

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, contracts, supplies and services provided by Company (in the following "Company") to the purchaser (in the following "Purchaser") shall be subject exclusively to these General Conditions of Sale.

(2) Company 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.

(3) The contractual parties 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 (in the following "Protected Information").

(4) 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 Company and all corporate data of the other contractual party.

(5) 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 Purchaser undertakes to store all data received from Company in a location which is protected against access by third parties.

((6) There shall be no obligation to confidentiality 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 authorized 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.

(7) After full payment has been made by the Purchaser, and if not otherwise explicitly agreed in writing, Company grants to the Purchaser a non-exclusive, irrevocable, perpetual, royalty-free, fully paid-up and non-assignable (except in connection with a permitted assignment of this Agreement) license to use any of Company's IP to the extent required for the use of supplies and/or services in accordance with the terms of the related contract.

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

II. Offer and Conclusion of the Contract

(1) Unless otherwise explicitly confirmed in writing, the offers provided by Company are non-binding (Art. 7(1) of the Swiss Code of Obligations) and subject to confirmation by Company. This applies, in particular, to the prices and delivery times stated in the offers. Binding offers on the part of Company shall be marked as binding and shall retain their validity for four weeks from the date of the offer unless a different period of validity is stated in the offer.

((2) If the granting of the order by the Purchaser is regarded as a proposal pursuant to Art. 3(1) of the Swiss Code of Obligations (CO), such proposal may be accepted by Company within a period of two weeks.

(3) Company offers products and services which may be ordered by using Company's Online Shop. To enable ordering of products and services via the Online Shop, Purchaser is required to register first by completing the registration form with required personal data. Registration by the Purchaser confirms Purchaser's acceptance of Company's provisions regarding the use of the Online Shop and delivery of products and services.

Company may accept or reject any registration without giving reasons at any time. Such rejection of a registration does not entitle Purchaser in any claim whatsoever. Registration is only permitted for legal entities, partnerships and natural persons (Purchaser). The registration of a legal entity or partnership can only be carried out by a natural person, who confirms by providing its name during registration that it is authorized to act on behalf of the Purchaser and has the legal capacity to enter into related contracts. The information required for the registration shall be complete and correct. Registration in the Online Shop is free of charge, whereas submitting an order via this Online Shop forms a binding contract proposal by Purchaser. Any such proposal may be accepted by Company within five working days, whereas Company reserves the right to accept or reject Purchaser's proposal.

(4) The information and descriptions provided in Company's Online Shop are none binding offers, which shall enable Purchaser to submit a binding contract proposal to Company. The online offer process via Company's Online Shop permits the Purchaser to first place the desired goods and services in the virtual shopping basket. By clicking the related button for submitting the proposal to Company, Purchaser submits a legally binding contract proposal with regards to the goods contained in the shopping basket. Company will provide an automatically generated confirmation of receipt of such proposal, whereas this shall be deemed for information only and shall not constitute Company's acceptance of such proposal. In addition to this Online Shop offer process, Purchaser may also submit such contract proposal to Company by telephone, fax, email or post. If any proposal is not provided via the Online Shop, it is at the discretion of Company to provide a confirmation of receipt. Any such Purchaser's submission of a contract proposal is to be regarded as a none binding proposal which may be accepted by Company within 5 working days, whereas Company reserves the right to accept or reject Purchaser's proposal. 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. Expiry of such a five working day period shall be considered as a rejection of Purchaser's proposal, with the consequence that Purchaser is no longer bound to such contract proposal.

(5) A contract is coming into force on delivery of the written order confirmation by Company to the Purchaser. All contracts, agreements, supplementary agreements, amendments or additions to a contract must be made in writing in order to become legally binding. This requirement applies also to any deviation from the written form requirement. Supplies and services according to the "Catalogue of Options" attached to the offer are only included if clearly identified in the item description of the order confirmation.

(6) The written form requirement is fulfilled by signature of authorized representatives of both contractual parties on the document in question or, where there is an unilateral declaration by one contractual party, by the explicit confirmation of such declaration by the other party in writing (letter, fax or e-mail), each case with the recognizable intention of concluding or amending the contract as appropriate.

((7) The fulfilment of the contract is subject to the prerequisite that it does not violate German, US-American or other applicable national, EU or international foreign trade legislation or any 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 Company, 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 Company is able to check its ability to export before conclusion of the contract.

(8) Company has the right to terminate the contract if after conclusion of the contract it becomes aware that the delivery cannot take place due to an embargo or other national or international regulations. In such case, the Purchaser shall be obliged to compensate Company for the costs incurred until then in relation to conclusion of the contract, the processing of the order and the termination of the contract.

(9) The Purchaser must fully inform Company about any circumstances which are relevant for the provision of

the services which are the subject matter of the contract. Unless explicitly agreed in writing, Company shall not be obliged to examine any data, information or other services with regard to their completeness and correctness.

((10) The Purchaser shall provide all services and supplies which are required by him free of charge to Company, to enable Company in the performance of the relevant contract. Please refer to the document "Explanation of Order Execution" attached to the offer, wherein mutual duties during an order execution are specified.

(11) Where Company carries out work on the Purchaser's or its 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. Company 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. Prices are only valid for services and supplies specified in the order confirmation. Further services and supplies as referenced in the "Catalogue of Options" are only included, if clearly identified in the item text of the order confirmation.

(2) The minimum order value for all deliveries and services is 50.00 Euros.

(3) The full amount of the purchase price must be paid within 21 days after the date of the invoice unless otherwise agreed.

(4) Should the Purchaser not accept the delivery on the contractually agreed delivery time, it 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, the Purchaser may be charged for storage at a rate of 0.5% per month of the price of the items contained in the deliveries, however up to a maximum total of 5% of the order value. For clarity: transfer of risk of loss and/or damage in case of such storage will take place in accordance with the agreed delivery terms and the Purchaser will be liable for such risk during such storage period.

((5) In case of late payment, Company 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 as published by the Deutsche Bundesbank. The enforcement of further damages is not excluded by payment of default interest.

(6) Company retains the right to withhold delivery until the Purchaser has settled due payments, which may have arisen also from other 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, Spenglerstr. 99, 23556 Lübeck in accordance with Incoterms 2010.

(2) The delivery time is only binding on Company, if it is confirmed in the order confirmation by Company. If a delivery times is confirmed by Company, such delivery time is based on the assumption that all commercial and technical questions between the contractual parties are clarified and that the Purchaser has fulfilled and will fulfil all its obligations in due time. The delivery time shall be appropriately extended if the Purchaser does not fulfil its obligations in due time. There shall be no extension in case Company bears the responsibility for the delay.

(3) The compliance with the delivery time is subject to supplies being received correctly and in due time from Company'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.

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(5) If delivery is delayed due to Company and the Purchaser suffers a loss as a result, the Purchaser shall have the right to demand liquidated damages for delay. Taking into account an agreed grace period of 5 working days, Company 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 Company which cannot be used either in time or not in accordance with the contract as a result of Company's delay. If the amount of 5% is exceeded, the parties will mutually agree on further steps.

(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 Company. This also applies if such circumstances occur to sub-suppliers of Company. Company 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 Company. The Purchaser may additionally terminate the contract if the order execution of a partial delivery is impossible, provided that the Purchaser 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, the Purchaser shall remain obliged to perform its contractual obligations.

(9) Where requested in writing by Company, the Purchaser shall be obliged to provide Company with a confirmation of arrival (Gelangensbestätigung).

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 and time at which delivery shall take 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 Company, Company shall select a form of transport which ensures compliance with the delivery times and the appropriate transportation of the supplies and services. The Purchaser is responsible for the insurance of the transportation and must pay the associated costs irrespective of whether Company ensures transport and insurance.

(2) If the Purchaser desires a formal acceptance, such a right must be confirmed in the Contract. In such a case, the acceptance of the supplies and services must take place in the personal presence of an authorized 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 Company on readiness for acceptance. If the Purchaser's representative does not show up on the date of the acceptance test, Company may continue to carry out such tests in the absence of the Purchaser's representative and the consequential acceptance certificate after a successful test shall have the same effect as if the Purchaser's representative has participated and signed the acceptance certificate.

(4) The Purchaser may not refuse the acceptance in case of a non-essential defect.

(5) If shipment or acceptance is delayed or is not performed as a result of circumstances for which Company 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 remain the property of Company 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 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 Company 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) The Purchaser shall assign all claims arising from such sale to third parties to Company in advance up to the value covering the unpaid amounts. 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 are deemed to be carried out on behalf of Company. If the goods being subject to title of retention are processed together with other products and/or structures not belonging to Company, Company 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, in particular in case of delayed payment, Company 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 Company. An application for the opening of insolvency proceedings on the assets of the Purchaser shall give Company 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) The Purchaser shall be obliged to immediately inspect any supplies and services for obvious defects during receipt or acceptance in such a way as one could expect from a reasonable professional purchaser. Obvious defects also include a lack of manuals and significant, visible damage to the goods as well as the delivery of other items of too small quantities. In case of a defect, a defect notice shall be submitted to Company 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 Company within a period of 2 weeks after such defect is identified by the Purchaser and/or user.

(3) If a defect is not notified in accordance with the above, such defect is considered to be accepted by the Purchaser.

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, incorrect installation and 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 or terminate the contract. The remedy shall be assumed as having failed:

- if Company has been granted sufficient opportunity to carry out the remedy or replacement delivery (minimum 2 attempts) without the desired success (i.e., elimination of the defect) having been achieved,
- if it has been refused by Company or has been unreasonably delayed,
- if justifiable doubt exists regarding the likelihood of success, or
- if the remedy or replacement is unreasonable for other reasons.

(4) The Purchaser is obliged to use the supplies and services only in line with the limitations specified in the operation and maintenance manuals and also to instruct its purchasers and agents with due care in the use and operation of the supplies and services. Company shall deliver free-of-charge for the Purchaser any safety warning plates on the supplies and services which have become unrecognizable or which have been lost. The Purchaser shall bear the cost of their installation. Company shall remain free in the selection of the type of design of the safety warning plates. Company shall supply declarations of conformity at cost and only under the provision that their original copies must remain stored by Company.

IX. Return

Supplies and services which are delivered in accordance with the contract will not be taken back by Company unless Company explicitly accepts to take back such supplies and services on an individual case by case assessment due to particular reasons provided by the Purchaser.

X. Limitation of Liability for Damages

(1) Company excludes any liability for simple negligent (leichte Fahrlässigkeit) breaches of its obligations unless these do not relate to essential contractual obligations, damages arising from injury to life, body or health or guarantees or affect claims arising from the Product Liability Law. The same shall apply to breaches of duties on the part of agents of Company and also to employees of Company in case of direct claims asserted to employees of Company.

(2) Company's obligations to compensate damages shall always require Company's culpable breach of duties and the liability of Company shall be limited to such damages and expenses which occurrence could be typically expected in the case of a fault attributable to Company.

(3) If Company is liable to the Purchaser only for direct damages to property or injury or death of any person provided those property damages or injuries or death to persons are attributable to negligence of duties of Company or its employees, Company's liability shall be limited:

(3.1) for property damages to a maximum of EUR 2.5 m. per incident, however, not exceeding EUR 5 m. in the aggregate; and

(3.2) for injury or death of persons to EUR 2.5 m. per incident.

(4) Notwithstanding anything provided to the contrary by mandatory applicable law, in no event, whether as a result of breach of contract, warranty, tort or otherwise, shall Seller, or its sub-contractors or sub-suppliers, be liable for other damages than those mentioned in Clause X.3 above, including but not limited to:

(4.1) Damages not inflicted on the products other than set forth in Clause X(3); and

(4.2) loss of profit or revenues, loss of use of the products or any associated equipment, loss of production, downtime costs, loss of savings, loss of hire, loss of contract, loss of capital, cost of substitute goods, loss or corruption of data or claims of the Purchaser's customers for such losses or damages; and

(4.3) any special, consequential, incidental or indirect, incl. exemplary or punitive damages.

(5) The above limitations and exclusions of liability do not apply in case of acts or omissions by unlawful intent or gross negligence of directors or officers of Company. In the event damages have been caused by other persons employed or appointed by Company other than directors or officers, such as vicarious agents or regular employees of Company then the above limitations and exclusions of liability shall not apply in case of unlawful intent only.

(5) The above limitations and exclusions of liability do not apply in case of acts or omissions by unlawful intent or gross negligence of directors or officers of Company. In the event damages have been caused by other persons employed or appointed by Company other than directors or officers, such as vicarious agents or regular employees of Company then the above limitations and exclusions of liability shall not apply in case of unlawful intent only.

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(7) The above liability for damages and other compensational claims is made in lieu of all other liabilities or warranties, expressed or implied, and any other related obligations or liabilities on the part of Company of any nature whatsoever.

(8) Company shall only be liable for such damage which occurs during the warranty period in accordance with paragraph XI for material defect liability claims.

(9) Where not otherwise explicitly agreed in writing, the total liability of Company for all claims and judicial remedies by the Purchaser arising from the order in question shall be limited to a maximum of 10% of the total purchase price of the order in question.

(10) The Purchaser shall be obliged to notify Company 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 Company. The Purchaser shall give Company the opportunity to make a written pronouncement within a reasonable period of time before the imposition of further measures such as in particular exchanges or independent actions.

(11) Company shall not be liable for the behaviour of suppliers, sub-contractors, freight forwarders or logistics companies or for damage jointly caused by the Purchaser. Company 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, epidemic of disease, terrorism, biological, physical or chemical processes or comparable circumstances and which cannot be controlled by Company through the use of reasonable means.

XI. Limitation

(1) The right to claim remedies by the Purchaser regarding material defects, including manuals and other documents, shall end after a period of 12 months from the agreed delivery time in accordance with paragraph IV (the Warranty Period). After an appropriate request for elimination of the defect by the Purchaser before the end of the Warranty Period, Company 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.

XII. Final provisions

(1) The offer, contract and these General Terms and Conditions of Sale shall be governed by the substantive

laws of Switzerland to the exclusion of the UN sales law (CISG).

(2) Any dispute, controversy or claim arising out of, or in relation to an offer, a contract or these General Terms and Conditions of Sale, including the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one. The seat of the arbitration shall be Zurich, Switzerland. The arbitral proceedings shall be conducted in English.

(3) Should any 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 BDSG).