

GENERAL TERMS AND CONDITIONS FOR DELIVERIES AND SERVICE

I. General

- The following conditions apply to all consultations, offers, sales, deliveries and services and to all current and future contractual relationships between MPS Stollberg GmbH (hereinafter "Seller") and the Buyer, who is a businessman according to § 14 of the German Civil Code (BGB). Conditions for purchasing of the Buyer, which are completely or partly contrary to the conditions of the Seller or the legal regulations, are hereby expressly disagreed. They also will not become an integral part of the contract if the Seller carries out the deliveries or services in the awareness of regulations to the contrary. The following conditions apply to all future business relations, even if they are not explicitly referenced and as far as the Buyer has known them or ought to have known due to a previous business relationship. For the scope of the deliveries or services the bilateral consistent written declarations shall apply.
- Verbal subsidiary agreements do not exist at the time of conclusion of the contract. Agreements, particularly between the representatives of the Seller, deviating from the conditions of the Seller in individual cases, are only binding with the written confirmation by the Seller.

II. Offer and conclusion of the contract

- Offers of the Seller always are without engagement, meaning they are merely a non-binding invitation to the Buyer to submit a legally binding offer on his part. Contracts, even those at trade fairs or through agents of the Seller, only are entered in accordance with the written confirmation of order of the Seller and its receipt by the Buyer. Advertising documents and brochures of the Seller are not legally binding, in particular they may contain errors and the Seller reserves the right to make changes. § 434 section 1, 3rd sentence BGB remains unaffected.
- The configuration of the subject of the contract is exclusively described in the offers, confirmation of orders and the corresponding documents of the Seller, without being a guarantee in terms of § 443 BGB. The following No. II., 3 remains unaffected.
- As far as guarantees are given by the Seller, they need to be done explicit and in written and are not guarantees in term of § 443 BGB, but they can be regarded as independent guarantee promises.

III. Deliveries and terms of delivery

- The Seller can not be held responsible for delays if the Buyer does not or not in time fulfill its obligations to cooperate, particularly taking care of magisterial authorizations, implementation plans, documents for specification of the subject of the contract, clarification of all technical details and down payments. If these obligations are not fulfilled in time, the delivery times will be extended accordingly with a reasonable markup for the resumption of the performance, unless the Seller is responsible for the delay.
- If, after conclusion of the contract, there are any indications that the ability of the Buyer is endangered, e.g. default of payment, suspension of payment, request for insolvency proceedings, chattel mortgage of current assets, unfavorable information of banking establishments, credit institutions or credit insurers, the Seller is entitled to suspend his services and to cancel the contract and/or to claim damages after an unsuccessful appointment of a date for providing security in the form of directly enforceable bank guarantee, bank guarantee or advance payment. The appointment of a date is not applicable if the endangerment of the ability is obvious.
- Binding delivery dates need to be done explicit and in written. In case of separable deliveries the Seller is entitled to partial delivery and to early deliveries subject to prior written information.
- As far as circumstances, not caused by the Seller, complicate, delay or make the fulfillment of accepted orders impossible (Force Majeure), the Seller is entitled to postpone the delivery, the partial delivery or the outstanding delivery for a period equal to the period of the obstruction or to cancel fully or partly the contract without a claim for damages by the Buyer. Force Majeure includes particularly e.g. magisterial intervention, refusal of necessary export approvals, war, revolt, terrorism, governmental acts, business disruption, strikes, lock out, epidemics, interruption of work due to political or economic affairs, shortage of essential raw or working materials, shortage in materials, difficulties with the energy supply, transport delay due to traffic congestion, power failure, acts of god or an inevitable event which affect the Seller, his subcontractors or foreign companies, of which the operations of the plant of the Seller is depending on. The antecedent is also valid if such events occur at a moment at which the Seller is in default. Furthermore, the Seller has the aforementioned rights in case that the purchased goods are not available due to failure on the part of his suppliers, while the Seller has a valid sub-contract related to the purchased goods, unless the event is caused by culpable behavior of the Seller. The Seller is obligated to inform the Buyer of an entry of the aforementioned circumstances and, in case the Seller withdraws the contract, to refund any effected payment of the Buyer.
- The Buyer can only set an additional respite for delivery, if the agreed delivery date has been exceeded by more than two (2) weeks. This additional respite has to be adequate and last at least three (3) weeks. After unsuccessful expiry of the additional respite the Buyer is entitled to cancel the contract. § 323 section 2 BGB remains unaffected. Any claim for damages due to breach of duty is excluded in the scope of No. IX below.

IV. Prices and payment terms

- Unless otherwise agreed the prices for delivery are ex Seller's works (INCOTERMS 2010), exclusive packaging, shipping costs and all taxes, duties or levies payable under the applicable law.
- If, after conclusion of the contract, any changes of the calculation base arise from higher labor and material costs, increase of statutory VAT or other circumstances, particularly technical based change in calculation, the Seller is entitled to increase the contract price in an adequate percentage to the occurred change of the calculation base.
- Unless otherwise agreed, invoices shall be paid due net in the agreed currency within 14 days from date of invoice.
- Partial deliveries are charged at once and each of them are payable separately, irrespective of the completion of the total delivery.
- The Buyer only is entitled to charge up against the Seller, if the counterclaims are legally stated, undisputed or acknowledged by the Seller. Furthermore the Buyer is entitled to exercise a lien insofar as the counterclaim is based upon the same contractual relationship.

V. Buyer's obligations and duty to cooperate

- The Buyer shall generally support the seller during product realization as far as possible and reasonable. This shall include in particular the Buyer providing the Seller independently, but in any case on request, with information, documents and/or data that are necessary and useful for product realization. These shall be treated confidentially by the Seller.
- The Buyer shall affirm that he is entitled to hand over and use production parts or components, documents, software and/or data as part of the project and therefore does not violate any intellectual property rights of third parties, insofar as the Buyer provides these materials to the Seller. The Seller shall not be liable in this respect. The Buyer shall rather hold the Seller harmless in relation to claims made by third parties, if these exercise legal claims due to intellectual property right infringement against the seller. The Buyer shall provide his electronic material in technically immaculate condition, especially free of viruses, trojans, malware or other damaging software.
- The Seller shall be able to claim refund for additional expenditures at an amount that is customary in that place if the Buyer's material needed for product realization is not made available in a form that is suited for the contract purpose, especially in conventional form (e.g. file formats that are usual in a line of business).
- The Seller shall not be liable, insofar as defects, deficiencies or inadequacies of the goods are based on incorrect or otherwise insufficient information, documents or other material of the Buyer, unless the Seller has an advantage in knowledge. The Buyer in particular shall bear the risk of manufactured parts that are based on his designs or other documents actually being suited for the planned use of the Buyer.

VI. Retention of title

- The purchased goods remain the property of the Seller until all claims against the Buyer out of the business relationship have been fulfilled. With the conclusion of the contract the Buyer authorizes the Seller, on Buyer's expense, to enter or announce the retention of title in the required form and in accordance with the applicable national rules in public registers, books or similar documents. The Buyer is obliged to give the Seller any assistance to enable him to take all necessary measures to protect its property. If the Buyer acts contrary to contract, particularly in case of payment delay, the Seller is entitled to take back the purchased goods. The Buyer is obliged to surrender. By taking back the purchased goods the Seller does not cancel the contract, unless the Seller would have made expressly a written declaration thereof. The distress of the purchased goods by the Seller always means a cancellation of the contract. After taking back the purchased goods the Seller is entitled for resale. The revenue is to be deducted from the liabilities – less adequate handling charges – of the Buyer.

- The Buyer is obligated to take care of the purchased goods; particularly, he is obligated to insure them sufficiently amounting to the replacement value at his own expense against water damages, fire losses and damages due to theft. Provided that maintenance and inspection operations are necessary, the Buyer has to carry them out in time and at its own expense. A relevant relocation of the purchased goods requires the prior written consent of the Seller.
- The Buyer is entitled to resell purchased goods in a regular course of business; the Buyer transfers to the Seller all claims amounting to the grand total of the invoice (including VAT), which arise from the resale against third parties, irrespective of whether the purchased goods have been resold without or with modifications. The authorization for collection of receivables also exist after assignment. The Seller's authority to collect the claim by himself will remain unaffected thereof. But the Seller commits not to collect the claims if the Buyer fulfills its payment obligations with the collected sales revenues, the Buyer does not fall behind with payment and particularly, there is no request for insolvency, composition or bankruptcy proceedings or suspension of payment. In these cases, the Seller is entitled to request that the Buyer discloses the conveyed claims and whose debtors, gives all necessary information for collection, hands out all corresponding documents and notifies the assignment to the debtors (third parties).
- The processing or transformation of the purchased goods always is carried out on behalf of the Seller. If the purchased goods are processed with items, which are not owned by the Seller, he will acquire a co ownership share concerning the new item proportional to the value of the purchased goods (invoiced final amount, including VAT) to the other processed item at the date of processing. The afore said also applies for items resulting due to processing of purchased goods.

VII. Passing of the risk

- The shipment of the purchased goods is carried out by the Seller ex works (INCOTERMS 2010) at the risk of the Buyer. The same applies if the freight and other costs are at the expense of the Seller. The purchased goods only will be insured by the Seller against transport damages at the expressly written instruction and for account of the Buyer.
- The risk passes to the Buyer with the handover of the purchased goods in customary packing to the forwarder or any other carrier. This also applies for separate partial deliveries and if the Seller has borne the forwarding charges.
- If the shipment is delayed by request of the Buyer or in case of default of acceptance, the risk will pass with notice of readiness for shipment. In this case the storage of the purchased goods is on behalf and at the expense of the Buyer.
- Transport packaging and all other packaging according to the German Packaging Ordinance will not be taken back, excepting pallets. The Buyer is obligated to arrange the disposal of the packaging at its own expense.

VIII. Liability for defects

- The Buyer has to immediately inspect the purchased goods according to § 377 of the German Commercial Code (HGB), especially obvious defects and missing items, and to immediately give written notice to the Seller of any defects. The same applies if the Buyer subsequently notices any defects. A written notice to the Seller shall be considered "immediately" if the notice is given within two (2) weeks at the latest, whereas the punctual dispatch suffices to comply with the time limit. Failing to notify the Seller in writing according to aforementioned obligations, the purchased goods shall apply as accepted in relation to these defects. The Seller's liability caused by fraudulent intent remains unaffected.
- If a defect of the purchased goods is existent, the Buyer will be entitled to choose supplementary performance in the form of a removal of defects or delivery of an object free of defects. Replaced, defective parts shall be returned to the Seller and become the property of the Seller. The Seller is entitled to refuse the manner of the chosen supplementary performance, if it only is possible with disproportional costs. Place of performance is the delivering factory in each case. For removal of defects it is to give reasonable time and opportunity to the Seller. The Buyer has to grant to the Seller access to the defective purchased good, including the disassembly and assembly, without cost to the Seller.
- If the supplementary performance fails despite a repeated attempt, the Buyer will be entitled at its choice to require cancellation or reduction of the purchase price. The cancellation is excluded if the breach of duty by the Seller is insignificant.
- The limitation period for claims due to defects is twelve (12) months, beginning with delivery. The limitation period for claims regarding spare parts is six (6) months, beginning with delivery.
- Typical wear parts are excluded from the warranty after expiration of the manufacturer's guaranteed lifetime. Used machines or other used parts and production materials are excluded from the warranty, unless otherwise expressly stated. The Seller shall not be liable for defects caused by parts not supplied and delivered by him, modifications made without the written consent of the Seller, excessive strain, improper tools and material, faulty or negligent treatment, repairs carried out by the Buyer or third party in an inappropriate manner or for normal wear.

IX. Liability for damages

- For damages caused by bodily injury, injury of life or health as well as intention or gross negligent breach of duty of the Seller, the Seller is liable in accordance with the statutory provisions of the applicable law.
- For damages based on breach of major contractual obligations due to slight negligence of the Seller, the statutory liability of the Seller is limited to the at the time of contract conclusion foreseeable and typically occurring damages. Major contractual obligations are the fundamental and essential obligations of the contract the compliance of which is required for the proper execution of the contract, the infringement of which compromises the attainment of contractual purpose and the observance of which the Purchaser relies on, and may rely on, regularly. Claims for damages from the infringement of non-major contractual obligations due to slight negligence are excluded. In this respect, the Seller is also not liable for indirect, consequential damages including, but not limited to loss of production, loss of profit, recall costs, etc.
- An extended liability for compensation as provided in this No. IX is excluded, regardless the character of the asserted claim. This is also valid to personal liability for damages of appointees, employees, assistants, agents and servants of the Seller.

X. Intellectual property rights

In any case the Buyer orders planning services against payment by the Seller, he solely acquires single and not-exclusive exploitation rights to the plans, drawings and all other documents which are subject to copyright law, unless otherwise explicitly agreed in written.

XI. Additional clauses

- Exclusively German law is applicable. The application of the United Nations Convention for International Sales of Goods is excluded.
- The assignment of claims, owned by the Buyer due to the business relation, is excluded.
- Unless otherwise stipulated in the order confirmation of the Seller, place of performance is the business location of the Seller.
- Jurisdiction is for any of the contractual disputes, which arise directly or indirectly, the location of the Seller. The Seller also reserve the right to submit all disputes to the place of general jurisdiction of the Buyer or to an arbitration court.