

General Terms and Conditions of Contract and Delivery

MTR Plus Vertriebs GmbH

- named the „supplier“ -

Jurisdiction

The following general terms and conditions form the basis of a contract, unless they are not expressly altered in writing or excluded. An alteration or suspension of any parts hereof affects only the respective conclusion of an agreement.

Conditions of purchase by the customer, which might be conflicting with our terms, and conditions will also not form part of the terms of contract, even if we do not expressly contradict them.

Offer, Extend of Delivery and Placing of Order

Offers of the supplier are subject to being sold; images in printed matters and description of the design in any form pose only services rendered and cannot be equipped with extra accessories. Technical and visible variations are permissible, if they are technically necessary or useful.

The supplier reserves its rights exclusively to the offer documentation, its rights of property and copyright /patent. The documentation may not be disclosed to others, if not expressly permitted by the supplier. Construction drawings will not be supplied.

The placed order signed by the customer is accepted and confirmed either in writing, verbally or by telephone or if the acceptance of the offer was not cancelled within 2 weeks. The cancellation deadline is deemed as being valid if the cancellation letter carries a postmark, which falls within this period.

Prices and Maturity

If not otherwise agreed, the prices are net prices from the Berlin delivery store, which do not include insurance, packaging, freight, transport to the place of delivery, unloading or possible transshipment.

Invoices will become mature for payment without deductions within 10 days commencing from the date of the invoice. On specific occasions the supplier will refer to its right to supply goods only if a prepayment has been made.

The retention of payments or setting off counterclaims is excluded unless the supplier accepts the counterclaims or a lawful title has been obtained.

Payments to the effect of unindebtedness can only be made to the supplier or a person acting as proxy for the supplier.

The supplier reserves its right to accept cheques or bills of exchange.

Cheques and bills of exchange will only be accepted for the purpose of contract. The customer will carry expenses and costs. Payment responsibilities are only recognised as being fulfilled if the payable amount has been finally accounted for by the supplier.

The supplier is allowed to charge 1 % of the value of the bill by accepting bills of exchange with net aim.

Payments will always be accounted for with the oldest mature debt and the accumulated costs for delay of payment incurred. The supplier is not responsible for any further delivery of goods resulting from any other ongoing contract with the customer, in the case of not complete payment by the customer of mature debts including the costs for delay of payment. If the customer comes into default with a payment, resulting from cash-flow problem or application of solvency proceedings, the supplier reserves its right to withdraw wholly or in part from all undergoing contracts. Furthermore, the supplier is allowed to demand a cash pre-payment of the goods despite outstanding delivery, resulting from an ongoing contract without giving grounds for withdrawal from the contract.

Time of Delivery

Times of delivery will be complied with so far as possible, but they are at all times not binding for the supplier. Circumstances beyond the suppliers control, operating problems etc. which could occur at the suppliers or his supplier, release him from the agreed times of delivery. In those cases the supplier has the right to withdraw from the contract or to undertake the delivery at a later date. Delays or undone deliveries do not entitle the customer to indemnification of any kind.

The time of delivery is complied with, if the product to be delivered is ready for shipment within the agreed deadline and if the customer is informed. Partial deliveries are permissible.

In the case of the customer initiating the delay of the delivery, the supplier has the right to store the goods to be delivered in a place of a third party to the responsibility and expense of the customer.

Status of Ownership / Reservation of Title

The delivered good are the property of the supplier until full payment has been made of all and also further incurring claims of the supplier resulting from business with the customer. Until this time the customer is obliged to store the goods with business-like care. This applies also to the fact when all invoices of the supplier are added up and accounted for and the sum thereof is accepted.

The customer is instantaneously obliged to insure the goods against theft, damages of machinery, fire and water. In the case of seizure or other acts by third parties the customer must inform the supplier immediately. All cost that incur for clearing lie with the customer.

The customer has the right to sell or let the delivered goods in an orderly business-like manner. The customer is obliged to resell the goods only to third purchasers under the reservation of title and if the goods are not fully paid. The right for reselling is invalid if the customer stops payment.

Other dispositions, especially pledging or protective conveyance by the customer are not permissible.

The customer overwrites immediately to the supplier all claims of the customer arising out of the reselling or letting of the goods to a third party. The customer may not engage into a contract in which the overwriting of the claims to the supplier will be interfered with or terminated. The customer is authorised to collect the overwritten claims to the supplier, not deferring the right of the supplier to collect the debts. The supplier will not disclose a claim transfer, as long as the customer fulfils orderly its obligation to payment and no endangering of its claims against the customer gives rise to concern.

If requested by the supplier, the customer is obliged to disclose the type and amount of the claim, as well as name and address of the debtor. Furthermore the customer must disclose to the supplier all-necessary information needed for the debt collection, also to hand out all documentation. The customer must also inform the debtor about the conveyance of claim.

Transfer of Risk

In each instance the risk is transferred to the customer commencing with the shipment of the goods, even if the shipment happens in stages, or if due to delivery costs, other arrangements have been made. Is there a delay in delivery caused by the customer, the risk will transfer to the customer from the day of written confirmation that the goods are ready for delivery. The supplier is obliged to install insurance cover for the delivery goods as aforementioned if the customer so wishes. The supplier will invoice the customer accordingly.

Return

For legal transactions only, which a consumer makes according to the German system of laws and which is subject to the German far-sales-law, the seller grants the legal right of return within two weeks without the need of any argument by the customer.

The two-week period starts at the time of the receipt of the delivery; it is valid by dispatch of the complete, unused and undamaged product to the seller (company and address in accordance with sales contract).

The sales contract therefore gets effective only after expiry of the two-week return period after delivery having been carried out definitely.

The right of return doesn't apply to articles, that the seller doesn't lead in the store and which were obtained by the seller because of an expressed customer request.

At return by the buyer, the customer gets the selling price.

Shipments sent in without payment aren't accepted by the seller and decline for debits of the buyer. Shipments have to be stamped therefore sufficiently. Shipments without payment or defects of the franking means to be not mailed duly, therefore it cannot keep the necessary period unless the seller for once accepts the return anyway.

If damaged or faulty articles are given back, then the buyer is obliged for compensation. The buyer takes the transportation risk of the return.

Notification by the Customer

Bearing in mind the obligation of the customer to exercise reproach in any way, the customer is obliged to inform the supplier about defective delivered goods within a period of 2 weeks after having discovering the defect(s). The notification must be in writing

The customer must ask the supplier to repair the damaged goods within a further period 3 weeks. After this period the supplier will be exempt from warranty responsibilities, as far as §§ 478, 479 BGB do not state otherwise. This applies also to incomplete or incorrect deliveries.

Guarantee and Rights of the Customer

The supplier warrants a guarantee for the defect free condition of the delivery goods within the frame of the law, provided however that the customers rights for forwarding, compensation delivery or exchange are restricted.

If after two attempts by the supplier to repair the goods do not result in a flawless compliance with the contract, then the customer may in force its other right according to § 437 BGB.

The guarantee is suspended if the customer or a third party without the prior knowledge or consent of the supplier undertakes repair attempts.

Damaged parts for which a replacement has been delivered become the property of the supplier.

Is the supplier liable for a claim of the customer according to § 478 BGB, may the supplier fulfil this claim by choosing either payment or concession for discounts of future deliveries to the customer in the amount of the claim for payment.

Indemnity of the Supplier

The supplier does not adhere to damage, which can be related back to reasons other than orderly use. The supplier does not compensate for damages that are due to incorrect handling, excessive use or normal wear.

Claims of the supplier

In the case of default by the customer, the supplier can demand interest on the outstanding amount per annum

4 % above the respective bank rate of the German Federal Bank, but at least 6 % unless the customer proves a lesser interest rate or the supplier can prove higher interest rate damage.

The supplier can call claims that haven fallen due instantaneously in the cases of claims out of bills of exchange, when the customer stopped its payments or debt collection proceedings into the customers property were ineffective or an application has been filed for opening insolvency or settlement proceedings into the customers assets.

The supplier can instantly claim a lump sum damage amounting 35 % of the gross-contract sum, if the contract was not fulfilled for reasons that the supplier is not responsible. (Claims for non-performance). The customer has the possibility to prove a lesser damage to the supplier.

Items of special designs

Particular conditions apply for items of special designs. The calculation results exclusively from the cost of development. Taking back especially manufactured items is impossible as well as the withdrawal of an order for especially manufactured items. The supplier is not obliged to check any copyright for the manufacture of such special design, which the customer provides such as models and other manufacturing documentation. The supplier is not liable for claims of third parties, which arise out of violation of national and international patent law or other protected rights on such documentation. In the case of a third party filing legal proceeding against the supplier, the customer will release the supplier from all thereof resulting liability to pay, especially regress claims, court fees and fees for legal advice.

Clauses of Law, Place of performance, Jurisdiction

The laws of the Federal Republic of Germany will be applicable for all claims and their compliance with arising out of the contract between the parties.

The place of performance and the exclusive jurisdiction for both contractual parties is Berlin; for all actual and future claims arising out of their business relation also for filing plaintiff procedures, action arising out of a bill of exchange and deed proceedings.

Final conditions

The efficacy of these contractual terms and conditions will not be affected if parts or some terms of this agreement become ineffective.

Any verbal agreements, assurances and changes of agreement will only become effective if the supplier gives its confirmation to the customer in writing there of.

With these conditions coming into force other conditions of sale and delivery or payment will cease to be effective.

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