

Standard Terms and Conditions for the Sale of Goods of Mankenberg GmbH



I. General / Applicability

(1) If not otherwise explicitly agreed in writing or marked as such, all offers, supplies and services provided by Mankenberg GmbH shall be subject exclusively to these General Conditions of Sale. Herewith the inclusion of the purchaser's own terms is revoked unless agreed otherwise.

(2) These General Conditions of Sale shall apply exclusively to companies as defined in § 14 of the German Civil Code (BGB) and to a legal person or special fund governed by public law as defined by § 310 para. 1 of the German Civil Code (BGB).

(3) Mankenberg GmbH shall retain title rights and copyrights on all documents relating to the granting of an order, such as samples, cost estimates, drawings and similar information of a physical or intangible nature, irrespective of whether the documents in question are marked as such or not.

(4) The parties shall undertake to maintain strict confidentiality regarding all information and/or data which they have received either in writing, verbally or in any other form from the other party.

(5) The protected information includes in particular technical data, diagrams, drawings, calculations and other documents, purchase quantities, prices and information on products, product developments, on current and future research and development plans, information about customers and/or suppliers, trade secrets, all information in connection with the manufacture and production of the supplies and services of Mankenberg GmbH and all corporate data of the other contractual party.

(6) The contractual parties shall make use of all products and samples and all information and data provided exclusively for the purpose of fulfilling the obligations in accordance with each of the related contracts. The contractual parties shall also require their employees and any other persons involved to comply with these obligations in an appropriate manner to maintain confidentiality. The information, and also the possibility of passing information to third parties about the products, samples and/or information, shall require the prior written agreement of Mankenberg GmbH. The purchaser shall undertake to store all data received from Mankenberg GmbH in a location which is protected against access by third parties.

(7) The obligation to confidentiality shall not be required if the disclosing party can prove that a) such information was previously known to it from other sources, b) it has received such information from another third party which was entitled to disclose such information, c) the information is or becomes generally available to the public other than as a result of disclosure by the disclosing party, its affiliates or their respective authorised parties who should have kept such information confidential, d) it has independently developed the information itself, e) or it is forced to carry out disclosure due to a governmental directive or legal obligation.

(8) Insofar as this is necessary for the contractual use of the services provided by Mankenberg GmbH, and unless expressly agreed otherwise in writing, Mankenberg GmbH grants the purchaser a non-exclusive and non-transferable right of use to copyrightable services after payment has been made by the purchaser to the extent necessary for the contractual use of the services provided.

(9) The transfer and/or utilization of the services provided by Mankenberg GmbH in excess of the contractually agreed purpose, in particular their publishing, is only permitted with the prior written agreement of Mankenberg GmbH.

II. Offer and Conclusion of the Contract

(1) Unless otherwise explicitly confirmed in writing, the offers provided by Mankenberg GmbH are subject to confirmation and are non-binding; this applies in particular to the prices and delivery times stated in the offers. Binding offers on the part of Mankenberg GmbH shall retain their validity for four weeks from the date of the offer unless another period is expressly confirmed in the offer.

(2) The use of the Mankenberg GmbH Online Shop requires registration. The registration itself is free of

charge and is effected by opening a user account. By completing and sending the registration form electronically, the user makes Mankenberg GmbH a proposal to conclude a contract for the use of the Online Shop. Mankenberg GmbH will decide at their own discretion whether or not to accept the user's offer. Upon successful registration, a contract between Mankenberg GmbH and the user is concluded with regards to the use of the Online Shop (hereinafter referred to as the Usage Contract). There is no entitlement to the conclusion of a Usage Contract. Registration is only permitted for legal entities, partnerships and natural persons with unlimited legal capacity. The data requested during registration must be complete and correct. The registration of a legal entity or partnership may only be carried out by a natural person authorised to represent, who must be named.

(3) The product descriptions contained in Mankenberg GmbH's Online Shop are no binding offers on the part of Mankenberg GmbH, but serve to submit a binding contract proposal by the purchaser. The purchaser can submit the contract proposal via the online order form on the Mankenberg GmbH Online Shop website. Within the framework of the electronic ordering process, the purchaser can first place the desired goods and services in the virtual shopping basket and, by clicking the button that concludes the ordering process, submit a legally binding contract proposal with regards to the goods contained in the shopping basket. Subsequently, the purchaser receives a confirmation of receipt of his order for information purposes, which, however, does not constitute or justify acceptance of the order. The purchaser may also submit the contract proposal to Mankenberg GmbH by telephone, fax, e-mail, post or online contact form. The purchaser's submission of a contract proposal in this way is to be regarded as an application pursuant to § 145 BGB (German Civil Code). Mankenberg GmbH may accept this application within five working days. The period for acceptance of the contract proposal shall commence on the day following dispatch of the contract proposal by the purchaser and shall end on the expiry of the fifth working day following dispatch of the contract proposal. If Mankenberg GmbH do not accept the purchaser's contract proposal within the aforementioned period, this shall be deemed as rejection of the contract proposal with the consequence that the purchaser is no longer bound by his application.

(4) A contract for the delivery of services and goods (hereinafter referred to as contract) is coming into force on delivery of the written order confirmation by Mankenberg GmbH to the purchaser. All agreements must be made in writing in order to become legally binding. All collateral agreements, amendments or supplements to this contract must be made in writing in order to be legally effective; this also applies to the cancellation of this requirement for the written form. The contract can be concluded in German or English language.

(5) The written form requirement shall be deemed to have been met in the case of a text message if this is sent by fax, e-mail, post, courier or online contact form. Any contract or amendments to a contract shall be concluded by the signature of both parties on the respective document governing the facts or, in the case of a textual unilateral declaration by one party (including an online form), by the express confirmation of such declaration by letter, fax or e-mail by the other party with the recognisable intention of concluding or amending the contract accordingly.

(6) When a contract proposal is submitted via the Mankenberg GmbH online order form, the text of the contract is stored by Mankenberg GmbH after conclusion of the contract and sent to the purchaser in text form (e.g. e-mail, fax or letter) after sending the order. Mankenberg GmbH will not make the contract text accessible beyond this purpose. If the purchaser has set up a user account in the Mankenberg GmbH Online Shop before sending his order, the order data will be filed on the Mankenberg GmbH website and can be retrieved by the purchaser free of charge via his password-protected user account after providing the corresponding login data.

(7) Order processing and contacting usually take place by e-mail and automated order processing. The purchaser must ensure that the e-mail address provided by him for order processing is correct so that the e-mails sent by Mankenberg GmbH can be received at this address. In particular, when using SPAM filters, the purchaser must ensure that all e-mails sent by Mankenberg

GmbH or third parties commissioned by Mankenberg GmbH to process the order can be delivered.

(8) The fulfilment of the contract is subject to the provision that it does not preclude German, US-American and other applicable national, EU or international foreign trade legislation and no embargoes or other sanctions. The purchaser shall be obliged to provide all information and documents which are necessary for the export, transfer or import of goods. The purchaser shall be further obliged to inform Mankenberg GmbH, before conclusion of the contract, of any possible embargo or any possible restriction on trade and provide information on the end user and purpose of use so that Mankenberg GmbH is able to check its ability to export before conclusion of the contract.

(9) Mankenberg GmbH shall have the right to terminate the contract if it is found after conclusion of the contract that the delivery cannot take place due to an embargo or to other national or international regulations. Furthermore, the purchaser shall be obliged to compensate Mankenberg GmbH for the costs incurred until then in relation to the order processing.

(10) The purchaser must fully inform Mankenberg GmbH on all circumstances which are relevant for the provision of the contractual services. Where not otherwise explicitly agreed in writing, Mankenberg GmbH shall not be obliged to examine the completeness and correctness of any data, information or other services provided by the purchaser.

(11) The purchaser shall provide free of charge to Mankenberg GmbH all services and supplies which are required of him to enable Mankenberg GmbH to perform the relevant contract.

(12) If Mankenberg GmbH carries out work on the purchaser's or his customer's premises, the purchaser shall be responsible for any measures necessary for the fulfilment of regulatory obligations and safety duties unless the nature of the matter or an agreement with the purchaser demands otherwise. Mankenberg GmbH is not required to perform its obligations until the purchaser has carried out relevant mandatory measures.

III. Price and Payment

(1) If not otherwise explicitly agreed, the prices are valid ex works EXW Lübeck, Spenglerstrasse 99 in accordance with Incoterms 2010 excluding packing and plus VAT at the respectively applicable rate.

(2) The minimum order value for all deliveries and services is 50,- Euros.

(3) The full amount of the purchase price must be paid within 30 days after the date of the invoice unless otherwise agreed.

(4) Should the purchaser not accept the delivery on the contractually agreed delivery time, he must nevertheless settle those payments which are related to the delivery time. If shipment or delivery are delayed by more than one month at the request of the purchaser, a charge may be made on the purchaser for storage at a rate of 0.5% of the price of the items contained in the deliveries, however up to a maximum total of 5% of the order value. The risk of accidental loss of the delivery shall remain with the purchaser even in the event of such storage in accordance with the agreed form of delivery.

(5) In case of late payment, Mankenberg GmbH shall have the right to apply default interest. The interest rate shall amount to five percentage points above the base interest rate for the year. The enforcement of further damages is not excluded by payment of the interest.

(6) Mankenberg GmbH retains the right to withhold delivery for such a period until the purchaser has settled due payments, which may have arisen also from earlier contracts and for which due payment is delayed. The settlement of such a payment claim shall be regarded, among other things, as an obligation in terms of article IV. (2).

IV. Delivery Time and Delay in Delivery

(1) If not otherwise explicitly agreed, delivery shall be made EXW Lübeck, Spenglerstrasse 99 in accordance with Incoterms 2010.

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(2) The Delivery Time shall only be deemed to have been agreed if it has been confirmed in the order confirmation by Mankenberg GmbH. If delivery times are confirmed by Mankenberg GmbH it is based on the assumption that all commercial and technical questions between the parties are clarified and that the purchaser has fulfilled all obligations placed upon him in due time. If this is not the case, the delivery time shall be extended accordingly. This shall not apply where Mankenberg GmbH bears the responsibility for the delay.

(3) The observance of the Delivery Time is subject to supplies being received correctly and in due time from Mankenberg's subcontractors.

(4) The Delivery Time is fulfilled if readiness to dispatch has been notified or, where a delivery other than delivery EXW in accordance with Incoterms 2010 has been agreed in writing, if the supplies and/or services are provided within the agreed time period at the nominated place in accordance with the agreed form of delivery.

(5) If delivery is delayed due to Mankenberg GmbH and the purchaser suffers a loss as a result thereof, he shall have the right to demand flat-rate liquidated damages for delay. Taking into account an agreed grace period of 5 working days, Mankenberg GmbH shall pay for each complete week of delay an amount equal to 0.5% of the order value of the delayed part, in total however a maximum of 5% of the value of that part of the delivery by Mankenberg GmbH which cannot be used either in time or not in accordance with the contract as a result of the delay.

(6) The delivery time shall be reasonably extended if the non-compliance with the Delivery Time is due to force majeure, due to labour disputes or due to other events outside the control of Mankenberg GmbH. This also applies if such circumstances occur to sub-suppliers of Mankenberg GmbH. Mankenberg GmbH shall communicate the beginning and end of such circumstances to the purchaser as soon as possible.

(7) The purchaser may terminate the contract before delivery without a prior notice if performance of all of the contractual obligations is impossible to Mankenberg GmbH. The purchaser may additionally terminate the contract if the order execution of a partial delivery is impossible and he has a legitimate interest in the supply of this partial delivery. If this is not the case, the purchaser shall pay the contract price due for the partial delivery.

(8) If impossibility to perform occurs during default of acceptance, or if the purchaser is solely or largely responsible for these circumstances, he shall remain obliged to perform his contractual obligations.

(9) Where requested in writing by Mankenberg GmbH, the purchaser shall be obliged to draw up a confirmation of arrival (in German: Gelangensbestätigung) and to send this to Mankenberg GmbH.

V. Transfer of Risk

(1) If not otherwise specified in the contract, right of use and transfer of risk to the purchaser shall take place on notification of readiness for dispatch or at that point of time at which delivery has taken place in accordance with the form of delivery agreed in writing based on Incoterms 2010 in the contract. Where shipment is to be arranged by Mankenberg GmbH, Mankenberg GmbH shall select a form of transport which ensures compliance with the Delivery Times and the appropriate transportation of the supplies and services. The insurance of the transportation is the responsibility of the purchaser and the purchaser must pay the associated costs irrespective of whether or not Mankenberg GmbH ensures transport and insurance.

(2) If the purchaser desires a formal acceptance, this must be confirmed in the Contract. The acceptance of the supplies and services must take place in the personal presence of an authorised representative of the purchaser.

(3) Where an acceptance in accordance with paragraph 2 is required to take place, this shall be the decisive factor for the transfer of risk. It must be carried out without delay on the date of acceptance, alternatively after reporting from Mankenberg GmbH on readiness for acceptance.

(4) The purchaser may not refuse the acceptance where a non-essential defect is present.

(5) If shipment or acceptance is delayed or is not performed as a result of circumstances for which Mankenberg GmbH is not responsible, the risk of loss and/or damage shall be transferred to the purchaser from the day of the notice of readiness for dispatch or the notice of readiness for acceptance as applicable.

VI. Retention of Title

(1) The supplies and services (goods being subject to title of retention) remain the property of Mankenberg GmbH until full payment of the purchase price.

(2) The purchaser shall be obliged to treat the goods being subject to title of retention with care as long as the title has not been transferred to him and to adequately insure the supplies and services during the retention of title period, at his own cost, against theft and damage due to breakage, fire and water.

(3) The purchaser shall be further obliged to inform Mankenberg GmbH without delay in writing if the goods being subject to title of retention are impounded or otherwise subjected to the intervention of any third party.

(4) The purchaser shall have the right to sell the goods being subject to title of retention in the course of normal business practice.

(5) All claims arising from this on third parties shall be assigned by the purchaser in advance to Mankenberg GmbH up to the value covering the unpaid total amount. This assignment shall apply irrespectively of whether the goods being subject to title of retention have been sold with or without any further processing being carried out on them. Notwithstanding this assignment, the purchaser shall continue to have the right to claim related compensation.

(6) A processing or transforming of the goods being subject to title of retention by the purchaser shall always be carried out on behalf of Mankenberg GmbH. If the goods being subject to title of retention are processed together with other products and/or structures not belonging to Mankenberg GmbH, Mankenberg GmbH shall acquire partial title to the new item at a ratio in proportion with the value of the purchased item to the other processed items at the time of the processing.

(7) In case of breach of contract by the purchaser, particularly in case of delayed payment, Mankenberg GmbH shall have the right to take possession of the goods being subject to title of retention after a related delay notice, to terminate the contract and the purchaser shall be obliged to hand over the goods to Mankenberg GmbH. An application for the opening of insolvency proceedings on the assets of the purchaser shall give Mankenberg GmbH the right to terminate the contract with immediate effect and to demand the return of the goods being subject to title of retention.

VII. Defect Notice

(1) During receipt or acceptance the purchaser shall be obliged to immediately inspect any supplies and services for obvious defects that an average purchaser would easily notice. Obvious defects also include a lack of manuals and significant, easily visible damage to the goods. In addition, such cases include those where other items or too small quantities are delivered. In case of such a defect, a defect notice shall be submitted to Mankenberg GmbH in writing detailing such defects within two weeks after delivery.

(2) In case of a hidden defect the purchaser shall submit a defect notice to Mankenberg GmbH within a period of 2 weeks after such defect has been identified by the purchaser and/or user.

(3) In the event of violation of the duty to inspect and give notice of defects, the goods shall be deemed to have been approved with regard to the defect in question.

VIII. Liability for Defects

(1) A defect shall not be regarded as existing if the supplies and services comply with the agreed conditions at the time of transfer of risk.

(2) A defect shall similarly not be regarded as existing in cases of unsuitable or improper use, incorrect storage, faulty installation and/or commissioning by the purchaser or third parties, natural wear, incorrect or negligent treatment, incorrect maintenance or the use of unsuitable operating equipment,

(3) If the defect cannot be eliminated within a reasonable period of time or if the remedy or replacement delivery is regarded as having failed for other reasons, the purchaser may, at his discretion, demand a decrease in the purchase price (price reduction) or terminate the contract. The remedy shall be assumed as having failed

- If Mankenberg GmbH have been granted sufficient opportunity to carry out the remedy or replacement delivery without the desired success having been achieved and if the remedy or replacement delivery has been made possible,
- if it has been refused by Mankenberg GmbH or has been unreasonably delayed,
- if justifiable doubt exists regarding the likelihood of success or
- if unreasonableness exists for other reasons.

(4) The purchaser is obliged to use the supplies and services only in line with the limitations specified in the operation manuals and also to instruct his buyers and auxiliary persons with due care in the use and operation of the supplies and services. Mankenberg GmbH will be prepared at any time to replace free-of-charge for the purchaser any safety warning plates on the supplies and services which have been rendered unrecognisable or which have been lost. The purchaser shall bear the cost of their installation. Mankenberg GmbH shall remain free in the selection of the type of design of the safety warning plates. Mankenberg GmbH shall supply declarations of conformity at cost and only to the extent that their originals still have to be stored by Mankenberg GmbH.

IX. Return

Supplies and services which have been delivered in accordance with the contract will not be taken back by Mankenberg GmbH unless Mankenberg GmbH accept to take back such supplies and services on an individual case by case assessment due to particular reasons provided by the purchaser.

X. Liability

(1) Mankenberg GmbH limit the liability for slightly negligent breaches of duty to such damages and expenses whose occurrence within the scope of the respective contract must typically be expected in the event of a fault, provided that these do not relate to essential contractual obligations, damages from injury to life, body or health or provided that guarantees or claims under the Product Liability Act are affected. The same shall apply to breaches of duty on the part of auxiliary persons of Mankenberg GmbH and also to employees of Mankenberg GmbH in a case of direct claims asserted on employees of Mankenberg GmbH by the purchaser.

(2) Mankenberg GmbH shall not be liable for any lost profits and immaterial restrictions.

(3) The contractor shall only be liable for such damage which occurs during the warranty period in accordance with item XI for material defect liability claims.

(4) Unless expressly agreed otherwise in writing or otherwise regulated by statutory provisions, the total liability of Mankenberg GmbH for all claims and remedies of the purchaser arising from the underlying order for damages caused by property damage, processing damage, pecuniary loss, damage caused by delay, indirect damage, loss of production, loss of profit, consequential damage, damage to processed objects or products and other expenses for experts, legal counsel and other expenses, damage or remedies shall be limited to a maximum of 10% of the order value (net amount) of the underlying order.

(5) The purchaser shall be obliged to notify Mankenberg GmbH without delay in writing of any threat or enforcement of product liability claims by third parties which relate or could relate to a portion of the performance of Mankenberg GmbH. The purchaser shall give Mankenberg GmbH the opportunity to take a written position within a reasonable period of time before the

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imposition of further measures such as in particular exchanges or independent actions.

(6) Unless otherwise stipulated in the contract, Mankenberg GmbH is not liable for the conduct of carriers or forwarding agents or for damage caused by the purchaser. Mankenberg GmbH shall also not be liable for faults due to force majeure which occur as a result of natural or political events, government actions, labour disputes, sabotage, accidents, terrorism, biological, physical or chemical processes or comparable circumstances and which cannot be controlled by Mankenberg GmbH through the use of reasonable means.

XI. Limitation period

(1) Claims of the purchaser for material defects including the manuals and other documents shall become time-barred one year after the date of delivery accor-

ding to paragraph IV or after another period of limitation confirmed in writing by Mankenberg GmbH. After an appropriate request for elimination of the defect by the purchaser before the end of the Warranty Period, Mankenberg GmbH shall, at its discretion, eliminate the defect either by repairing free of charge the defective item or by replacement delivery. The purchaser shall be obliged, in case of a replacement delivery, to return the defective item.

(2) Excepted from this limitation period are claims arising from defects raised by private consumers, claims due to injury to life, body or health and/or claims for damages as a result of gross negligence or intentional damage caused by Mankenberg GmbH and according to the Product Liability Law. In such cases the statutory limitation period shall apply.

XII. Final provisions

(1) The relevant law of the Federal Republic of Germany shall exclusively govern the legal relationship between Mankenberg GmbH and the purchaser to the exclusion of the UN sales law (CISG).

(2) Place of jurisdiction is the court in Lübeck responsible for the registered office of Mankenberg GmbH. Mankenberg GmbH shall, however, have the right to file a lawsuit at the headquarter of the purchaser.

(3) Should individual provisions of this agreement be ineffective or become ineffective or contain a gap, then the effectiveness of the remaining provisions shall remain unaffected. The contractual parties shall undertake to agree instead of the ineffective term upon a legally permissible term which comes closest to the commercial purpose of the ineffective term or which closes this gap.

(4) We hereby inform you that we store and process your data in our EDP system where necessary for business purposes and within the terms permitted by the German Federal Data Protection Act (§ 26).