

I. Material Conditions, Scope

1. All deliveries, services and offers of the seller shall be exclusively on the basis of these General Terms and Conditions. These shall form an integral part of all contracts concluded by the Seller with its contract partners (hereinafter also referred to as „Principal“ and/or „Buyer“) with respect to the deliveries and services offered by it. They shall apply for all future deliveries, services and offers made or rendered to the Principal, even where such is not separately so agreed.
2. Contrary business terms or purchasing conditions of the Principal or any third party shall not apply, even where the Seller does not expressly reject their application in the individual case. Even where the Seller refer to correspondence containing business terms of the Principal or a third party, this shall not indicate the Seller's acceptance of these terms.
3. The General Terms and Conditions shall only apply with respect to entrepreneurs in the sense of § 14(1) BGB (German Civil Code).

II. Offer and Conclusion of Contract

1. In the absence of any express indication to the contrary, all offers of the Seller shall remain subject to change and shall be non-binding. The Seller shall be able to accept orders within 14 days of their receipt.
2. The order shall be binding upon the Seller (conclusion of contract) once it has provided written confirmation of order or where it begins execution of order.
3. The legal relationship between Seller and Buyer shall be governed exclusively by the terms of the contract of sale they conclude, including these General Terms and Conditions. This contract shall render the agreement between the contract parties in full. Oral warranties given by the Seller before conclusion of this contract shall be legally non-binding and any oral agreements between the contracting parties shall be abrogated and replaced by the written contract, except in the case that such oral agreements expressly state that they shall remain binding.
4. Supplements and amendments to agreements made, including these General Terms and Conditions, must be made in writing for their validity. Written form shall include fax and text telecommunication, in particular through e-mail, provided that such declarations are confirmed by the receiving contracting party in the same text form.
5. Indications made by the Seller on the object of the delivery or service (e.g. weight, dimensions, utility values, load capacity, tolerance, technical or other service data) as well as corresponding representations of the Seller with respect to these indications (e.g. sketches, illustrations) shall be approximations only unless expressly described in writing by the Seller as binding and/or where the actual purpose of contract require exact agreement with the specific indications. They are not warranted characteristics, but descriptions or features of the delivery or service. Customary deviations and deviations resulting from legal provisions or technical improvements, as well as the replacement of certain components by others of equal quality, shall be permissible insofar as they do not impair the intended contract purpose.
6. The Seller shall retain title and/or copyright in all offers and quotes it makes as well as in all sketches, illustrations, invoices, prospectuses, catalogues, models, tools and other documentation and auxiliary materials. The Buyer shall not make these or their contents available to third parties or make them known to third parties without express approval from the Seller, nor shall it use or reproduce them, either personally or with the help of a third party. At the request of the Seller, the Buyer shall return these objects and shall destroy any copies made where these are no longer required in the ordinary course of business or where negotiations have not resulted in the conclusion of contract. The same shall apply for documents provided by the Buyer to the Seller for implementation of contract. The Seller shall be entitled to make these documents available to third parties charged with making deliveries.
7. Should the Buyer rescind the contract before delivery of the ordered article, the Seller shall be entitled to invoice the Buyer for all costs incurred up to the point of rescission. These costs shall include, inter alia, project planning costs, processing costs for the compilation and supervision of order, manufacture planning costs, costs for goods fabricated etc.. Irrespective of this, the Seller shall also be entitled to demand specific performance.

III. Prices, Right to Amend Prices, Conditions of Payment and Consequences of Default, Set Off and Right of Retention

1. The prices shall apply with respect to the service and/or delivery set out in the confirmation of order issued by the Seller. Additional or special services like trainings, issuing certificates etc. shall be invoiced separately.
2. In the absence of any express agreement for a particular currency, prices shall be understood in EUR ex works plus shipping and handling cost (freight incl. packaging) statutory value added tax and, in the case of export deliveries, all customs duties and fees as well as other public dues.
3. Insofar as agreed prices are based on the Seller's list prices and the delivery is to follow at least 3 months after conclusion of contract, the list price effective at the point of delivery shall apply (minus any agreed percentage or fixed discount).
4. Should, in the period between conclusion of contract and performance, a statutory change in sales tax enter into force, the Seller shall be entitled to invoice at the changed rate of sales tax, also with respect to permissible part deliveries.
5. With respect to all orders -- also orders on demand and successive delivery contracts -- for which, in accordance with contract or at the request of the orderer, delivery is made later than 3 months after placement of order, the Seller shall be entitled to pass on increases in material and wage costs occurring in this period to the Buyer. These increases shall be passed on to the extent that they are incurred.
6. The Seller shall not be bound to maintain the above prices in case of independent follow-on orders. Any price reductions introduced shall not apply with retrospective effect, but shall apply only prospectively as of the date of announcement of the respective reduction.
7. Invoice sums shall be payable within 10 days at a 2% discount or within 30 days without discount as of the date of invoice, at the very latest 30 days after maturity and receipt of service without deduction for postage and expenses. Decisive for date of payment shall be receipt by the Seller. Cheques shall be deemed payment upon redemption. Should the Buyer fail to make payment by the invoice maturity date, outstanding sums shall incur interest at a rate of 5% p.a. calculated as per maturity date. The right to assert a higher rate of interest and further damages in case of default, in accordance with statutory provisions, shall remain unaffected.
8. Fees and surcharges of any kind, as well as invoiced amounts for additional or special services (see III.1) are not qualifying for discount.
9. Set-off against claims of the Buyer or a right of retention with respect to payments on account of these claims shall only be permissible where these claims are undisputed or whose existence has been affirmed in a declaratory judgement.
10. The Seller shall be entitled to make deliveries/render services only against prior payment or security where, after conclusion of contract, circumstances become known which are capable of considerably reducing the creditworthiness of the Principal/Buyer and which are likely to jeopardise the payment of sums payable to the Seller by the Principal under the respective contract relationship (including other individual contracts for which the same framework agreement applies).
11. Small orders, under a net invoice value of € 100.00, shall be subject to an administration fee of € 25.00 per small order. Replacement orders shall be excluded from this rule.
12. The Seller shall be entitled to assign its existing claims against the Buyer for the deliveries made or services rendered to third parties for the purpose of finance.

IV. Delivery and Delivery Time

1. In the absence of any express agreement to the contrary, all deliveries shall be made ex works (D-57399 Kirchhundem [M5]).
2. Deadlines and dates for delivery and services stipulated by the Seller shall be approximate only unless a fixed deadline or date has been expressly promised or agreed. Where dispatch has been agreed, delivery deadlines and dates shall refer to the date of transfer to the logistics provider, freight carrier or other third party charged with transport. In case of subsequent amendment to order, the Seller shall be released from the originally agreed delivery dates.
3. Irrespective of rights arising from any default of the Buyer, the Seller shall be entitled to demand an extension of delivery/service deadlines or postponement of delivery/service dates by a period equal in length to the default by the Buyer.
4. The Seller shall not be liable in case of frustration of delivery or for delays in delivery where these are caused through force majeure or other events which were not foreseeable at the time of conclusion of contract and for which the Seller is not responsible (e.g. interruption of operations of any kind, difficulties in acquiring materials or energy, transport delays, strikes, lawful lock-outs, lack of labour, energy or raw materials, difficulties in the procurement of necessary official authorisations, official measures or failure or delay in delivery by suppliers). Insofar as such events make it considerably more difficult or even impossible for the Seller to make delivery or render services and where the impairment to performance of contract is not only temporary, the Seller shall be entitled to rescind the contract either in full or in part. A pre-requisite for rescission on these grounds is, however, that the Seller notify the Buyer of the relevant circumstances and that it reimburse any sums paid by the Buyer in relation to any outstanding services of the Seller. In case of temporary impairment to performance, the deadlines or dates for delivery or service shall be extended by a period equal in length to the duration of the impairment plus an appropriate run-up period. Should it be unreasonable to expect the Principal to take delivery or accept the service after such delays, it shall be entitled to rescind the contract by way of immediate issue of written declaration of rescission to the Seller.
5. The Seller shall only be entitled to make part deliveries where part deliveries are of value to the Principal within the scope of the contract purpose, the delivery of the remainder is assured and the Principal does not incur considerable additional expense as a result, except in the case that the Seller agree to assume these additional costs. Should the Seller be late with a delivery or service or should it become impossible to make the delivery/render the service, for whatever reason, the Seller's liability for damages shall be restricted in accordance with Point VIII. of these General Terms and Conditions.

V. Place of Performance, Dispatch, Packaging, Transfer of Risk

1. In the absence of any express agreement to the contrary, place of performance for all obligations arising under this contract relationship shall be the Seller's works in 57399 Kirchhundem/Germany.
2. The type of dispatch and packaging shall be chosen at the reasonable discretion of the Seller. Usual packaging shall be the smallest packaging unit indicated in the catalogue. On ordering different amounts, the nearest packaging unit shall be delivered.
3. Risk shall pass to the Buyer at the very latest upon the object for delivery being passed to the logistics provider, freight carrier or only third party charged with transport. The beginning of loading shall be decisive in determining when the object is passed. This shall also apply with respect to part deliveries or where the Seller has agreed to provide other services (e.g. dispatch). Where dispatch or transfer is delayed as a result of a circumstance whose cause rests with the Principal, risk shall pass to the Principal on the day the delivery object is made available for delivery and the Seller has notified this to the Buyer.
4. Storage costs after transfer of risk shall be borne by the Principal. In case of storage provided by the Seller, storage costs shall be 0.25% of the invoice value of the delivery objects to be stored per each full week. It shall remain open to the contracting parties to assert and prove higher or lower storage costs.
5. The consignment shall be insured by the Seller only on the express wish of the Buyer. Insurance shall be provided against theft, breakage, damage through transport, fire or water or other insurable risks. The cost of insurance shall be borne by the Buyer.
6. With respect to contracts with repeated successive deliveries, the structure of delivery shall be indicated to the Seller in good time. Where deliveries are not called on time, the Seller shall be entitled, after expiry of a suitable grace period indicated to the Buyer, to structure and make the deliveries itself or to withdraw from the relevant part of the contract subject to the further conditions in Point IV. 4. and to claim damages for loss of profits. The right of the Seller to assert further damages shall remain unaffected.
7. Returns not based on material defects or defects in title shall be processed in accordance with the Seller's conditions of return. These can be read at www.mennekes.de under General Terms and Conditions.

VI. Warranty, Material Defects

1. Irrespective of the duties of inspection and notification (§ 377 HGB (German Commercial Code)) which exist in respect of any bilateral trade, the Principal shall be bound to inspect the delivery for manifest defects and to issue notices with respect to such manifest defects -- this shall also apply for incomplete or incorrect deliveries. Notice of defect shall be issued within 5 working days after receipt of goods. With respect to latent defects, notice of defect shall be issued within 5 days of the defect becoming apparent. Notice of defect shall be made in writing. Failure to issue notice of defect within the stipulated period shall result in the goods being deemed to have been approved and the Principal losing any right of recourse with respect to the defect against the Seller. At the request of the Seller, the queried delivery object shall be returned to the Seller with carriage paid. In case of legitimate notice of defect, the Seller shall reimburse the cost of cheapest return transport; this shall not apply where costs are higher because the delivery object is being used at a location other than that stipulated for use.
2. In case of legitimate notice of defect, the Seller, at its own option, shall be bound and entitled, within a reasonable period, to repair the defect or make a replacement delivery (secondary performance). In case secondary performance fails, that is, it is impossible or unreasonable, the Seller refuses to make secondary performance or secondary performance is subject to unreasonable delays, the Buyer shall be entitled to rescind the contract or make an appropriate reduction to the purchase price.
3. Where the defect is the fault of the Seller, the Buyer shall be entitled to assert a claim for damages under the conditions set down in VIII.
4. In case of defects in components made by other manufacturers which the Seller cannot remove, either for licence or physical reasons, the Seller shall, at its option, either assert its warranty rights against the manufacturer and supplier on the Principal's account, or shall assign these rights to the Principal. Warranty claims against the Seller with respect to such defects shall exist in accordance with these General Terms and Conditions only where legal proceedings against the manufacturer and supplier were unsuccessful or where such legal proceedings have no prospect of success, for instance due to the defendant's insolvency. For the duration of the legal dispute, the limitation period of the respective warranty shall be stayed.
5. The warranty shall lapse where the Principal tampers with the delivery object without the Seller's consent, or where a third party tampers with the delivery object at the Principal's behest, and the removal of defect is made impossible or unreasonable to the Seller as a result. The Principal shall bear all additional costs of the removal of defect as may arise as a result of the tampering.
6. Claims for defects shall not arise where the error occurs through the non-adherence to operating, storage, maintenance or installation instructions, unsuitable or improper use, wrong or negligent use by the Principal or naturally occurring wear and tear. The same shall apply where the Seller's products are improperly mounted, negligently handled or subjected to undue strain, or where disruption arises as a result of unsuitable operating means, substitute materials or mechanical, chemical, electro-chemical or electrical effects.

7. Any individual agreement with the Principal to supply used objects shall be to the exclusion of all warranty for material defects except in the case that such defects are maliciously suppressed by the Seller.
8. Legitimate defects on only part of the delivery shall not justify a complaint with respect to the entire delivery.

VII. Protected Rights

1. In accordance with Point VII., the Seller shall warrant that the object of delivery shall be free of third party industrial property rights or copyright in the country (state) or the agreed place of delivery. In the absence of any express written agreement to the contrary, the place of delivery shall be Kirchhundem/Germany. Each contracting partner shall notify the other immediately and in writing in case any claims for infringement of such rights are asserted. The rule in sentence 1 shall form no warranty, but shall represent an agreement as to quality pursuant to applicable warranty regulations.
2. In the case that the object of delivery infringe third party property rights or copyright, the Seller shall, at its own option, amend or exchange the object, such that it no longer infringe such rights yet still fulfil the contractually agreed functions, or shall furnish the Principal with the appropriate right of use by way of licence. Should the Seller not be able to resolve the problem within a reasonable period of time, the Principal shall be entitled to rescind the contract or reduce the purchase price accordingly. Any damage claims arising to the Principal against the Seller shall be subject to the restrictions of Point VIII of these General Terms and Conditions.
3. In case of legal infringements resulting from products delivered by the Seller but manufactured by other manufacturers, the Seller shall, at its own option, assert claims against the manufacturer or supplier on behalf of the Principal or shall assign these claims to the Principal. In these cases, claims against the Seller shall only exist where legal proceedings against the manufacturer or suppliers were unsuccessful or have no prospect of success, for instance because of the manufacturer's/supplier's insolvency.
4. Where deliveries are made in accordance with specific sketches or other indications made by the Principal and where these deliveries infringe third party rights, the Principal shall bear the responsibility for correctness and for ensuring that third party rights are not infringed. The Principal shall indemnify the Seller against all claims brought for breach of third party property rights. In the case of damage claims, the indemnity shall only be where the Buyer fail to prove that it is not responsible for the deficiency in its indications or the infringement of third party rights. If, in such a case, the Seller is prohibited from manufacturing or delivering the respective goods by a third party asserting its own property rights, the Seller shall be entitled to discontinue works and rescind the contract. Before doing so, the Seller must, however, issue notice to the Buyer setting a grace period during which the Buyer is required to have the prohibition removed by the third party. The assertion of a corresponding claim for damages by the Seller against the Buyer on the basis of other statutory provisions shall remain unaffected.

VIII. Other Liability (Limitation and Exclusion)

1. Liability of the Seller for damages, for whatever legal reason, in particular for frustration, delay, defective or wrong delivery, breach of contract, breach of duty of care in contractual negotiations and in tort, where fault is established, shall be limited by the following rules.
2. The Seller shall not be liable in case of negligence simpliciter of its corporate bodies, legal representatives, employees or other vicarious agents unless this involves a breach of essential contract duties (main duties under contract / cardinal duties). Essential contract duties are those duties which must be fulfilled in order that the contract be performed at all and which may regularly be relied upon by the contracting party.
3. Insofar as the Seller is liable for damages under the above sentence, liability shall be limited to damage which the Seller foresaw on conclusion of contract as a possible consequence of breach of contract or which it would have foreseen on exercise of due caution. Indirect or consequential damage resulting from defects in the object of delivery shall only be compensated where such damage can be typically expected on proper use of the object of delivery.
4. In case of liability for negligence simpliciter, the Seller's duty to pay compensation for property damage and pecuniary damage resulting therefrom shall be limited to damage which is usually and typically insurable by the Seller through liability / product liability insurance on reasonable terms, even where the matter relates to a breach of essential contract duties.
5. The above exclusions and limitations of liability shall apply to the same extent to the benefit of corporate bodies, legal representatives, employees and other vicarious agents of the Seller.
6. Insofar as the Seller provide technical information or acts in an advisory capacity and this information or advice does not form part of the services agreed and owed under contract, this information or advice shall be provided free of charge and the Seller shall not be liable for the information or advice.
7. The limitations on liability contained in this Point VIII shall not apply to liability of the Seller for deliberate acts, for warranted characteristics, for injury to life, body or health or to liability under the German Product Liability Act.

IX. Limitation Periods

1. Claims arising under Point VI shall be subject to a limitation period of one year beginning on delivery to the Buyer.
2. This shall not apply to the following claims which shall be subject to statutory limitation periods.
 - Claims involving deliberate, malicious or grossly negligent breach of duty by the Seller, its legal representatives or vicarious agents;
 - Claims for damage resulting from injury to life, body or health due to a negligent breach of the Seller or from a deliberate or negligent breach of its legal representatives or vicarious agents;
 - Claims under a warranty for a certain characteristic;
 - Insofar as the supplier is so obliged, claims for reimbursement of costs which the Principal has to bear as against a subcontractor in the supply chain on account of a sale of new goods for the purpose of secondary performance (§ 478(2) BGB);
 - In case goods delivered by the Seller have been used in accordance with their instructions for use in a construction project and they have caused a defect in that project and Part B of the German Construction Contract Procedures (Verdingungsordnung für Bauleistungen) do not apply to the contract relationship.
3. For all these cases, limitation periods shall be in accordance with statutory provisions. The statutory rules on staying of the limitation periods and new begin of deadlines shall remain unaffected. In case of damage claims under the Product Liability Act, statutory limitation periods shall apply, also in case of deliberate or grossly negligent breach.
4. Where the Seller is liable under VIII for damage for which liability insurance at reasonable conditions is usually and typically concluded, the limitation period shall also be one year.

X. Retention of Title

1. The Seller shall retain title to the object of delivery (conditional goods) until all claims against the Principal arising under the business relationship, including any future claims from concurrent or later contracts, are settled. In case of open invoice, the retention of title and all rights shall form security for the entire outstanding sum plus interest and costs. In case of pledge or other third party acts, the Principal shall notify the Seller immediately.

2. The Principal shall be entitled to process and sell on the object of delivery in the course of ordinary business. This authority shall end where the Principal fall into arrears, on suspension of payments or where insolvency proceedings are opened against its assets. It shall be bound to sell on the goods only under retention of title and to ensure that claims from the resale pass to the Seller in accordance with 5. and 6. The use of the conditional goods for the fulfilment of contracts for work and contracts for work and materials shall be deemed a resale for this purpose. Other dispositions with respect to the conditional goods, in particular pledge or transfer by way of security, shall be prohibited.

Assignment of claims from transfer of the conditional goods shall be prohibited unless the assignment is by way of a factoring, duly notified to the Seller, and for which the proceeds exceed the value of the secured claim. Upon crediting of the proceeds of the factoring arrangement, the Seller's claim shall immediately become due.

3. Processing of the conditional goods shall not result in the Buyer acquiring ownership of the resulting object pursuant to § 950 BGB. Processing or restructuring of the goods shall not obligate the Seller. The processed or restructured goods shall continue to be conditional goods.

4. On processing, incorporation or mixing of conditional goods with other goods, the Seller shall become joint owner of the resulting product. The Seller's share shall stand in proportion to the invoice value of the conditional goods to the invoice value of the other goods used. Where the Seller's ownership rights are extinguished by the incorporation, mixing or processing, the Principal shall assign it appropriate ownership rights or liens on the new product in the ratio of the invoice value of the conditional goods to other goods used. Storage of the product shall be free of charge for the Seller. Joint ownership rights in goods shall be sufficient for these goods to be conditional goods.

5. Claims of the Principal arising from the resale of conditional goods shall hereby be assigned to the Seller. They shall serve as security to the same extent as retention of title in the conditional goods.

6. Where the conditional goods are resold by the Principal together with other goods, the Seller shall be assigned a claim from the resale in the ratio of the invoice value of the conditional goods to the invoice value of the other goods. In case of resale of goods in which the Seller has joint ownership rights pursuant to 4., a corresponding share of the claims shall be assigned.

7. At the request of the Seller, the Principal shall be bound to provide it with an exact listing of its claims with names and address of buyers, to notify the buyers of the assignments and to supply the Seller with all information necessary for assertion of its assigned claims. As soon as it fall into arrears with payment or its financial situation deteriorate, the Principal shall authorise the Seller to notify the buyers of the assignment and to recover on its claims itself. The Seller shall be entitled to demand an assessment of its assigned claims carried out by an appointed party using the Principal's accounts. The Principal shall furnish the Seller with a listing of all goods for which the Seller still holds title (conditional goods).

8. Should existing securities exceed the value of secured claims by more than 10%, the Seller shall be bound, at the request of the Principal, to release securities at its option, taking into account the interests of the Principal. In case of retention of title, the value of the securities shall be determined with reference to the invoice value of the goods as bought by the Principal from the Seller. In case of extended retention of title, the invoice value for the resale of the goods shall be decisive.

9. Since the Seller retains title to the goods, the Seller can demand return of the goods in case of rescission of contract. The Seller shall be entitled to declare rescission of contract, irrespective of the further conditions set down in § 323 BGB and in particular without the requirement of imposition of a grace period for payment, immediately upon the Principal's default. The same shall apply where the Principal suspend its payment or where insolvency proceedings are opened against its assets. All costs arising as a result of repossession of the object of delivery shall be borne by the Principal. The Seller shall be entitled to dispose of the property it has repossessed as it sees fit.

XI. Authority to Process Data

The Seller shall be entitled to process all data in connection with the business relationship with the Buyer within the scope of applicable statutory provisions.

XII. Concluding Provisions

1. Place of jurisdiction for any and all dispute arising in connection with the business relationship between the Seller and the Principal shall be, at the option of the Seller, Kirchhundem or the place of business of the Buyer. For claims against the Seller, exclusive place of jurisdiction shall be 57399 Kirchhundem. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this rule.

2. The relationship between the Seller and the Buyer shall be governed by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods from 11.04.1980 (CISG) shall be excluded.

3. Insofar as the contract or these General Terms and Conditions contain lacunae, the parties shall agree the legally effective provision which they would have agreed in light of the economic purpose of contract and the purpose of these General Terms and Conditions had they recognised the lacunae at the time of conclusion of contract or these General Terms and Conditions.

Note pursuant to § 36 of the Consumer Discrimination Act (VSBG)

The seller / contractor is neither obliged nor willing to participate in dispute settlement proceedings in front of a consumer arbitration board as defined by § 36 VSBG.

Printing errors, amendments, errors excepted.

Status of March 2017