

# General Terms of Delivery and Performance of MAFU Systemtechnik GmbH

## I. Scope of application

1. These Terms of Delivery and Performance only apply in relation to purchasers who are acting in the exercise of their independent professional or commercial activity when concluding the contract (entrepreneurs within the meaning of Section 14 BGB [German Civil Code]), legal entities under public law and special funds under public law. In relation to these purchasers, these Terms of Delivery and Performance apply exclusively. They also apply to all future business transactions and all initiated business contacts with the purchaser, for example for taking up negotiations or initiation of a contract, even if not expressly agreed upon or pointed out once more.
2. Any terms of the purchaser's which are deviating from or contrary to our Terms of Delivery and Performance shall not become part of the contract.
3. Purchaser's receipt of our deliveries and performance is considered acceptance of the applicability of our Terms of Delivery and Performance.
4. Any previous agreements made and earlier versions of our terms of delivery and performance are made redundant by these Terms of Delivery and Performance.

## II. Conclusion of contract

1. A contract will only be binding for us following our confirmation in writing or once we have started fulfilling the contract. This is particularly true if the purchaser's order is not based on our concrete quotation in writing.
2. If our quotation or order confirmation is based on purchaser's technical data (figures, drawings, specification of weights and dimensions etc.) and it is found after contract conclusion that the order cannot be executed in compliance with purchaser's technical data, we have the right to withdraw from the contract if and as far as purchaser is not willing to accept the technical solution suggested by us instead, and, if applicable, to bear any additional costs actually incurred.
3. If the purchaser modifies its order, the modification is only binding if confirmed by us in writing. We shall inform the purchaser when confirming the order modification of any additional costs resulting from the modification. Unless the purchaser, within five working days after receipt of our confirmation of the order modification, accepts such additional costs in writing, we shall not be bound to the order modification and the order shall remain to be valid as originally agreed (before the order modification).
4. We reserve all property rights and copyrights to sketches, drafts, samples or similar preliminary work.

## III. Delivery/performance and acceptance

1. The scope of our performance respectively delivery is as specified in our order confirmation. Ancillary agreements or modification are subject to our written confirmation.
2. Unless expressly agreed, our obligation to deliver or to perform comprises neither the integration of the delivery item into machines and systems nor the commissioning of the delivery item or participation in the commissioning of a system created using the delivery item; such integration and commissioning services are subject to a separate charge.
3. If the contractual agreement with the purchaser comprises inspection and approval of the delivery item, or if the performance provided by us consists of processing things made available by purchaser, inspection and approval shall be carried out on our premises before shipment; no final inspection and approval shall be carried out on purchaser's premises or purchaser's customer's premises. If inspection and approval is to take place pursuant to the above regulation, the purchaser, having received our notification of completion, shall be obliged to carry out such inspection and approval and, if successful, confirm in writing the fulfilment of our contractual obligations. If inspection and approval is delayed for reasons not attributable to us, our performance shall be considered approved following our notification of completion and expiry of a reasonable period set by us in the individual case.
4. With all orders, we have the right to provide partial performance within reasonable limits. We furthermore have the right to assign subcontractors to fulfil our contractual obligations.
5. Generally, delivery periods and dates are always the best possible approximation, but are non-binding unless a fixed period or a fixed date has been expressly promised or agreed. As a precondition for the delivery period to start (sending of the order confirmation) and for the compliance with delivery dates, the purchaser must duly and properly offer the mandatory cooperation, make available all documents and, if applicable, samples of the products to be processed punctually and in sufficient numbers, and make any downpayments as agreed. Irrespective of our rights arising from purchaser's default, failure to meet one of these preconditions entitles us to demand an extension of delivery and performance periods or a postponement of delivery and performance dates by the period during which the purchaser failed to meet its contractual obligations vis-à-vis us. If we hand over the ordered goods to a carrier or if we notify the purchaser of our readiness for shipment, the date of handover or the date of notification of readiness for shipment shall be deemed the delivery date.
6. The documents enclosed with our quotations, such as drawings, weights and dimensions, are only approximate unless expressly marked as binding, unless the usability for the contractually intended purpose requires exact conformity. They do not constitute guaranteed characteristics but only descriptions or markings of the delivery or performance. Deviations

customary in the trade and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permitted, provided they do not impair the usability for the contractually intended purpose.

7. If the delivery or performance is delayed due to measures of force majeure, such as labour disputes, strikes, lockouts or other events at home or abroad for which we are not responsible, the delivery and performance deadlines shall be extended or the delivery and performance dates shall be postponed by the period of the disturbance, plus a reasonable start-up period. This applies analogously if these disturbances occur at our sub-suppliers'. Within reasonable limits, we shall immediately inform our purchasers of the start and end of these disturbances. Should the force majeure event render the provision of our performance permanently impossible, we have the right to withdraw from the contract.
8. If the purchaser is in default of inspection and acceptance or if shipment is delayed at purchaser's request, purchaser shall be charged for the costs incurred for storage at our premises or on third-party premises, starting with the notification of readiness for shipment. We can charge these costs at a flat rate of 0.5% of the invoice amount (incl. value-added tax) for each week, up to a maximum of 5% of the invoice amount (incl. value-added tax). Proof of higher damages and our statutory claims shall remain unaffected; however, the flat rate shall be offset against further monetary claims. The purchaser is free to provide evidence of lower damages.
9. If the concluded contract obliges us to perform in advance, we have the right to refuse to render our performance or to make outstanding deliveries and render outstanding performances against advance payment or security only and – if applicable after expiry of a reasonable period set by us for the provision of the consideration concurrently or the advance payment or provision of security – to withdraw from the contract (Sections 321, 323 BGB) if it becomes apparent after conclusion of the contract (e.g. due to an application to open insolvency proceedings) that our claim to the consideration is jeopardised by purchaser's inability to pay. In case of contracts for the manufacture of unique (custom-made) things, we may withdraw with immediate effect; the statutory regulations on the dispensability of setting a deadline remain unaffected.

#### **IV. Passing of risk**

Even in case of partial shipments, the risk of loss or deterioration of the goods shall pass to the purchaser when the goods are handed over for shipment, or following inspection and approval in case of processing of things made available to us by purchaser. If the dispatch is delayed for reasons attributable to purchaser, the risk shall pass to purchaser with the notification of readiness for shipment.

#### **V. Prices**

1. Our prices are net prices and are generally "ex works" (EXW, Incoterms® 2020). Reasonable costs for proper packaging shall be borne by the purchaser. At invoicing, value-added tax shall be added at the applicable statutory rate. Shipping costs, freight, carriage, customs duties and other expenses associated with the delivery, including the costs for the preparation of officially prescribed safety or conformity certificates, shall be borne accordingly by the purchaser. If the purchaser wishes for freight insurance, we shall take it out for purchaser at purchaser's costs if instructed to do so in writing.
2. The quoted prices are based on the raw material prices, energy costs and costs of supplies offered to us at the time we submit our quotation. If there is a period of more than four months between the time of conclusion of the contract and the agreed time of our delivery or performance and if the prices of these cost elements have changed by more than 5% at the time of our delivery compared to the prices of the cost elements at the time of submission of the quotation, we may demand a change in the agreed total price of the performance and deliveries offered to a corresponding extent; this shall not apply if the respective cost increase of an element is offset by reduced costs in other areas.

#### **VI. Terms of payment**

1. We shall submit our final invoice at the time of delivery or completion of the performance. We have the right to ask for part payments. The amount of such part payments shall be specified in our quotation and become binding upon order confirmation. In case of partial deliveries and partial performances, we have the right to ask for reasonable part payments. If the purchaser defaults, it shall compensate us for the damage caused by delay and pay interest in the statutory amount, currently 9% above the base rate of interest. If the purchaser is in default with the payment of a due amount or partial amount for more than 14 days, the entire remainder of all outstanding claims shall become due for payment immediately.
2. Unless expressly agreed upon, the purchaser has no right to make deductions.
3. Our remuneration claims can only be offset with undisputed or legally established claims. This applies analogously to the exercise of a right of retention. Otherwise, the purchaser can exercise a right of retention only if it is based on the same contractual relationship. In case of defects, the purchaser's counter-rights, in particular its right to retain a reasonable part of the purchase price in proportion to the defect, shall remain unaffected.

#### **VII. Retention of title**

1. Until full payment of all our present and future claims arising from the order and from an ongoing business relationship (including outstanding balance claims from a current account limited to this supplier relationship), we retain title in the delivered goods.
2. The goods subject to retention of title (in the following, the "Goods subject to retention of title") must neither be attached to third parties nor transferred as a security before all secured debts have been fully paid. In case of third-party access to the Goods subject to retention of title, in particular via attachment or confiscation, the purchaser shall immediately inform such third party of our ownership and inform us immediately so that we can assert our ownership rights.

3. In case of purchaser's conduct in violation of the contract, particularly non-payment of the due purchase price, we have the right to withdraw from the contract pursuant to the statutory regulations and/or to demand handover of the goods based on the retention of title. The demand for handover of the goods does not at the same time signify our withdrawal from the contract; rather, we can demand handover of the goods and reserve the right to withdraw. If the purchaser fails to pay the due purchase price or compensation, we can only assert these rights after having previously set a reasonable period for payment for the purchaser, which elapsed without purchaser's payment of the due amount, unless there is no need to set such period pursuant to the statutory regulations.
4. Until revocation according to (c) in the following, the purchaser has the right to resell and/or process the goods under retention of title in the regular course of business. In this case, the following supplementary regulations apply.
  - a) If the purchaser processes the Goods subject to retention of title, it is agreed that such processing is done in our name and for our account, while we are deemed to be the manufacturer, and that we acquire ownership directly or – if the processing is carried out using materials of several owners or if the value of the processed thing is higher than the value of the goods subject to retention of title – co-ownership (pro-rata ownership) in the newly created thing in the ratio of the invoice value of the goods subject to retention of title to the sales value of the newly created thing. Should no such acquisition of ownership occur for us, the purchaser hereby transfers to us its future ownership or – in the above-mentioned ratio – co-ownership in the newly created thing as security. We herewith accept such transfer.

If the Goods subject to retention of title are combined or inseparably intermixed with each in such a way that they become a uniform thing, and if one of the things is deemed to be the main thing, so that either the purchaser or we acquire sole ownership, the party who owns the main thing shall transfer to the other party the pro-rata co-ownership in the uniform thing in the ratio named in s. 1. We herewith accept such transfer.

Otherwise, the agreement reached for the goods subject to retention of title shall apply respectively to the new thing generated via processing, combining or intermixing.

- b) The purchaser hereby assigns to us as security in total or in the amount of our pro-rata co-ownership, if any, in accordance with the above paragraph any claims against third parties arising from the resale of the goods or the thing. We herewith accept such assignment. This applies analogously to other claims taking the place of the Goods subject to retention of title or otherwise arising with regard to such Goods, such as insurance claims or claims in tort in the event of loss or destruction.

Purchaser's obligations named in paragraph 2 are valid also with regard to the assigned claims.

- c) The purchaser shall remain authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the purchaser meets its payment obligations to us, there is no deficiency in its ability to pay and we do not exercise a right in accordance with paragraph 3 to assert the retention of title. Should this be the case, however, we can call upon the purchaser to inform us of the assigned claims and the respective debtors, to disclose to us all data required for collection, hand over the pertinent documents, and inform its customers (debtors) of the assignment. In this case, we are also entitled to revoke purchaser's right to resell and process the goods under retention of title.
5. At purchaser's request, we are obliged to release the securities to which we are entitled in accordance with the above provisions at our discretion to the extent that the realizable value of the securities to which we are entitled exceeds the claims to be secured by more than 10%.
6. By processing or transforming things made available by the purchaser, we shall acquire sole ownership in the processed thing pursuant to Section 950 BGB unless the value of our processing is substantially less than the value of the total thing after processing. In the latter case, we shall acquire co-ownership in the processed thing. Our pro-rata co-ownership is then calculated by the ratio of the increase in the thing's value attributable to the processing and its sales value after processing. Our sole or co-ownership in the processed thing shall not terminate on passing of possession to the purchaser but only on full payment of the compensation. Until then, our sole or pro-rata co-ownership shall be treated like an ownership under retention in a thing delivered by us; in this sense, it is subject to the agreements in the above paragraphs 2 to 5.

#### **VIII. Purchaser's defect rights**

1. Unless specified otherwise in the following, statutory provisions shall apply to the purchaser's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions). The statutory provisions on purchase of consumer goods (Sections 474 ff BGB) and purchaser's rights from separately given warranties, in particular manufacturer's warranties, remain unaffected at all times.
2. The warranty becomes void if the purchaser, without our consent, modifies the delivery item or has it modified, making rectification impossible or unreasonably difficult. In any rate, the purchaser shall bear the additional rectification costs attributable to the modification.
3. If the parties have agreed on the quality of the purchased item, objective requirements for the purchased item do not apply insofar.
4. The purchaser can assert its claims based on defects on the condition that it fulfilled its statutory obligations to inspect and notify (Sections 377, 381 HGB [German Commercial Code]). In case of building materials and other goods intended for installation or other processing, inspection must always be carried out immediately before processing. Immediately after delivery to the purchaser or the third party specified by purchaser, the delivered things shall be inspected thoroughly. Unless we receive a notice of defects in writing within 7 working days after delivery, the goods are deemed approved by

purchaser in respect of apparent defects or other defects that would have become evident in a prompt and thorough inspection. In respect of other defects, the delivery items are deemed approved by purchaser unless we receive a notice of defects in writing within 7 working days after the defect becomes apparent; if the defect has been evident earlier during normal use, however, this earlier point in time is decisive for the start of the period of notice. At our request, a rejected delivery item shall be returned to us freight paid. In case of a justified notice of defects, we shall refund the costs for the least expensive type of transport; this is not applicable if the costs are higher because the delivery item is in another location than the place of intended use. If the delivery item is not defective and the purchaser was aware of this fact or would have become aware of it had due diligence been used, the costs shall not be refunded.

If the purchaser approves of a defective thing even though it is aware of the defect, purchaser is only entitled to supplementary performance, withdrawal from the contract, abatement and damages if purchaser, during inspection and approval, reserves these rights by reason of the defect.

5. In case of material defects, we shall choose within a reasonable period of time whether to provide supplementary performance by remedying the defect (rework) or by delivering a defect-free thing (replacement delivery) or by producing a new work. If the type of supplementary performance chosen by us is unreasonable for the purchaser in the individual case, it may reject it. Our right to refuse supplementary performance under the statutory preconditions remains unaffected.
6. The purchaser shall allow us the time and opportunity needed for the supplementary performance owed by us, and above all shall hand over to us the rejected goods for inspection. In case of replacement delivery, the purchaser shall return the defective thing to us at our request pursuant to the statutory regulations, but the purchaser cannot demand return of the thing. Supplementary performance comprises neither disassembly, removal or uninstallation of the defective thing, nor the fixing, mounting or installation of an intact thing unless we had been originally obliged to provide these services; purchaser's claims for refund of the respective costs ("Disassembly and installation costs") remain unaffected.
7. In urgent cases, e.g. prevention of hazards to the operational safety or of disproportionate damage, the purchaser has the right to remedy the defect itself and to call upon us to refund the objectively required expenses. The purchaser must inform us immediately of such self-help, if possible before undertaking it. The right to undertake self-help does not apply if the statutory provisions would have allowed us to refuse supplementary performance.

Section 637 BGB remains unaffected.

8. If a reasonable period specified by the purchaser for the supplementary performance expired without result or is not required pursuant to the statutory provisions, the purchaser can withdraw from the sales contract or reduce the purchase price in accordance with the statutory provisions. There is no right to withdraw from the contract in case of insignificant defects.
9. In case of defects in other manufacturers' components that we cannot remedy for organisational or license right reasons, we shall, at our discretion, assert our warranty claims against the manufacturers and suppliers for purchaser's account, or assign them to purchaser. Warranty claims against us for such defects shall only exist under the other conditions and in accordance with these General Terms of Delivery and Performance if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, e.g. due to insolvency. For the duration of the legal dispute, the limitation period for purchaser's relevant warranty claims against us shall be suspended.
10. Purchaser's claims for refund of expenses pursuant to Section 445a para. 1 BGB are excluded, unless the last contract in the supply chain is a purchase of consumer goods (Sections 478, 474 BGB) or a contract on the supply of digital products (Sections 445c s. 2, 327 para. 5, 327u BGB).
11. If the defect is attributable to our fault, the purchaser may demand damages or the reimbursement of futile expenses pursuant to clauses IX and X (Section 284 BGB).

## **IX. Other liability**

1. Unless specified otherwise in these General Terms of Delivery and Performance and in the provisions below, we assume liability pursuant to the statutory provisions in case of a breach of contractual and extra-contractual obligations.
2. Our liability for damages on any legal grounds whatsoever, in particular on the grounds of impossibility, default, defective or wrong delivery, breach of contract, breach of obligations during negotiations, and tort shall be limited pursuant to the provisions specified in the following, insofar as the question of fault is involved in each case.

In case of slight negligence, we are liable, subject to statutory limitations of liability (e.g. care one usually employs in one's own affairs), only

- a) for damages resulting from injury to life, body or health,
- b) for damages arising from the breach of a material contractual obligation (cardinal obligation). Material contractual obligations (cardinal obligations) are obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely. In case of negligent breach of material contractual obligations, our liability is limited to the amount for compensation of the typical damage foreseeable at the time of contract conclusion.

Furthermore, direct and consequential damage attributable to defects in the delivery item can only be compensated to the extent that such damage is typically to be expected with intended use of the delivery item.

3. The limitations of liability pursuant to paragraph 2 apply to the same extent to the bodies, legal representatives, employees and other vicarious agents of MAFU Systemtechnik GmbH.

4. The limitations of liability pursuant to paragraphs 2 and 3 do not apply
  - if a defect has been fraudulently concealed,
  - insofar as a guarantee for the quality of the goods or a guarantee of durability has been assumed,
  - for fault-based liability due to intent and gross negligence and for claims under the Product Liability Act.

#### **X. Limitation**

1. The limitation period for claims based on material defects and defects of title is one year after the date of shipment.
2. If the delivery item is a building or a thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building (building material), the statutory limitation period is 5 years from the day of delivery (Section 438 para. 1 (2) BGB). Likewise, other statutory special provisions on limitation remain unaffected (in particular Section 438 para. 1 (1), para. 3, Sections 444, 445b BGB, Section 634a para. 1 (2), para. 3 BGB).
3. The above limitation periods also apply to purchaser's contractual or extra-contractual claims for damages based on a defect in the goods or work, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages from fault-based liability for intent or gross negligence and from injury to life, body or health as well as claims pursuant to the Product Liability Act become statute-barred only in accordance with the statutory limitation periods.

#### **XI. Final provisions**

1. Place of performance and only place of jurisdiction for all disputes between the parties arising from the contractual relationship is 72348 Rosenfeld (Germany). Notwithstanding this, however, we are also entitled to bring action at the purchaser's legal place of jurisdiction. Mandatory statutory provisions regarding exclusive places of jurisdiction remain unaffected.
2. Should one provision of these General Terms of Delivery and Performance or one provision in the frame of other agreements between the parties be or become ineffective, the effectiveness of all remaining provisions or agreements remains unaffected.
3. Contract language is German. If the parties use another language in addition to German, the German wording as agreed is decisive.
4. The contractual and other legal relationships to our purchasers are subject to German law under exclusion of the UN Convention on Contracts for the International Sale of Goods.