

# General Terms and Conditions of Sale of Makino s.r.o. for Spare Parts and Consumables (“GTC Parts”)

## 1. Validity of the GTC Parts

These GTC Parts shall apply to all deliveries of spare parts, additional parts and consumables (hereinafter referred to individually and collectively as “Parts”). The GTC Parts shall apply exclusively to all our deliveries and services, including future deliveries and services. Deviating or additional conditions of the Buyer shall not be binding for us, even if we do not object in individual cases, unless we expressly acknowledge them. In this case, they shall only apply to the respective individual contract.

**Agreements deviating from these GTC Parts shall only be valid if and to the extent they are expressly stated in the order confirmation or confirmed in writing by the authorised representatives of the contracting parties.**

## 2. Purchase agreement

Our offers are always non-binding unless expressly designated as binding.

We shall only accept orders and order amendments by confirming them. Confirmation may be effected verbally. The Buyer's receipt of a delivery note or an invoice and the execution of the delivery or service shall be deemed confirmation. The contract shall be concluded at the latest upon receipt of the delivery in accordance with our confirmation.

## 3. Delivery, Inspection of parts

We shall deliver the parts in accordance with **CPT Incoterms 2020** to the Buyer's designated delivery address, except where we conclude a delivery agreement with the Buyer that deviates from this.

Upon delivery of the parts, the Buyer shall inspect all transport containers for external influences and damage indicating transport damage. Where such effects or damage are visible, the Buyer shall photograph the affected areas, note the impairment on the transport documents and inform us immediately of all effects and impairments, and shall also submit copies of the transport documents. The Buyer shall also inspect the parts immediately after delivery and notify us immediately where a defect is ascertained. Where a defect that was not ascertainable during the inspection only becomes apparent later, the notification shall be effected immediately following the discovery of the defect. Failure to fulfil the inspection obligations shall be at the Buyer's expense and may lead to loss of insurance cover and exclusion of warranty rights.

The Buyer shall dispose of packaging material at its own expense.

We can take back old parts at a charge.

## 4. Delivery period

Delivery shall be effected within the agreed delivery period. In the event of delivery delays, we will notify the Buyer as soon as possible and provide a new delivery date. Unavoidable delivery delays shall not entitle the Buyer to compensation.

## 5. Transfer of ownership

We reserve title to the parts (“goods subject to retention of title”) until full payment of all claims, including future claims, arising from the entire business relationship, including all ancillary claims. In the event of a current account, the reserved property shall be deemed security for the balance claim.

The Buyer is entitled to sell the goods subject to retention of title in the ordinary course of its business. The Buyer hereby assigns to us all claims arising from the sale, including all ancillary rights. We hereby accept the assignment.

Should the retention of title require a registration or notarization or other similar action under the law in order to become valid the Buyer shall support us upon request in obtaining such registration or notarization or other action.

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The Buyer may neither pledge the goods subject to retention of title nor assign them as security. The Buyer shall notify us in writing of access by third parties to the goods subject to retention of title, in particular seizures. The Buyer shall immediately object to any seizures with reference to our rights.

In the event of default in payment, we may withdraw from the contract in accordance with statutory provisions and demand the immediate return of the goods subject to retention of title.

We undertake to release goods subject to retention of title and assigned claims to the extent that the realisable value of the security exceeds 110% of the secured claim. The release will be effected by transfer of ownership or reassignment.

The costs of recovering and realising the goods subject to retention of title shall be borne by the Buyer. The costs shall amount to a flat rate of 5% of the realisation proceeds including VAT, unless we prove higher costs or the Buyer proves that no or lower costs were incurred.

### 6. Prices and payment terms

All prices are quoted in euro and are exclusive of the legally applicable value added tax. The costs for packaging and freight are included in the price. All payments must be made in euros and are due within 30 days of the invoice date without deduction. The Buyer is responsible for the receipt of the full payment on our designated account. Deviating agreements in the order confirmation shall take precedence.

We may provide the invoice in paper form or in electronic format (for example as PDF file sent by email).

### 7. Warranty

The warranty period shall be 12 months from delivery in accordance with clause 4, **except where the warranty term is mutually agreed otherwise, as set out in the respective order or order confirmation.**

The agreed specification is derived from our product description and order confirmation. In particular, the agreed specification is defined by the use specified therein only for a particular machine type (compatibility) or a specific purpose or the specified durability. Public statements, promotions and advertising by us, the manufacturer or vicarious agents are irrelevant for the condition.

In the event of a defect, we shall remedy the defect within a reasonable period of time through repair or by supplying new, defect-free parts (“supplementary performance”). The Buyer shall give us the opportunity to verify notices of defects - also by third parties. Where a notice of defect is unfounded and the Buyer was able to ascertain this, the Buyer shall be obliged to reimburse us for the expenses incurred for the inspection. Where the supplementary performance fails, the Buyer is entitled to withdraw from the purchase agreement or to reduce the purchase price accordingly. The Buyer may claim damages in accordance with clause 8. Any further warranty claims are excluded.

In case the sold parts have been taken to a location other than the agreed place of performance, we shall only bear expenses in connection with supplementary performance which arise because the sold parts are being located at such other place, if a corresponding agreement has been made.

The Buyer may not assign claims for defects.

We sell used goods as described and/or inspected to the exclusion of any warranty and liability for defects, except to the extent otherwise expressly agreed in written form or except where we have given an express written guarantee or where we have acted with gross negligence or in the event of death, physical injury or illness.

### 8. Liability

We shall not be liable for loss of production, loss of profit, loss of use or other consequential financial loss, except, however, for damage caused by intent or gross negligence on the seller’s part. Liability under product liability laws and liability in the event of death, physical injury or illness shall remain unaffected.

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The above liability provisions shall apply to the same extent in favour of our executive organs, legal representatives, employees and other vicarious agents.

### 9. Software

Grant of rights, transfer of the software. Where our scope of delivery also includes software, we hereby grant the Buyer either a permanent right (software purchase) or a temporary right (software rental) to use the software for the contractually agreed purpose in accordance with the contractual agreement. The Buyer shall receive together with the software user documentation in English, which, at our discretion, may also consist exclusively of extensive and detailed online help.

In the event of a software purchase, the Buyer shall receive a simple right to use the software and the user documentation, which is not restricted in terms of location or time, after payment has been made in full. In particular, the Buyer is not entitled to wholly or partly reproduce the software, distribute it, lease it out (in particular not as software as a service), make it available to the public (e.g. via the Internet), sub-license it and modify, translate, edit or otherwise re-engineer it. The Buyer may permanently transfer the acquired copy of the software to a third party, together with the handover of the user documentation, where the Buyer completely abandons the use of the software, removes all installed copies from its computers and deletes all copies located on other data carriers or hands them over to us, unless it is legally obliged to retain them for a longer period. Upon request, the Buyer shall confirm to us in writing that the aforementioned measures have been carried out in full or, if applicable, explain the reasons for longer retention. The Buyer shall expressly agree with the third party to observe the scope of the grant of rights in accordance with the provisions of this clause 9 and shall provide us with evidence of this upon request.

In the event of software rental, the Buyer will receive a time-limited, simple, locally unrestricted right to use the software and the user documentation. In particular, the Buyer is not entitled to wholly to partly reproduce the software, make it available to a third party for use, distribute it, lend it, lease it out (in particular not as software as a service), make it available to the public (e.g. via the Internet), sub-license it and to change, translate, edit or otherwise re-engineer it. After payment of the corresponding license fee, the Buyer will receive activation codes from us, which enable the use of the software during the agreed period of use.

Where the hardware is changed, the software shall be completely deleted from the previously used hardware.

The Buyer will only receive the software object code. At our discretion, the Buyer will receive the software on data carriers or by a download option. We may take reasonable technical measures to protect against non-contractual use of the software, for example with license keys or copy protection, provided that these do not impair the use of the software on an alternate or successor configuration.

The Buyer may neither change nor remove copyright designations or other identification features of the software and user documentation from us or from third parties.

We are only obliged to update/upgrade the software or to provide telephone support in the event of a corresponding express agreement, for example in a separately concluded maintenance or service contract. We are also only obliged to adapt interfaces where this has been expressly agreed in advance.

Warranty. Our warranty for software shall be determined in accordance with clause 7. In the event of a software lease, this shall be with the proviso that we shall provide a warranty for the contractually agreed period of use and that liability regardless of fault for defects already existing at the time of conclusion of the contract shall be excluded. Our warranty does not apply to errors that are imputable to the use of the software in a hardware and software environment that does not satisfy our communicated requirements or that are due to the Buyer's changes and modifications to the software without it being entitled to do so by law or on the basis of a prior consent declared by us at least in text form. We also satisfy our obligation to remedy the defect by providing appropriate and reasonable workarounds and by making updates provided with an automatic installation routine available for download on a website and offering the Buyer telephone support to resolve installation problems.

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Where our scope of delivery also includes third-party software and where the third-party software is defective, we shall assign to the Buyer all claims to which we are entitled against the manufacturer and/or sub-supplier. The Buyer shall first assert claims for defects against them and we shall only be liable on a subsidiary basis where claims against the manufacturer or sub-supplier cannot be realized. We can also demand the Buyer to legally enforce the claims against the manufacturer or sub-supplier, but in this event we will furnish the Buyer with security regarding the costs upon request.

### **10. Force majeure**

In cases of force majeure that render performance substantially more difficult or temporarily impossible for us, we may reasonably postpone the performance without being in default. A force majeure event shall be deemed to exist, for example, in the event of natural disasters, strikes, lockouts, official measures, a pandemic (e.g. at our principal place of business or those of our sub-suppliers or the Buyer), by which we are directly or indirectly affected. Such disruptions to performance that occur as a result of a pandemic shall be deemed force majeure even if the pandemic is already known. Where performance is postponed for more than three months, the parties will negotiate an appropriate contract adjustment or termination.

### **11. Place of jurisdiction**

The place of jurisdiction for all disputes arising from or in connection with the purchase agreement shall be our registered office or, at our discretion, the Buyer's registered office.

### **12. Applicable law**

The purchase agreement shall be governed by the law of the country in which the Buyer is located, without regard to conflict of laws and excluding the UN Convention on Contracts for the International Sale of Goods.

### **13. Severability clause**

Where one of the provisions of these terms and conditions is or proves invalid, this shall not affect the validity of the remaining provisions.

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