

# Terms & Conditions of Purchase for machinery, assembly technology, mechanical systems and punching/bending tools (equipment).

(Status: June 2021)

## 1. Applicability

- 1.1 These Cherry Terms and Conditions of Purchase apply to purchases of machinery, assembly technology, mechanical systems and punching/bending tools (hereinafter referred to collectively as "equipment") including any additional services required in connection with them, such as assembly work (delivery of equipment and provision of additional services hereinafter referred to collectively as "services"). These terms and conditions are generally subject to the regulations agreed in individual contracts concluded between Cherry AG or its subsidiaries (hereinafter referred to as "CHERRY" or the "Client") and their supplier (hereinafter referred to as the "Contractor", both also referred to jointly as the "Contractual Partners").
- 1.2 These Cherry Terms & Conditions of Purchase apply exclusively. Any terms and conditions of the Contractor that deviate from, are in conflict with or supplement the Cherry Terms & Conditions of Purchase will only become part of a contract if and to the extent that CHERRY has expressly agreed to their applicability in writing. This requirement for express agreement applies in all cases, including, for example, if CHERRY accepts deliveries without reservation from the Contractor in the knowledge of the Contractor's terms and conditions.
- 1.3 Individual agreements made with the Contractor in individual cases (including secondary agreements, additions and amendments) take precedence over these Cherry Terms & Conditions of Purchase in all cases. Subject to evidence to the contrary, a written contract or our written confirmation is authoritative for the content of any such agreements.
- 1.4 Legally relevant declarations and notifications made by the Contractor in relation to the contract (e.g. setting a deadline, warning, withdrawal) must be submitted in writing, i.e. in written or text form (e.g. letter, email, fax). Legal form requirements and other evidence, in particular in cases of doubt as to the legitimacy of the declarant, remain unaffected.
- 1.5 References to the validity of statutory provisions have only a clarifying function. Even without such clarification, the statutory provisions apply insofar as they have not been directly amended or expressly excluded in these Cherry Terms & Conditions of Purchase.

## 2. Conclusion of contracts and prices

- 2.1 Quotations from the Contractor are binding and free of charge unless expressly agreed otherwise in writing.
- 2.2 Negotiations and transactions made verbally or by telephone require written confirmation by CHERRY. Amendments to agreements, contracts, orders or documents are only effective if they are confirmed in writing by both Contractual Parties. A contract for the delivery of equipment or additional services is only concluded with a written agreement signed by both parties, such as the purchase agreement, referred to as the negotiation protocol or the written order placed by CHERRY and the receipt of the countersigned and unmodified copy of the written order placed by CHERRY (order confirmation). The Contractor must point out any obvious errors (e.g. spelling and calculation errors) and incomplete sections in the order, including the order documentation, and in change requests within 10 working days for the purposes of correction or completion; otherwise, the Contractor bears responsibility for these errors and any resulting consequences.
- 2.3 Unless otherwise agreed in an individual contract, the agreed prices are fixed prices (exclusive of the applicable VAT) and represent the total price of production, the delivery to the installation site (including unloading and internal transport in the plant of the Client) and assembly. Without the written confirmation of the Client, the Contractor cannot adjust the fixed prices or charge additional costs. The fixed prices include the necessary measures to protect the equipment against frost, snow, heat and water damage as well as the removal of any such damage.

- 2.4 The agreed price is due for payment within 60 calendar days of complete delivery and service (including an acceptance procedure, if agreed upon) and receipt of a proper invoice. The Client is not liable for any interest payable after the due date. The statutory provisions apply in the case of payment default.
- 2.5 Unless otherwise agreed in an individual contract, the delivery term is DAP (incoterms 2020) to the respective plant of the Client.
- 2.6 Costs for transport, transport insurance, packaging and reimbursement must be stated separately in the pricing. The same applies accordingly with regard to costs for the assembly and commissioning of a piece of equipment, insofar as costs are charged for this. The costs for this must be given in their full amount, quoting the hourly or daily rate and travel and accommodation costs or in accordance with a different agreement, e.g. flat rate.
- 2.7 The Client is entitled to rights of offset and retention and to a plea of non-performance to the extent permitted by law. In particular, it is entitled to withhold due payments proportionally for as long as it continues to have claims against the Contractor as a result of incomplete or defective services. The Contractor is only entitled to rights of offset or retention on the basis of legally established or undisputed counterclaims.
- 2.8 In the event of defective performance, the Client is entitled to withhold payment proportionally until performance has been duly rendered.
- 2.9 The Contractor is not entitled to assign claims against the Client or have them collected by third parties without the Client's prior written consent, which shall not be unreasonably withheld.

### **3. Delivery dates**

- 3.1 Unless otherwise agreed in writing, agreed delivery dates are binding. Compliance with delivery dates or delivery deadlines is determined by the date on which the equipment is received at CHERRY. The Contractor is obliged to inform the Client immediately in writing if he is unlikely to be able to meet agreed delivery times - for whatever reason.
- 3.2 Where no time for the service has been specified or is evident from the circumstances, the Contractor must effect it immediately (Section 271 of the German Commercial Code (BGB)).
- 3.3 If the seller does not provide its service or does not do so within the agreed delivery period or is in default, the Client's rights, in particular, rights of withdrawal and compensation, are determined in accordance with the statutory provisions. The provisions of para. 4 remain unaffected.
- 3.4 If the Contractor is in default, the Client may, in addition to further statutory claims, demand lump-sum compensation for the damage caused by the default of 0.2% of the gross invoice amount for each working day; however, this compensation is limited to a total of 5%. The Client reserves the right to prove that it has suffered greater damage. The Contractor reserves the right to prove that no damage or significantly less damage has been incurred.

### **4. Scope and performance**

- 4.1 Unless otherwise agreed, the Contractor will deliver complete equipment containing all the parts required for proper operation in compliance with the quality agreed in the contract and established in writing in the design discussions or the implied or customary quality, even if individual parts required for that purpose are not listed. It is the Contractor's responsibility to check the information provided by the Client. The elements and parts of the equipment must be designed and arranged in such a way that they can be maintained, inspected and exchanged quickly and easily. Wearing parts must have the longest possible service life.
- 4.2 A positive supplier declaration in accordance with 89/392/EEC (or any later versions) forms part of the agreed services (within the European Economic Area, this is the CE mark and the declaration of conformity in accordance with the applicable EU directives).

4.3 Any additional hourly rate work (hourly rate attached) that becomes necessary after acceptance, may only be carried out on the express written instruction of the Client, if the Contractor has previously informed the Client in writing of this chargeable work and the expected costs. The Contractor records the hours on the hourly rate form and submits this to the Client each day to be countersigned; this form refers only to the number of hours.

4.4 If the Contractor wishes to use subcontractors to fulfill its obligations, it must obtain the Client's consent prior to concluding any subcontracts.

## 5. **Packaging**

5.1 Packaging must be limited to the extent required to protect the equipment and may only consist of environmentally sustainable and recyclable materials. Unless otherwise agreed, packaging will be taken back.

## 6. **Work carried out in the Client's works area**

6.1 Work to be carried out in the Client's works area must not hinder the Client's operations and third parties any more than is unavoidable.

6.2 The sequence of the work must be coordinated with the Client's relevant technical contact in good time.

6.3 Before beginning any installation and/or assembly work, the Contractor must take over the installation site with all the foundations, connections, layout, etc. which are important for the Contractor and check to ensure they are all correct.

6.4 When carrying out work, the Contractor is obliged exercise special care with regard to any environmentally hazardous substances. If the Contractor releases any pollutants when carrying out the work, finds any pollutants or suspects the presence of such substances, it must inform the Client immediately. Only substances with a water hazard class (WGK) of no more than 2 are permitted. The relevant safety data sheet must be kept at the place of use together with the associated operating instructions.

6.5 The local Client's technical contact has the right to issue instructions at the construction site throughout the construction period. Instructions from other departments of the Client may only be followed after consultation with the technical contact.

6.6 The Contractor must staff the installation site with a competent and experienced supervisor and provide that supervisor with the necessary powers. Any change requires the Client's consent.

6.7 The Contractor must provide the local technical contact with a list of the names of the workers that it intends to employ in the works area. The list must be kept up to date at all times. Upon request, the Contractor must prove that all workers employed are covered by social insurance protection prescribed by law. The Contractor's workers may be denied access to the Client's works area for good cause.

6.8 The Contractor must ensure that the workers that it employs follow the Client's instructions to maintain order and safety and undergo the usual control procedures. Before beginning any work, the Client and the Contractor must carry out a joint risk assessment and issue instructions to the workers employed.

6.9 All items brought onto the Client's premises are subject to works inspections. Before delivery to and removal from the site, a written list of all the items must be submitted to the Client's technical contact for signing. This contact must also keep a copy for their records. The Contractor and its subcontractors must label their tools, devices and installation equipment clearly and unalterably with their name or company logo before bringing them onto the Client's premises. Vehicles and other means of transport are only processed for access during normal working hours.

6.10 Insofar local safety regulations exist, these are to be handed over by the Client's technical contact to all the Contractor's employees (see Section 6,7). All employees of the contractor are obliged to comply with them.

**7. Accident prevention, emission control, pollution damage, fire protection**

- 7.1 The Contractor is obliged to comply with all laws, ordinances and regulations relating to the health and safety of employees, environmental protection, transportation of hazardous goods and fire protection, including any data sheets issued by employer's liability insurance associations and the Verband der Sachversicherer [German property insurance association] in so far as they are relevant to the performance of the services.
- 7.2 The Contractor must contact the Client's technical specialists for occupational health and safety, environmental protection and fire protection for information regarding any requirements and regulations relating to accident prevention, environmental protection and fire protection that apply to the place of performance. The necessary measures must be coordinated with the specialists named in each case.
- 7.3 The Contractor must ensure that all workers that it employs behave in an environmentally-friendly manner and are conscious of safety and fire protection; there must be proof that they have been instructed accordingly.
- 7.4 Fire protection requirements established by the works/plant fire brigade or the fire protection officer must be met in all cases. Where work involving a risk of fire on or in the vicinity of machinery that may pose a risk of fire and/or explosion, such as oil reservoirs, cable systems, etc., cannot be avoided, such work may only be carried out with the approval of the competent authority, which must be in the form of a welding permit. Unless otherwise agreed, the Contractor must provide a trained fire service for a sufficient period of time. Follow-up checks must be carried out after completion of the work. This also applies to disassembly and scrapping work.
- 7.5 The Contractor must indemnify the Client and any individuals that the Client entrusts to carry out or monitor accident prevention, environmental protection, works protection, fire protection, dangerous goods regulations and construction management against any claims directed against the Client or the aforementioned individuals on the basis of a breach of the regulations that the Contractor is required to observe in connection with the performance of the services. This also applies in the case of claims for damages arising from the performance of work on third-party facilities (e.g. supply and waste lines); the Contractor must obtain detailed information regarding any such third-party facilities from all competent authorities before beginning any work. If damage arises, the Client and any other competent authorities must be informed immediately.

**8. Proof of performance and acceptance**

- 8.1 Insofar as a joint acceptance procedure has been agreed, this takes place at the location specified by the Client. The Contractor must submit a written request to set a date for acceptance. Acceptance should take place immediately and, in the case of equipment/machinery that requires prior trial operation, within a period of no less than four weeks and no more than three months after trial operation begins, as requested by the Contractor. During trial operation, machinery may also be used for production, insofar as is possible.
- 8.2 The Client bears any necessary materials costs arising during acceptance unless the end products at the time of acceptance are defective and therefore cannot be used by the Client as intended. The Contractor and the Client each bear their own personnel acceptance costs.
- 8.3 If the acceptance test shows that the equipment has not been manufactured in accordance with the contract, the Contractor must bring the equipment up to a standard that complies with the contract without delay and request a repeat acceptance procedure within no more than three months (unless otherwise agreed between the Parties). Any costs (for non-compliant assembly parts from the automatic assembly machine) arising during the repeat acceptance test, which the Client must prove, are to be borne by the Contractor, insofar as parts that comply with the drawings (as confirmed by the measurement report) are available in accordance with the associated specifications.
- 8.4 If defects are found that do not affect the performance and function of the equipment or the health and safety of the employees, acceptance may take place subject to the immediate remediation of those defects. In that case, an appropriate amount will be withheld from the remaining payment until remediation has taken place. However, compliance of the equipment (machinery) with the German Machinery Ordinance (9th Equipment and Product Safety Act (GSGV)) or any updated version thereof must be fulfilled in all cases for acceptance to take place.
- 8.5 The Contractor will receive an acceptance report, in which any identified defects are written down. This acceptance report will be signed by the Contractor and the Client's technical contact. If no defects are found, the Contractor will receive a written successful acceptance report from the Client. The Contractor must inform the Client's company management in writing 14 days prior to acceptance.

**9. Notification of defects**

9.1 The statutory provisions apply to the commercial obligation of inspection and notification of defects (Section 377 and 381 of the German Commercial Code (HGB)), subject to the following condition: the obligation of inspection is limited to defects that become apparent during the inspection carried out in the course of customary business practice (e.g. transport damage, incorrect or short delivery) or are identifiable during our quality controls carried out using random sampling. If an acceptance procedure has been agreed, there is no obligation of inspection. In all other respects, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into consideration the circumstances of the individual case. The obligation to provide notification of defects discovered at a later date remains unaffected. Without prejudice to the obligation of inspection, a complaint (notification of defects) is, in all cases, deemed to have been submitted immediately and in good time if it is sent within five working days from discovery or, in the case of obvious defects, from delivery. In this regard, the Contractor waives its right to object to a delay in the notification of defects.

**10. Liability (for defects)**

10.1 Unless otherwise provided below, the statutory provisions apply to the rights arising in the event of material defects and defects of title with regard to the services (including incorrect and short delivery, incorrect assembly, defective assembly, operating or control instructions) and in the case of any other breaches of duty by the Contractor.

10.2 In accordance with the statutory provisions, the Contractor is, in particular, liable for ensuring that the goods have the agreed quality at the point at which risk transfers to the Client. Any product descriptions that form part of the respective contract (in particular where they are named or referred to in the order) or that have been incorporated into the contract in the same way as these Cherry Terms and Conditions of Purchase are deemed to constitute an agreement regarding quality in all cases. It makes no difference whether the product description originates from the Client, the Contractor or from the manufacturer. The equipment must exhibit the agreed quality, function and performance and comply with any applicable laws, ordinances, directives, standards and Client regulations relating to occupational health and safety, environmental protection and fire protection. Unless requirements to the contrary arise from these applicable instruments or from the rest of the contract, the generally recognized rules of the trade must be complied with.

10.3 By way of derogation from Section 442(1), sentence 2 of the German Civil Code (BGB), the Client is also entitled to claim for defects without restriction even if the defect was unknown at the time at which the contract was concluded due to gross negligence.

10.4 In urgent cases or if the Contractor is in default with defect remediation, the Client may carry out the measures required itself (or have them carried out by a third party) at the Contractor's expense and request compensation for the expenses required for this or an appropriate advance payment from the Contractor. The Client will notify the Contractor prior to carrying out the measures. If this is not possible, the measures required to avert the damage may be carried out without prior notification; in such cases, the Client will make up for the notification without delay. The Contractor's obligations under its liability for defects remain unaffected; however, this does not include defects attributable to measures carried out by the Client or a third party.

10.5 In the case of services performed as part of defect remediation, a new limitation period within the meaning of Section 10.2 begins upon written acceptance of those services. If the Client does not submit the written acceptance declaration within 15 working days of written notification from the Contractor that defect remediation has been successfully completed, the new limitation period will begin upon expiry of that 15 working day period.

10.6 For all equipment parts that cannot be used as provided for in the contract due to an operational interruption that occurs as a result of the need for remedial measures, the defect warranty period will be extended for the duration of that interruption.

10.7 If subsequent performance is not possible or not reasonable for the Client, the Client's other rights remain unaffected.

10.8 The statutory provisions apply with regard to liability and any rights that go beyond this.

## 11. Proprietary rights

- 11.1 The Contractor is liable for claims arising from breaches of proprietary rights and applications for proprietary rights (proprietary rights) where the equipment is used in accordance with the contract. The Contractor will indemnify the Client and recipient of any claims arising from the use of such proprietary rights.
- 11.2 This does not apply if the Contractor has conducted its production operations in accordance with drawings, models or other equivalent descriptions or information provided by the Client and does not know or, in terms of the products it has developed, is not obliged to know that proprietary rights have been breached by its operations.
- 11.3 The Contractual Parties undertake to inform each other immediately of any risks of a breach and alleged cases of a breach of which they become aware and to give each other the opportunity to counter such claims amicably.
- 11.4 At the Client's request, the Contractor will provide notification regarding the use of published and unpublished proprietary rights and applications for proprietary rights over the equipment, irrespective of whether these are rights of its own or licensed rights.

## 12. Force majeure

- 12.1 The Contractual Parties are released from their performance obligations in the case of force majeure, industrial disputes, riots, official measures and other unforeseeable, unavoidable and serious events for the duration of the disturbance and to the extent of its effects. This also applies if these events occur at a time at which the affected Contractual Party is in default. The Contractual Parties are obliged to immediately provide any necessary information, where reasonable, and to adjust their obligations in line with the changed circumstances in good faith.

## 13. Extraordinary termination, billing in the case of termination due to breach of contract

- 13.1 In addition and complementary to the statutory or otherwise contractual termination rights, the Client is entitled to terminate the contract in whole or in part for good cause at any time, in particular if
- i) the Contractor breaches a fundamental contractual obligation, which is not remedied within an appropriate period of no more than thirty (30) days following written notification to the Contractor of that breach;
  - ii) the Contractor's financial circumstances deteriorate substantially or threaten to deteriorate, which jeopardizes compliance with the obligations arising from this contract vis-à-vis the Client. A significant deterioration in financial circumstances is deemed to have occurred in particular if the Contractor does not pay its own supplier invoices, its checks are not honored or its bills of exchange are protested;
  - iii) an admissible application to open insolvency proceedings is submitted, the Contractor has suspended its business operations or the Contractor's legal entity has been dissolved for reasons other than the opening of insolvency proceedings or rejection of bankruptcy for lack of assets;
  - iv) there is a change in the technical management, which the Client may reasonably assume will jeopardize proper contract performance.

In the event of a termination, the Contractor remains obliged to continue to fulfill any existing contractual agreements to their full extent until the termination becomes effective, and beyond this, where those agreements are not covered by the termination.

- 13.2 If the Client exercises a right of termination to which it is entitled in accordance with the contract or law (see also Section 13.1), any services performed up to that point will only be billed at contract prices to the extent that they can be used by the Client as intended. Billing takes place on the basis of the contract. Any damage for which the Client must be compensated will be taken into consideration in the billing. The same applies with regard to any forfeited contractual penalties.

**14. Software**

- 14.1 In so far as the Contractor's services include the delivery of standard software or the creation and delivery of individual software, the Client will be granted the rights of use of that software as described below:
- 14.2 The Client will be granted an irrevocable, non-exclusive, transferable right of use of the standard software with no restrictions in terms of space or time, for any type of use, including the right to revise, reproduce, amend, expand and grant simple rights of use to third parties.
- 14.3 The Client will receive an irrevocable, exclusive right of use of any programs or parts of programs developed specifically for the Client and of any other service results with no restrictions in terms of space or time, for any type of use, including the right to revise, reproduce, amend, expand and grant simple rights of use to third parties, unless the following paragraphs contain a restriction to this.
- 14.4 If the acquisition of a right of use in accordance with the above paragraph is prevented by third-party rights to third-party programs included in the services or other third-party service results, the scope of the Client's right of use must be agreed accordingly in the contract.
- 14.5 The Contractor remains entitled to continue using standard programs, program modules, tools and any expertise it has provided that may be associated with the development of the service results, including for orders from third parties. The Contractor is not permitted to copy, process or otherwise use all or part of the service results and solutions developed for the Client.
- 14.6 The Contractor is only permitted to publish service results of any type developed for the Client (including parts thereof) with the Client's written consent.

**15. Data protection**

The Contractor may only use individuals for the performance of the contractual service who it has bound to data secrecy in accordance with the Federal Data Protection Act (BDSG)/GDPR. It must ensure that all individuals who it entrusts with processing or performing the contract comply with the provisions of the BDSG/GDPR. The Contractor must guarantee the data security measures required by the BDSG/GDPR and will provide the Client, at its request, with any information and evidence required for order control in accordance with the BDSG/GDPR.

**16. Export control**

The Contractor will immediately inform the purchaser and provide it with all necessary information if the delivery item is wholly or partially subject to approval or (re-)export control.

**17. Secrecy**

- 17.1 The Client reserves the property rights and copyright to illustrations, plans, drawings, templates, samples, calculations, execution instructions, product descriptions and other documents that the Client has made available to the Contractor or to a contractual or cooperation partner of the Contractor. Such documents are to be used exclusively for the contractual service and returned to the Client after completion of the contract. The reproduction of any of these is only permitted within the scope of operational requirements and copyright regulations. These documents must be kept secret from third parties, even after the contract has come to an end. The obligation to maintain secrecy will only expire if and to the extent to which the knowledge contained in the documents provided has become public knowledge. The forwarding or provision of the documents specified in sentence 1 to third parties requires the Client's consent. Any subcontractors must be bound accordingly to the same obligations.
- 17.2 Paragraph 1 applies accordingly to substances and materials (e.g. software, finished and semi-finished products) and to tools, templates, samples and other items made available to the Contractor for manufacturing. Provided they are not processed, such items will be kept separately at the Contractor's expense and reasonably secured against destruction and loss.
- 17.3 The Contractual Parties may only use their business relationship for advertising purposes with prior written consent.

**18. Use of the Client's production means and information**

Models, matrices, templates, samples, tools and other means of production as well as confidential information that the Client provides to the Contractor or in the costs of which the Client has a significant share may only be used for performance of the respective contract with the Client and only with the latter's prior written consent for the Contractor's own purposes and for deliveries to third parties.

**19. Limitation period**

19.1 The Contractual Parties' mutual claims have a limitation period as established in the statutory provisions, unless otherwise specified below.

19.2 Insofar as an acceptance procedure has been agreed, the limitation period begins upon acceptance. The two-year limitation period also applies accordingly to claims arising from defects in title, whereby the statutory limitation period for third-party rights in rem for restitution of property (Section 438(1), item 1 BGB) remains unaffected; beyond this, claims arising from defects in title do not become statute barred in any case as long as the third party can still assert that right against us – in particular where there is no limitation period.

19.3 The limitation period established in the sale of goods law, including the above extension, apply, to the extent permitted by law, to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims to damages due to a defect, the standard statutory limitation period applies (Sections 195 and 199 BGB), unless the application of the limitation period laid down in the sale of goods law establishes a longer limitation period in individual cases.

**20. Place of performance, applicable law, place of jurisdiction and severability clause**

20.1 The place of performance is the place to which the contractual items are to be delivered in accordance with the order, unless CHERRY's registered office is designated for this purpose.

20.2 The contractual relationships between CHERRY and the Contractor, including all past and future legal relationships, are governed exclusively by German law, to the exclusion of private international law and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

20.3 The place of jurisdiction for all legal disputes arising directly or indirectly from contractual relationships based on these Terms and Conditions of Purchase is Nuremberg, Germany. However, CHERRY is entitled to take legal action either at the Contractor's registered office, its branch office or at the court of the place of performance. Overriding statutory provisions, in particular those regarding exclusive jurisdiction, remain unaffected.

20.4 Should individual provisions of these Terms and Conditions of Purchase and any further agreements reached be or become invalid, the validity of the remaining provisions will not be affected by this. The Parties undertake to replace the invalid provision with a legally permissible provision or option that corresponds to or comes closest to the intended economic effect.