

General Terms and Conditions of Sale of MBS-MP GmbH & Co. KG (as of 10/24)

§ 1 Scope of Application

The following terms and conditions apply to all deliveries, services, offers and order confirmations of MBS-MP GmbH & Co. KG

Gutenbergring 55a
22848 Norderstedt

for use in business transactions with entrepreneurs, legal entities under public law or special funds under public law within the meaning of § 310 (1) BGB (German Civil Code). These terms and conditions of sale also apply to all future transactions with the customer – insofar as these are legal transactions of a related nature – even if these terms and conditions are not expressly agreed again. These terms and conditions shall be deemed accepted at the latest upon receipt of the deliveries or services. Any deviating, conflicting or supplementary terms and conditions of the customer are hereby rejected, unless we expressly agree to their validity in writing.

Unless the following General Terms and Conditions provide otherwise, the statutory provisions of the German Civil Code (BGB) applicable to the respective contractual relationship shall apply.

In the following terms and conditions, we (MBS-MP) are referred to as the supplier and our customer as the client or purchaser.

§ 2 Offer and Conclusion of Contract

(1)

The subject matter of the contract shall be the tasks described in the supplier's offer or in the specifications in the form of the client's written declaration of acceptance and the supplier's written order confirmation, including these General Terms and Conditions of Sale.

(2)

If an order is to be regarded as an offer in accordance with § 145 BGB (German Civil Code), we may accept it within two weeks.

(3)

Drawings, illustrations, dimensions, weights or other performance data are only binding if they have been expressly agreed in writing in the above form.

The qualities specified in these agreed performance descriptions conclusively define the characteristics of the services. The qualities specified in these agreed performance descriptions conclusively define the characteristics of the services.

(4)

In the case of order-related production, the supplier reserves the right to deliver five per cent more or less than the order quantity, but at least one item, for orders of 50 items or more. Deviations require a separate agreement.

§ 3 Prices and Payments / Offsetting and Right of Retention

(1)

a) The remuneration shall be calculated as a fixed price. Notwithstanding this, the parties may agree that invoicing shall be based on actual expenditure with a fixed upper limit for costs. The applicable statutory value added tax shall be added to the remuneration.

(b) Unless otherwise agreed in writing between the parties, the supplier reserves the right to make reasonable price changes for deliveries made three months or more after conclusion of the contract due to changes in wage, material and distribution costs; if this results in the initially agreed prices being exceeded by more than 10%, the client is entitled to withdraw from the contract.

c) The customer shall bear the costs of shipment from the location of the supplier's registered office. At the customer's request, deliveries/services shall be insured in its name and at its expense.

(2)

a) Payments shall be due in accordance with the agreed payment schedule. The customer shall be in default 10 days after the due date without further notice from the supplier if he has not paid.

b) In the absence of a payment schedule, the supplier's invoices shall be payable within 14 days of the invoice date with a 2% discount, otherwise within 30 days without deduction; here too, the customer shall be in default 10 days after the due date without further explanation from the supplier if it has not paid.

c) An invoice shall be deemed paid as soon as the correct invoice amount has been received in full in the supplier's designated bank account.

d) In the event of late payment, the supplier shall be entitled to charge default interest at the rate specified in Section 288 (2) of the German Civil Code (BGB) from the due date of payment.

e) A fee of EUR 5.00 (five) per invoice shall be charged for the postal delivery of the supplier's invoice. Digital transmission by e-mail is free of charge.

f) If the client wishes to use a forwarding agent other than the supplier's, the supplier shall be entitled to charge the client an administration fee of EUR 25.00 (twenty-five) per delivery (service 'routing order').

(3)

a) The customer shall only be entitled to offset or reduce payments, even if complaints or counterclaims are asserted, if the counterclaims have been legally established or are undisputed.

b)

In the event of defects, the client shall only be entitled to a right of retention insofar as his counterclaim is based on the same contractual relationship; in such a case, the client shall only be entitled to retention insofar as the amount retained is in reasonable proportion to the defects and the anticipated costs of subsequent performance (in particular rectification). The client is not entitled to assert claims and rights due to defects if the client has not made due payments and the amount due is in reasonable proportion to the value of the delivery or service affected by defects.

§ 4 Call-off Orders

In the case of call-off orders, the entire quantity of goods must be accepted within the agreed period. If the call-off is not made within this period, the supplier is entitled to deliver the quantities not called off without further involvement of the customer and to invoice them in accordance with the usual terms of payment pursuant to § 3.

§ 5 Delivery Times, Default of Delivery and Reception, Acceptance

(1)

The agreement of binding or non-binding execution periods and delivery dates must be made in writing. The commencement of such execution periods and delivery dates is subject to the proper fulfilment of the purchaser's obligations. The right to plead non-performance of the contract is reserved.

(2)

If delays in delivery occur for which the supplier is responsible, the grace period to be set by the customer shall be at least three weeks, beginning upon receipt of the grace period notice by the supplier.

(3)

If, at the request of the customer, shipment of the delivery/service is delayed by more than 2 weeks after the agreed delivery date or – if no exact delivery date was agreed – after notification of readiness for shipment, the supplier may charge a flat-rate storage fee of 0.25% of the price of the delivery/service item to be stored for each week that has elapsed. The customer is entitled to prove that the supplier has not incurred any damage or has incurred significantly lower damage. The supplier is entitled to prove that higher damage has been incurred.

(4)

Even in the case of bindingly agreed deadlines and dates, the supplier shall not be responsible for delays in delivery and performance if these are caused by force majeure or events which make delivery or performance significantly more difficult or impossible for the supplier, not only temporarily, in particular official orders, strikes, lockouts, etc., even if these occur at the supplier's suppliers or their sub-suppliers. In such a case, the supplier shall be entitled to postpone deliveries and services for the duration of the delay plus a reasonable lead time. If, as a result of the delay, the customer cannot reasonably be expected to accept the delivery or service, it may withdraw from the contract by immediately notifying the supplier in writing.

(5)

If the supplier is in default with a delivery or service or if a delivery or service becomes impossible for any reason whatsoever, the supplier's liability for damages shall be limited in accordance with § 7 of these General Terms and Conditions of Sale.

(6)

If the customer fails to accept delivery or culpably violates other obligations to cooperate, the supplier shall be entitled to demand compensation for the damage incurred in this respect, including any additional expenses. Further claims remain reserved. Further claims remain reserved. If the above conditions are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the point in time at which the customer is in default of acceptance or payment.

(7)

Insofar as acceptance is to take place, the delivery/service item shall be deemed to have been accepted if - the delivery and, if the supplier is also responsible for installation, the installation has been completed, - the supplier

has notified the customer of this, referring to the deemed acceptance pursuant to this paragraph (7), and has requested the customer to accept the delivery/service item, - twelve working days have elapsed since delivery or installation, or the customer has started using the delivery item/service (e.g. by commissioning the entire system in which the delivery item/service has been installed) and, in this case, six working days have elapsed since delivery or installation, and - the customer has failed to accept delivery within this period for a reason other than a defect notified to the supplier which renders the use of the delivery item/service impossible or significantly impairs it.

(6)

If the customer fails to accept delivery or culpably violates other obligations to cooperate, the supplier shall be entitled to demand compensation for the damage incurred in this respect, including any additional expenses. Further claims remain reserved. Further claims remain reserved. If the above conditions are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the point in time at which the customer is in default of acceptance or payment.

(7)

Insofar as acceptance is to take place, the delivery/service item shall be deemed to have been accepted if - the delivery and, if the supplier is also responsible for installation, the installation has been completed, - the supplier has notified the customer of this, referring to the deemed acceptance pursuant to this paragraph (7), and has requested the customer to accept the delivery/service item, - twelve working days have elapsed since delivery or installation, or the customer has started using the delivery item/service (e.g. by commissioning the entire system in which the delivery item/service has been installed) and, in this case, six working days have elapsed since delivery or installation, and - the customer has failed to accept delivery within this period for a reason other than a defect notified to the supplier which renders the use of the delivery item/service impossible or significantly impairs it.

§ 7 Transfer of Risk / Delivery

The place of performance is the supplier's registered office. If, at the request of the customer, the delivery item / service item is shipped to a location other than the place of performance, the risk of accidental loss or accidental deterioration of the delivery item/service item shall pass to the customer as soon as the shipment has been handed over to the person performing the transport or the delivery item / service item has left the supplier's factory/warehouse for the purpose of shipment. If shipment is delayed at the request of the customer, the risk shall pass to the customer upon notification of readiness for shipment. The customer shall bear the costs of shipment from the place of performance.

§ 8 Liability

(1)

Statements made by the supplier in connection with this contract (e.g. service descriptions, references to DIN standards, etc.) do not constitute a guarantee in cases of doubt. In cases of doubt, only express written statements by the supplier regarding the assumption of a guarantee shall be authoritative.

(2)

The supplier shall be liable in cases of intent or gross negligence on its part or on the part of its representatives or vicarious agents in accordance with the statutory provisions. Otherwise, the supplier shall only be liable under the Product Liability Act for injury to life, limb or health based on at least slightly negligent breach of duty by the supplier or intentional or grossly negligent breach of duty by its representatives or vicarious agents, and for culpable breach of essential contractual obligations. However, the claim for damages for the breach of essential contractual obligations shall be limited to the foreseeable, contract-typical, direct average damage according to the type of order; this limitation shall also apply to the supplier's liability in cases of gross negligence if none of the exceptional cases listed in sentence 2 of this paragraph 2 apply.

(3)

However, liability for damage caused by the delivery item/service item to the client's legal interests, e.g. damage to other property, is completely excluded. This does not apply in cases of intent or gross negligence or in cases of liability for injury to life, limb or health.

(4)

The provisions of paragraphs 2 and 3 above extend to compensation in addition to delivery/performance and compensation in lieu of delivery/performance, regardless of the legal basis, in particular due to defects, breaches of duty arising from the contractual obligation or from tort. They also apply to claims for reimbursement of futile expenses. Liability for delay and impossibility shall be determined in accordance with paragraphs 5 and 6.

§ 9 Warranty Period

(1)

The limitation period for claims and rights due to defects in deliveries and services – regardless of the legal basis – is one year (12 months) from delivery or, if acceptance is required, from acceptance. However, this shall not apply in the cases of Section 438 (1) No. 2 BGB (buildings and items for buildings), Section 479 (1) BGB (right of recourse) or Section 634a (1) BGB (construction defects) insofar as the law prescribes longer periods for this.

(2)

The limitation periods pursuant to paragraph (1) shall also apply to all claims for damages against the supplier in connection with the defect, irrespective of the legal basis of the claim. Insofar as claims for damages of any kind against the supplier exist which are not related to a defect, the limitation period specified in paragraph (1) sentence 1 shall apply.

(3)

The limitation periods pursuant to paragraphs (1) and (2) shall apply subject to the following provisions:

a) The limitation periods shall generally not apply in cases of intent.

b) The limitation periods shall also not apply if the supplier has fraudulently concealed the defect or if the supplier has assumed a guarantee for the quality of the deliveries and/or services. If the supplier has fraudulently concealed a defect, the statutory limitation periods that would apply in the absence of fraud shall apply in place of the periods specified in paragraph (1), excluding the extension of the period in the event of fraud in accordance with Sections 438 (3) and 634a (3) of the German Civil Code (BGB).

c) Furthermore, the limitation periods shall not apply to claims for damages in cases of injury to life, limb or health or freedom, in cases of claims under the Product Liability Act, in cases of grossly negligent breach of duty or in cases of breach of essential contractual obligations.

(4)

The limitation period for all claims shall commence upon delivery to the client; in the case of research and development services – if agreed – upon acceptance, otherwise upon handover to the client.

(5)

Unless expressly stipulated otherwise, the statutory provisions on the commencement of the limitation period, the suspension of expiry, the suspension and the recommencement of periods remain unaffected.

§ 10 Claims for Defects

(1)

If the supplier's operating or maintenance instructions are not followed, changes are made to the products, parts are replaced or consumables are used that do not correspond to the original specifications, claims for defects in the products shall lapse if the customer does not refute a corresponding substantiated assertion that one of the circumstances caused the defect.

(2)

The customer must notify the supplier in writing of any defects immediately, at the latest within one week of receipt of the delivery item/service item. Defects that cannot be discovered within this period even after careful inspection must be reported to the supplier in writing immediately after discovery.

(3)

In the event of an existing obligation to remedy defects in the event of a timely notification of defects, the supplier shall, at its discretion, either repair the product or deliver a replacement product. It shall always be given the opportunity to remedy the defect within a reasonable period of time. Recourse claims remain unaffected by the above provision without restriction.

(4)

If the repair fails after a reasonable period of time, the customer may, without prejudice to any claims for damages, demand a reduction in payment or withdraw from the contract at its discretion.

(5)

If the costs of subsequent performance increase because the goods and services provided by the supplier have subsequently been moved to a location other than the customer's branch office, the supplier shall be compensated for the additional working hours and travel expenses incurred as a result; this shall not apply if the transfer is in accordance with the intended use.

(6)

Claims for defects against the supplier shall only be available to the direct customer and shall not be transferable.

(7)

The client shall only have recourse claims against the supplier in accordance with § 478 BGB (recourse of the entrepreneur) insofar as the client has not made any agreements with its customer that go beyond the statutory claims for defects. Otherwise, paragraph 5 shall apply mutatis mutandis to the scope of the client's recourse claim against the supplier.

(8)

The warranty shall lapse if the customer modifies the delivery item or has it modified by third parties without the supplier's consent and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the customer shall bear the additional costs of remedying the defect resulting from the modification.

§ 11 Retention of Title

(1)

Until all claims (including all balance claims from current accounts) to which the supplier is entitled against the customer now or in the future for any legal reason have been satisfied, the supplier shall be granted the following securities, which he shall release on request at his discretion, insofar as their value exceeds the claims by more than 20% on a sustained basis.

(2)

Ownership of the delivery item/service item shall only pass to the customer upon full payment of all secured claims. Processing or transformation of the goods by the customer shall always be carried out in the name and on behalf of the supplier as manufacturer, but without any obligation on his part. In this case, the customer's expectant right to the delivery item shall continue to apply to the unprocessed item. If the delivery item is processed with other items not belonging to the supplier, the supplier shall acquire co-ownership of the new item in proportion to the objective value of the delivery item to the other processed items at the time of processing. The same applies in the event of mixing. If the mixing is carried out in such a way that the client's property is to be regarded as the main item, it is agreed that the client shall transfer proportional co-ownership to the supplier and shall hold the resulting sole ownership or co-ownership in safekeeping for the supplier. To secure the supplier's claims against the customer, the customer also assigns to the supplier any claims against third parties arising from the connection of the delivery item with a piece of land; the supplier hereby accepts this assignment. Delivery items to which the supplier is entitled to (co-)ownership are referred to below as reserved goods.

(3)

The customer is entitled to process and sell the goods subject to retention of title in the ordinary course of business, provided that he is not in default. Pledging or transfer by way of security is not permitted. The client hereby assigns to the supplier all claims arising from the resale or any other legal reason relating to the goods subject to retention of title in the amount of all existing claims against the client (including all balance claims from the current account). The supplier revocably authorises the customer to collect the claims assigned to the supplier for the supplier's account in its own name. This authorisation to collect can only be revoked if the customer does not properly meet its payment obligations. This does not affect our authority to collect the claim ourselves. However, the supplier shall not collect the claim as long as the customer meets its payment obligations from the proceeds received, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have been suspended.

(4)

In the event of third-party access to the goods subject to retention of title, in particular seizures, the customer shall indicate the supplier's ownership and inform the supplier immediately so that the supplier can enforce its property rights.

If the third party is unable to reimburse the supplier for the judicial or extrajudicial costs incurred in this connection, the customer shall be liable for these costs.

(5)

In the event of a breach of duty by the customer, in particular in the event of default in payment, the supplier shall be entitled, even without setting a deadline, to demand the return of the delivery item/service item and/or to withdraw from the contract; the customer shall be obliged to return the item. The demand for the return of the delivery item/service item does not constitute a declaration of withdrawal by the supplier, unless this is expressly stated.

§ 12 Confidentiality / Publication

(1)

During the term of the contract and for a period of five years after its termination, the client shall not disclose to third parties any confidential information of a technical or commercial nature that has been communicated to it. However, this shall not apply to information that was known or accessible to the client or the public prior to disclosure by the supplier, or that became known or accessible to the public after disclosure by the supplier without the involvement or fault of the client, or information has been disclosed or made accessible to the client by an authorised third party or has been independently developed by an employee of the client who had no knowledge of such information.

Third parties within the meaning of this provision are not subcontractors of the supplier who have been entrusted by the supplier in the course of fulfilling the order and who have been obliged to maintain confidentiality. If the client invokes one of the above exceptions, it shall bear the burden of proof.

(2)

For each case of culpable breach of the confidentiality obligation, the supplier shall be entitled to claim lump-sum damages of €50,000.00.

The customer shall be entitled to prove that the supplier has not incurred any damage or has incurred significantly lower damage. The supplier shall be entitled to prove that higher damage has been incurred. The customer is entitled to prove that the supplier has not incurred any damage or has incurred significantly lower damage. The supplier is entitled to prove that higher damage has been incurred.

§ 13 Final Provisions

(1)

Subsidiary agreements, amendments and supplements to the contract must be made in writing to be effective.

(2)

This contract itself and all legal relationships between the supplier and the customer are subject to the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG). The place of performance and exclusive place of jurisdiction for all contractual disputes between the supplier and the customer is the supplier's place of business, unless otherwise stated in the order confirmation.

(3)

Should any provision in these terms and conditions or any provision within the framework of other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements. Instead, the parties undertake to replace the invalid provision with a legally permissible provision that comes as close as possible to the economic purpose of the invalid provision or fills this gap.

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