

Terms and conditions of sale and delivery of the companies

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For use vis-à-vis a natural or legal person who upon conclusion of this contract acts in exercise of his commercial or independent activity, or respectively legal persons under public law or separate assets under public law (hereinafter: “Orderer”)

§ 1. Bases of the contract, conclusion of the contract

1. Our terms and condition of sale and delivery also apply for future contracts with the Orderer if we have handed them out to him and he agreed to their validity.
2. All offers and contracts vis-à-vis companies are subject exclusively to the following terms and conditions. We do not recognise conditions of the Orderer which oppose these, also if we have not objected to them in individual cases, unless these have been expressly confirmed by us in writing. With the granting of the order and/or acceptance of the delivery, the Orderer recognises our terms and conditions.
3. Our offers are subject to change. All agreements require our written confirmation in order to be valid, or respectively will be binding when the order is started to be carried out. All statements which are based on the conclusion, change or termination of contracts are to be set out in writing. They are then only binding for us if they are confirmed by us in writing.
4. The basis for the carrying out of the contract is formed by the agreed drawings, samples, descriptions and similar documents.
5. Dimensions, weights, images and drawings as well as information and images contained in the prospectuses and catalogues are only binding if this is expressly agreed in writing by us.

6. Moreover, the properties of the goods are based exclusively on the agreed technical delivery requirements. If we are to deliver to our Orderers according to drawings, specifications, samples etc., the Orderer assumes the risk for suitability for the intended use. The time of transfer of risk is decisive for the condition of the goods according to the contract. In this regard we are only liable for proper editing/processing.

7. With the order of goods, the Orderer makes a binding declaration that he wants to purchase the ordered goods. We are entitled to accept the contractual offer contained in the order within two weeks after receipt. The acceptance can be declared either in writing or by delivering the goods to the Orderer.

§ 2 Ownership / Copyrights

In offers or respectively cost recommendations; we reserve rights of ownership and copyrights in prospectuses, calculations and other documents, as well as forms, finished devices and tools etc.; they may not be used, made accessible to third parties, duplicated or made known without our written consent. The Orderer is liable for all direct or indirect damages incurred by not observing this provision.

§ 3 Prices

Unless otherwise agreed, our prices apply ex works, plus the particular applicable value-added tax, without packaging, shipping costs, insurance and duty, as well as other possible fees.

Price changes are allowed if there are more than 6 months between the conclusion of the contract and the agreed delivery deadline (also in the case of part deliveries and discount invoices issued). If after the production of the delivery salaries, material costs or market-based cost prices increase, we are entitled to increase the price appropriately according to the cost increases. The Orderer is only entitled to rescind if the price increase does not only insignificantly exceed the increase of the general living costs between ordering and delivery.

Insofar as we receive goods for further processing, the price agreements made with the Orderer apply with the provision that the Orderer provides his goods ahead of time, so that the agreed delivery time can be adhered to. If the goods are not provided on time, the delays in delivery arising from this entitle us to adjust the price to the price basis (e.g. raw materials, salaries) changed during this period to the prices valid on the day of delivery.

For the agreed prices to be valid, it is required that the positions forming the basis of the agreement remain unchanged and can be produced without obstructions which the Orderer is responsible for (e.g. imprecise or incorrect documents provided by the Orderer, incomplete or delayed self-supply). Subsequent extensions and changes which lead to additional expenses are also to be reimbursed by the Orderer.

Contracts without a price agreement will be calculated at the particular price valid on that day.

§ 4 Payments, default on payments

1. The invoice amount is payable immediately. Discounts will not be granted.
2. Agreed payment deadlines are only adhered to if we are provided with the amount to be paid on the due date. In the case of plant output, we can request from the Orderer reduced payments for the parts closed within the payment.
3. We only accept bills of exchange and checks on account of performance following special agreement. Expenses or other costs arising with the submission of the check or bill of exchange are carried by the Orderer.
4. In the case of payment default we are entitled to charge interest on delay amounting to 8 % above the particular base rate of interest. We reserve the right to prove and claim higher damages caused by delay. We reserve the right in particular to also claim such costs which we incur if we must intervene to guarantee our rights against third parties after payment is defaulted.
5. In the case of material deteriorations in the financial circumstances of the Orderer, we are entitled to perform our deliveries and services only against advance payment or against payment on delivery, or to make it dependent on a security payment. Debts existing for services already performed are payable immediately, in spite of deferral. This applies in particular if in the case of default on payment, in spite of setting a suitable period, further payments fail to appear or if an application has been made to open insolvency proceedings. If the Orderer does not meet our demand to make a security payment within a suitable period set for him, we have the right to rescind the contract.

§ 5 Offsetting, right to refuse performance, assignment

1. The Orderer can only exercise a right of retention if his counter-claim is based on the same contractual relationship.
2. The Orderer only has a right to off-set if his counter-claims have been legally determined or recognised by us.

3. The Orderer may assign claims against us to third parties or have third parties drawn in only with our prior written consent, unless it concerns claims which are undisputed, ready for the decision process or are legally determined.

§ 6 Delivery

1. The delivery deadlines stated in the offers are only to be considered as empirical values and are not binding for us. For the start of and adherence to the delivery times stated by us, it is required to clear up all technical issues as well as timeous receipt of all services to be performed by the Orderer (suppliers, authorisations, releases, maps, other documents, etc.). The place of performance for all services which are to be performed by the Orderer for us in order to carry out the works is our particular delivering plant.

2. In the case of subsequent changes to the order, the originally agreed delivery period and a new delivery deadline are to be agreed in writing, or respectively will be named on request from us.

3. In the case of force majeure or other unforeseeable, extraordinary circumstances through no fault of one's own, such as difficulties in procuring materials, strike, lock-out, shortfall in transport, official interventions, difficulties in energy supply etc., also if they occur for upstream suppliers, the delivery period extends by a suitable period if this prevents us from fulfilling our obligation timeously.

4. Should an agreed delivery deadline be exceeded for reasons which we are not responsible for, the Orderer is to set us a reasonable period of grace in writing. Only after this period of grace is not adhered to is he entitled to rescind the contract.

5. The delivery deadline is met with the handing over of the goods to the carrier.

6. Excess and short deliveries common to the industry are permitted.

7. When delivering the goods, deviations related to production technology in terms of weights and number of items are allowed up to 10%, and indeed with regard to the total trade quantity, the individual part delivery and also the individual order posts. If no particular dimension tolerances have been agreed in writing, the generally known DIN/EN standards apply. In the case of goods not listed in the DIN/EN standards or if no particular tolerances have been agreed in writing, general tolerance applies.

8. The contract is concluded under the condition that we are supplied by our suppliers correctly and on time. This only applies for the case where we are not responsible for the non-delivery, especially if a congruent hedging transaction is concluded with our supplier.

§ 7 Part deliveries

We are entitled to part deliveries unless these are unreasonable for the Orderer.

§ 8 Make-and-hold orders

Insofar as make-and-hold orders are concluded with the Orderer, these are to be delivered in roughly the same monthly quantities for a maximum of 12 months, unless another express written agreement is made. If the agreed individual deliveries are increased significantly at the Orderer's request, we reserve the right to delay delivery to a reasonable extent. If the agreed individual deliveries are significantly reduced at the Orderer's request, we reserve the right to adjust the freight and packaging costs. If the agreed individual deliveries are delayed by more than 2 months at the Orderer's request, we are entitled to charge storage costs at a reasonable amount. Likewise we reserve the right to use the clause on price adjustment in § 5.

§ 9 Shipping, transfer of risk, insurance

1. We reserve the right to choose the shipping route and the type of shipping if there are no instructions to the contrary provided by the Orderer. The material will generally be delivered without packaging and not protected against rust. We only deliver packaged insofar as it is common in the trade. The costs for this are carried by the Orderer.

On request from the Orderer, the shipment will be insured by us at his costs against theft, breakage, transport, fire and water damages as well as through other insurable risks.

2. With the handing over of the goods to the carrier/shipping company or other person or institute determined to carry out the shipment, the risk for accidental loss and accidental deterioration of the goods is transferred to the Orderer. All deliveries to our company are made "ex works" (EXW Incoterms 2015). According to this, the risk of destruction, loss or damage to the goods is transferred to the Orderer with the handing over of the goods to the carrier or shipping company in our warehouse.

In the case of transport damages, the Orderer is to inform the carrier/shipping company without culpable delay and to communicate this to us.

3. There is also a handing over if the purchaser defaults on acceptance.

§ 10 Claims for defects

1. Whether or not the deliveries are in accordance with the contract and free of defects is measured according to the express agreements. Liability for a particular use or a particular suitability will only be assumed by us if this has been stated expressly in writing in the agreements and confirmed by us in writing. In other cases, the risk of suitability and risk lies exclusively with the Orderer.

2. The contents of the contractual agreements with the Orderer fundamentally do not establish any guarantee. Taking over a guarantee requires an express written agreement confirmed by us.

3. The Orderer is to check our deliveries immediately after receipt with regard to transport and packaging damages, as well as the delivery volume and other obvious delivery defects, and to document and inform us immediately in writing about defects determined from this on the delivery papers. Further, unhidden defects must be reported immediately in writing. Hidden defects must be reported in writing immediately and according to the statutory provisions after their discovery. Insofar as an acceptance is agreed, once it is carried out it is not possible to report defects which could have been determined at the time of this acceptance.

4. Should the Orderer determine defects when checking, he is to immediately give us the opportunity to check the delivery complained about. On request from us, the delivery complained about is to be provided to us according to our instructions wholly or partly at our costs. In the case of unfounded complaints, we reserve the right to charge the Orderer with shipping, packaging, checking and other ancillary costs arising from this. In the case of goods which we have sold expressly as downgraded material ("II-A-Material"), the Orderer is not entitled to claims for defects which we stated in the offer or the order confirmation, or respectively with which he usually reckons on.

5. In the case of justified reports of defects, the Orderer is to grant us a suitable period of grace, provided that this is not dispensable for statutory reasons. We thereupon make subsequent performance as we choose, through replacement delivery or repair, or respectively re-manufacturing. If there are defective parts in elements ready for assembly, the repair is made fundamentally through an exchange of the defective parts, but not the whole element or respectively the entire delivery. The repair or replacement delivery is made within a suitable period which the procurement, repair and/or re-manufacturing of the defective parts requires from points of view common in the market at the time of the complaint. If we do not fulfil the subsequent performance within a reasonable period, or if this fails, the Orderer has the right to demand a reduction in the payment, or, in the case of not only insignificant breaches of duty, to rescind from the contract. If only parts of the delivery are defective, the further rights of the Orderer are based only on the defective part of the delivery.

6. The prescription period for material deficiency claims amounts to twelve months, provided that the law does not provide longer periods according to §§ 438 Para. 1 No. 2 BGB [German Civil Code] (Delivery of things for construction), 479 Para. 1 BGB (Claims to recourse for purchase of used goods) and 634 a Para. 1 No. 2 BGB (Construction defects). The statutory prescription period also remains in cases of injury to life, body or health, in the case of culpable or grossly negligent breach of duty and fraudulent concealment of defects.

§ 11 General liability provisions

1. Insofar as claims are made against us for compensation for damages or expenses, irrespective of the legal basis, in particular due to breaches of duties from the contractual obligations concluded with the Orderer, or respectively for illegal actions, we are only liable as follows:

The liability of our company, our legal representatives or our persons assisting in the performance of obligations is limited to intent and gross negligence, or if the breach of duty was essential to achieve the purpose of the contract (cardinal duty).

Liability for simple negligence is excluded insofar as this does not concern a breach of duties essential to the contract. In this case, our liability to compensate damages is however limited to foreseeable damages typical to the contract.

2. In the case of liability according to the provisions above, this amount is limited to such damages which were foreseeable as possible consequences of such a breach of contract when the contract was signed, or respectively were foreseeable with due diligence, which we knew or must have known about, taking all circumstances into consideration.

In the case of liability for indirect damages and consequential losses as a result of defective delivery of goods, our obligation to compensate only comes into play for such damages which are typically to be expected if the object of delivery is used in accordance with the regulations.

3. The abovementioned rules and regulations apply to the same extent for our statutory representatives, employees and persons assisting in the performance of obligations.

4. The above limitations on liability do not affect claims of the Orderer arising from product liability. Furthermore, the limitations of liability do not apply in the case of non-attributable injuries to body and health, or in case of loss of life of the Orderer. There is no change in the burden of proof to the detriment of the Orderer connected with this agreement.

5. The claims prescribe within one year from handing over the delivery to the Orderer. The statutory provisions apply for claims for compensation for damages arising under the “Produkthaftungsgesetz” [German law on product liability].

§ 12 Right of rescission

1. For the case of unforeseen events in the delivery conditions, insofar as they significantly change the economic significance or the content of the service, or significantly affect our business, and if it subsequently becomes impossible to carry out as a result of this, the contract will be suitably adjusted. Insofar as this is not economically tenable, we have the right to rescind the contract in whole or in part.

2. The Orderer has no claims for compensation for damages on the basis of such a rescission. If we want to make use of the right of rescission, we are to inform the Orderer about this immediately after acquiring knowledge about the extent of the event and also if initially an extension of the delivery period was agreed with the Orderer.

§ 13 Supplies

Models, raw materials and other objects serving re-use such as half-completed and completed products of the Orderer will only be kept safe by us following prior agreement and against special payment. Our liability for this is based on § 11.

We only need to undertake a prior check of the materials, parts, half-finished products, tool devices or other parts provided to us by the Orderer if this is expressly agreed with the Orderer and the carrying of costs has been regulated.

In the case of material faults or inability to use supplies arising from circumstances which we are not responsible for, the Orderer cannot derive any claims against us. He is to replace the corresponding parts free of charge and carriage paid as well as take back the defective parts free of charge and carriage paid.

§ 14 Retention of ownership

1. We retain ownership in the goods until full settlement of all debts from an on-going commercial relationship, irrespective of the legal basis from which they arose. In the case of on-going invoices, the retention of ownership is considered a security for our particular debit claim. This also applies if payments are made by the Orderer on particular debts.

2. In the case of action in breach of contract by the Orderer, in particular payment default, we are entitled to take back the goods subject to retention and for this purpose to enter the business premises of the Orderer. The Orderer hereby states his express agreement to this. We are also entitled to take possession of the purchased object. The Orderer expressly agrees to this so that this in particular does not represent any forbidden self-given authority.

3. The Orderer is obligated to handle the goods with care. If maintenance and inspection works are necessary, the Orderer is to carry this out regularly at his own costs.

4. Processing or remaking the goods subject to retention is always carried out for us as manufacturer, without producing any liability for us. When processing or remaking the goods subject to retention with other goods not delivered by us, we are entitled to co-ownership in the new thing relative to the value of the goods subject to retention with the value of the other processed or remade goods at the time of the processing or remaking. If our ownership in the goods subject to retention expires through binding or mixing, the Orderer from now assigns to us (co-)ownership rights in the new thing or the mixed assets to the extent of the invoice value of the goods subject to retention, and keeps this safe for us without charge.

The new thing produced through processing, remaking, binding or mixing (hereinafter referred to as the “new thing”) or respectively the (co-)ownership rights in the new thing which we become entitled to, or respectively to be transferred to us according to No. 2 of this paragraph serve in the same way as security for our claim, as the retention of goods itself according to Paragraph 1. Insofar as nothing else arises from the following provision of these paragraphs, they apply analogously to the new thing.

5. The Orderer may only sell the goods subject to retention in proper business dealings with common commercial conditions and only as long as he punctually fulfils his payment obligations to us. The Orderer is obligated to only sell the goods subject to retention under retention of ownership on his side, and to ensure that the debt for such sales transactions can be assigned to us.

6. The Orderer’s debt from a resale of the goods subject to retention is assigned to us already from now. We accept the assignment. The debt serves as a security to the same extent as the goods subject to retention. If the Orderer sells the goods subject to retention together with other goods not delivered by us, the assignment of the claim only applies to the amount of the invoice which is produced from the resale of the goods subject to retention. In the case of the sale of the goods according to Paragraph 4 or the statutory provisions regarding binding and mixing things which are in our co-ownership, the assignment of the claim applies for the amount of our co-ownership share.

7. If the Orderer accepts claims from the re-sale of goods subject to retention in a current account existing with his customer, then he assigns already from now a debit recognisably produced in his favour or final balance to the amount which corresponds with the entire amount of the claim, adjusted in the current account balance from the resale of our goods subject to retention. The above paragraph applies analogously in this regard.

8. The Orderer is authorised to collect the claims from the resale of the goods subject to retention to us. The Orderer is not permitted to assign the claim from the resale, also within the framework of a real factoring contract.

We can revoke the authorisation to collect at any time in the case of payment default, suspension of payment, transfer of the commercial operation of the Orderer to third parties, in the case of restricted creditworthiness and trust-worthiness or dissolution of the Orderer’s company, as well as in the case of a breach by the Orderer of his contractual duties in this section. In this case the Orderer is obligated to inform his customer about the assignment of the claim to us immediately and to transfer to us all information and documents required to collect. Besides that, he is in this case obligated to return or respectively to transfer possible securities which he is entitled to for Orderer claims to us.

9. If the realisable value of the securities existing for us exceeds our secured claims by more than 15 %, we are ready on request from the Orderer to release securities of our choosing in this regard.

10. The Orderer is obligated to inform us immediately about a pledge or other or actual restriction or danger to the goods subject to retention or other securities existing for us.

11. The Orderer is obligated to sufficiently insure the goods subject to retention, especially against fire, water, storms, lightning strike and theft. He assigns his claims from the insurance contracts to us already from now.

12. We are entitled in the case of action by the Orderer in breach of contract, in particular in the case of payment default or breach of a duty of this section, to rescind from the contract and to request the return of the goods. For this case, the Orderer already from now agrees that we take away or respectively have taken away the goods subject to retention in the Orderer's possession or respectively – insofar as we are sole owners – the new thing in the sense of Paragraph 2 of this section.

In order to carry out these measures, as well as to make a general inspection of the goods subject to retention or respectively the new thing, the Orderer is to grant us, or persons authorised by us, access at any time.

§ 15 Third party property rights

If we deliver according to requirements (drawings, samples, models, etc.) or using work-pieces supplied by the Orderer, the Orderer guarantees that property rights of third parties are not violated by this.

Our company is not obligated to manufacture the delivery if a third party forbids it, referring to a property right he owns. The Orderer alone is responsible for defending such claims; we are not obligated to do this.

There is no liability for damages or loss of the work-pieces, drawings, samples, tools or similar provided to us by the Orderer. Insofar as the Orderer wants insurance for the objects handed over by him, this will only be concluded by us on express written request and at the cost of the Orderer.

Insofar as manufacturing equipment is produced by us to carry out the works, these remain our property – irrespective of payment or part payment by the Orderer – unless there exists a different written rule with the Orderer.

§ 16 Place of performance, court of jurisdiction, applicable law

The place of performance for both contract partners is the headquarters of mbw in Rheinmünster.

The court of jurisdiction for all differences in opinion arising from contracts with the Orderer is Rheinmünster if he is a businessman, legal person under public law or asset under public law.

We are however entitled to sue the Orderer in his court of domicile.

The law of the Federal Republic of Germany applies.

The UNCISG is expressly excluded.

The language of the contract is German.

§ 17 Proof of dispatch

If the Orderer, who is registered outside of the Federal Republic of Germany, collects himself or has our services collected by a third party, and dispatches or sends abroad, the Orderer is to procure the proof of dispatch required for tax purposes for us immediately. Insofar as this proof is not provided by the Orderer, the Orderer is to pay the value-added tax applicable within the Federal Republic of Germany on the full invoice amount.

§ 18 Severability clause

Insofar as a part of the contract is ineffective for whatever reason, the remaining part of the contract will remain effective. The parties are obligated in this case to make an agreement which comes as close as possible to the ineffective provision.

§ 19 Data protection provisions

We are entitled to archive electronically the entire written communications made between us. The data will be treated confidentially according to the applicable data protection laws. We inform you in this regard that we process particular personal data which we receive with regard to or in connection with this commercial relationship, irrespective of whether it is from you yourself or third parties, in the sense of the law on data protection. This will be handled by us with strict confidentiality and it serves exclusively the purpose of internal administration. Personal data will not be passed on to third parties. This agreement is considered consent in the sense of the “Datenschutzgesetz” [German law on data protection].

Rheinmünster, July 2015