

# General Terms and Conditions for Sales of Mahltechnik Görgens GmbH for International Business

## 1. Scope

- 1.1 These General Terms and Conditions for Sales ("GTC") of Mahltechnik Görgens GmbH ("MTG") apply to all contracts between MTG and its customers on the sale and/or supply of goods, as well as on the supply of goods to be manufactured or produced, where an international reference occurs. An international reference occurs if the customer's place of business is outside the Federal Republic of Germany. In case of the customer's having several places of business, it is decisive whether the place of business which has the closest relationship to the contract and its performance is outside the Federal Republic of Germany. These GTC shall not apply if the customer himself has undertaken to supply a substantial part of the materials necessary for the manufacture or production.
- 1.2 These GTC shall apply exclusively. General terms and conditions of the customer shall only apply if and to the extent that MTG expressly acknowledges them in writing. In particular, silence on the part of MTG shall not constitute acceptance of or consent to such deviating terms and conditions, even in the case of future contracts. These GTC shall also apply instead of any general terms and conditions of the customer (e.g. purchasing terms and conditions) even if they state that acceptance of the order constitutes unconditional acceptance of the general terms and conditions.
- 1.3 These GTC in their current version shall also apply as a framework agreement to future contracts on the sale and/or delivery of movable objects with the same customer, without MTG being obliged to refer to them in each individual case.
- 1.4 To the extent that individual agreements have been made with the customer in particular cases, they shall have priority over these GTC. The contents of such agreements shall only be effective when stated in a written contract or confirmed in writing by MTG.
- 1.5 Legally relevant statements and notifications which are to be made to MTG by the customer after conclusion of the contract (e.g. setting of deadlines, reports of defects or declarations of avoidance of the contract or price reduction) shall only be effective if made in writing.

## 2. Information, Advice, Characteristics of the Goods, Guarantee

- 2.1 Information and advice and other services by MTG are provided exclusively on the basis of gained experience. All statements on MTG's goods and services, and especially those in the illustrations, drawings, details of capacity and performance and other details contained in MTG's quotations and publications are to be regarded as approximate average values.
- 2.2 MTG does not provide consulting services. The customer is obliged to check the suitability of the goods for the purpose he has set himself.
- 2.3 The documents belonging to quotations, such as drawings, illustrations, technical data, references to standards and statements in advertising materials do not constitute statements of quality, warranties of characteristics or guarantees unless they are expressly designated in writing as such.
- 2.4 MTG expressly retains all rights of ownership and copyright to all goods, packaging, catalogues, documentation (e.g. drawings, plans, statements of weights and dimensions, calculations and costs) and other product descriptions or documents, including those in electronic form. Unless otherwise agreed, the sale and delivery of goods does not entitle the customer to copyrights or licence. The customer commits itself not to make the documents listed in the previous sentence accessible to third parties unless MTG issues its express written consent.

## 3. Samples and Examples

If agreed, MTG will provide the customer with a sample of the ordered goods prior to manufacture. MTG will then only commence manufacture of all the goods ordered when the sample has been inspected and confirmed to be acceptable by the customer. The characteristics of samples shall only become an integral part of the contract when this is expressly agreed in writing. The customer shall only be entitled to use and pass on samples with the express written consent of MTG.

## 4. Conclusion of Contract

- 4.1 The communication from MTG to the customer designated as "quotations" are non-binding and are made without engagement. They constitute an invitation to the customer to place an order for goods or services.
- 4.2 The order of goods by the customer shall constitute a binding offer of a contract. Unless otherwise stated in the order, MTG shall be entitled to accept this offer of a contract within two weeks of its dispatch.
- 4.3 A contract shall only come into effect – even in the course of normal business – when MTG accepts the customer's order. Acceptance may be communicated in text form (e.g. in confirmation of order). If the customer has his place of business in a state which has made a declaration under Article 96 CISG in connection with Article 12 CISG, the contract is concluded only with MTG's written acceptance of the customer's written order. The content of the contract shall be determined by MTG's confirmation of order.
- 4.4 An offer which is, contrary to the general case set out in clause 4.1, explicitly marked as „binding“ by MTG can also be accepted by the customer's tacit acceptance of the goods.

## 5. Scope of Supply, Risk of Performance

- 5.1 MTG shall only be obliged to supply goods which are on stock, unless otherwise expressly agreed in writing. If MTG is to deliver an item defined solely by its class, it doesn't impose an assumption of a purchasing risk.
- 5.2 MTG shall be entitled to perform excess or short deliveries in terms of weight of up to 10% in relation to the ordered volume.
- 5.3 In the event of call orders and acceptance delays caused by the customer, MTG shall be entitled to provide the service immediately, in particular to procure necessary material for the complete order and manufacture and offer the entire product immediately resp. to carry out the order. Any wishes for modifications by the customer cannot therefore be taken into account after the order has been placed, unless this has expressly been agreed in writing.
- 5.4 The customer is to inform MTG in writing and in due time prior to the conclusion of the contract of any special requirements he has for MTG's goods or services.

## 6. Period of Delivery, Late Delivery

- 6.1 Delivery dates or periods of delivery shall only be binding when they have been expressly confirmed as binding in writing by MTG. They shall commence on the date of the acknowledgement of order. Unless otherwise agreed, the delivery date or period of delivery shall be deemed to have been met if the customer has received the notice of readiness for despatch of the objects to be supplied at the agreed time or within the agreed period. It shall be permissible to deliver goods before the end of the delivery period.
- 6.2 Compliance with delivery dates or periods of delivery shall be dependent on the clarification of all technical questions, and in particular on the prompt receipt of all documents, necessary approvals and releases to be provided by the customer, and compliance with the agreed terms of payment and other obligations of the customer. Should the above conditions not be fulfilled, the periods shall be appropriately extended; this shall not apply to the extent that the delay is within MTG's control.
- 6.3 MTG reserves the right to make partial deliveries to a reasonable extent.
- 6.4 If the delivery date or the delivery period is exceeded, the customer is only entitled to avoid the contract with regard to the part not yet fulfilled if the excess is due on the fault of MTG or its employed persons and if the customer has set a reasonable grace period and this has expired. Claims for damages shall be governed by the provisions of section 12 of these GTC.
- 6.5 Should the customer cause a delay in delivery of the objects to be supplied or in the performance of other services, MTG shall be entitled to require compensation for the losses or damages it has incurred in this respect, including any additional expenses. The right to make further claims or assert further rights is reserved.
- 6.6 If the customer does not pay the purchase price on time, MTG shall be entitled to exercise a right of retention for deliveries.

## 7. Reservation as to oneself obtaining delivery, Force Majeure

- 7.1 To the extent that MTG cannot meet binding delivery dates or delivery periods for reasons beyond its control (non-availability of the goods), it shall inform the customer of this without delay and at the same time notify him of the prospective new delivery period. If the goods are still not available within the new delivery period, MTG shall be entitled to avoid the contract in whole or in part without any liability arising on its part to pay damages; any consideration already paid by the customer shall be refunded by MTG without delay.
- 7.2 MTG shall in particular be entitled to avoid the contract if it is not correctly and punctually supplied by its suppliers for reasons beyond its control and in spite of having concluded a corresponding covering transaction.
- 7.3 In the case of force majeure, the provisions set out in clause 7.1 shall apply accordingly. This applies in particular in the event of conflict with German, European or American export, import, customs and payment regulations (e.g. embargos) that directly or indirectly concern the performances of services by MTG or the purchase of the goods by the customer, regardless of whether these were foreseeable or not. Furthermore, force majeure shall include war, natural disaster, terror, riot, industrial disputes, strikes, lock-outs, official directives or actions, unavoidable shortages of energy or raw materials, transport bottlenecks beyond MTG's control, unforeseeable disruptions to operation, for example due to fire, flood and damage to machinery, and all other hindrances which, when viewed objectively, have not been culpably brought about by MTG.
- 7.4 If a delivery date or delivery period has been agreed as binding and if the agreed delivery date or delivery period is exceeded as a result of events as set out in clauses 7.1 to 7.3, the customer shall be entitled, after setting a reasonable period of grace which expires without performance, to avoid the as yet unfulfilled part of the contract if he cannot in an objective view be reasonably expected to continue to adhere to it. In such a case, further claims by the customer, including in particular claims for damages, shall be excluded.

## 8. Delivery, Transfer of Risk, Acceptance, Late Acceptance

- 8.1 Unless otherwise agreed, delivery shall be made ex-works (as defined in Incoterms® 2010) at the registered office of MTG, which shall also be the place of performance.

- 8.2 If agreed separately between MTG and the customer, the goods will be consigned to a different destination (contract of sale involving carriage of the goods) on customer's expense. Unless otherwise agreed, MTG shall in this case be entitled to determine the method of carriage (in particular the carrier, transport route and packaging) itself.
- 8.3 In case of contract of sale involving carriage of the goods, the dispatch shall be insured by MTG against theft, breakage, transport, fire, water and other damages only at customer's express request and at his expense.
- 8.4 The risks of accidental destruction and accidental deterioration of the goods shall be transferred to the customer on the day of notification of readiness, at the latest, however, on handover to the customer or to a person or organisation appointed by the customer for acceptance at the registered office of MTG. This applies in particular if partial deliveries are made or if MTG has taken over additional performances (e.g. transport costs). In the case of contract of sale involving carriage of the goods, however, the risks of accidental destruction and accidental deterioration of the goods and the risk of delay shall be already transferred on handover of the goods to the forwarding agent, carrier or other person or organization appointed to effect the carriage.
- 8.5 The customer is obliged to accept the goods in accordance with the provisions of the CISG.
- 8.6 If the customer does not comply with his acceptance obligations or does not comply on time, MTG shall be entitled to avoid the contract in accordance with Articles 61 et sqq. CISG. In this connection, in particular, but not exclusively, the following cases constitute a fundamental breach of contract within the meaning of Article 64 para. 1 lit. a CISG:
- The customer does not accept the goods.
  - The customer does not fulfill his obligations at transportation, customs clearance and further inquiries.
  - The customer does not cooperate with contractually scheduled inspections and protocol creations or violates reporting obligations in this regard.
  - The customer does not comply with his other duties of cooperation, especially as a condition of the due date of the purchase price or a rate.
- 8.7 Irrespective thereof, MTG is entitled to claim damages according to Articles 61 et sqq. CISG if the customer does not comply with his acceptance obligations or does not comply on time. In case of late compliance with the acceptance obligations, there will be charged as lump sum compensation in the amount of 0.25% of the agreed net invoice amount per calendar week or part thereof, commencing on the delivery date or – in the absence of a delivery date – on notification of the readiness for dispatch of the goods. This shall not prejudice the demonstration of any greater damages and pursuit of further claims by MTG (including in particular reimbursement of additional expenses, appropriate compensation and termination of the contract); the lump sum shall however be set off against any further monetary claims. The customer shall be permitted to demonstrate that MTG has incurred no losses or damages or significantly lower losses or damages than the above lump sum.
- 8.8 If it has been agreed between the parties that acceptance in the sense of approval of the goods as according to the contract shall be conducted (in particular, as a condition of the due date of the purchase price or a rate of the purchase price), default of acceptance shall be deemed equal to the acceptance. Where the parties have agreed upon an acceptance in the sense of this clause, the delivery is considered accepted if
- the delivery is completed.
  - MTG has informed the customer of this fact with reference to the assumed acceptance pursuant to this clause and has requested acceptance.
  - ten business days have passed since the delivery or the customer has started to use the goods and in this case five business days have elapsed since delivery.
  - the customer has failed to accept within this period for any reason other than a significant defect notified to MTG which makes the use of the goods impossible or substantially affects it.
- 8.9 The customer is obliged to comply with the European Trade Policy and with the restrictions of the Dual-Use Export, available at [http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/index\\_en.htm](http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/index_en.htm). The direct or indirect resale of the products in the countries which are under export restrictions is strictly forbidden. In case of resale, the customer is obliged to certify to MTG the final destination of the goods in written form prior to resale pursuant to the valid export regulations.
- 8.10 The customer is obliged to comply with the relevant legal regulations regarding the anticorruption.
- 9. Prices, Terms of Payment, Defence of Insecurity**
- 9.1 Unless otherwise agreed, all prices are stated in euros, including packaging and excluding loading and freight ex works, plus the value added tax to be borne by the customer at the applicable statutory rate.
- 9.2 The prices are to be calculated in accordance with MTG's offer prices as on the day of delivery or notification of readiness, unless otherwise agreed and if the delivery is made later than four months after the conclusion of the contract.
- 9.3 In case of contract of sale involving carriage of the goods (clause 8.2), the customer shall bear the transport costs ex-warehouse and the costs of any transport insurance desired by the customer. MTG does not take back transport and all other packaging in accordance with the packaging regulation, the seller does not take back, they become the property of the customer, except pallets.
- 9.4 Services which are not part of the agreed scope of delivery shall be executed on the basis of the valid general price lists of MTG, unless otherwise agreed.
- 9.5 The purchase price is due immediately upon conclusion of the contract, unless otherwise agreed. The timeliness of payment shall be determined by the time of receipt of the payment in MTG's account. Cheques payments are not accepted.
- 9.6 The payments are to be made directly by the customer. Payments from third parties are not accepted.
- 9.7 In case of payment delay, MTG is entitled to charge interest at 9 percentage points p.a. above the main refinancing rate of the European Central Bank (ECB) or to claim compensation for any higher damage caused by the delay in payment.
- 9.8 In the event of late or missed purchase price payment, MTG is entitled to avoid the contract in accordance with Articles 61 et sqq. CISG. The payment of less than 90% of the purchase price at the original due date shall be deemed a fundamental breach of contract within the meaning of Article 64 para. 1 lit. a CISG.
- 9.9 The customer shall only have a right of setting-off or retention with respect to claims that are undisputed or recognized by declaratory judgement. This shall not prejudice clause 11.5 in the case of defects in the supply.
- 9.10 Should it become apparent after conclusion of the contract that MTG's entitlement to the purchase price is at risk from inability of the customer to pay (e.g. as a result of an application to institute insolvency proceedings), MTG shall be entitled to suspend performance and avoid the contract in accordance with Articles 71, 72 CISG.
- 10. Retention of Title**
- 10.1 All goods supplied by MTG shall remain the property of MTG ("goods subject to retention of title") until all present and future sums owing to MTG as a result of the purchase contract and a continuing business relationship are paid in full.
- 10.2 The customer is to insure the goods subject to retention of title sufficiently, in particular against fire and theft. Claims on the insurance policy resulting from damage to the goods subject to retention of title are herewith already assigned to MTG in the amount of the value of the goods subject to retention of title.
- 10.3 The customer may neither pledge the goods subject to retention of title to third parties nor assign them as security until all the sums owing as stated in clause 10.1 have been paid in full. The customer is to notify MTG in writing without delay if and to the extent that the goods subject to retention of title are seized by third parties.
- 10.4 On conduct of the customer in contravention to the contract, and in particular non-payment of the purchase price due, MTG shall be entitled to avoid the contract in accordance with the provisions of the CISG or this GTC and/or require the surrender of the goods on grounds of the retention of title. The demand for surrender shall not automatically constitute a declaration of avoidance; MTG shall rather be entitled merely to require surrender of the goods and reserve the right to avoid the contract. Should the customer fail to pay the purchase price due, MTG may only exercise these rights when it has previously set the customer a reasonable period for payment without result, or when the setting of such a period is dispensable under the provisions of the CISG or these GTC.
- 10.5 The customer shall be entitled to resell and/or to process the goods subject to retention of title in the normal course of business. In such a case, the following provisions shall additionally apply.
- 10.6 The retention of title shall also extend to the full value of the goods created by processing, mixing or joining MTG's goods, with MTG deemed to be the manufacturer. Should, on processing, mixing or joining the goods with goods from third parties, the ownership rights of those third parties persist, MTG shall acquire co-ownership in proportion to the invoice values of the processed, mixed or joined goods. For the rest, the same shall apply to the goods created as to the goods delivered subject to retention of title.
- 10.7 The customer hereby assigns his receivables from third parties resulting from the resale of the goods or the goods created therefrom in full or in the amount of MTG's co-ownership share as applicable in accordance with the previous paragraph to MTG as security. MTG accepts the assignment. The obligations of the customer set out in clause 10.3 shall also apply with regard to the assigned receivables.
- 10.8 The customer, together with MTG, shall be entitled to collect the receivables from the resale. MTG undertakes not to collect the receivables as long as the customer fulfils his payment obligations to MTG, is not in default with payments, no application for institution of insolvency proceedings has been made and there is no other deficiency in his ability to pay. If this should however be the case, MTG may require the customer to notify MTG of the assigned receivables and the relevant debtors, to provide all the information necessary for collection, hand over the corresponding documents and notify the debtors (third parties) of the assignment.
- 10.9 Should the realizable value of the securities exceed MTG's receivables by more than 10%, MTG shall release securities of its choice on request by the customer.

## 11. Customer's claims based on lack of conformity of the goods

- 11.1 The customer's rights in the case of lack of conformity of the goods shall be governed by Articles 35 et seq. CISG, unless otherwise stipulated below.
- 11.2 The basis of MTG's liability for conformity of the goods shall be above all the agreement reached concerning the quality of the goods. The product descriptions (including those of the manufacturer) which were provided to the customer before he placed his order or were adopted in the contract in the same way as these GTC shall constitute agreements on the quality of the goods when they are designated as such. A particular application or usage purpose shall be part of the quality agreement only with a prior express consent of MTG.
- 11.3 The obligations to examine the goods and give notice of any lack of conformity of the goods according to Articles 38, 39 CISG are applicable. The delivered goods shall be thoroughly inspected for any lack of conformity immediately, at the latest within 7 days upon readiness or delivery to the customer or to the third party designated by the customer. The customer bears the cost of the examination. The customer must give notice of any lack of conformity immediately and no later than within 7 working days after the possible defects have become evident or should have become evident upon examination.
- 11.4 If the delivered goods are non-conforming and if the lack of conformity constitutes a fundamental breach of contract, MTG shall be obliged, subject to clause 11.3, to provide supplementary performance at its discretion by remedying the lack of conformity (rectification) or by delivery of a contractual item (delivery of substitute goods).
- 11.5 MTG shall be entitled to make the supplementary performance owed dependent on the customer paying the purchase price due. The customer shall however be entitled to retain a reasonable amount of the purchase price in proportion to the lack of conformity.
- 11.6 The customer is to give MTG the necessary time and opportunity to effect the supplementary performance owed, and in particular to hand over the goods which have been found defective for test purposes in its unchanged and unprocessed state. In the case of a delivery of substitute goods, the customer is to return the non-conforming item to MTG in compliance with Article 82 CISG.
- 11.7 Transport charges resulting from the transfer of the rejected goods to another location than the place of performance shall not be borne by MTG.
- 11.8 If the installation of the goods by MTG has not been expressly agreed upon with the customer, MTG, in case of lack of conformity of the goods, shall be liable neither for deinstallation of non-conforming goods and for installation of the ones delivered as substitute goods or as rectification within the supplementary performance, nor for reimbursement of the customer's expenses incurred for installation and deinstallation. Otherwise applies, subject to clause 11.3, if MTG is at fault for the lack of conformity of the goods. In this case clause 12 shall apply. Upon the customer's request, MTG will name its manufacturer/pre-supplier.
- 11.9 Clause 11.8 remains applicable also if the customer is liable towards its purchaser for expenses incurred for installation and deinstallation.
- 11.10 Claims by the customer for damages or compensation for futile expenditure shall, subject to clause 11.3, only be valid as per clause 12 and are for the rest excluded.
- 11.11 Should a customer's request for remedy of lack of conformity of the goods be unjustified, MTG may require the customer to reimburse MTG for the costs incurred.
- 11.12 The place of supplementary performance is the registered office of MTG. Deviating from that, MTG can also choose the situs of the goods or the customer's registered office as place of supplementary performance.

## 12. Other Liability of MTG and the customer

- 12.1 Unless otherwise stipulated in these GTC, including the provisions below, MTG and the customer shall be liable in accordance with the provisions of the CISG for infringement of contractual obligations.
- 12.2 MTG and the customer shall be liable for damages – on whatever legal grounds – if the injured party can prove that the breach of contract is based on intent or gross negligence, whereby the liability is in any case limited to foreseeable damages. In case of ordinary negligence, the parties are liable only for damages resulting from injury to life, limb or health.
- 12.3 The respective liability for damages is limited to foreseeable damages even if the damage to be compensated is determined in accordance with Article 75 or Article 76 CISG.
- 12.4 The following circumstances are considered as unforeseeable damages or exceptional obstacles and are therefore not covered by the respective liability:
- Natural phenomena;
  - State interventions, such as Export or import bans, plant closures, blockade, closure of transport routes, boycott, embargo, effective exchange restriction, unless a party expressly bears the risk of such interference under the contract;
  - Unpredictable strikes;
  - Terror;
  - An existing profit margin of the customer on resale that significantly exceeds the market rate;

- Delay damages resulting from unusually short delivery periods of the customer to its customers;
  - Costs in connection with installation and removal, unless MTG had to anticipate the specific nature and extent due to the nature of the goods and their normal intended use;
  - acceptance of contractual penalties by the customer towards his buyer;
  - loss of production resulting from the fact that the customer has not immediately taken appropriate and reasonable measures to counteract the loss of production and to resume and maintain production in coordination with MTG;
  - Insofar as the customer has failed to notify MTG of the occurrence of unusually high damage.
- 12.5 The above exclusions and limitations to liability shall apply to the same extent to MTG's and the customer's respective managers and employees, other agents and subcontractors.
- 12.6 The above stipulations are not associated with any reversal of the burden of proof.
- 12.7 Any liability in accordance with mandatory statutory provisions remains unaffected insofar as they are applicable in the relationship between MTG and the customer.

## 13. Statute of Limitations

- 13.1 In deviation from Section 438 para. 1 no. 3 of the German Civil Code (BGB), the general limitation period for claims based on defects of quality and defects of title shall be one year from delivery.
- 13.2 If, however, the good is a building structure or an object which according with its normal purpose has been used for a building structure and has caused the defectiveness of that building structure (construction material), the limitation period shall be 5 years from delivery as provided for by the statutory regulation (Section 438 para. 1 no. 2 of the German Civil Code (BGB)). None of the above shall prejudice the special statutory regulations for real rights of third parties to return of the object purchased (Section 438 para. 1 no. 1 of the German Civil Code (BGB)) and fraud on the part of the seller (Section 438 para. 3 of the German Civil Code (BGB)).
- 13.3 The above limitation periods set down in purchasing law shall also apply to contractual and non-contractual claims for damages by the customer which are based on a defect in the goods, unless application of the regular statutory limitation period (Sections 195 and 199 of the German Civil Code (BGB)) would lead in an individual case to a shorter limitation period. In no case shall any of the above prejudice the limitation periods set down in the German Product Liability Act.

## 14. Final Provisions

- 14.1 These GTC and all legal relationships between MTG and the customer shall be governed by the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention/CISG) in the English version. Outside the validity of the UN Sales Convention, non-uniform German law applies. The prerequisites for and the effects of retention of title as set out in section 10, shall be governed by the law in force at the place where the goods are located when, in accordance with that law, the choice of German law would be impermissible or ineffective.
- 14.2 If, at the time of the procedure initiating the proceedings, the customer has his registered office in the European Union, Switzerland, Norway or Iceland, the exclusive venue for all disputes – including international disputes – arising directly or indirectly from the contractual relationship shall be a competent court at the location of MTG's registered office. However, in this case, MTG shall also be entitled to bring actions against the customer at any other general or special place of jurisdiction.
- 14.3 Insofar as clause 14.2 GTC does not apply, all disputes arising in connection with the respective delivery contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration is Dormagen. The language of the arbitral proceedings is German.
- 14.4 Amendments to the contract by individual agreements shall require no particular form to be effective. For the rest, amendments and additions to these GTC and supplementary agreements shall only be effective if made in writing. This shall also apply to any waiver or cancellation of this clause requiring written form.
- 14.5 Employees of MTG are not entitled to complement or deviate contents of the contract. This does not apply to MTG's institutions and proxy holder ("Prokurist") as well as to representatives authorised by MTG to this in writing.
- 14.6 Should any of the above provisions be or become ineffective, this shall not affect the validity of the remaining provisions. The parties shall be obliged to replace the ineffective provision with a stipulation that approximates to it in its commercial effect as closely as possible.