



## General Terms and Conditions No.: 11/november 2019 of Assfalg GmbH

### I. General

1. The General Sale and Delivery Conditions No.: 03/2011 exclusively apply for the entire business relationship including any prospective relationship between Assfalg GmbH and the purchaser. Other purchasing conditions or other general terms and conditions of the purchaser are hereby contradicted and do not apply. Assfalg GmbH is entitled to change its General Sale and Delivery Conditions No.: 03/2011 upon notification with effect for the entire prospective business relationship with the purchaser.
2. The General Sale and Delivery Conditions apply both for this framework agreement as well as for the individual order if such a framework agreement exists between the purchaser and Assfalg GmbH.

### II. Contract conclusion

1. Offers by Assfalg GmbH are subject to alteration and non-binding. Documents relating to the offer such as illustrations, drawings, weight and dimensions are only approximate values unless expressly declared as binding. Any drawings or technical documentation provided to the purchaser by Assfalg GmbH regarding the technical purchasing item to be delivered remain the property of Assfalg GmbH.
2. Orders by the purchaser are binding for him. The delivery or invoice is regarded as an order confirmation provided that Assfalg GmbH does not pursue another form of written confirmation.
3. If the purchaser is a merchant, the written confirmation by Assfalg GmbH is exclusively decisive in regard to the content of orders and agreements provided that the purchaser does not promptly object in writing. This specifically applies to oral orders and agreements or orders and agreements reached via telephone. A notification sent to Assfalg GmbH is no longer regarded as prompt if Assfalg GmbH does not receive it within seven days.

### III. Delivery date, delivery scope, delivery delay

1. Delivery dates and deadlines are only regarded as approximately agreed upon if Assfalg GmbH has not expressly issued a binding written acceptance. Delivery dates are extended in case the purchaser does not clarify all order details in a timely manner and does not make all advance payments in a timely manner. Delivery dates are regarded as fulfilled with the notification of shipping readiness.
2. Assfalg GmbH is entitled to partial deliveries provided that these do not exceed the reasonable minimum.
3. The purchaser must check and receipt the delivery note. Assfalg GmbH must be promptly notified in writing in case any objections arise. Otherwise the receipted delivery quantity is regarded as accepted.
4. The delivery deadline is extended accordingly in case of operational disruptions, official measures, absence of supply deliveries to Assfalg GmbH or force majeure. Force majeure also exists in case of industrial action including strike and legal lockouts at the operational facility of Assfalg GmbH or at the facilities of presuppliers of Assfalg GmbH. Claims by the purchaser for damage compensation are excluded in these cases within the limitations of Section VII (General Liability Limitation).
5. If the purchaser incurs damages due to delivery delay for which Assfalg GmbH is culpable, the purchaser can demand compensation in the amount of 0.5% for each week of delay with a maximum amount of 5% of the value of the relevant part for the total delivery excluding further compensation claims. In case of delivery delay, the purchaser can rescind from the contract after issuing a suitable grace period with the express declaration that he rejects the acceptance of the service after expiry of this deadline and rescinds from the contract if the service is not provided within the determined grace period. Further claims in case of delivery delay, specifically claims for damage compensation are excluded in accordance with the regulations of Section VII (General Liability Limitation).

### IV. Prices, payment conditions

1. Prices include value-added tax, freight, customs, postage, packaging, insurance and other expenses. Prices valid on the day of delivery are decisive for the calculation of brand new machines. Packaging is calculated at cost; returns are excluded.
2. Invoices are due immediately without deductions in the absence of special agreements.
3. If the purchaser defaults on payments, the seller is authorised to demand default interest in the amount of 8% (5% for private customers) above the base interest rate (Section 288.2 of the Civil Code). The assertion of specific delay damages remains reserved.
4. Offset rights are only granted to the purchaser if his counterclaims are legally valid, undisputed or recognised by Assfalg GmbH.



## V. Risk transfer, acceptance

1. Risk is transferred to the purchaser at the beginning of loading or shipment of the delivery item, even if partial deliveries are made or Assfalg GmbH has also taken on other services such as shipping costs or delivery and setup and/or commissioning. Acceptance is decisive for the risk transfer insofar as the delivery item must be accepted. Acceptance must be performed promptly on the acceptance date, alternatively after the deliverer's notification regarding acceptance readiness and may not be refused by the purchaser due to the mere existence of a non-essential defect.
2. Risk is transferred to the purchaser from the day of notification of shipment or acceptance readiness in case shipment or acceptance is delayed due to reasons for which Assfalg GmbH is not responsible.

## VI. Warranty, notice of defects

1. Under the exclusion of further claims, Assfalg GmbH is liable for delivery defects as follows:
  - 1.1 From the transfer of risk, warranty periods for new products (Consumable goods purchase, Section 474 of the Civil Code) amount to 24 months in case of private use, 12 months for commercial and/or professional use.
  - 1.2. From the transfer of risk, the warranty period for used products (Consumable goods purchase, Section 474 of the Civil Code) amounts to 12 months in case of private use; warranty is excluded for commercial and/or professional use. Used machines are delivered with still available accessories in the same state as at the time of contract conclusion. Any liability for apparent or hidden defects is also excluded if the machine has not been visibly inspected in advance by the purchaser unless Assfalg GmbH intentionally or in a grossly negligent manner concealed defects from the purchaser.
2. The regulations of Section 1 do not apply for assured characteristics or for culpable infringement of essential contractual obligations. Such claims of the purchaser as well as claims due to damages not of the delivery item itself are excluded according to the regulations of Section VII (General Liability Limitation) within the legally permissible framework. Any reworking or subsequent delivery within the context of the warranty service does not initiate a new beginning of the warranty period.
3. Characteristics are only assured if these are expressly designated as such in the contract. Oral statements and statements within the documentation of Assfalg GmbH do not contain any assurances. Samples, specimens, dimensions, DIN stipulations, service specifications and other information regarding the properties of the delivery item are provided for specification purposes and are not assured characteristics. To the extent that material used by Assfalg GmbH is contractually specified, only compliance with the specification is guaranteed and not the suitability of the material for the contractual purpose. Assfalg GmbH is only obligated to provide indications in case of obvious unsuitability.
4. Damages caused by external influences, improper setup and handling, deficient operation or maintenance, corrosion or normal wear are excluded from the warranty service. In the latter case, the warranty specifically does not extend to wearing parts. Wearing parts include all rotating parts as well as all drive parts and tools. At the time of sale of the machine, single-shift operation is taken as the basis for warranty regulations.
5. The purchaser is obligated to promptly and properly inspect delivered goods upon receipt at his own expense and promptly report any defects or wrong deliveries, apparent non-permissible wrong deliveries or shortages to Assfalg GmbH in written form. A limitation period of seven days from receipt of the delivery applies for the reporting obligation. Hidden defects must be promptly reported to Assfalg GmbH upon detection. In all other respects, Sections 377, 378 of the Commercial Code for mutual commercial transactions among merchants remain untouched.
6. Any qualitative defects of a partial delivery do not entitle the recipient to reject the rest of the concluded quantity unless the purchaser can verify that the acceptance of only one part of the delivery is infeasible for him while taking the relevant circumstances into account.
7. If the purchaser detects a defect, he may not change or process the delivery item or release it to third parties, but must grant Assfalg GmbH sufficient opportunity and time to grasp the defect themselves and possibly perform the required subsequent fulfilment (reworking or replacement delivery); all defect claims are otherwise void.

Only in urgent cases of endangerment of operational safety or prevention of disproportionately greater damages, in the event of which Assfalg GmbH is to be promptly notified, does the purchaser have the right to rectify the defect himself or have it rectified by third parties and demand compensation for required expenditures from Assfalg GmbH. Regardless of the existence of a defect, all warranty claims also lapse if the purchaser or a third party changes or performs maintenance work without the authorisation of Assfalg GmbH.
8. Transport damages must be promptly reported to the seller. The purchaser must settle required formalities with the freight forwarder, specifically all required determinations for maintaining recourse rights with respect



to third parties. Complaints cannot be issued in case of commercially customary breakage, loss or the like within a reasonable extent.

9. In the case of a justified complaint, Assfalg GmbH determines whether reworking of the deficient goods or a replacement delivery is appropriate. Multiple reworking instances are permitted.
10. In case of defect removal, Assfalg GmbH is obligated to bear all necessary expenditures for the purpose of defect removal, specifically transport, travel, work and material costs provided that these are not increased by the purchased item having been transported to a different location outside of the place of fulfilment.
11. The purchaser, who is not the consumer, only has the right to rescind from the contract or reduce the purchasing price under the exclusion of all further claims regarding the delivery item if Assfalg GmbH allows the lapse of an issued grace period for subsequent fulfilment within the meaning of Section 439 of the Civil Code without rectifying the defect or providing a replacement delivery or in case reworking or a replacement delivery is impossible, fails or is refused by Assfalg GmbH due to other reasons.

## VII. General liability limitation

1. The regulations in Sections VI VII.2 apply in case the delivery item cannot be used by the purchaser according to the contract as a result of Assfalg GmbH's culpability due to neglected or erroneous consultation before or after contract conclusion or due to infringement of other contractual secondary obligations (e.g. operational or maintenance instructions); further claims of the purchaser are excluded.
2. On whatever legal grounds – Assfalg GmbH is only liable for damages not to the delivery item itself in case of
  - wilful intent,
  - gross negligence on the part of the owner/organs or executive employees,
  - culpable injury to life, body, health,
  - defects that were maliciously concealed or whose absence was guaranteed,
  - defects to the delivery item insofar as liability applies according to the Product Liability Act for personal injury or material damage for privately used items.

In the event of culpable violation of essential contractual obligations, Assfalg GmbH is also liable for gross negligence of non-executive employees and for slight negligence, in the latter case limited to contractually typical, reasonably predictable damage; further claims are excluded.

## VIII. Retention of title, securities

1. Assfalg GmbH retains the title for the delivery item until receipt of all payments from the delivery contract. In case of contract-violating behaviour by the purchaser, specifically for payment delay and in case of an application for the initiation of insolvency proceedings, Assfalg GmbH is entitled to take back the delivery item upon the issuance of a late notice, and the purchaser is obligated to return the item. The purchaser must promptly inform Assfalg GmbH in writing of seizures or other interventions by third parties.
2. Assfalg GmbH is entitled to insure the delivery item at the expense of the purchaser against theft, breakage, fire, water and other damages provided that the purchaser himself has not verifiably taken out the insurance.
3. The purchaser is entitled to resell the delivery item in the ordinary course of business. However, he already now assigns all receivables from further divestment to purchasers or third parties to Assfalg GmbH, regardless whether the goods subject to retention of title are resold without or after processing. The purchaser is also entitled to collect receivables after assignment. Assfalg GmbH's authorisation to independently collect receivables remains untouched; however, Assfalg GmbH may not collect receivables as long as the purchaser properly fulfils his payment obligations.

Assfalg GmbH may demand that the purchaser informs him of assigned receivables, states their debtors, provides all information that is necessary for collection, surrenders associated documentation and informs the debtor of the assignment. If the delivery item is resold together with other goods that do not belong to Assfalg GmbH, the purchaser's receivables against the buyer are regarded as assigned in the amount of the delivery price agreed upon between Assfalg GmbH and the purchaser.
4. The purchaser always processes and converts items subject to reservation of title for Assfalg GmbH. If the item subject to retention of title is processed or inseparably mixed with other objects that do not belong to Assfalg GmbH, then Assfalg GmbH becomes the co-owner of the new item at the time of processing or mixing according to the proportion of the value of the item subject to retention of title to the other processed or mixed items. If Assfalg GmbH's goods are combined or inseparably mixed with other movable objects into a uniform item and if the other item is regarded as the main item, it is agreed that the buyer proportionately transfers co-ownership to Assfalg GmbH provided that he is the owner of the main item. The purchaser stores the property or joint property for Assfalg GmbH. Apart from that, the same applies for the item created by processing,



conversion, combination and mixing as for the goods subject to retention of title.

5. Assfalg GmbH is entitled to demand appropriate securities for the proper fulfilment of the purchaser's liabilities. Assfalg GmbH is obligated to release the securities due to the company insofar as their value exceeds the receivables that are to be secured by more than 20%, provided that these have not yet been settled.

#### **IX. Fulfilment obligation, impossibility and non-fulfilment**

1. Assfalg GmbH's delivery obligation and delivery deadline are subject to the reservation of proper, complete and timely availability of supplies.
2. The purchaser can rescind from the contract if the entire service prior to risk transfer becomes impossible for Assfalg GmbH due to circumstances for which Assfalg GmbH bears responsibility. The previous regulation only applies for the respective part in case of partial impossibility or partial incapability. However, in this case the purchaser can rescind from the overall contract if he can prove legitimate interest in refusing the partial delivery. Further claims of the purchaser, specifically claims for damage compensation are excluded in accordance with the regulations of Sections VI and VII.
3. The purchaser remains obligated to fulfilment if the impossibility occurs during the acceptance delay or due to the culpability of the purchaser.
4. Assfalg GmbH is entitled to freely utilise reclaimed goods after Assfalg GmbH has rescinded from the contract or after the deadline determination with the threat of refusal.

#### **X. Place of fulfilment, place of jurisdiction, applicable law**

1. In the absence of other contractual agreements, the place of business of Assfalg GmbH is the place of fulfilment for the payment and delivery of goods.
2. If the purchaser is a merchant, a legal entity under public law or a special fund under public law, the place of business of Assfalg GmbH is the place of jurisdiction for all legal disputes, also within the context of an exchange and cheque process; complaints against Assfalg GmbH can only be litigated at this location.
3. The laws of the Federal Republic of Germany exclusively apply under the exclusion of international private law, standardised international law and the UN Purchasing Convention.

#### **XI. Legal validity, data protection**

1. The validity of the contract remains untouched in case one of the provisions of the General Sale and Delivery Conditions is or becomes invalid. The legal regulation applies in its stead. The relevant provision in the General Sale and Delivery Conditions is on no account replaced with the purchaser's terms and conditions.
2. Any changes or supplements to the contract require written confirmation from Assfalg GmbH in order to be effective, which also applies to the deviation from the contractual written form requirement itself.
3. Legally relevant declarations of intent, such as terminations, rescission declarations, demands for purchasing price reductions or damage compensation are only effective in writing.
4. Assfalg GmbH is entitled to process and save as well as to allow third parties, commissioned by Assfalg GmbH to process and save data about the purchaser with respect to data received within the context of the business connection – even if this data is from third parties – within the meaning of the Federal Data Protection Act.

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Commercial Register Commercial Register Branch B 700411  
District Court Ulm