

## **General Terms and Conditions of UNICCOMP GmbH for the Manufacture and Delivery of Machine Parts**

### **1. General Points and Scope of Application**

- 1.1 These General Terms and Conditions (GTC) are the sole conditions valid for all orders and delivery contracts for machine parts ("products") and their accessories and spare parts manufactured by UNICCOMP (hereinafter referred to as "UNICCOMP") for the customer. Stipulations differing from these GTC, in particular any Customer's terms and conditions which contradict these GTC, shall only be deemed to be agreed if they are specifically confirmed in writing by UNICCOMP as being applicable in place of these terms and conditions. These GTC shall also apply if UNICCOMP supplies to the Customer without reservation, despite being aware of contradictory or differing Customer terms and conditions.
- 1.2 These GTC shall apply in a personal respect exclusively to companies as well as to any legal person under public law and special assets under public law.
- 1.3 In the event of an ongoing business relationship, the valid version of these GTC shall also apply to all future business transactions without specific notification of this or reference to it. This shall apply particularly in the event of call orders or follow-up orders made by telephone or verbally.
- 1.4 Business correspondence, such as order confirmations, invoices, credit notes, account statements and payment reminders, printed by UNICCOMP by means of data processing methods or sent by email are valid and legally binding even without a signature.

### **2. Offers and Conclusion of a Contract**

- 2.1st Offers of UNICCOMP are non-binding and are subject to appropriate supplies to UNICCOMP, provided nothing to the contrary has been expressly agreed in writing. Orders shall only become binding on the basis of written order confirmations unless the performance ordered has already been provided by UNICCOMP or has already been invoiced. With respect to electronic business correspondence, the parties hereby waive application of the stipulations in Section 312i, Paragraph 1, Sentence 1, Nos. 1 to 3 BGB (German Civil Code). Confirmation of the receipt of electronic orders (e-mail) does not constitute binding acceptance of the order. However, the confirmation of receipt may be sent together with the declaration of acceptance. In the event of orders by electronic means, the text of the contract will be stored by UNICCOMP and will - upon request - be sent to the Customer by e-mail together with these GTC.

2.2nd UNICCOMP does not develop and design the products themselves but manufactures them according to the instructions and plans of the Customer on the Customer's behalf (contract for manufacture and supply concerning non-fungible goods under Section 651, S. 3 BGB). The cooperation of the Customer is a primary contractual obligation.

2.3rd The Customer shall ensure the ongoing processing of the order. The Customer shall submit design plans and shall specify the binding manufacturing dimensions as well as any connections / a binding material allowance for finish machining, and assumes the responsibility and liability for the design of the product commissioned and of any components, materials and substances provided by Customer. UNICCOMP is not under obligation to the Customer to examine the specifications, plans and dimensions and/or the product in respect of faulty design.

2.4th The Customer is responsible for the correctness of the documentation he provides, such as e.g. samples and drawings, as well as for his rights thereto. Should the manufacture of the products according to the drawings, samples, or other information of the Customer lead to a violation of protected rights of third parties, the Customer shall release UNICCOMP from any and all claims made by the rights holder.

### **3. Prices and Conditions of Payment**

3.1st The prices quoted by UNICCOMP in offers and stated in price lists are net prices; they include neither VAT nor any other taxes, tariffs, fees or government charges related to the acquisition of the product in question by the Customer. Packaging, postal fees, shipping costs and transport insurance shall be invoiced separately. Confirmed prices are valid only upon purchase of the confirmed amount. Deliveries and work not included in the offer (e.g. in the event of a retroactive modification of the contract), shall be invoiced separately.

3.2nd Unless something to the contrary has been specifically agreed, if the valid list price at the time of delivery is higher than that agreed with the Customer, the higher list price shall apply if the items are supplied more than four months after the contract has been concluded for reasons for which the Customer is answerable, unless the invoice has already been issued and has been paid by the Customer.

3.3rd The purchase price shall be payable net without deductions within seven days of the invoice date, unless otherwise agreed. Any payment target other than these shall be shown on the invoice. All Customer payments shall be made exclusively to UNICCOMP. UNICCOMP

reserves the right to request pre-payment.

- 3.4th The acceptance of checks or bills of exchange requires the consent of UNICCOMP and is on account of payment only. Discount charges and other incidental charges shall be borne by the Customer.
- 3.5th If the Customer comes into default with due payments, UNICCOMP is entitled to retain deliveries of other orders of the Customer. Insofar as payment of the amounts in arrears is then effected, UNICCOMP is entitled to make a new delivery taking account of other delivery commitments at their reasonable discretion (Section 315 German Civil Code).
- 3.6th If the Customer does not meet his obligation to pay (e.g. if he does not cash in a cheque or bill of exchange) or if insolvency proceedings have been applied for or have been instituted against the Customer, UNICCOMP is entitled to accelerate maturity of the whole claim for payment immediately, disregarding the period of accepted bills of exchange. Furthermore, UNICCOMP shall then be entitled to retain due deliveries until receipt of prepayment or securities. If UNICCOMP does not receive prepayment or securities after granting the Customer an appropriate deadline, UNICCOMP may withdraw from the contract with regard to goods and services not yet provided. In such case, all claims of the Customer concerning these goods and services shall become extinct. In such cases, instead of, or in addition to declaring the withdrawal from the contract, UNICCOMP may also claim damages or assert their rights to the retention of title under Section 8.
- 3.7th The Customer may only offset his own claims if these have been established by declaratory judgement, or are uncontested or are accepted by UNICCOMP. Any right of retention or any other right of the Customer to refuse performance can only be asserted against UNICCOMP if and insofar as they concern the same contractual relationship. Even in the case of an ongoing business relationship each single order shall be considered a separate contract. Notices of complaints, of whatsoever nature they may be, do not entitle the Customer to withhold payment, unless the defects reported are established by declaratory judgement, or are uncontested or are accepted by UNICCOMP.

#### **4. Delivery and Acceptance**

- 4.1st The dates and terms of delivery or performance stated by UNICCOMP are only roughly binding unless a calendar date has been specified in writing. The stated period for delivery begins when written confirmation of the order is sent, however, not before the Customer supplies the documents required and/or fulfils any other duties of cooperation, and not before reception of

any official certification or permits that may be required. If the Customer is obliged to make advance payments, the delivery period shall begin to run upon reception of said payment by UNICCOMP.

- 4.2nd Delivery and fulfilment deadlines shall be deemed met, if the supplied product has left the works or warehouse of UNICCOMP or if readiness for dispatch has been announced to the Customer or the service has been fulfilled by the expiry of the period. UNICCOMP is entitled to make partial deliveries within reasonable bounds. If approval is required, the date of inspection and secondarily the date of announcement of readiness for inspection shall be relevant, except for a case of justified refusal of acceptance.
- 4.3rd If UNICCOMP is unable to comply with agreed delivery dates, e.g. due to force majeure, intervention by public authorities, disasters, war, insurrection, strikes at his own plant, forwarding agents or suppliers, or with respect to means of transport, UNICCOMP is entitled to effect later delivery after the cause of the delay has ceased. If supply is delayed by more than four months, the Customer is entitled to reject the delivery and withdraw from the contract. The Customer has no other rights or claims for non-supply or delayed supply due to causes such as those above listed, even if these causes only obtained once the supply deadline had already been exceeded or UNICCOMP was in arrears.
- 4.4th If the delivery and performance deadline is exceeded, the Customer shall be entitled to set UNICCOMP a reasonable delivery / performance deadline extension and, if this period of grace should expire without result, to withdraw from the contract. Claims for damages, irrespective of their legal grounds, are excluded, unless UNICCOMP be guilty of intent or gross negligence. If the delay in delivery is due to intentional or grossly negligent behaviour on the part of UNICCOMP, the Customer shall be entitled to demand lump-sum compensation. This compensation shall amount to 0.5% for every complete week, but is not to exceed a maximum of 5% of the net delivery value of those parts of the total delivery which it is not possible to use in time or not in accordance with the contract. UNICCOMP reserves the right to prove to the Customer that the damages caused by delay amount to less than this.
- 4.5th If the Customer should come into default of acceptance, starting one month after announcement of readiness for dispatch, UNICCOMP is entitled to charge him 0.5% of the invoiced amount for each new month to com-

pensate storage costs. The Customer is entitled to prove lower storage costs, while UNICCOMP may prove and claim higher damages.

4.6th The compliance with a term of delivery or performance is subject to the Customer's observance of his contractual duties. The Customer shall be under the obligation, when requested to do so by UNICCOMP, to confirm in writing the completion of any necessary preparatory work before delivery. If the Customer refuses to do this or refuses acceptance of the goods he will come into default of acceptance.

4.7th Deliveries from UNICCOMP are made ex works. If the parties agree on a different type of delivery in individual cases, the following shall apply: UNICCOMP will decide on the kind and means of dispatch, the transportation route, the forwarding agent, the carrier, the kind and scope of required securities and the packaging at its sole discretion after due assessment of the circumstances. Due diligence provided, UNICCOMP shall not be liable for losses or damages during transport. At the request of the Customer UNICCOMP will insure the consignment at the Customer's expense against theft, breakage and other damages from transport, fire or water and further insurable risks.

## 5. Transfer of Risk

5.1st The risk shall pass to the Customer upon delivery ex works (EXW). If the parties agree on a different type of delivery, the risk shall pass to the Customer upon handing over of the goods to the carrier, the forwarding agent or the collecting person, even if the consignment is free or free at Customer's address. If the transport is executed by UNICCOMP, UNICCOMP shall bear the risk until delivery at the place of reception. These stipulations shall also apply to partial deliveries.

5.2nd Notwithstanding his rights from Clause 6, the Customer is obliged to accept delivered goods even if they present unsubstantial defects. It is the Customer's obligation to assert claims in the event of transport damage vis-à-vis the forwarding agent, the carrier, insurance companies or similar in a timely manner.

## 6. Warranty

6.1st It is the Customer's duty to examine the goods upon their reception with due care. He shall make notes of all discernible defects, missing quantities or incorrect goods on the delivery note or consignment note immediately upon receipt of the goods, or at the very latest five working days after receiving them and without fail notify UNICCOMP in writing before their processing or installation. Otherwise the deliveries will be deemed approved. The customer shall bear the full burden of proof in relation to all preconditions for making a

claim based on a defect, particularly with respect to the defect itself, the time when it was ascertained and the timely report of the defect.

6.2nd If the delivered products are installed by UNICCOMP, the Customer shall accept delivery of them immediately on the spot. If, however, acceptance is not declared, it is nevertheless deemed as having taken place if the delivered and installed product is put into operation by the Customer. If any installation errors are ascertained, they are to be reported immediately in the presence of the installer or representative of UNICCOMP. After acceptance has been effected, warranty claims are excluded unless they concern hidden defects.

6.3rd The warranty period for material defects shall be one year from the transfer of risk. The Customer must prove that the defect already existed at the moment of risk transfer. The regulations on the limitation of action concerning the right of recourse against the supplier according to Section 479 BGB shall not be affected.

6.4th The warranty is limited either to rectification (repair) or the replacement of the item at UNICCOMP's discretion; this shall be free of charge and, within the European Union and the European Economic Area, free of transport costs. In case of replacement, the ownership title for the defective product shall pass to UNICCOMP the moment ROTORCOMP accepts the complaint. Any additional expenses caused by difficult or obstructed access to the item to be replaced, or insufficient workspace or delivery outside the territory of the European Union or the European Economic Area shall be borne by the Customer.

6.5th If the rectification of a defect fails and the Customer then chooses to withdraw from the contract, he is not entitled to any additional claim for damages. If the Customer chooses to claim damages after a failed rectification, the goods shall remain with the Customer, if reasonable. In that case, damages will be calculated as the difference between the purchase price and the value of the faulty items. This shall not apply if UNICCOMP has caused the breach of contract maliciously or fraudulently. The Customer can claim damages only under the provisions of Section 7.

6.6th Warranty obligations will lapse, if the Customer, after having informed UNICCOMP of the defect, does not ensure the required time or opportunity for the necessary repairs or replacements to be carried out at the discretion of ROTORCOMP. Only in urgent cases in which operating safety is endangered or to prevent disproportionate damage or if UNICCOMP is in

default with the rectification of the defect, shall the Customer have the right to rectify that defect himself or through a third party and to claim compensation for the necessary expenses from UNICCOMP. In such a case, too, it is an essential prerequisite that UNICCOMP be immediately informed of the damage.

6.7th The right of termination pursuant to Section 649 of the German Civil Code is excluded.

## **7. General Limitation of Liability and Release from Liability**

7.1st Insofar as liability according to Sections 7.3 and 7.4 is not restricted or excluded, UNICCOMP shall be liable without limitation for damages caused by a culpable violation of principal contractual duties or essential accessory obligations on the observance of which the Customer must be able to rely and which are important for the achievement of the purpose of the contract (cardinal duties). UNICCOMP is likewise liable in the event that promised features be absent, in the case of wilful deception or grossly negligent breach of contractual obligations not pertaining to cardinal duties (simple accessory obligations) through members of UNICCOMP management or UNICCOMP senior employees.

7.2nd If liability according to Section 7.1 is not substantiated, then the liability of UNICCOMP for damage arising from slight negligence is excluded. In the case of damage resulting from grossly negligent action on the part of an agent of UNICCOMP, liability shall be limited to the compensation of UNICCOMP's business liability insurance with a coverage level of € 500,000 per damaging event. In the event that this insurance cover in favour of the Customer not exist or be insufficient, UNICCOMP shall be directly liable up to a sum of € 500,000. In such cases further liability is excluded.

7.3rd UNICCOMP's liability is likewise limited to € 500,000 if the Customer failed to inform UNICCOMP about a risk known or recognisable to the Customer and damages exceeding the ordinary and that were unforeseeable for UNICCOMP.

7.4th UNICCOMP shall not be liable for lost profit, not realized savings, damages resulting from claims of third parties, further indirect or consequential damage nor for the loss of stored data, unless UNICCOMP has created a legitimate expectation to that effect. UNICCOMP shall only be liable for the recuperation of data if the Customer has ensured that these data can be reconstructed with reasonable effort and expenditure from other data material.

7.5th The preceding exclusions and limitations of liability shall apply correspondingly in cases of pre-contractual or non-contractual liability. This

liability limitation does not apply to claims resulting from loss of life, bodily injury or damage to health. Nor do they apply to claims based on Sections 1<sup>o</sup>4, of the German Product Liability Law.

7.6th At least as far as the internal relationship between UNICCOMP and the Customer is concerned, UNICCOMP is not the "manufacturer" who simply puts the product made at the Customer's behest in circulation in the sense addressed in the product liability law, furthermore, UNICCOMP is not the one who makes the product available on the market and is responsible for production safety under the terms of the Product Safety Law; the Customer alone is manufacturer and responsible party. If claims are made against UNICCOMP because of damage under the product liability law or for tortious product liability or for infringement of the German Product Safety Law, the Customer shall be under the obligation to release UNICCOMP from these claims. Likewise in the case of the installation or further processing of the product, any claim against UNICCOMP based on a defective end product shall be excluded. If claims are made against UNICCOMP for any of the above reasons, the Customer is obliged to release UNICCOMP from these claims.

7.7th Insofar as UNICCOMP's liability is limited or excluded, this also applies to the personal liability of employees, representatives and other agents of ROTORCOMP.

7.8th The Customer's claims for compensation shall fall under the statute of limitations with the expiration of the warranty period according to Section 6.3., except for claims resulting from loss of life, bodily injury or damage to health, or claims based on intentional, malicious or grossly negligent conduct, or based on an infringement of cardinal duties, or on the German Product Liability Law; these claims are subject to the respective statutory limitation periods.

## **8. Reservation of Ownership**

8.1st Property of the products delivered and other delivery items shall be transferred to the Customer only after the complete payment of all receivables resulting or to result in future from the business transactions with UNICCOMP, including accessory claims (current account reservation). Issuance of cheques and bills of exchange does not constitute the fulfilment of open claims, but is only on account of payment.

8.2nd The Customer has the duty to handle delivery items with care and to insure them as new at his own expense against damage by fire and water, as well as against theft and vandalism. Upon request, the insurance policy is to be made available to UNICCOMP for inspection.

With immediate effect, the Customer shall renounce in favour of UNICCOMP any claim against the insurer; UNICCOMP hereby accepts this assignment. Moreover, UNICCOMP declares the retrocession of these claims in favour of the Customer subject to the condition precedent that the title in the reserved goods passes to the customer if all claims by UNICCOMP have been paid in full. If maintenance and inspection work is necessary, the Customer must carry it out at his own expense and in a timely manner.

8.3rd The Customer is entitled to process and to resell or otherwise dispose of the delivery objects in the orderly course of business. Processing or conversion of the delivery objects by the Customer is always performed for UNICCOMP. If delivery objects are processed or worked upon with other items not belonging to UNICCOMP, UNICCOMP then acquires joint ownership of the new item in a ratio equal to the ratio of the value of the delivery object to that of the other processed items.

8.4th If the value of the securities according to Sections 8.1 and 8.3 exceeds the secured claims by more than 20 % on a more than temporary basis (cover limit), then UNICCOMP is under the obligation, should the Customer request, to release collateral to the extent of the excess security. UNICCOMP has the right to choose the securities to be released.

8.5th Valuation of the securities is carried out based on the realisable market price or stock exchange price. If such a price is unavailable or cannot be determined, alternatively the purchase price shall be decisive. If this price cannot be ascertained, then the manufacturer price shall be decisive.

8.6th The Customer is not allowed to pledge, transfer security or alienate the collateral in a Sale/leaseback transaction. In the event of attachment and other interference by third parties the Customer shall notify UNICCOMP without delay, to enable ROTORCOMP to lodge a third-party action against execution in accordance with Section 771 ZPO, (German Code of Civil Procedure). If the third party is unable to compensate UNICCOMP for all judicial and extra-judicial costs incurred due to the action under Section 771 of the German Code of Civil Procedure, the Customer is liable to ROTORCOMP for the loss caused.

8.7th If the items serving as security are sold in accordance with the above authorisation, the Customer shall hereby now relinquish in favour of UNICCOMP all claims resulting therefrom against its contractual partner for the securing of current and future claims from the commercial relationship with UNICCOMP. UNICCOMP hereby accepts this assignment. In the event that UNIC-

COMP share ownership of the security item, the Customer hereby assigns to UNICCOMP the proportion of the claim equivalent to UNICCOMP's share in the ownership of the entire item.

8.8th If an assignment prohibition has been agreed between the Customer and his contracting party, the Customer shall not be entitled to resell the secured products unless the claim from said sale of the secured items be placed in a current account relation. In this case the Customer shall assign to UNICCOMP the current account claim ("causal" balance) against the third party in accordance with Section 8.7. After netting out, it is replaced by the recognised account balance which is assigned up to the amount of the original current account receivable.

8.9th The Customer remains, together with UNICCOMP, entitled to the collection of the assigned claims.

8.10th If the realisable value of the assigned claims exceeds the sum of UNICCOMP's secured claims by more than 20 % on a more than temporary basis, then UNICCOMP must release claims to the extent of the excess security should the Customer request. UNICCOMP is free to choose the claims to be released.

8.11th ROTORCOMP shall only have the right to revoke the authorisation to process and alienate the securities, to make use of the direct debit authorisation for the claims assigned as security and to use the collateral if the Customer comes into arrears with his payment obligations, or if an application has been filed to open insolvency proceedings, or the Customer has conclusively discontinued payments.

8.12th In the cases contemplated under Section 8.11 the Customer must disclose without delay to UNICCOMP name and address of third-party debtors and to deliver to UNICCOMP all the information and documents required for the enforcement of the claim. The Customer shall inform the third-party debtors about the assignments of claims without delay.

8.13th UNICCOMP is entitled to withdraw from the contract and require the goods be returned if the Customer falls into default with payment or violates his duties pursuant to this Section 8. If ROTORCOMP asserts their rights to the collateral, UNICCOMP is entitled to enter the property and buildings of the customer, to take possession of the reserved goods or collateral and to transport it, or have it transported, to a different location.

## **9. Prohibition Of Use And Export Restrictions**

9.1 Without the explicit written authorisation of

UNICCOMP, the Customer may not use any product in connection with the operation or maintenance of

- (i) a plant or facility using nuclear power,
- (ii) mass transportation facilities,
- (iii) facilities for the supervision or monitoring of airspace or aircraft

. This prohibition does not apply to flight simulators.

- 9.2 The delivered goods are destined to be used and retained in the country of delivery agreed with the Customer and shall not be exported from there without permission. The Customer is aware that the export of the delivered goods including the technical information provided with the delivery may be restricted by the export regulations of the Federal Republic of Germany and other countries, in particular of the United States of America. If UNICCOMP approves export, the Customer is under the obligation towards UNICCOMP, to observe and comply with all relevant export regulations.

#### **10. Final Provisions**

- 10.1 German law is the sole law applicable between the two parties. The United Nations stipulations concerning Contracts for the International Sale of Goods (CISG) are ruled out.
- 10.2 The place of performance for all claims arising from the business relationship with the Customer is Geretsried near Munich; however, the place of performance for UNICCOMP delivery obligations is the location of the plant or warehouse commissioned with the delivery by UNICCOMP.
- 10.3 Insofar as the contractual party is a merchant, legal person as defined in public law or special fund as defined in public law, the place of jurisdiction for all claims arising from and in connection with the contractual relationship is, depending at the plaintiff's choice, either Munich (Munich I Landgericht [Regional Court]) or the general place of jurisdiction of the defending party.
- 10.4 Should any provision of these general terms and conditions of business be, or become, fully or partially void, this will not affect the other provisions.

**(as at August 2016)**