notice. This also applies where we have provided the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN Norms), other product descriptions or documents – including in digital form.

(2) The purchase order placed by the Purchaser shall be deemed a binding offer. Except where otherwise provided in the purchase order the order shall be capable of acceptance for a 2 week period beginning on the date of receipt of order.

(3) Acceptance will be communicated in text form (§v126b of the German Civil Code (BGB), e.g. the order acknowledgement) or will be deemed on supply of the goods to the Purchaser.

(4) Any changes, supplements and/or cancellation of a sales contract or of these terms must be in text form.

§ 3 Risk, Delay in Acceptance, Part Deliveries

(1) Except where otherwise agreed the goods will be supplied EXW Haiger (Incoterms in the most current version) which is also the place of performance for delivery of the goods and for any supplementary performance. At the request and the expense of the Purchaser the goods will be shipped to another destination (sale by delivery to a place other than the place of performance). Except where otherwise agreed we shall be entitled to determine the method of shipment (in particular the shipping company, shipping route and packing).

(2) The risk of accidental loss and deterioration of the goods shall transfer to the Purchaser at the time we inform the customer that the goods are ready for collection. In the event of a sale by delivery to a place other than the place of performance the risk of accidental loss and deterioration of the goods as well as the risk of delay shall pass to the Purchaser on surrender of the goods to the shipper or freight forwarder or any other person instructed to undertake shipment.

(3) Where the Purchaser is in delay of acceptance of the goods or fails to undertake acts of assistance or where delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to demand compensation for damages incurred as a result including additional expense (e.g. storage costs).

(4) In relation to make and hold orders approximately the same quantities shall be called off each month except where otherwise agreed. The entire order quantity shall be deemed called off one month after the expiration of the call off deadline, or in the absence thereof twelve months after the contract date. Where the Purchaser fails to assign goods ordered to a certain delivery within one month after the expiry of the deadline for such assignment, or in the absence of an agreed deadline, within one month of our request for such assignment, we reserve the right to assign and deliver the goods at our discretion and at the expense of the customer.

(5) Supply of goods or services by instalment is permitted except where unreasonable for the Purchaser

§ 4 Term of Delivery, Delay

(1) The term of delivery shall be agreed on a case by case basis, alternatively we will advise the delivery term on order acceptance.

(2) The commencement of the delivery term quoted shall be subject to clarification of all technical matters and proper and timely performance by the Purchaser of its obligations.

(3) Where we are unable to fulfill binding delivery dates for reasons for which we are not responsible (non-availability of performance), we shall notify the Purchaser without delay and at the same time inform the Purchaser as to the new estimated delivery date. Where performance is still not possible by the new delivery date we are entitled to rescind the contract in part or in whole; we shall immediately reimburse any consideration already provided by the Purchaser. For the purposes of this clause non-availability of performance shall include the failure of our suppliers to supply us on time despite us having placed a corresponding order to cover the transaction and neither our supplier or ourselves are at fault or where, in isolated cases, we have no procurement obligation under the contract.

(4) If an agreed delivery or performance date is exceeded for reasons for which we are responsible, the Purchaser shall set us a reasonable grace period of time in writing for delivery or performance. This extension shall be at least three weeks. Where upon the expiry of the grace period, delivery is still not forthcoming and the Purchaser desires to rescind the contract or demand damages in lieu of performance, the Purchaser shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention. The Purchaser is obliged at our request to declare within a reasonable period whether he shall rescind the contract due to the delay in delivery and/or demand damages in lieu of performance or insist upon performance.

(5) Purchaser’s rights in accordance with clause 9 of these GTSD and our statutory rights, in particular with regard to the preclusion of our performance obligation (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance)) shall not be affected by the aforesaid.

§ 5 Force majeure, Disturbance of Contract, Reservation of Performance

In the event of force majeure which affects either ourselves or our suppliers, we are entitled to suspend performance of our obligation to deliver for the duration thereof. The same applies in the event of pandemics, epidemics, energy or raw material shortages, industrial disputes, official decrees or traffic or operational disruptions. Where there is a considerable change in the circumstances prevailing at the formation of the contract as a result of which we cannot reasonably be expected to adhere to the contract, we shall be entitled to rescind the contract.

Our performance of the contract is subject to the proviso that we thereby neither violate regulations of national and international foreign trade law nor violate sanctions or embargoes.

§ 6 Prices, Prices, Terms of Payment, Rights of Set-off or Retention

(1) Our prices are EXW (Haiger) Incoterms in the most current version. Except where otherwise agreed they do not include packing, insurance, freight and VAT. Any special packing shall remain our property and shall be subject to a rental charge at cost price; it shall be returned to us without delay at the Purchaser's cost.

(2) In the event of a sale by delivery to a place other than the place of performance the Purchaser shall bear the shipping cost from the place of storage and, where requested by the Purchaser, the cost of insurance. The Purchaser shall bear all customs duties, charges, taxes and any other public dues.

(3) Where we have agreed to assemble or install the goods and in the absence of any agreement otherwise the Purchaser shall bear all necessary ancillary costs including travel expenses, the cost of the shipping of tools and personal luggage and disbursements in addition to the agreed price.

(4) Where the delivery or performance date is more than 3 months after the contract date we are entitled upon timely notification to the Purchaser and prior to delivery or performance to adjust the price in such a manner as is necessitated by any general price development beyond our control (e.g. advance performance, exchange rate fluctuations, currency regulations, customs and fee changes). In relation to framework agreements with a price clause the three-month period shall commence upon conclusion of the framework agreement.

(5) Except where otherwise agreed the Purchaser shall pay the agreed remuneration to us as follows:

Payment terms for supplies within the European Union:

Payments are to be made without deduction in EURO as follows: 40% down payment due 14 days after receipt of the order acknowledgement;

20% payment due 14 days after submission of the layout of the goods to be supplied;

30% payment due immediately after provisional acceptance;

10% payment due 14 days after final acceptance of the goods, but not later than 60 days after delivery if acceptance is delayed for reasons beyond Cloos' control.

Payment terms for supplies outside the European Union:

For supplies outside the European Union payment shall be made by Letter of Credit or in advance. Payments are to be made without deduction in EURO as follows:

40% down payment due 14 days after receipt of the order acknowledgement;

50% payment due 14 days after "Bill of Lading" for the system to be supplied;

10% payment due 14 days after final acceptance of the goods, but not later than 60 days after delivery if acceptance is delayed for reasons beyond Cloos' control.

(6) For supplies and works, for which no definitive amount can be provisionally set, we are entitled to request a down payment on placement of order and instalment payments during performance depending upon the cost incurred, insofar as is reasonable for the Purchaser. Down payments and instalments shall not be subject to interest. In this case, the delivery period shall begin at the earliest on the day of receipt of the agreed down payment.

(7) Upon expiry of the aforementioned payment deadline, the Purchaser shall be deemed in default of payment. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to claim additional compensation for payment default. With respect to merchants, our claim to the commercial interest on arrears (§ 353 of the German Commercial Code HGB) shall remain unaffected.

(8) The Purchaser shall only be entitled to rights of set-off or retention insofar as his claim has been legally established or is undisputed. Where the goods supplied are defective, Purchaser's rights under § 8 below shall remain unaffected.

§ 7 Retention of Title

(1) We retain title to the goods until full payment of all current and future claims under the contract and any ongoing business relationship (secured claims) have been received.

(2) Goods which are subject to a retention of title shall not be mortgaged or assigned by way of security to third parties prior to receipt of full payment. The Purchaser shall inform us in text form without delay where an insolvency application has been made or if third parties (e.g. attachments) seize the goods belonging to us.

(3) Where the Purchaser is in breach of his contractual obligations, in particular where he fails to remit payment of the purchase price, we are entitled to rescind the contract subject to the statutory requirements and to demand the surrender of the goods based on our retention of title and the rescinded contract. Where the Purchaser fails to remit payment of the purchase price we are only entitled to enforce those rights where, prior thereto, we have set the

Purchaser a reasonable deadline to remit payment or the setting of such a deadline is not required legally.

(4) Subject to (c.) below the Purchaser is authorised to resell or process the goods which are subject to a retention of title in the ordinary course of his business. In this case, the following shall apply in addition.

(a) The retention of title shall extend in its full value to products which originate from the processing, mixing or combining of our goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as to the goods delivered under retention of title.

(b) The Purchaser hereby assigns to us by way of security all claims against third parties based on the resale of the goods or the resulting products in total or in the amount of our co-ownership as set out in the preceding paragraph. We accept such assignment. Purchaser's duties as set out in para. 2 shall apply to assigned claims accordingly.

(c) The Purchaser shall remain authorised to collect payment in addition to ourselves. We undertake not to collect payment for as long as the Purchaser complies with his payment obligations to us, there is no deficiency in his performance capability and we do not assert the retention of title by exercising a right pursuant to para. 3. If this is the case, however, we can request the Purchaser to inform us of the assigned claims and their debtors, to provide us with any information required to collect payment and corresponding documentation and to inform the debtors (third parties) of the assignment. Furthermore in such circumstances we are entitled to revoke Purchaser's authorisation to resell and process the goods subject to retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10 percent, we shall release securities of our choice on demand by the Purchaser.

§ 8 Purchaser's Rights in the case of Defects

(1) The goods supplied by us correspond to the European regulations and standards currently in force. We give no guarantee that the goods comply with other national regulations. If the products are used abroad, the buyer undertakes to check the conformity of the products with the relevant legal systems and standards himself and to make any necessary adjustments.

(2) The statutory provisions shall apply to the purchaser's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below.

(3) The purchaser's claims for defects presuppose that he has fulfilled his statutory obligations of inspection and notification of defects (§§ 377, 381 of the German Commercial Code (HGB)). Where a defect is discovered on or subsequent to inspection, the Purchaser must inform us in text form without delay, but in any case within one week. Timely dispatch of notice is sufficient to preserve Purchaser's rights. Irrespective of this obligation to inspect and give notice of defects, the Purchaser must notify us of obvious defects (including incorrect and short delivery) in text form without delay, but in any case within one week, whereby the timely dispatch of the notification is also sufficient in this case to meet the deadline. If the Purchaser fails to properly inspect the goods and/or notify us of defects, our liability for the defect not notified shall be excluded.

(4) Where the goods delivered by us are defective we shall at our option deliver a replacement or remedy the defect (supplementary performance). The Purchaser shall grant us a reasonable period of not less than 15 working days to carry out the same. The Purchaser shall return the defective goods for testing. Where we deliver a replacement the Purchaser shall return the defective good in accordance with the statutory provisions. Supplementary performance does not include the disassembly of the defective object nor does it include its reassembly provided that we were not originally obliged to assemble it.

(5) We bear the costs for the purpose of inspection and supplementary performance, in particular transport, travel, labour and material costs (not: removal and installation costs) provided that the goods are actually defective and that the expenses are not increased due to the subsequent transportation of the goods to a location other than the original shipment location - unless the transfer corresponds to its intended use. If there is actually no defect, we reserve the right to claim reimbursement of the costs incurred (in particular inspection and transport costs) from the Purchaser, unless the lack of defectiveness was not recognisable to the Purchaser.

(6) If the supplementary performance is not successful, the Purchaser may reduce the remuneration or rescind the contract. However, rescission is only permissible where the Purchaser prior thereto sets a final and reasonable deadline in text form expressly indicating his intention. In the case of an insignificant defect, there is no right of rescission.

(7) Any claims of the Purchaser for compensatory damages or reimbursement of wasted expenditure based on defective goods are subject only to the provisions set out in § 9 below. Otherwise, they are excluded.

§ 9 Other Liability

(1) Except where otherwise provided in these GTSD including the following provisions we are liable for contractual and non-contractual breaches in accordance with the applicable statutory provisions.

(2) We shall be liable for damages – irrespective of the legal grounds – within the scope of fault liability in the event of intent and gross negligence. In the event of simple negligence, we shall be liable in accordance with the statutory provisions as follows:

(a) for damages resulting from injury to life, body or health,

(b) for damages arising from the breach of an essential contractual obligation (obligation, the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case, however, liability is limited to compensation for the foreseeable, typically occurring damage.

(c) in all other cases, not for damages which did not arise from the goods themselves, in particular not for loss of profit or other financial losses by the Purchaser.

(3) The limitations of liability set out in § 9 (2) aforesaid shall also apply to breaches of duty by or in favour of persons for whom we are legally responsible. They do not apply where we have given a guarantee as to the quality of the goods and in relation to claims of the Purchaser made under the Product Liability Act (Produkthaftungsgesetz).

(4) The Purchaser may only rescind or terminate the contract due to a breach of duty which does not consist of a defect if we are responsible for the breach of duty. Notice of rescission or termination must be declared in writing. Notice by email or facsimile does not suffice the written form requirement. In all other respects, the statutory requirements and legal consequences shall apply.

(5) The aforementioned provisions shall apply accordingly to claims of the Purchaser for reimbursement of wasted expenditures.

§ 10 Limitation

The limitation period for claims based on the supply of defective goods and services as well as for claims for compensation is one year from delivery. This does not apply if longer periods are prescribed by law as well as in cases of violation of life, body or health, in cases of a wilful or gross negligent breach of duty by us and in cases of claims for compensation in accordance with the German Product Liability Act (ProdHaftG). The commencement of the limitation period

for claims in connection with work performances shall be determined in accordance with § 14 of these GTSD.

§11 Provision of Materials

(1) Where it is agreed that the Purchaser shall provide materials, the Purchaser shall provide the same free of charge, in good time and ensure that they are of proper quality. The aforesaid shall apply in relation to any technical documentation or specifications required for our performance. Any materials and documentation provided shall remain the property of the Purchaser.

(2) Our liability for material defects, from product liability or delay in delivery shall be excluded insofar as such liability is caused by materials, documentation or specifications provided by the Purchaser with hidden faults or late provisions despite timely requests. The same exclusion of liability shall apply where the Purchaser prescribes the materials in accordance with his specifications and/or prescribes the source of supply, even if we are bound by the terms of the agreement to order the same at our own cost.

§ 12 Installation Works

(1) Where the Purchaser requires installation works the installation sites must be freely accessible. Where this is not the case, any additional costs incurred as a result shall be invoiced to the Purchaser.

(2) Where we are instructed to carry out installation works, we are entitled to use sub-contractors.

(3) The Purchaser shall, at his own expense, take over and provide in good time all earth, construction and other ancillary works outside of the industry including the skilled and unskilled labour, building materials and tools required for this purpose, the commodities and materials required for assembly and commissioning, such as scaffolding, lifting and other devices, fuels and lubricants as well as energy and water at the place of use, including connections, heating and lighting.

(4) The Purchaser shall ensure that at the place of installation all machine parts, apparatus, materials, tools etc. are properly stored. He is obliged to provide sufficiently large, suitable, dry and lockable rooms and appropriate working and recreation rooms for the assembly personnel, including appropriate sanitary facilities. Furthermore, the Purchaser shall protect and treat our property and our assembly personnel in the best possible manner.

(5) Protective clothing and protective devices which are necessary due to special circumstances at the installation site shall be provided by the Purchaser.

(6) Prior to the start of the installation works, the Purchaser shall provide the necessary information on the location of hidden electricity, gas and water lines or similar installations as well as the required structural data without being requested to do so.

(7) Prior to the commencement of erection or installation works all materials and objects required shall be available at the erection or installation site and all preliminary works shall be sufficiently advanced in order that the assembly and installation works can be commenced as agreed and executed without interruption. Access roads and the installation or assembly site must be levelled and cleared.

If the installation, assembly or acceptance is delayed due to circumstances for which we are not responsible, any agreed execution deadlines shall be extended accordingly and the Purchaser shall bear the expenses incurred to a reasonable extent, in particular but not exclusively for waiting times, use of materials and additional travel, in accordance with the applicable prices or price calculation.

(9) The Purchaser shall certify to us on a weekly basis the working hours of the installation personnel as well as completion of the assembly, installation and commissioning.

(10) Any additional material required or labour cost which was not foreseeable at the time the order was placed shall be invoiced separately, unless otherwise agreed.

§ 13 Acceptance of Works

(1) Where for the performance of works acceptance has been agreed, we shall be entitled upon completion – where appropriate prior to the completion date – to request acceptance of performance. The Purchaser shall accept performance within 12 working days of our request; an alternative deadline can be agreed. Where requested, self-contained parts of the performance can be accepted separately. Acceptance shall only be refused pending the remedy of significant defects.

(2) Where no acceptance is required, the works shall be deemed accepted upon the expiration of 12 working days after written notification of completion. Where no acceptance is required and the Purchaser has commenced operation, in whole or in part, the works shall be deemed accepted 6 days after the commencement of operation, unless otherwise agreed. The use of parts of the structural installations for the continuation of of works shall not be deemed acceptance.

(3) Any reservations based on known defects or contractual penalties must be claimed by the Purchaser at the latest within the deadlines set out in sub. paras (1) and (2).

(4) The risk shall pass to the Purchaser upon acceptance insofar as it has not already passed in accordance with § 3.

§14 Commencement of the Limitation Period for the Performance of Works

Where acceptance has been agreed, the limitation period for claims under warranty for the performance of works or for claims in damages shall begin to run from the date of acceptance. Where performance is of several independent works, the limitation period with regard to these partial performances shall commence with their respective dates of acceptance.

§ 15 Custom-made Goods

(1) Orders placed by the Purchaser for custom-made goods can only be terminated by the Purchaser for good cause for which we are responsible.

(2) Where the Purchaser fails to accept goods manufactured to the Purchaser's specifications, we are entitled to dispose of the goods at the Purchaser's expense upon the expiration of a reasonable collection deadline communicated to the Purchaser in text form.

§ 16 Industrial Property Rights, Copyrights

(1) As a matter of principle, the provision of our deliveries and services does not involve the transfer of any rights of use to industrial property rights or copyrights to which we are entitled. Any such transfer shall be subject to a separate agreement.

(2) Except where otherwise agreed, the following shall apply to the transfer of standard software: the Purchaser shall receive an unlimited, simple right of use limited to use with the contractual products for one employee's workplace only. Any mandatory statutory provisions of the German Copyright Act (§§69 c and d) shall remain unaffected.

(3) Any damages claims made by the Purchaser shall be subject to the provisions set out in §§ 8 and 9. The Purchaser shall not be entitled to claim damages where the Purchaser is responsible for the breach of the property rights, in particular where breach of the property rights is caused by an application not foreseeable by us or by the fact that the delivery is modified by the Purchaser or used together with products not supplied by us.

(4) In the event of breach of the property rights, we shall be entitled, at our discretion, to obtain the necessary industrial property rights within a reasonable period of time or to supply the Purchaser with a permissible alternative solution.

§ 17 Non-disclosure

(1) (1) During the term and after termination of this contract the parties shall not disclose to third parties or use for their own business aims without authorisation any confidential information (to include without limitation quotations, documents, samples,

sketches, business intentions, personal data, problems, data and/or problem solutions, or any other know-how of any kind as well as information visually gained by the inspection of plants or facilities) received from the other party or of which the parties became aware by reason of their collaboration. The parties shall also impose this obligation upon their employees and vicarious agents.

(2) This non-disclosure obligation shall not apply to information which

- is already known to the other party outside the contractual relationship at the time of their disclosure,
- has been developed by the other party itself or has been lawfully acquired from third parties,
- is generally known or state of the art or
- has been released by the contractual partner from whom it originates.

The non-disclosure obligation for technical information ends 5 years after termination of the contractual relationship.

(3) Upon termination of the contract the parties shall return, without being asked to do so, all confidential information to the respective other party in tangible or digital form or at the request of the party from which it originated destroy the same or − insofar as technically reasonable − irrevocably delete the same.

(4) The parties shall comply with data protection law requirements, in particular where access is granted to the premises or information technology facilities of the other party. They shall undertake suitable measures to ensure that their employees and vicarious agents shall also comply with the same.

§ 18 Choice of Law and Jurisdiction

(1) These GTSD and all contractual relation between us and the Purchaser shall be governed by the laws of Germany excluding the United Nations Convention on the International Sales of Goods (CISG).

(2) If the Purchaser is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the contractor's place of business in 35708 Haiger, Germany. In all cases, we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTSD or a prior individual agreement or at the general place of jurisdiction of the Purchaser. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.