

# General Terms and Conditions

## 1. General

All deliveries and services of MBA Instruments GmbH (henceforth referred to as Supplier) shall be based on these General Delivery Terms and Conditions, as well as any separate contractual agreements. Deviating and supplemental General Terms and Conditions of the purchaser shall only apply insofar as the Supplier has explicitly consented to them in writing.

## 2. Offer - Contract Conclusion - Contract Content

2.1 Offers shall be subject to confirmation, provided that they are not bindingly identified as being binding. Binding offers must be accepted by the purchaser within an adequate time limit. Verbal or written orders shall be deemed as accepted with the issuance of the written order confirmation or delivery of the ordered goods within an adequate time limit.

2.2 The drawings, technical specifications and other documents included with the offer are subject to the ownership and copyright of the Supplier; the purchaser shall not be permitted to disclose these to third parties.

## 3. Scope of delivery and service

The Supplier's offer/written confirmation shall be relevant for the scope of the deliveries and services. Partial deliveries are admissible, provided that these are reasonable for the purchaser.

3.1 The operating instructions mentioned in the order confirmation can be provided in the following languages: German, English, French and Spanish.

## 4. Prices and payments

4.1 Details in pricelists and other general pricing information are subject to confirmation and shall be updated by the Supplier at regular intervals.

4.2 Prices are stated in EUR and unless agreed otherwise are quote ex works (INCOTERMS 2010), plus the respective applicable value-added tax.

4.3 In the event that deliveries or services takes place later than 9 months after the date envisaged in the order confirmation, the Supplier shall be entitled to charge new prices, if the list prices and/or material, wage or other costs have changed in the meantime. The offered prices shall only be valid for the respective individual offer. The arrangement of a fixed price requires an explicit written agreement.

4.4 Costs for freight and insurance explicitly requested by the purchaser shall be charged separately to the valid prices, as incurred at the time.

4.5 If the supplier has also taken responsibility for the setup, assembly or commissioning, in addition to the agreed remuneration, the purchaser - unless agreed otherwise - shall also assume all costs for the setup, assembly or commissioning, on the basis of the Supplier's valid pricelists at the time of implementation.

4.6 Invoices for deliveries shall be payable within 14 days, less 2% cash discount or within 30 days of the invoice date without any deductions, to the Supplier's account.

4.7 Invoices for services are immediately payable without any deduction of a cash discount to the supplier's account.

4.8 The purchaser can only retain payments or offset on the basis of counterclaims, insofar as these are undisputed or legally established.

## 5. Time limits for deliveries and services, default

5.1 Adherence to time limits and deadlines for deliveries and services shall require the timely performance of all services to be provided by the purchaser - particularly documentation, approvals and releases to be delivered, especially for plans - as well as compliance with the arranged payment terms and other obligations by the purchaser. If these requirements are not fulfilled on time, the Supplier's time limits and deadlines shall be extended appropriately.

5.2 If the non-compliance with time limits is due to force majeure, e.g. war, riot or similar events, such as strike or lock-out, the time limits shall extend appropriately. If deliveries and/or services cannot be fully or partially performed on time, without it being the supplier's fault, the supplier shall optionally be entitled to withdrawal - partial withdrawal from the contract.

5.3 At the supplier's request, the purchaser undertakes to declare within an adequate time limit, whether he intends to withdraw from the contract or insist on delivery due to the Supplier's default.

## 6. Setup and assembly

6.1 Insofar as setup, assembly or commissioning has been arranged, the purchaser shall assume the responsibility for and provide in good time, at his own expense:

- a) All excavation, construction and other ancillary works outside of the industry, including the necessary specialists and assistants, materials and tools
- b) The necessary items and materials for setup, assembly and commissioning, such as scaffolding, lifting equipment, lubricants, fuels, etc.
- c) Energy and water at the site of use, including the connections, heating and lighting
- d) Sufficiently sized, suitable, dry and lockable spaces at the assembly site for the storage of machine parts, apparatus, materials, tools, etc. and for the Supplier's employees, adequate working and staff premises, including adequate sanitary facilities; furthermore, for the protection of the Supplier's property, as well as the property of the

Supplier's employees, the purchaser shall undertake measures on the building site that he would undertake for the protection of his own property.

e) Protective clothing and safety equipment, which are necessary as a result of specific circumstances at the assembly site.

6.2 Prior to starting work, the purchaser must voluntarily provide the necessary details regarding the location of electricity, gas and water lines or similar installations, as well as the required statistical details.

6.3 Prior to starting the work, the necessary provided materials and items must be situated at the setup or assembly site for the initiation of work and all preliminary work prior to the start of setup must be advanced far enough that the setup or assembly can started as arranged and completed without interruption, after the arrival of the assembly personnel. Access routes, as well as the setup or assembly location must be levelled, cleared and freely accessible.

6.4 If the setup, assembly or commissioning is delayed due to circumstances for which the Supplier is not responsible, the purchaser shall bear the adequate costs for waiting time and any further necessary travel by assembly personnel.

6.5 Upon request, the purchaser shall certify to the Supplier, the duration of the assembly personnel's working hours, as well as the completion of setup, assembly or commissioning.

6.6 In the event that the Supplier demands acceptance after completion of the contractually produced work, the purchaser shall declare this within two weeks. If this does not occur, the acceptance shall be deemed as having taken place after this end of this time limit. Acceptance shall also be deemed as having taken place, if the work is used, after concluding a possibly arranged test phase.

## 7. Transfer of risk

7.1 The risk shall transfer to the purchaser with the separation/provision of the delivery item, unless this has been arranged otherwise on the basis of INCOTERMS 2010. Insofar as the supplier has also taken the responsibility for the setup, assembly or commissioning, the risk shall transfer to the purchaser with the delivery of the delivery item to the purchaser's setup or assembly site.

7.2 If the delivery, setup, assembly or commissioning is delayed or omitted for reasons owing to the purchaser, the risk shall transfer to the purchaser at that time it would have transferred without the delay.

7.3 Upon request by the purchaser, the Supplier shall insure the delivery item against theft, breakage, transport, fire and water damage or other insurable risks at the purchaser's expense.

## 8. Warranty

The Supplier shall guarantee material and legal defects, excluding further claims - subject to Clause 10 - as follows:

### 8.1 Material defects

8.1.1 The purchaser shall immediately notify the Supplier in writing of any material defects.

8.1.2 At the Supplier's option, all items or services that display a material defect shall be rectified, replaced or newly performed, without charge. The purchaser shall not be permitted to refuse the acceptance of deliveries due to insignificant defects.

8.1.3 The purchaser shall provide the Supplier with the time and opportunity to carry out the necessary rectification and replacement delivery. Only in urgent cases of a risk to operating safety or aversion of disproportionately high damages, does the purchaser have the right to rectify the defect himself or have it rectified by third parties and demand compensation for the necessary costs from the Supplier. In these cases, the Supplier shall be notified immediately.

8.1.4 If supplemental performance does not take place within an adequate time limit or if the supplemental performance fails, the purchaser shall be entitled to withdraw from the contract. If only an insignificant defect exists, the purchaser shall only have a right to reduction. Otherwise, the right to reduction shall remain excluded.

8.1.5 The Supplier shall bear the costs of the replacement item, including delivery, out of the costs incurred by rectification or replacement delivery, insofar as the complaint proves to be justified. The Supplier shall also bear the costs for dismantling and installation, as well as the costs for any necessary provision of installation engineers and assistant, including travel costs, provided that this does not cause a disproportionate burden on the Supplier.

8.1.6 Claims for material defects shall not exist in the following cases: Unsuitable or improper use, faulty assembly/commissioning by the purchaser or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, use of unsuitable operating supplies, electrochemical or electrical influences - provide that the cause does not lie with the Supplier.

8.1.7 If the purchaser or a third parties carry out improper rectification, no liability shall exist by the Supplier for the resulting consequences. This also applies if changes are made to the delivery item without the Supplier's prior consent.

8.1.8 For damages claims, Clause 10 shall apply ceteris paribus. Further claims against the Supplier from material defects are excluded.

### 8.2 Legal defects

8.2.1 If the use of the delivery item results in a breach of industrial property rights or domestic copyrights, the Supplier shall basically obtain

the right to further use for the purchaser at his own expense or modify the delivery item in a reasonable manner for the purchaser, so that the breach of property right no longer exists.

- 8.2.2 If this is not possible at commercially appropriate conditions or within an adequate time limit, the purchaser shall be entitled to withdraw from the contract. Under the aforementioned conditions, the Supplier shall also have a right to withdrawal from the contract.
- 8.2.3 Furthermore, the Supplier shall exempt the purchaser from undisputed or legally established claims due to breaches of property rights.
- 8.2.4 The Supplier's aforementioned obligations shall only exist, insofar as the purchaser immediately notifies the Suppliers about the claims asserted by third parties and the purchaser does not acknowledge a breach and all defence measures remain reserved for the Supplier, the purchaser is not responsible for the breach of property rights, the breach was not caused by specific requirements of the purchaser or by utilisation that was not foreseeable by the Supplier or if the breach was caused by the delivery item being changed by the purchaser or used together with a product that was not delivered by the supplier.
- 8.2.5 If other legal defects exist, the provisions pursuant to Clause 8.1 shall apply accordingly.
- 8.2.6 For damages claims, Clause 10 shall apply *ceteris paribus*. Further claims against the Supplier due to legal defects are excluded.

## 9. Exclusion of guarantees

- 9.1 Details in catalogues, product descriptions, data sheets, offers, drawings or other documentation regarding size, quantity, colour, use, technical data and other characteristics, particularly regarding availabilities, reading rates, measurement precisions, etc., describe the condition and guaranteed characteristics of the delivery item, but do not constitute any guarantee, unless explicitly agreed otherwise (condition or durability guarantees) in accordance with §§ 443, 639 BGB [German Civil Code].
- 9.2 In the event of non-compliance with the guaranteed characteristics, the purchaser can assert the rights described in Clauses 8 and 10 against the Supplier.

## 10. Damages

The Supplier shall only be liable for damages - regardless of the legal grounds: in the event of wilful acts, gross negligence of the bodies or management staff, with culpable injury to life, limb or health, with defects that were maliciously concealed, insofar as the Supplier has assumed a guarantee for a specific condition of the delivery items, if the Supplier has assumed a guarantee that the delivery item maintains a specific conditions for a certain time period, as well as with defects to the delivery item, provided that liability exists under the product liability law for personal injury or material damages to privately used items. In the event of culpable breach of significant contractual duties, the Supplier shall also be liable for negligence by non-management staff and for slight negligence, however, in the latter case, limited to the typical contractual, reasonably foreseeable loss. Significant contractual duties are those duties that protect the purchaser's significant contractual legal positions, which the contract must specifically grant him, according to its content and purpose; those contractual duties also significant, whose fulfilment enables the proper implementation of the contract in the first place and the observance of which the purchaser can and may generally trust in. Further damages claims are excluded.

## 11. Damages vis-à-vis third parties

The liability provisions mentioned under Clauses 8 and 10 shall also apply in favour of subsidiaries, upstream suppliers, licensors and other legal agents of the Supplier.

## 12. Reservation of ownership

- 12.1 The delivered goods shall remain the Supplier's property until all claims against the purchaser have been fulfilled, even if the concrete goods have already been paid for.
- 12.2 The assertion of the claim for possession shall not constitute withdrawal from the contract. The purchaser shall immediately notify the Supplier of any third-party enforcement proceedings regarding the goods subject to reservation of ownership, providing the necessary documentation for an intervention – this shall also apply to other types of impairments. Notwithstanding this, the purchaser shall already point out the existing rights to the goods in advance to the third parties. The purchaser shall bear the costs of an intervention, insofar as the third party is not able to compensate these.

- 12.3 The purchaser now already assigns to the Supplier, claims created against his own customers as security, in the event of onward sale of the goods subject to reservation of ownership, until all of the Supplier's claims are fulfilled.
- 12.4 In the case of processing the goods subject to reservation of ownership, their alteration or combining with another item, the Supplier shall acquire direct ownership of the produced item, in accordance with the value of the delivery. These shall be deemed as goods subject to reservation of ownership.
- 12.5 If the security value of exceeds the Supplier's claims against the purchaser by more than 20%, the Supplier shall be obligated at his option, upon request by the purchaser, to release the security in the relevant amount.

## 13. Export

- 13.1 In the event of export, the purchaser undertakes to observe the export control regulations that apply to the delivery items. The Supplier shall be entitled to withdraw from the contract if export regulations are breached.
- 13.2 If the delivery is comprised of an export by the Supplier that requires approval, the contract shall only be deemed as concluded upon receipt of the relevant approval. The purchaser undertakes to provide all necessary documentation for the approval.
- 13.3 Upon request, the purchaser also agrees to provide evidence of use and/or end user confirmations if these are not officially required.
- 13.4 In the event of export/transfer, the delivery shall only be exempt from German value-added tax upon receipt of a legally valid export certificate.

## 14. Contract modification, withdrawal

- 14.1 In the event that unforeseen circumstances in accordance with Clause 5.2 significantly change the economic significance or content of the delivery or they have a considerable impact on the Supplier's operation, the contract shall be modified accordingly, subject to the provision in Clause 5.2, in good faith. Insofar as this is not economically justifiable, the Supplier shall have the right to withdraw from the contract.
- 14.2 The Supplier is entitled to withhold his services or withdraw from the contract, insofar as he becomes aware of circumstances, suggesting that the purchaser is at risk of becoming insolvent, or for other reasons, is not willing or able to fulfil his payment obligations at the time of maturity.

## 15. Limitation of action

All of the purchaser's claims shall expire in 24 months, regardless of the legal grounds. This shall not apply, insofar as the law in accordance with § 348 (1) No. 2 BGB [German Civil Code] and § 634a (1) No. 2 BGB prescribes longer time limits, as well as in the cases of injury to life, limb or health, with wilful, grossly negligent or malicious conduct or with claims under the product liability law.

## 16. Legal jurisdiction and applicable law

- 16.1 The exclusive legal venue for all disputes arising directly or indirectly from the contractual relationship is the Supplier's registered office. However, the Supplier is also entitled to file legal action against the purchaser at his domicile.
- 16.2 German law shall apply to the legal relationship in relation to this contract. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

## 17. Bindingness

In the event that a provision of these conditions is or becomes unenforceable or invalid, this shall not affect the validity of the remaining provisions. In such a case, the invalid or void provisions shall be construed, reinterpreted or replaced, so that the economic purpose is achieved. This shall not apply if abiding by the contract would cause unreasonable hardship for one of the parties.