

General Terms and Conditions

As of: 07/2017

I. General Provisions

The provisions of the contract between MEKRA^{tronics} GmbH, and our orderers who are contractors as defined in para. 14 BGB are solely governed by these General Terms and Conditions. Our offers are exclusively meant for entrepreneurs as defined by Article 4 BGB (German Civil Code). Deviating business terms of the customer, even if they are known to us, shall not become a part of the contract. Our offers are always subject to change without notice. Our General Terms and Conditions of Sale and Delivery are considered accepted upon placement of order, at the latest upon receipt of goods. In the case of repeated business relations these General Terms and Conditions of Sale and Delivery also apply for all future transactions. Should individual provisions be or become completely or partially ineffective, then the validity of the other provisions shall thereby not be affected. MEKRA^{tronics} and the customer shall agree upon a regulation the economic success of which shall be as close as possible to the ineffective one. Until such agreement the laws, administrative practice and judicature effective at the time of execution are to be applied.

II. Conclusion of Contract and Prices

1. By ordering merchandise the purchaser bindingly declares that he wants to buy the merchandise ordered. He shall be bound to this statement for two weeks. We are entitled to accept the offer of a contract underlying the order within two weeks upon receipt of the latter by us. The acceptance may be declared in writing, electronically, or by delivery of the goods to the purchaser.
2. The obligations in electronic commerce according to Section 312e, par. 1 sentence 1, Nos. 1 to 3, and sentence 2 of BGB (German Civil Code) are excluded.
3. The conclusion of the contract takes place subject to the correct and timely delivery by our sub-suppliers to us. This applies only in case we are not responsible for the non-delivery, especially in case of the conclusion of a congruent hedging business transaction with our sub-suppliers. The purchaser shall be informed about the non-availability of the product without delay, and the equivalent, insofar as already paid, shall be reimbursed immediately.
4. All contractual financial obligations are to be fulfilled solely in EURO.
5. Prices are understood to be net as ex-factory or supply depot. Freight, packaging and import costs, customs duties and other additional taxes are payable by the purchaser.

III. Period of Delivery and Supply Commitment

1. Our written or electronic order confirmation shall be decisive for extent, type, and date of the delivery. Partial shipments shall be permitted.
2. A liability in meeting delivery deadlines determined as binding shall only be accepted under the condition of undisturbed flow of operations and distribution. In particular in cases of acts of God and other disruptive events at our facilities or those of our sub-suppliers or transport contractors, for example operational or traffic disruptions, fire, flooding, labour-, energy-, or traffic shortages, strikes, lockouts, official measures as well as technical or technological situations that considerably aggravate the execution of the contract, release us from liability in punctual delivery or give us the right to stop delivery without obligation for subsequent delivery.
3. If not agreed otherwise, we have the right to deliver earlier than the delivery deadline. Unless otherwise agreed upon, delivery effected by us one up to a maximum of two weeks after the stipulated delivery date shall not be considered as delayed.
4. Delivery deadlines shall be considered met when the goods have left the works or dispatch depot or the purchaser has received notice by expiration of the deadline of our readiness to deliver. Subsequent alteration of contract shall be cause for a reasonable extension of delivery deadlines.
5. In the case of contracts whose performance consists of several deliveries, non-performance, defective or delayed performance of one delivery remains without influence upon the other deliveries of the contract.
6. Default of payments, handing in of a state meant in lieu of an oath of disclosure in accordance with § 807 ZPO (German Code of Civil Procedure), temporary shortage of liquid funds, or public knowledge of a considerable deterioration of the financial circumstances of the purchaser shall entitle us at your discretion to demand payment in advance for outstanding deliveries or to stop deliveries immediately and to deny performance of current contracts. At the same time we shall be entitled to make immediately due and payable those accounts receivable from the customer which are not due yet.

IV. Shipment, Passage of Risk

1. Packing, shipping route and method of transportation remain at our discretion unless special agreements have been made.
2. The risk of accidental loss and accidental deterioration of the merchandise shall pass over to the purchaser upon handing it over, in case of a mail order purchase upon delivery of the matter to the forwarding agent, the carrier, or another person or institution determined to execute the shipment. If the purchaser is overdue in accepting, this shall be equal to a handing over of the merchandise.
3. Merchandise out of call orders shall be accepted within 3 months after issuance of the acknowledgement of order, unless otherwise agreed.
4. Insurance against breakage and transportation risks shall only be taken out upon special request and shall be billed.
5. Customs duties and other expenses, also the costs for payment of the necessary papers for import into the country of destination, shall be payable by the purchaser.

V. Payments, Terms of Payment

1. Invoices shall be payable: within 30 days from date of invoice without cash discount of the accumulated invoice value.
2. Cash discount shall only be granted after all payment commitments out of earlier deliveries have been fulfilled and the invoice amount has been punctually paid to us in cash or has been credited to our account by the aforementioned due dates. The drawing of a bill of exchange can thus not lead to the granting of a cash discount. In case of cashless payment, especially when a cheque is submitted, the date of the credit entry shall be decisive. A cash discount cannot be granted in the case of payment or credit entry under reserve, with limiting conditions or any other restrictions. The purchaser shall assume all risks of method of payment. Invoices for tools are subject to immediate payment without cash discount.
3. Bills of exchange and checks shall only be accepted on account of payment. Corresponding credit entries are made only under the limiting condition of correct receipt of the complete amount due. We reserve the right to take in external or own acceptances. Costs and discount expenses are payable by the purchaser. We assume no responsibility for submission and protest. Protest imposed against the purchaser's own bills of exchange or non-immediate repayment of protested external bills of exchange shall entitle us to return all bills in circulation. At the same time we shall be entitled to make immediately due and payable those accounts receivable from the purchaser which are not yet due. Antedated checks shall not be accepted.
4. Interest on defaulted payment of 9%-points over the discount rate of the German Central Bank referred to in § 247 BGB (German Civil Law) as well as a liquidated damages of 40.00 Euro shall be charged in the case of missed payment dates. The right of assertion of further damages caused by delayed performance and other claims shall remain reserved.
5. Advance and part payments are not subject to interest payments.
6. The purchaser shall only be entitled to offset or withhold payment if his counterclaim is undisputed or has been determined legally binding. The purchaser may execute a right of retention only if his counter claim is based on the same contractual relationship.
7. Customer and invoice numbers are to be given by the purchaser when invoices are balanced. Delays or incorrect booking resulting from failure to do so shall be payable by the purchaser.

VI. Retention of Ownership, Factoring

1. The delivered goods shall remain our property until payment of all claims has been received. The purchaser has the right to resell the proviso goods within the scope of proper and orderly course of business; however, a pledge or transfer by way of security is not permissible. The purchaser is required to ensure our rights in the case of resale of proviso goods on credit.
2. The accounts receivable by the purchaser based on the resale of the merchandise subject to reservation shall now already be transferred to us in the amount of the invoice. We hereby agree to accept this transfer. Regardless of the assignment, the purchaser shall retain the right to collect payment under the condition that he fulfills his responsibilities to us according to the underlying contractual relationship and does not fall into financial decline. Otherwise the purchaser must provide the information about the assignment necessary for collection upon our demand and notify his debtors of the respective assignment. In this case we reserve the right to collect the accounts receivable by ourselves.
3. A possible finishing or processing of the merchandise sold subject to reservation by the purchaser shall always take place on our behalf and by order of us, without any obligations resulting for us from this, however. In the case of processing of proviso goods with other goods not belonging to us, we are entitled to the co-owner portion of the resulting product corresponding to the value of the proviso goods in relation to the other processed goods. Insofar as here and in the following the value of the proviso goods is referred to, this value results from our invoice value.
4. Should the purchaser acquire sole ownership of the new product according to § 947 paragraph 2 BGB, it is agreed upon that the purchaser grants co-ownership in the proportion of the value of the processed, attached, or mixed proviso goods, and that he protects these free of charge.
5. In the case of resale of the proviso goods together with other goods, regardless of with or without processing, attachment or mixing, the assignment in advance agreed to above shall be valid only to the extent of the value of proviso goods that were resold together with the other goods. We shall be obligated to release on demand the securities entitled as provided above, if the value exceeds secured payments by 20 %.

6. The purchaser must immediately notify us and provide the material necessary for an intervention in the case of compulsory execution by third parties against the proviso goods or in case of claims assigned in advance. Any costs resulting from such intervention shall be payable by the purchaser.
7. The purchaser shall be obligated to adequately insure the merchandise sold subject to reservation against fire and burglary and has to prove such insurance to us on demand.

VII. Warranty

1. The period of limitation for any warranty claim shall be 24 months as from handover of the goods.
2. First of all, we shall remedy a defect or make a substitute delivery at our discretion. In case of failure to rectify defects or to substitute delivery, the purchaser can demand rescission of the contract or reduction of the payment.
In case there is only a minor contract violation, especially if there are only minor defects, the purchaser shall not have the right of contract cancellation, however.
3. The purchaser must notify us in writing of any obvious flaws immediately, at the latest within 7 days after receipt of the goods, and must refrain from any eventual working of protested goods. Otherwise claims based on defects are excluded. The timely dispatch shall suffice for the observance of the warranty deadline. The full burden of proof for all claim prerequisites rests with the purchaser, especially for the defect itself, for the date of the establishment of the defect, and for the timeliness of the complaint about the defect.
4. Defects which could not be ascertained within this time span despite careful inspection are to be reported to us in writing immediately upon discovery. If the purchaser opts for a withdrawal from the contract because of a legal imperfection or a physical defect after a failed subsequent fulfilment, then he shall not be additionally entitled to a claim for compensation because of the defect.
5. If, after a failed subsequent fulfilment, the purchaser opts for a compensation of the damage, then the merchandise shall remain with the purchaser if this can reasonably be considered acceptable. The compensation is restricted to the difference between the purchase price and the value of the defective product. This shall not apply if we caused the contract violation maliciously.
6. Goods which replaced by us become our property.
7. Claims cannot be made for damages that resulted from the purchaser's culpably
 - a) improper handling or overstressing the purchased item or
 - b) altering the purchased item in a manner not agreed upon or
 - c) not following the instructions of the mounting or operating manual or
 - d) not observing the complaint and delivery responsibility according to points 3 and 4 above or
 - e) further using the purchased item after ascertaining the defect.Natural wear and tear is excepted from the warranty.

VIII. Liability

1. In case of simply negligent violations of obligations our liability shall be restricted to an average damage predictable for the type of merchandise, typical for such a contract, and immediate. This also applies in case of simply negligent violations of our legal representatives or agents. We shall not be held liable in case of a simply negligent violation of nonessential contract obligations.
2. The liability by virtue of acceptance of a guarantee as well as due to product liability remains unaffected; the same applies in case of bodily harm or health impairment attributable to us or in the event of loss of life of the purchaser
3. Compensation claims of the purchaser because of a defect shall superannuate after one year from the delivery of the merchandise to the purchaser. This shall not apply if we can be charged with gross negligence as well as in case of bodily harm or health impairment attributable to us or in the event of loss of life of the purchaser.

IX. Returns

Properly ordered and delivered goods shall in principle not be taken back. Returns that have been agreed upon with us shall remain the exception, which additionally require the following pre-requisites to be met:

1. The products must have been acquired directly from us or from one of our works depots.
2. Flawless and unaltered condition of the goods.
3. In principle, return shall only be possible when the articles in question are still in our product range.
4. Return shipment must be „free domicile“ to our Ergersheim works or to the appropriate works depot with accompanying delivery note date and number. Value reduction for returns:
 - in the first year after delivery date /. 10 % of the contract price
 - in the second year after delivery date /. 25 % of the contract price
 - goods older than 2 year shall not be taken back.Technical inspection and completion of the credit slip shall be carried out under consideration of eventual value reduction upon receipt of the articles. Freight costs, insofar as any occurred to us for the original shipping, reduce the remaining value.

X. Industrial Property Rights

1. The purchaser is held liable to us for the exemption from industrial protection rights of third parties on articles ordered, indemnifies us against any possible claims of third parties and has to reimburse any damage to us possibly resulting from a violation of this obligation.
2. Our designs and design proposals are to be kept confidential and may not be passed on to third parties.
3. All drawings, construction plans, and samples which the purchaser has received, shall remain our intellectual property.

XI. Place of Fulfillment and Jurisdiction, Other Agreements

1. On principle, the product description of the manufacturer is understood to be decisive for the characteristics of the goods. Public statements, sales talks, or advertisements made apart from this do not represent a contractual description of the characteristics of the goods. Samples and specimens serve as approximate illustrative articles in terms of quality, measurements and colour. Legal claims cannot be inferred from this. Technical changes as well as alterations in shape, colour, and/or weight are reserved within reasonable scope.
2. If the purchaser receives a faulty assembly instruction, we shall only be obliged to furnish a faultless assembly instruction and this only if the fault of the assembly instruction is in contradiction with a proper assembly.
3. The purchaser does not receive warranties in the legal sense of the word from us; warranties of the manufacturers, however, shall remain unaffected by this.
4. Place of fulfillment for our deliveries ex works shall be the delivery works, for delivery ex storage the warehouse. Place of fulfillment for all payments shall be Ergersheim / Bavaria.
5. The exclusive place of jurisdiction for all litigations from this contract shall be Fuerth / Bavaria, Germany. This also applies to lawsuits based on a cheque or bill of exchange.
6. These provisions shall be governed by the Law of the Federal Republic of Germany. The provisions of the UN Purchase Law shall not be applicable. The wording of the German language version of our „General Terms and Conditions of Sale and Delivery“ shall solely be decisive for these General Business Terms.
7. The special terms of our products published with the appropriate price lists shall additionally be applicable.
8. The purchaser itself shall be responsible to examine the suitability of the goods for the intended final usage.
9. German law (BDSG-Federal Data Protection Law) requires us to inform you that all data of our purchasers are electronically saved.