

General Terms and Conditions of MBN GmbH (GTC of MBN GmbH)

§ 1 General, application of the terms and conditions

1.1. The following terms and conditions apply to all contracts concluded between ourselves and the Customer on the sale and/or delivery of movable goods ("goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433,651 of the Civil Code, hereafter abbreviated to "BGB"), to the exclusion of any other terms and conditions unless they are amended by an express written agreement between the parties. By issuing orders, the Customer declares his consent to our Standard Terms and Conditions. The version of our Standard Terms and Conditions in force at the time the contract is concluded is binding.

1.2. They also apply to all future business relationships with the same Customer as a framework agreement, even when not expressly agreed once more; in this case, we will inform the Customer immediately of changes in our Standard Terms and Conditions. We are not bound by different, contrary or supplementary terms and conditions of the customer that we have not expressly acknowledged in writing, even should we not explicitly reject them.

1.3. The following terms and conditions will also apply should we carry out the delivery and/or the service without reservation, in spite of being aware of contrary or different terms and conditions of the Customer.

1.4. Individual agreements made with the Customer in specific cases (including side-agreements, additions and amendments) will always have precedence over these Standard Terms and Conditions. The contents of such agreements require a written contract or our written confirmation.

1.5. Legally relevant declarations and notifications that the Customer is required to submit to us after the contract has been concluded (e.g. notice periods, reports of defects, declarations of rescission or reductions in prices) must be in writing in order to be valid. This does not affect any additional formal requirements stipulated by law.

1.6. References to the application of provisions of the law are only intended to provide clarification. Even without such clarification, these provisions of the law will apply unless they are directly amended or explicitly excluded in these Standard Terms and Conditions.

§ 2 Conclusion of a contract

2.1. The goods and services that we offer are intended solely for customers who are companies within the meaning of § 14 of the Civil Code, a public-law legal entity or public-law special assets. Contracts will only come into force with entrepreneurs.

2.2. Our quotations are subject to change and non-binding unless we have explicitly described them as binding. We reserve the right to make technical changes, changes in color, form and/or weight as long as these changes are reasonable. Quotation documents are intended to inform the Customer and their contents do not constitute an assurance of certain qualities. We are not liable for statements made by third parties on the goods and services we offer, unless due to deliberate intent or gross negligence on our part. The presentation and advertising of goods in our catalogue or on our website do not constitute a binding offer to conclude a purchase contract but are an invitation to the Customer to order the products described in the catalogue.

2.3. The Customer's order constitutes the binding offer to conclude a contract for the goods and/or service we offer. We may confirm the offer within two weeks of receipt, either in writing (text form), e.g. by sending an order confirmation, or by carrying out the delivery/service.

2.4. We reserve the rights, to which we are entitled, of ownership, copyright as well as other proprietary rights to all diagrams, calculations, drawings as well as other documents to which we are entitled. The Customer may only forward them to third parties with our written consent, irrespective of whether we have identified them as confidential.

§ 3 Purchase price

3.1. Unless anything different has been agreed in the order confirmation, our prices are ex warehouse in 86316 Friedberg and exclude packaging. The place of fulfillment is our warehouse in 86316 Friedberg. Prices do not include the value added tax applicable by law, which will be shown separately in the invoice at the rate applicable on the day the invoice is issued.

3.2. Information on prices in price lists and catalogues is subject to the proviso that these prices might be changed. We reserve the right, having given the Customer adequate notice and before providing the service, to increase the price of the goods as is necessary due to price developments beyond our control (such as for example in the event of exchange rate fluctuations, currency controls, changes in customs duties, a considerable increase in material or manufacturing costs) or necessitated by changes made by our suppliers.

3.3. Cash discounts may only be deducted provided that a separate written agreement has been made between ourselves and the customer. The purchase price is payable net (without deductions) immediately after the customer has received the invoice, unless different payment terms have been agreed in the order confirmation. Payment will not be considered as having been made until we are able to dispose of the amount.

3.4. The provisions of the law will apply should the Customer fall into arrears. Payments will be in arrears at the latest 30 days after receipt of the invoice, whereby the invoice will be considered as having been accepted unless a written objection is submitted within this time.

3.5. The Customer is only entitled to offset claims, even in the case of defects or counter-claims, provided that the counter-claims have been established in law, are acknowledged by us or are undisputed. The Customer is only entitled to withhold payment provided that his counter-claim is derived from the same contractual relationship, has been established in law, acknowledged by us or is undisputed.

§ 4 Delivery and service period

4.1. Delivery dates or deadlines that have not been expressly agreed as binding, particularly in the order confirmation, only represent non-binding information.

4.2. We will inform the Customer immediately should we be unable to meet binding delivery dates for reasons for which we are not responsible (should the service not be available) and simultaneously notify a probable new delivery date. Should the service still not be available within the new delivery period, we are entitled to rescind the whole or parts of the contract; we will immediately reimburse any payment already made by the Customer. A case of the non-availability of the service in this sense will be deemed to apply particularly in cases in which our supplier has not delivered to us on time when we have concluded a parallel covering transaction, neither ourselves nor the supplier are to blame or we are not required to purchase the goods in the particular case.

4.3. We are entitled at any time to make part deliveries and provide part-services provided that this is reasonable from the Customer's point of view.

4.4. Arrears in our deliveries will be subject to the provisions of the law. In any event, however, the Purchaser is required to send a reminder. The Customer may demand a lump-sum amount as compensation should we fall into arrears with our deliveries. The lump-sum compensation is 0.5% of the net price (delivery value) for every complete calendar week in which we are in arrears up to a maximum total amount 5% of the delivery value of the goods delivered late. We are free to prove that the Customer did not incur any damage or that only considerably lower damage was incurred than the above lump-sum amount.

4.5. Our liability in the event of arrears in delivery is limited to damage that typically occurs unless the arrears are due to deliberate or grossly negligent breach of contract on our part or on the part of our representatives or vicarious agents.

4.6. The Customer's rights in accordance with § 7 of the Standard Terms and Conditions and our legal rights, particularly as regards an exclusion of a duty to perform (e.g. because of the impossibility or unreasonableness of performance and/or subsequent performance) are not affected.

4.7. Should the Customer be unable to accept the goods or services on the day they are due, he will still be required to pay the purchase price. We are also entitled to demand compensation for the damage incurred and any additional costs. The same will apply should the Customer culpably infringe his duties to cooperate. Should the Customer be in arrears in accepting the goods or in fulfilling his obligations, the risk of accidental deterioration and accidental destruction will pass to the Customer. In such cases, we will insure the goods at the Customer's risk and expense. At the Customer's request, we will store the goods at his expense.

§ 5 Transfer of risk – dispatch/packaging

5.1. The risk of damage to or the loss of goods will pass to the Customer at the time we notify him that the goods are ready to be picked up. Should the delivery be made to a different location than the place of fulfillment at the Customer's request, the risk of accidental destruction and deterioration of the goods or the risk of delays will pass at the time the goods are handed over to the transport company or freight forwarder or otherwise to the individual or body appointed to carry out the delivery. The handover or acceptance will not be affected should the Customer delay accepting the goods.

5.2. Loading and delivery will be made without insurance cover at the Customer's risk. We will endeavor to take account of the Customer's wishes as regards the type of delivery and route taken; any additional costs incurred as a result – also in the event of delivery carriage paid – will be borne by the Customer. Unless anything different has been agreed, we are entitled to determine the type of delivery (particularly the transport company, the route taken, packaging used).

5.3. With the exception of pallets, in accordance with the provisions of the packaging code, we do not take back transport and other packaging materials. The Customer is responsible for disposing of packaging at his own expense.

5.4. We will store the goods at the Customer's expense and risk should delivery be delayed at the Customer's request or due to his negligence. In this case, notification that the goods are ready for delivery will be considered equivalent to delivery.

5.5. We will insure the goods at the Customer's expense, should he request this.

5.6. The Customer is required to inspect the goods immediately for transport damage and to notify any damage in writing to the transport company or freight forwarder appointed to carry out the delivery.

§ 6 Reservation of title

6.1. The goods delivered (reserved goods) will remain our property until all claims are fulfilled, including all claims to balances on current accounts

to which we are entitled from the customer, either now or in the future. In the event of conduct by the Customer contrary to the contract, e.g. payment arrears, we are entitled, having set a reasonable grace period previously, to take back the reserved goods or to demand their return. The return of the reserved goods or their attachment by us constitutes a rescission of the contract. We are entitled to dispose of the goods having taken them back. After deduction of a reasonable amount for the costs of disposal, the proceeds will be deducted from amounts we are owed by the customer.

6.2. Until the goods are completely paid for, the Customer must hold them in trust on our behalf, keep them separately from his own property and that of third parties and properly store, secure and insure the reserved goods and identify them as the seller's property. The Customer must carry out necessary maintenance and service work on time and at his own expense.

6.3. Until the reserved goods are paid for in full, the Customer may use or resell them as part of normal business operations but must keep any income earned in trust on our behalf separately from his own assets and that of third parties. This does not apply in the event of payment arrears by the Customer.

6.4. The Customer is not permitted to mortgage the goods or transfer title as collateral.

6.5. As a precautionary measure, the Customer assigns to us with immediate effect any receivables (including all balances on current accounts) arising from the resale of the reserved goods or for some other legal reason (particularly insurance, an unauthorized act). The Customer is not entitled to assign to a third party the receivable arising. We authorize the Customer to collect the receivables assigned to us on his own account and in his own name until this right is withdrawn. The authority to collect these amounts may be withdrawn at any time should the Customer fail to fulfill his payment obligations properly.

6.6. Should the reserved goods have been further processed and should the further processing take place with parts that are not our property, we will acquire an appropriate share of ownership. The same will apply should the goods have been mixed. Should, in the event of mixing, the Customer's goods be regarded as the main product, the parties are agreed that the Customer will transfer a share to us as co-owners; we hereby accept the transfer. The Customer will take care of our property acquired in this way on our behalf.

6.7. The Customer must notify us immediately in the event of attachment or other intervention by third parties with respect to goods belonging to us, in order that we can assert our title (by litigation). The Customer will be liable for any damage incurred should he fail to do this.

6.8. At the Customer's request, we are obliged to release collateral to which we are entitled to the extent that the realizable value of the collateral exceeds the claims to which we are entitled by more than 10%. We will choose the collateral that is to be released.

§ 7 Warranty and exclusion of liability

7.1. The Customer is required to examine the goods and report any defects within the meaning of § 377 HGB. He is required to examine the purchased goods after delivery and to notify us immediately of any defects established immediately. Notice will be considered immediate when made within three workdays whereby this deadline will have been met when notification is dispatched within this period. Irrespective of this obligation to examine the goods and report defects, the Customer is required to report obvious defects (including wrong and short deliveries) in writing within three workdays of the delivery, whereby here too it is sufficient that the report should be dispatched within this time. Our liability for defects not reported will cease to apply should the Customer fail to properly inspect the goods and/or report defects.

7.2. Provided that we are responsible for the defect and we are notified, we are entitled, at our option, either to deliver replacement goods or to remedy the defect free of charge. Our right to reject subsequent fulfillment under the conditions provided for in law is not affected. We are entitled to make subsequent fulfillment we are required to provide dependent on the Customer having paid the purchase price due. The Customer is however entitled to withhold an appropriate part of the purchase price in relation to the defect. The Customer may, at his option, rescind the contract or demand a price reduction should we not be prepared to remedy the defect or to deliver replacement goods.

7.3. The Customer is required to give us the necessary time and opportunity to provide the subsequent fulfillment due from us, particularly to send us the goods complained of for test purposes. In the event of a replacement delivery, the Customer is required to return the defective goods to us in accordance with the provisions of the law. Subsequent fulfillment includes neither dismantling the defective product nor assembling it again should we not have been required to assemble it originally.

7.4. We will pay the expenses entailed in testing the goods and subsequent fulfillment, particularly transport, travel and material costs (but excluding dismantling and reassembly costs) provided that a defect is actually present and that these costs are not increased by the goods purchased having been brought to a different place than the place of fulfillment and provided that the costs required do not exceed the purchase price. Should however the Customer's demand that defects be remedied prove to be unjustified, we may demand that the Customer reimburse us the costs entailed. We charge a processing fee in the case of returns agreed in this way; provided that the goods are in their original packaging and the packaging is undamaged, this fee is 20% of the value of the goods. This will not affect the right to claim higher damages.

7.5. We are not liable for defects due to statements made by the Customer in its advertising or other contractual agreements in which we had no part or should the Customer have given other contractual partners a separate guarantee. Our liability is also excluded should the Customer be liable under a warranty given to his contractual partners on his account and not due to the provisions of the law or has failed to report this defect to a claim made against himself. This will also apply should the Customer provide other contractual partners with a warranty in excess of what the law stipulates.

7.6. Notwithstanding the agreed limitations on liability, we are liable in accordance with the provisions of the law for damage to life, limb and health due to negligence or a deliberate breach of obligations by us, our legal representatives or vicarious agents as well as for damage covered by liability under the German Product Liability Law. We are liable in accordance with the provisions of the law for other damage due to deliberate or grossly negligent breaches of contract as well as fraud on our part and on the part of our legal representatives or vicarious agents. We are only liable for damage caused by us due to minor negligence in infringing such contractual obligations as are not essential to the extent that the damage is typically connected with the contract and foreseeable. Any additional liability is excluded.

7.7. Contrary to § 438 section 1 no. 3 BGB the general period of limitation for claims arising from defects of quality and title is one year from the transfer of risk. Should the goods however relate to a building construction or to an object used for a building construction in its normal application and has caused it to be defective (building material), the period of limitation according to law is five years from the date of delivery (§ 438 section 1 no. 2 BGB). This does not affect third parties' rights to physical possession (§ 438 section 1 no. 1 BGB) in the event of deception on the part of the seller (§438 paragraph 3 BGB) and recourse claims against suppliers in the event of final delivery to a consumer (§ 479 BGB). The limitation periods in purchasing law also apply to the customers' contractual and non-contractual claims to compensation relating to a defect in the goods, unless the application of the normal legal period of limitation (§§ 195, 199 BGB) would in the particular case lead to a shorter period of limitation. In any event, the periods of limitation in the Product Liability Law are not affected. Otherwise, the Customer's claims to compensation that are not due to defects and for which we are liable in accordance with the Standard Terms and Conditions are subject solely to the periods of limitation provided for in law.

§ 8 Choice of law, contractual language, place of jurisdiction, severability clause

8.1. The contractual relations between the Customer and ourselves are subject solely to the law of the Federal Republic of Germany to the exclusion of international private law and the CISG. The conditions for and consequences of retention of title in accordance with § 6 are subject to the law of the place where the goods are stored provided that the choice of law in favor of German law is not permitted or is invalid.

8.2. Should a contract concluded between the parties not be concluded or wholly concluded in German, only the German version of the text of the contract and the Standard Terms and Conditions will be binding.

8.3. Should the Customer be a businessman within the meaning of the Commercial Code, a public-law legal entity or public-law special assets, both parties declare their consent to the sole – also internationally – jurisdiction of the legal venue at our registered company office. We are also entitled to litigate at the court responsible for the Customer or at any other court that can be responsible in national or international law.

8.4. Should one or more provisions of the Standard Terms and Conditions be partly or wholly invalid or subsequently lose its legal validity, this will not impair the validity of the remaining Standard Terms and Conditions.

(Last amended in November 2015)