

# General Terms and Conditions of Sale

for products and services of M&C TechGroup GmbH

## 1. General

- 1.1 The scope of deliveries and/or services (hereinafter referred to as „Supplies“) shall be determined by the written declarations of both parties. However, the general terms of business of the Purchaser are only valid in case they are expressly confirmed in writing by the Supplier of products or services (hereinafter referred to as „Supplier“).
- 1.2 The Supplier herewith reserves any industrial property rights and copyrights on the cost estimates, drawings and other documents (hereinafter referred to as „Documents“). The Documents are only allowed to be transmitted to a third party after prior approval by the Supplier and shall be returned to him on request and without delay in case the order is not awarded to the supplier. The clauses 1.1 and 1.2 are valid accordingly for the documents of the purchaser. However, these documents may be made available to those third parties to whom the Supplier has transferred deliveries.
- 1.3 The Purchaser is non-exclusively allowed to use the standard software provided it remains unchanged, is used with the agreed characteristics of performance and on the devices agreed upon. The Purchaser may make a back-up copy without express agreement.
- 1.4 Quotations and cost estimates are submitted by the Supplier without charge within the standard scope.
- 1.5 Partial deliveries are admissible as far as they are reasonable to accept for the Purchaser.

## 2. Prices and payment conditions

- 2.1 The prices shall be ex works, packaging and transport insurance excluded and the respective legal value added tax to be added.
- 2.2 In case the Supplier is also responsible for the installation, assembly or starting up and no further agreements have been made, the Purchaser shall pay the agreed remuneration and any incidental costs required, e.g. travel costs, costs for transport of tools and personal luggage as well as travel allowances.
- 2.3 Packaging is charged at cost price and remains at the Purchaser.
- 2.4 Regarding dispatch, the supplier chooses the most reasonable shipping agent provided the customer does not expressly give his specific shipping instructions.
- 2.5 Payments are to be effected free Supplier's payment office.
- 2.6 In case large orders are placed, the Supplier reserves the right to ask the purchaser for a deposit.
- 2.7 The Purchaser may only set off those claims that are undisputed or against which no legal recourse is possible.
- 2.8 In case the Purchaser has overdrawn the period allowed for payment, reminding fees as well as at least 14 %/a interest charges are due.

## 3. Retention of title

- 3.1 Items pertaining to the Supplies ("Retained Goods") remain the propriety of the Supplier until each and every claim the Supplier has against the Purchaser on account of the business connection has been fulfilled. If the combined value of the security interests of the Supplier exceeds the value of all secured claims by more than 20 %, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser.
- 3.2 For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
- 3.3 In case of mortgages, confiscations or other seizures or acts of intervention by third parties, the Purchaser shall inform the Supplier forthwith.
- 3.4 Where the Purchaser fails to fulfil its duties, including failure to make payments due, the Supplier shall be entitled to cancel the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable time set by the Supplier; the statutory provisions that a time limit is not needed remain unaffected. The Purchaser shall be obliged to surrender the Retained Goods.

## 4. Delivery periods; Delay

- 4.1 Delivery periods set can only be observed if all Documents to be supplied by the Purchaser, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser, for example the delivery of necessary provisions, are fulfilled. In case these conditions are not fulfilled in time, delivery periods are extended appropriately; this is not valid in case the Supplier is responsible for the delay.
- 4.2 The delivery period begins on dispatch of the order acknowledgement.
- 4.3 The delivery period is kept when the article of sale has left the Supplier's factory until delivery period's expiry.

- 4.4 If the delivery is delayed for reasons for which the Purchaser is responsible, then the delivery period is considered to have been complied on notice of readiness for dispatch within the agreed period.
- 4.5 If dispatch or shipment is delayed at the Purchaser's request by more than one month after notice of readiness for dispatch was given, the Purchaser may be charged, for every month commenced, storage costs of 0,9% of the price of the items of the Supplies. The two parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.
- 4.6 If non-observance of the times set is due to force majeure such as mobilization, war, rebellion or similar events, e.g. strike or lockout, the periods are extended accordingly.
- 4.7 At the Supplier's request, the Purchaser shall declare within a reasonable period of time whether the Purchaser cancels the contract due to the delayed Supplies or insists on the Supplies to be carried out.
- 4.8 Any compensation claims due to delay in delivery are excluded.

## 5. Transfer of the risk

- 5.1 As soon as the delivery, also in case of partial deliveries, has been picked up by the shipping agent, the risk is passed on to the Purchaser, even where delivery has been agreed freight free.
- 5.2 The consignment can be insured by the Supplier and at the cost of the Purchaser against damage caused by transport as well as against other risks in case the Purchaser stipulates this condition in his order.
- 5.3 If the dispatch or delivery is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies, the risk is passed on to the Purchaser.

## 6. Erection, Assembly, Commissioning

Unless otherwise agreed in writing, the following regulations are valid for the erection and assembly:

- 6.1 The Purchaser shall provide at its own expense and in good time:
  - a) all earth- and construction work and other ancillary work outside the scope of the Supplier, including the necessary skilled and unskilled labour, construction materials and tools.
  - b) the equipment and materials required for assembly and commissioning, such as scaffolds, lifting equipment and other devices, combustibles, operating equipment as well as calibration materials.
  - c) energy and water at the place of use including connections, heating and lighting.
  - d) suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances. Furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the erection personnel at the site.
  - e) protective clothing and protective devices needed due to particular conditions prevailing on the specific site.
- 6.2 Before the erection work starts, the Purchaser shall make available of its own accord any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
- 6.3 Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly/erection and any preparatory work must have advanced to such a degree that assembly/erection can be started as agreed and carried out without interruption. Access roads and the assembly/erection site itself must be level and clear.
- 6.4 If the erection, assembly or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle items and any additional travelling of the Supplier or the erection personnel.
- 6.5 The Purchaser shall attest to the hours worked by the erection personnel towards the Supplier at weekly intervals and the Purchaser shall immediately confirm in writing if assembly, erection or commissioning has been completed.
- 6.6 If, after completion, the Supplier demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the Supplies are put to use, after completion of an agreed test phase, if any.

## 7. Receiving of Supplies

- 7.1 The Purchaser shall not refuse to receive Supplies due to minor defects.

## 8. Defects as to quality

- 8.1** All parts or services where a defect becomes apparent within the limitation period shall, at the discretion of the Supplier, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the defect had already existed at the time when the risk passed.
- 8.2** All claims based on defects are subject to a limitation period of 12 months. This provision does not apply in any cases of injury of life, body or health, or where the Supplier intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a defect as well as in cases where longer periods are prescribed by law according to §438 section 1 No. 2 (buildings and things used for a building), §479 section 1 (right of recourse) and §634a section 1 No. 2 (defects of a building) German Civil Code ("BGB").
- The legal provisions regarding suspension of expiration ("Ablaufhemmung"), suspension ("Hemmung") and recommencement of limitation periods remain unaffected.
- 8.3** The Purchaser shall notify defects to the Supplier in writing and without delay.
- 8.4** In case of any notice of defects, the Purchaser may withhold payments to a reasonable extent taking into account the defects occurred. The Purchaser, however, may withhold payments only if the subject-matter of the notice of the defects occurred is justified beyond doubt. Unjustified notifications of defects shall entitle the Supplier to have its expenses reimbursed by the Purchaser.
- 8.5** At first, the Purchaser shall grant the supplier the opportunity to supplement its performance ("Nacherfüllung") within an appropriate period of time.
- 8.6** If supplementary performance is unsuccessful, the Purchaser shall be entitled to cancel the contract or reduce the remuneration, irrespective of any claims for damages it may have according to §11.
- 8.7** There shall be no claims based on defects in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications of repair work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
- 8.8** Any claims of the Purchaser with respect to expenses incurred in the course of supplementary performance, especially such as transport costs, travel allowance, labour and material costs, are only justified to 5% of the delivery sum of the defective subject of Supply respectively they are excluded in case the expenses are increased because the subject-matter of the Supplies was subsequently transported to another location than the Purchaser's branch office or outside of Germany.
- 8.9** The Purchaser's right of recourse against the Supplier according to § 478 BGB (recourse of the businessman) is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on defects. Moreover, No. 8.8 above shall apply mutatis mutandis to the scope of the right of recourse the Purchaser has against the Supplier according to § 478 section 2 BGB.
- 8.10** Furthermore, the provisions of No. 11 (other claims for damages) shall apply in respect of claims of damages. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this No. 8, based on defects, shall be excluded.

## 9. Industrial property rights and copyright; defects in title

- 9.1** Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR with respect to the Supplies made by the Supplier and then used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in §8.2 as follows:
- a) The supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from the Supplier, the Purchaser may cancel the contract or reduce the remuneration pursuant to the applicable statutory provisions.
- b) The Supplier's liability to pay damages shall be governed by paragraph 11.
- c) The above obligations of the Supplier shall only apply if the Purchaser immediately notifies the Supplier of any such claim asserted by the third party in writing, does not concede the existence of an infringement and leaves any protective measures and settlement negotiations to the discretion of the Supplier. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- 9.2** Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an IPR.
- 9.3** Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by specifications made by the Purchaser, to a type of use not foreseeable by the Supplier or to the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
- 9.4** In addition, with respect to claims by the Purchaser pursuant to § 9.1 above, § 8, No. 4, 5 and 9 shall apply mutatis mutandis in the event of an infringement of an IPR.
- 9.5** Where other defects in title occur, § 8 shall apply mutatis mutandis.
- 9.6** Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this § 9, based on a defect in title, shall be excluded.

## 10. Impossibility of Performance; adaptation of contract

- 10.1** To the extent that Supplies are impossible to be carried out, the Purchaser shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence of injury of life, body or health; this does not imply a change in the burden of proof to be detriment of the Purchaser. The right of the Purchaser to cancel the contract shall remain unaffected.
- 10.2** Where unforeseeable events within the meaning of § 4.6 substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, the Supplier shall have the right to cancel the contract. If the Supplier intends to exercise its right to cancel the contract, it shall notify the Purchaser thereof without undue delay after having realised the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Purchaser.

## 11. Other claims for damages

- 11.1** Any claims for damages and reimbursement of expenses the Purchaser may have (hereinafter referred to as "Claims for Damages"), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.
- 11.2** The above shall not apply in case of mandatory liability, e.g. under the German Product Liability Act ("Produkthaftungsgesetz"), in case of intent, gross negligence, injury of life, body or health, or breach of a condition which goes to the root of the contract ("wesentliche Vertragspflichten"). However, Claims for Damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent of gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.
- 11.3** To the extent that the Purchaser has a valid Claim for Damages according to this § 11, it shall be time-barred upon expiration of the limitation period applicable to Defects pursuant to Art. 8.2. In case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

## 12. Data protection

- 12.1** The Purchaser agrees to saving of personal data by the Supplier, working on and transferring them to connected companies, as far as required for the fulfilment of the contract.

## 13. Waste Disposal of electrical equipment out of service

- 13.1** The Purchaser accepts the duty to dispose of the delivered goods properly after termination of its use at his own expense according to the legal prescriptions.
- 13.2** The Purchaser releases the Supplier from his duty according to Section 10, paragraph 2 of "ElektroG" as well as all claims of third parties in connection herewith.
- 13.3** The Purchaser must obligate by contract all commercial users to whom he is passing on the delivered goods to dispose them properly after termination of use at their own costs according to the legal prescriptions and in the event of a further passing on of the goods to obligate their clients accordingly by contract to a proper waste disposal.
- 13.4** Should the Purchaser neglect his duty to obligate third parties to whom he is passing on the delivered goods by contract to take over their duty of waste disposal and to pass on this obligation accordingly, the Purchaser is obliged to taking back the delivered goods at his own expense and to dispose them properly according to the legal prescriptions.
- 13.5** The right of the Supplier of being released from his duty for waste disposal by the Purchaser is limited to two years after the final termination of use of the goods. This limit of two years is beginning at the earliest when the Supplier receives a written information of the Purchaser that the electrical equipment is out of service.

## 14. Venue and applicable law

- 14.1** If the Purchaser is a businessman, sole venue for all disputes arising directly or indirectly out of the contract shall be the Supplier's place of business. However, the Supplier may also bring an action at the purchaser's place of business.
- 14.2** Legal relations existing in connection with this contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## 15. Severability Clause

- 15.1** The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the contract.

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