General Terms and Conditions of Sale for WMU GmbH

I. General

1. These General Conditions of Sale for WMU GmbH (the “Seller”) (“Terms and Conditions”) apply only to entrepreneurs within the meaning of Section 14 of the German Civil Code [BGB] (the “Buyer”) with regard to the sale of machines, integrated software and other products (“Products”).

2. The Seller’s quotes shall be provided, orders confirmed, deliveries made and services provided solely on the basis of these Terms and Conditions.

3. These Terms and Conditions shall also apply to all future business relations even if these have not yet been expressly agreed.

4. Any statement to the contrary by the Buyer with reference to its own terms and conditions of purchasing shall not be valid even if the Seller has not explicitly disagreed.

5. Any changes to these Terms and Conditions shall only be valid if they are confirmed in writing by the Seller.

II. Quotes and concluding the contract

1. Quotes provided by the Seller shall not be legally binding, unless they are expressly identified as such.

2. The contract shall only be concluded when the Seller confirms an order. An order may be confirmed in writing or by telex (including EDI, remote data transmission and machine-readable media). This shall also apply to any additions, amendments or ancillary agreements. The issuing of an invoice shall constitute confirmation of an order.

3. Order or item numbers refer to numbers in the latest edition of the Seller’s documentation, including catalogues or brochures, which will also provide further technical details. These documents should not be considered as fully accurate, unless they have been specifically designated as legally binding, or unless they require agreement from both parties in order to be used for the purposes for which they were intended in the contract. There can be no guarantee that item weights specified in parts of the catalogue will be adhered to precisely.

4. Drawings, illustrations, dimensions, weights and other technical data shall only be considered legally binding if specifically agreed in writing. If the contract is not concluded, all drawings and documents must be returned to the Seller without the Seller needing to request their return.

5. If it becomes apparent after the contract has been concluded, particularly because invoices are still open or unpaid, that the Seller’s entitlement to receive payment is at risk because of lack of solvency on the Buyer’s part, the Seller shall be entitled to refuse to fulfil the contract until the Buyer makes a payment or provides security for the payment. The Seller shall be entitled to withdraw from the contract if it has provided the Buyer with a reasonable period of time either to make the payment or provide security for the payment, but to no avail. Any counterclaims from the Buyer shall not be affected.

III. Prices and terms of payment

1. The prices quoted by the Seller shall not be legally binding, unless they are designated as binding. Unless otherwise stated in the order confirmation, the Seller’s ex works/warehouse prices will be exclusive of packaging, postage, freight, other shipping charges, insurance and customs charges; these will be invoiced separately. Packaging will be charged at cost price. VAT will not be included in the Seller’s prices. It will be invoiced separately at the statutory rate.

2. For spare-part-orders coming from outside the EU with a total volume below 500,00 Euro, we charge handling expenses of 150,00 Euro.

3. The Seller shall be entitled to offset payments against the Buyer’s older debts first of all, regardless of any provisions to the contrary in the Buyer’s terms and conditions. If costs and interest payments have already been incurred, the Seller shall be entitled to offset payments against costs first of all, then against interest and finally against the main part of the contract.
4. A payment will only be deemed to have been made when the Seller has received the amount required.

5. If the Buyer defaults on its obligation to pay, the Seller shall be entitled to declare the entire outstanding debt due once a reasonable period of time has elapsed.

6. If the Buyer is in default of payment, the Seller shall be entitled to demand security in the form of a bank guarantee.

IV. Offsetting, right of retention, prohibition on assignment

1. The Buyer shall only be entitled to offset or retain items in respect of claims that are undisputed or upheld by a court of law. A reduction following complaints about defects shall be subject to the same restrictions.

2. The Buyer shall declare its consent for the Seller and its affiliated companies to offset its receivables and liabilities. The receivables and liabilities of the Buyer’s affiliated companies will be subject to offsetting in the same way.

3. The rights of the Buyer under both the contract and these terms and conditions are not transferable.

V. Delivery and performance periods

1. The dates and periods stipulated by the Seller shall not be binding unless otherwise expressly agreed in writing. In addition, call-offs and blanket orders will require individual agreements regarding delivery times.

2. Delivery periods shall begin on the day on which the Seller sends an order confirmation to the Buyer. The date on which the order is confirmed shall be the deciding factor in determining the start of the delivery period, unless a different delivery period is mentioned in the order confirmation. In order for the Seller to meet its obligation to deliver the goods the Buyer must fulfil its obligations in a proper and timely manner; in particular, the Seller must have received all documents, parts, information and licences it requires from the Buyer, and any agreed down payments must have been made.

3. The day on which the Buyer is informed that the goods are ready for collection shall be deemed the delivery date. If the goods are being shipped, the day on which the goods are handed over to the carrier shall be deemed the delivery date.

4. Appropriate partial deliveries and services shall be permitted if they are considered reasonable. In addition, unavoidable variations in quantities of up to +/- 5 to 10% shall not be considered too small.

5. The Seller shall not be responsible for delays in delivery and performance caused by force majeure. Force majeure and industrial disputes shall exempt the Seller from its performance obligations for the duration of the disruption and to the extent warranted by its impact. The Seller shall undertake to provide the information required within a reasonable period of time and to adapt its obligations to the changed circumstances in good faith. In such circumstances, the Buyer shall only be entitled to withdraw from the contract if the period of force majeure plus a reasonable period required to start deliveries again exceeds the agreed delivery period, unless the period of force majeure lasts longer than four weeks. Apart from this, the Buyer shall only have a right to withdraw if it has been informed by the Seller in writing that it cannot or can no longer make a delivery to the Buyer. The above restriction shall not apply to fixed time deliveries.

6. If the Seller fails to deliver the goods on the delivery date agreed in writing, the Buyer shall be entitled to withdraw from the contract if it has granted the Seller a reasonable grace period of at least thirty days, unless granting a grace period is unnecessary in this exceptional case.

VI. Transfer of risk

1. Risk shall be transferred to the Buyer as soon as the goods have left the Seller’s factory, an external warehouse or, in the event of direct delivery of goods not produced by the Seller itself, the subcontractor’s warehouse.

2. The Buyer must accept all items delivered, even if they have minor defects, without prejudice to its rights under Section VIII.
VII. Retention of title
1. The goods delivered shall remain the property of the Seller until the Buyer has settled all liabilities arising from the business relationship.

2. Processing or modification shall always be deemed to be performed on the Seller’s behalf as the manufacturer, but without any obligation on its part. If the Seller’s right to joint title should cease as a result of intermixing of movable items, it shall be agreed at the outset that the Buyer's right to joint title of the uniform item shall be transferred to the Seller in an amount proportional to the invoice value. The Buyer shall hold the Seller’s title or right to joint title without payment.

3. The Buyer shall undertake to protect the Seller’s title or right to joint title against deterioration, depreciation or loss, with the diligence of a prudent businessman, even with respect to its Buyers.

4. The Buyer shall be entitled to process and sell the retained goods within the ordinary course of business. They may not be pledged or transferred by way of security. By way of security, the Buyer shall assign to the Seller, at the outset and in full, any debt claims and all ancillary rights arising from such resale or some other legal basis with regard to the goods that are subject to retention of title.

5. In the event that third parties have access to the goods that are subject to retention of title, the Buyer shall inform them of the Seller’s title to the goods and notify the Seller immediately. Any costs and losses shall be borne by the Buyer.

6. In the event the Buyer defaults on payment, the Seller shall be entitled to withdraw from the contract and take back the goods that are subject to retention of title at the Buyer’s expense or, if necessary, request assignment of the Buyer’s right to recover property from third parties. The Seller’s right to claim damages shall not be affected. The same shall apply for any breach of the contract by the Buyer.

7. The Seller shall undertake to release the securities to which it is entitled at the request of the Buyer if the value of its securities exceeds the claims to be secured by more than 20%. The choice of securities to be released shall be determined by the Seller.

VIII. Claims for defects
1. The Seller shall be responsible for ensuring that its products are free of manufacturing and material defects and otherwise have the features included in the order confirmation. Without prejudice to the provisions included in these Terms and Conditions, the Seller shall not accept any other guarantees, express or implied, particularly not those for average type and quality or fitness for a particular purpose. The Seller will only provide guarantees that are specifically designated as guarantees in writing. Claims made by the Buyer because of defects shall require the Buyer to have duly fulfilled its duties to inspect the goods and lodge a complaint, in accordance with Section 377 of the German Commercial Code (HGB).

2. For products with integrated software, a separate purchase contract will be concluded with regard to the software. A defect in the software shall not constitute a defect in the remainder of the product, unless the defect in the software means that remainder of the product does not correspond to the quality agreed between the Seller and the Buyer. If the Parties had not agreed that the product could be in this condition, a defect in the software will only constitute a defect with respect to the remainder of the product if the software defect means that remainder of the product is not suitable for ordinary use or for the uses intended in the contract.

3. Variations that occur commonly in the sector shall only be deemed defects if this has been expressly agreed in writing by the Parties. The information provided by the Seller about the articles for delivery and service in its catalogues, brochures and price lists shall merely represent descriptions, designations or approximate values, unless otherwise stated in the order confirmation or in the purpose included in the contract and agreed by both parties. Minor, insignificant variations with respect to the catalogue or goods supplied previously shall not be considered defects.

4. The Buyer shall be required to check for itself whether the goods ordered from the Seller are suitable for the purposes for which they are intended. Any goods that are not suitable shall only be deemed to be defective if the Seller has confirmed their suitability to the Buyer in writing.

5. Features of the goods shall only be deemed to be guaranteed if such a guarantee has been provided in writing by the Seller.
6. The wear and tear of wear parts during normal use shall not constitute a defect.

7. If the Buyer does not follow the Seller’s instructions regarding assembly, installation, operation or maintenance, makes changes to the products, replaces parts or uses consumables that do not conform to the original specifications, the right to claim for defects shall apply only if the Buyer can prove that the defect was not caused by its actions but was already present when risk was transferred to it.

8. If the goods have not yet been delivered to an end user, the Seller will be obliged to remedy defects about which the Buyer can justifiably register a complaint by either repairing the defect or by supplying new items or parts, at its discretion. If subsequent deliveries or improvements fail to remedy the defects, the Buyer’s only options are to request reduction in payment or to withdraw from the contract, if it so decides. The Buyer shall only have the right to withdraw from the contract and claim compensation instead of completing the contract if the defect is not insignificant. The Buyer’s right to claim compensation shall be based on Section X.

9. If the goods have already been delivered to an end user, the Buyer shall only be entitled to make those claims for defects against the Seller that its customer has made against it.

10. Claims for defects cannot be made against the Seller if the goods have been taken back on a goodwill basis that has not been agreed with the Seller. Furthermore, the Buyer shall not be entitled to withdraw from the contract with the Seller if the Buyer was required to take back the goods from third parties because it did not fulfil its obligation to remedy the defect properly, particularly if it allowed a time limit to elapse that was set for it to rectify the defect. The Buyer must notify the Seller in writing without delay about its customer's request for the defect to be remedied and must notify the Seller about the intended type of remedy and the approximate costs involved. The Buyer shall be obliged, in the Seller’s interest, to keep the amount of the expenses, as defined by Section 439 (2) of the BGB, as low as possible, and to comply with the Seller's proposals for a less costly way of remedying the defect.

11. If the Seller infringes obligations that are not related to fulfilling the contract, in accordance with Section 241 (2) of the BGB, the Buyer shall then be entitled to withdraw from the contract and claim compensation instead of having the contract fulfilled, if the Buyer can no longer be reasonably expected to adhere to the contract.

12. In the events that defects are remedied, the Seller shall be obliged to bear any costs associated with remedying the defects, especially the costs for transportation, travel, labour and materials, as long as these costs are not incurred as a result of moving the products to a location other than the location where the Buyer stores the products.

13. Any claims for defects shall expire twelve months from the date of delivery to the Buyer. For cases of intent or negligence, Section X shall apply.

IX. Software
The Seller’s software is not intended for private use. It may only be installed and/or used by qualified personnel who are familiar with the information provided by the Seller in the installation instructions and warning notes. Incorrect installation, operation and/or maintenance of the software by the Purchaser may result in the software not functioning properly and/or causing damage to equipment and/or machines or to people. If and to the extent to which defects in the software are caused by a failure to comply with the Seller’s installation instructions and warning notes and/or by faulty operation and/or maintenance of the software on the part of the Buyer, such defects shall not be covered by the Seller’s warranty obligations. The Seller shall also accept no liability for any resulting consequential damages. This shall particularly apply to any damage to the software arising from the faulty software and/or any consequential damage to machines, equipment or other products and people.

X. Haftungsbeschränkung
1. The Seller shall be liable, without limitation, for intent and gross negligence, for culpable injury to life, limb or health, for defects that the Seller has fraudulently concealed, or if the Seller has provided a guarantee that the goods have a specified quality for a specified period. The Seller shall also be liable, without limitation, for product liability and other mandatory liability.
2. If the Seller is in culpable breach of material contractual obligations, it shall also be liable for simple negligence, but limited to damage that is typical of this kind of contract and was reasonably foreseeable when the contract was concluded. Material contractual obligations are those where infringement jeopardises the purpose of the contract, because either the Buyer is deprived of rights which the Seller must grant in accordance with the contents and purpose of the contract, or its rights are restricted.

3. Further claims for compensation, in particular those relating to financial losses, shall be excluded.

4. The limitations of liability mentioned above in this Section X shall also apply to the Seller’s employees, representatives and vicarious agents.

XI. Rights of use and exploitation, property rights

1. If the Seller manufactures goods and delivers them to the Buyer on the basis of an order from the Buyer and in accordance with its instructions and guidelines, the Buyer shall be liable to the Seller for ensuring the goods and services provided in the course of the order are free from third-party property rights. The Buyer shall indemnify the Seller against all claims to this same extent and must compensate it for any losses incurred.

2. If the Seller provides the Buyer with tools, designs, installation suggestions or other drawings and documents with the goods, it shall retain its title to them along with all property rights and rights of use. The Buyer shall only be entitled to use these items as part of the purchase contract; in particular, the Buyer shall not be entitled to reproduce them or make them available to third parties.

3. The Buyer shall be entitled to use integrated software products to the extent agreed in the contract. The intellectual property rights to the software and any manuals supplied with it shall not be affected. The Customer may only reproduce the software or manuals, or make them available to third parties, where this is prescribed by law. Sections 69a et seq. of the German Act on Copyright and Related Rights (UrhG) shall not be affected.

The Seller shall accept no warranty claims and/or claims for liability with respect to the software if and insofar as the software is altered by the Customer or is not used properly.

XII. Confidentiality

1. Unless otherwise expressly agreed in writing, all information obtained by Buyer in connection with the contractual relationship shall be deemed confidential.

2. The obligation to maintain confidentiality shall not apply to information:
   - which is demonstrably known to the Party receiving the information (the "Receiving Party") before it is disclosed, as long as the Receiving Party informs the Party that discloses the information (the "Disclosing Party") about this fact within one month of receiving the information;
   - which is already in the public domain or is accessible to the Receiving Party at the time it is disclosed, or which becomes public knowledge or becomes accessible after it is disclosed, without this involving a breach of this contract by the Receiving Party;
   - which is obtained by the Receiving Party from third parties, as long as this information is not the subject of a confidentiality agreement with the Disclosing Party;
   - the disclosure of which to third parties has previously been permitted in writing by the Disclosing Party; or
   - which is required to disclose by law or by judicial or regulatory order.

3. This obligation to maintain confidentiality shall continue to apply beyond the end of the contractual relationship.

XIII. Datenschutz


XIV. Data protection

The Seller will store and process all data about the Buyer obtained as part of contract processing solely for its own purposes, in compliance with the provisions of the German Federal Data Protection Act. If required by contract processing, the Seller will disclose the data to third parties. The third parties shall be required to use the data exclusively for contract processing purposes and in compliance with data protection regulations. If an individual clause in these Terms and Conditions or in other agreements should be or become partially invalid or contain a gap, this shall have no bearing on the validity of any other clauses or agreements. In order to fill the gaps, the Parties shall be deemed to have agreed...
valid clauses of the type that they would have agreed, in accordance with the economic objectives of the contract and the purpose of these General Conditions of Sale, if they had realised that there were gaps.

XV. Place of jurisdiction, place of performance
The exclusive place of jurisdiction for all disputes between the Parties arising out of or in connection with these Terms and Conditions (including those relating to claims under tort law) for which there is no other exclusive place of jurisdiction shall be Arnsberg. The Seller shall, however, be entitled to bring an action against the Buyer where its registered office is located. Unless otherwise stated in the contract, the place of performance shall be the Seller's registered office, which is supplying the goods in question.

XVI Applicable law

Date of revision: 01/06/2018 (previous versions shall no longer be valid)