

General Terms and Conditions of m-u-t GmbH

I. General Provisions

1. These General Terms and Conditions are valid solely towards entrepreneurs. The contractual partner (hereinafter: "Purchaser") confirms with his order, that he is entrepreneur and does not purchase the goods for private use. An entrepreneur is a natural or a legal person or an association with legal capacity that, at the time a legal transaction is concluded, exercises its commercial or independent professional activity.
2. The entire business relationship, including future relationship, between the m-u-t GmbH (hereinafter "Supplier") and the Purchaser shall be governed solely by these General Terms and Conditions. The General Terms and Conditions of the Purchaser shall only apply if the Supplier has expressly agreed to them in writing. The Supplier may modify his General Terms and Conditions with effect for the entire future business relationship after having informed the Purchaser in writing. The modification will be considered approved, if the Purchaser does not send his appeal against the modification in written form within six weeks after the announcement of the modification. The Supplier will inform the Purchaser about this consequence particularly, when announcing the modification.
3. Should one of the provisions in these General Terms and Conditions be or become invalid, the validity of the remaining provisions shall not be affected thereby. The statutory regulation shall apply instead. In no case shall the provision of these General Terms and Conditions be replaced by the Purchaser's terms and conditions. The same applies in case of a gap in these General Terms and Conditions.
4. These General Terms and Conditions also apply to any framework agreement and to all single orders between the Supplier and the Purchaser.
5. The Supplier reserves the unrestricted property and copyright exploitation rights relating to cost estimates, drawings and other documents (hereinafter "Documents"). The Documents may only be disclosed to third parties with the prior consent of the Supplier and must be immediately returned to the Supplier at his request if the contract is not awarded. Sentences 1 and 2 apply correspondingly to the documents of the Purchaser; however, these may be made accessible to those third parties to whom the Supplier has permissibly entrusted the deliveries.
6. The Purchaser has the non-exclusive right to use standard software with the agreed performance parameters according to a separate software license agreement in unchanged form on the agreed equipment.

II. Conclusion of Contract, Written Form

1. Offers made by the Supplier are non binding before conclusion of the contract.
2. Orders of the Purchaser are binding for the Purchaser. After receiving the order, the Supplier will transmit a written order confirmation to the Purchaser.
3. Concerning the content of orders and agreements only the written confirmation sent by the Supplier is binding, as long as the Purchaser has not appealed the confirmation in written form without delay. This applies especially for verbal agreements and orders via phone. In any case the appeal is not without delay, if the Supplier does not received the appeal within seven days after the Purchaser has received the confirmation.
4. To become effective, modifications and amendments of the contract, excluding a modification in terms of clause 1.2, sentences 3 and 4, have to be confirmed by the Supplier in writing. This applies equally for deviations from the contractual written form requirement.
5. Terminations, settings of deadlines, declarations of rescission, demands for reducing the purchase price or for compensations are only valid when made in writing.

III. Severability

Should one or more of the provisions of the contract concluded between Supplier and Purchaser or these General Terms and Conditions be or become invalid, due to reasons not based on statutory provisions, the validity of the remaining provisions shall not be affected thereby.

The invalid provision shall be replaced ex post by the valid provision, which comes closest to the commercial purpose intended by the Parties when concluding the contract. The same applies in case of a contractual gap.

IV. Pricing, Payment Terms and Delay

1. Prices are ex works, excluding packing plus the sales tax that is applicable in each case. Only the price stated in the order confirmation is binding.
2. Additionally the Supplier will charge the Purchaser the cost price of the packing.
3. The Parties may agree in writing, that the Supplier is responsible for installation and assembly. If the Supplier has assumed responsibility for assembly or installation and, unless agreed otherwise in writing, the Purchaser shall pay the agreed remuneration and any costs for installation and assembly, travel costs, the costs of transporting hand tools and personal luggage as well as accommodation allowances.
4. If not agreed otherwise in writing, payments must be made immediately without any deductions and free of transaction charges to the Supplier's account.
5. An offset of the Purchaser with any counterclaim is impossible, unless the Purchaser's claim is undisputed or has been established as legally effective. This applies as well for exercising rights of retention. As an additional condition, the right of retention is only valid, if the underlying claims are related directly to the contract which grants the claims to the Supplier. The provision in this clause IV.5. also applies for claiming defects.
6. The purchaser is delayed, when not paying after receiving the demand notice of the Supplier, which will be send after the claim of payment is due. Regardless of that, the Purchaser is delayed when not performing until a certain calendar date or a time of payment, stated in the contract. Regardless of a demand notice the Purchaser is delayed latest 30 days after maturity and receiving an invoice or an equal receivables list.
7. When the Purchaser is delayed, the Supplier may request the Purchaser, reserving further claims, to pay interest on the amount outstanding of an amount of 10 percentage points over the basic rate of interest, however at least EUR 25.00 per month commenced, as well as 5€ for every demand notice. The Purchaser may proof that the actual costs of the Supplier for every demand notice were lower than 5€. If the Purchaser is a merchant and the payment is due, interests of 8 percentage points over the German basic rate of interests has to be paid.

V. Retention of Title

1. The supplied products (reserved goods) remain property of the Supplier until full payment of any of the Supplier's claims related to the business relationship with the Purchaser, existing at the time of the conclusion of the contract, is done. If the purchaser is delayed with any payments or breaches the contract, the Supplier may request the Purchaser to return the reserved goods. A declaration of rescission is not necessary. This also applies for the worsening of the Purchaser's financial situation. The request for returning the reserved goods and taking the reserved goods back does not mean the rescission of the contract.
2. Due to the claims arising from the order, the Supplier has a contractual right of lien concerning those objects being in the Supplier's possession because of the order. As far as being related to the subject of the order, the contractual right can be also enforced, when the claim comes from an earlier commercial relationship or from a different performance. For other claims arising from the commercial relationship the contractual right of lien does only exist, as far as the claims are undisputed or a final and absolute title exists and the object is owned by the Purchaser.
3. Any handling or processing in accordance with Sec. 950 German Civil Code of the reserved goods is carried out free of charge for the Supplier. Accordingly from a legal perspective the Supplier will be considered to be the manufacturer of the new good in accordance with Sec. 950 German Civil Code.

4. Pledges or transfer of ownership to third parties by way of security of the reserved goods and the assignment or pledging of expectancy rights are excluded. In case of distraint or confiscation of the reserved goods including the execution of landlords' right of distress and other disturbances of the Supplier's security rights, the Supplier has to be notified immediately. In case of the Supplier's intervention, the costs are at the expenses of the Purchaser, if they cannot be acquired by the third party.
5. In case the Purchaser acquires the reserved goods for the purpose of reselling he is entitled to sell the goods in the ordinary course of his business. In case the Purchaser acquires the reserved goods for the purpose of connecting with other goods or processing and the subsequent reselling he is entitled to sell the manufactured goods in the course of his ordinary business. In case the reserved goods are not destined for reselling respectively processing with subsequent reselling a reselling is not permitted without the prior written consent of the Supplier. A reselling is also prohibited if the payment claim resulting from the reselling is captured by former acts of disposal by the Purchaser in favor of third parties, e.g. by way of global assignment.
6. The payment claims resulting from a reselling of the reserved goods are now assigned with effect to the time the payment claims arise in full amount and with all ancillary and security rights to the Supplier. The Supplier herewith accepts the assignment. The third party debtors have to be informed about the assignment by the Purchaser without delay. On demand, the Purchaser has to hand over a certificate of assignment to the Supplier. The Purchaser may – provided that he fulfills his payment obligations towards the Supplier – collect the payment claims resulting from the reselling on his own account and the ordinary course of his business. Any assignment of a payment claim resulting from reselling is excluded.
7. The Purchaser's right to process and to resell the reserved goods as well as the right to collect payment claims lapses upon delay of payment by the Purchaser for more than one month, suspended payment, seizure of reserved goods, the opening of insolvency proceedings or any out of court or court proceedings regarding the Purchaser's assets.
8. The Purchaser must treat the reserved goods with care and if necessary, service them. The Purchaser is obliged, at his own expense, to adequately insure the reserved goods for their original value and to the usual extent, in particular however, against loss or damages caused by fire, storm, water and theft and to provide evidence of such insurance protection to the Supplier upon the Supplier's request. The Purchaser herewith assigns to the Supplier his claims against the insurer and/or third parties he has in connection with the reserved goods. The assignment is limited to the value of the reserved goods. The Supplier herewith accepts the assignment. Paying the complete purchase price for the delivered goods is the condition subsequent for the assignments in accordance with this clause V.8. The Purchaser has to inform the insurance about the assignment of the claims. Accordingly the other conditions agreed on in the scope of the retention of title are valid.
9. If and when the secured claims of the Supplier are more than momentarily secured by reserved goods and/or assignment by more than 110 % the Supplier shall release security rights up to the aforementioned limit upon the Purchaser's request. The Supplier is entitled to decide which security rights shall be released. The Purchaser has to inform the Supplier in the context with this clause V.9 about all necessary information without delay.
10. As far as the retention of title is not effective due to the law of the country where the delivered reserved goods are located, the Purchaser is obliged to provide another security of equal value to the Supplier. If the Purchaser does not meet this obligation, the Supplier may claim all claims of payment against the Purchaser – independent from the terms of payment – to be due

VI. Delivery

1. Deadlines for delivery are approximate-deadlines. Compliance with the agreed deadlines for the deliveries presupposes, moreover, the timely receipt of all the documents to be delivered by the Purchaser, the requisite permits and approvals, particularly of plans, as well as compliance with the agreed terms of payment and other obligations of the Purchaser. If these conditions are not fulfilled by the Purchaser in due time, the deadlines shall be extended appropriately. Deadlines for delivery are met when the notice of shipping confirmation is given.
2. Partial deliveries are acceptable as long as they meet the for the Purchaser still acceptable minimum.
3. The Purchaser has to check and confirm the delivery note. The Supplier shall be informed about any objections without delay in writing. Otherwise the delivered quantity is considered as acknowledged.
4. Any delays in delivery caused by malfunctions the Supplier is not responsible for, official measures or force majeure will extend the deadline of delivery to an appropriate period. National or international sanctions, employment disputes including strikes and lawful lookouts in the business of the Supplier or at the Suppliers of the Suppliers are also considered as force majeure. In case of delayed delivery the Purchaser may rescind from the contract after setting an appropriate grace period for delivery, if the Supplier does not perform within the grace period. Any further claims for delayed delivery, such as damages, are excluded in accordance with the provisions in clause XII. (**Liability**).
5. If dispatch or delivery is delayed at the Purchaser's request and after written confirmation by the Supplier by more than one month after notification of readiness for dispatch, the storage will be at the Purchaser's risk and expense.
6. The Supplier indicates, that concerning the delivery of his products, the Supplier is depended on his Suppliers. If the Supplier made a congruent cover transaction, but still his Supplier does not deliver at all or does not deliver on time, the goods which the Supplier needs to fulfill his supply obligations arising from the contract with the Purchaser and if the Supplier is not responsible for the incorrect and delayed self-supply, the Supplier has the right of rescission from the contract with the Purchaser. According to the provisions in clause XII (**Liability**) the Supplier is not liable for potential damages. The Supplier has to inform the Purchaser about the incorrect or delayed self-supply, as soon as the Supplier takes notice.

VII. Transfer of Risks

1. Delivery shall take place ex works. Even if the delivery is carriage paid, the risk shall be transferred to the Purchaser as follows:
 - a) If the Supplier arranges the shipment to the Purchaser, the delivery is arranged in the Purchaser's name and at his risk and expense. This also applies, if the Supplier declares in a certain case, that he will pay for the shipment and / or will insure the shipment. (comp. clause VII. 2.).
 - b) If the shipment including assembly and installation by the Supplier was agreed on in writing, the risks are transferred on the day of the acquisition in the Purchaser's businesses or, if expressly agreed in writing, after a proper test run.
2. Upon the Purchaser's request, the supplier arranges an insurance for the shipment at the Purchaser's risk and expense. Concerning the choice of the shipment insurance the Supplier is only liable for the usual prudence one would exercise in one's own matters.
3. Goods for delivery that were announced being ready for shipment shall be retrieved immediately at the scheduled date of delivery. If the shipment is delayed due to reasons, the Purchaser is responsible for, the Purchaser is delayed from the date on when getting notice of the goods being ready for shipment. Sec. 294 German Civil Code is waived. Thereby the risk is transferred to the Purchaser. In this case the Supplier shall store the goods at the Purchaser's risk and expense. The Provisions in clause VI.5. remain unaffected.

4. Obvious losses and damages during the shipment shall be noted by the Purchaser on the cargo receipt with a certain reservation. Additionally, the deliverer needs to be informed in writing without delay. The Purchaser is responsible to take the necessary steps without delay in order to keep the rights of the Purchaser. The Supplier has to be informed about any losses or damages immediately. The limitation period for giving notice to the Supplier is seven days.
5. Losses and damages caused by shipment shall not give the Purchaser the right to not pay the full purchase prices.
6. The Purchaser assigns in advance all claims existing because of loss or damage from the shipment against third parties to the Supplier at an amount of due claims, the Supplier has against the Purchaser. This does also apply to claims arising from a potential shipment insurance. The Supplier accepts the assignment. The assignment and potential performances of the shipment insurance according to clause VII.2. are made only for processing. The assignment according to this clause VII.6. is under subsequent condition of full payment of the purchase price for the delivered goods by the Purchaser.

VIII. Installation and Assembly

Unless not otherwise agreed in writing, the following provisions apply to Installation and Assembly:

1. The Purchaser shall make the following available at his own expense and on time:
 - a) All earthworks, construction works and other ancillary works, including the requisite skilled and unskilled labor, construction materials and tools,
 - b) the implements and materials such as scaffolding, lifting equipment and other devices, fuels and lubricants required for assembly and commissioning,
 - c) energy and water at the point of use, including connections, heating and lighting,
 - d) at the site of assembly sufficiently large, suitable, dry and lockable rooms for the storage of machine parts, equipment, materials, tools etc. and appropriate workrooms and recreation rooms, including appropriate sanitary facilities for the assembly personnel; furthermore, the Purchaser has to take the necessary measures to protect the possessions of the Supplier and the assembly staff at the construction site,
 - e) protective clothing and protective devices required due to special circumstances at the assembly site.
2. Before the assembly work starts, the Purchaser shall provide the information required regarding the location of concealed electric, gas and water lines or of similar installations as well as the necessary structural data.
3. Before installation or assembly work starts, the materials and equipment required for the commencement of the work must be available at the installation or assembly site and all preliminary work prior to installation has to be progressed so far that installation or assembly can be started as agreed and carried out without interruption. Access roads and the installation or assembly site must be leveled and cleared.
4. If there is a delay in installation, assembly or commissioning on account of circumstances for which the Supplier is not responsible, the Purchaser has to bear the costs for the waiting time and any additional travels of the Supplier or the assembly personnel to an appropriate extent.
5. The Purchaser shall attest to the Supplier at weekly intervals the hours worked by the assembly personnel as well as the completion of installation, assembly or commissioning without delay in writing.
6. If, after completion, the Supplier demands acceptance of the delivery, the Purchaser must comply therewith within seven days of ordering. If not, the work shall be considered as accepted. Acceptance is also considered to be given if the deliveries have been taken into use - possibly after completion of a test phase on which the Parties agreed in writing.
7. For the liability of the Supplier during assembly and installation, clause XII (**Liability**) applies accordingly.

IX. Quality and Warranty

1. Measures, descriptions of performance and other data about the condition of the delivered goods serve for specification purposes only. Those do not include a guarantee regarding qualities which are subject of a warranty. In so far as the materials to be used are specified in the contract, this merely guarantees conformity with the specification and not the suitability of the material for the contractual purpose. The Supplier is only obliged to notify the Purchaser in the event of obvious unsuitability of materials.
2. The Purchaser is at his own expense obliged to examine the goods delivered properly and without delay immediately upon delivery and to inform the Supplier immediately in writing of any defects, wrong deliveries or short falls in quantity. For this notification applies a limitation period of seven days after receipt of the delivery. Hidden defects must be reported to the Supplier in writing immediately after discovery. If the Supplier breaches his obligations in accordance with this clause IX.2. he loses his warranty claims concerning the respective defect.
3. Any quality deficiency of a part delivery does not give a right to return the remaining quantity unless the Purchaser can prove that the receipt of the remaining quantity is unacceptable taking into account the existing circumstances.
4. Claims based on defects are excluded in the event of minor deviations from the agreed characteristics or utility. Apart from that, the Purchaser has the right to demand rectification of defects or replacement, depending on the Supplier's choice. The Supplier is entitled to make a reasonable number of improvement attempts or replacements, but at least three. If the rectifications of the defect or the replacements fail, the Purchaser shall - notwithstanding further claims in accordance with clause XII. (**Liability**) - be entitled to revoke the contract or to claim a price reduction at his own choice. This right is limited to the respective delivery as far as such a limitation is not unacceptable for the Purchaser due to the nature of the matter.
5. Claims based on defects become time-barred within one year after delivery of the goods. This shall not apply if the law prescribes longer periods in accordance with Sec. 438 par. 1 No. 2 German Civil Code (buildings and material for buildings), Sec. 479 par. 1 German Civil Code (regress claims) and Sec. 634 a par. 1 No. 2 (defect in construction) or in case longer periods apply mandatory according to the German Act on Product Liability, in cases of a willful or grossly negligent breach of duty by the Supplier, if a defect is fraudulently concealed and in cases of injury of life, body or health. The legal regulations concerning expiry suspension, suspension and restart of the limitation period remain unaffected. If the order confirmation of the Supplier states a longer warranty period, these claims expire after the stated period. Claims based on defects for provided rectification or replacement shall become time barred three months after completion of the rectification or replacement but not before the end of the original period. Measures to remedy defects do not constitute an acknowledgement of a defect. They always take place on a goodwill basis and without precedent of a legal or factual situation.

X. Industrial Property Rights and Copyrights

1. Provided that a third party asserts a justified claim against the Purchaser on account of an infringement of an industrial property right or copyright (hereinafter: "Property Rights") caused by goods delivered by the Supplier and used as specified in the contract, the Supplier is liable to the Purchaser as follows:
 - a) At his choice and his expenses the Supplier will acquire either a license to use the product, modify the product so that the property right is not infringed, or exchange the product. If this would lead to disproportionate costs for the Supplier, he is going to take back the product and refund the purchase price.
 - b) The above-mentioned obligations of the Supplier shall only apply if the Purchaser notifies the Supplier of any claim asserted by the third party immediately, meaning

within seven days, in writing, does not acknowledge an infringement towards the third party and leaves any protective measures and settlement negotiations to the discretion of the Supplier. If the Purchaser stops using the product for reasons of the mitigation of damage or for other important reasons, he is obliged to point out to the third party that the suspension of use does not mean the acknowledgment of an infringement of an industrial property.

2. Claims of the Purchaser shall be excluded if he himself is responsible for the infringement of the industrial property right.
3. Claims of the Purchaser shall also be excluded if the breach of the industrial property right is caused by special instructions of the Purchaser, by a use not foreseeable by the Supplier, or by the fact that the product has been modified by the Purchaser or used together with products not provided by the Supplier.
4. Further Claims against the Supplier are excluded according to clause XII. (**Liability**).

XI. Obligation of Performance, Impossibility and Non-Performance

1. The Supplier's obligation of performance and the time of performance are subject to the reservation of regular, complete and on time self-supply.
2. If it is impossible for the Supplier to perform the whole performance before the transfer of risk, due to reasons the Supplier is not responsible for, the Purchaser has a right of rescission.

In case of partial impossibility or partial incapacity the above mentioned rule only applies for the specific part. The Purchaser has a right of rescission from the whole contract, if he can prove that he has a legitimate interest in the rejection of partial performance.

Additional claims of the Purchaser, especially claims for damages, are excluded in accordance with the provisions in clause XII. (**Liability**).

3. If the performance becomes impossible while the Purchaser is in delay of acceptance or if he is responsible for the impossibility, he is still obliged to perform.
4. After the Supplier's rescission from the contract or rather after setting a deadline with threat of refusal in accordance with Sec. 323 German Civil Code the Supplier may use revoked goods in another way. Within the scope of claim for damages the Supplier will take revoked goods into consideration.
5. The Purchaser has no right of rescission if the Supplier is not responsible for breaches of obligations which do not consist in defective, newly produced goods.

XII. Liability

1. The liability of the Supplier occurring from contract or law is excluded, unless otherwise agreed below.
2. The exclusion of the Supplier's liability in accordance with clause XII. 1. does not apply
 - for damage the Supplier has caused deliberately or grossly negligent;
 - if and to the extent that the Supplier is liable concerning to the mandatory regulations of the German Act for Product Liability;
 - if and to the extent that the Supplier has given a warranty as to quality or durability and damage from the breach of the warranty occurred;
 - in cases of culpable injury of life, body and health.
3. In cases of minor and ordinary negligence of the Supplier his liability – unless he is not already liable in accordance with clause XII.2. - is limited to infringements of essential contractual obligations. In those cases the liability of the Supplier is limited to the typical damage foreseeable for the Supplier upon conclusion of the contract or upon committing the infringement. Essential contractual obligations are all obligations which have to be performed because otherwise the proper execution of the contract is not possible and on which the Purchaser relies upon and indeed is entitled to rely upon.
The Supplier is not liable for damages exclusively located at the Purchaser's risk area. Further, if and to the extent the damage is caused by the Purchaser or one of his agents not following the instructions for use, for example

stored the delivered goods in a wrong way, used improperly or mixed with products of other Suppliers, changed the product, changed parts of the product or used material which was not in accordance with the original specifications.

4. Claims for damage of the Purchaser due to minor or ordinary negligence in accordance with the above stated clauses XII.2. and XII.3. are excluded in any case, if not claimed in court within three months after rejection of the claims with a corresponding notice by the Supplier or by his insurance company.
5. All claims for damages caused by negligence in accordance with clause XII.2. and XII.3. expire corresponding to the provision in clause IX.6. Deviating hereof, the beginning of the limitation period for claims, which are not claims for defects, is determined by the statutory regulations.
6. The above mentioned exclusions and limitations of liability apply as well for the liability of the Supplier, his institutions, employees, agents as well as the personal liability of institutions, employees and agents of the Supplier.

XIII. Compliance with German Provisions

The products comply with the legal provisions in Germany. If the Purchaser wants to sell or use the products in other countries than in Germany, the Purchaser shall make sure, that the products comply with the law in the respective foreign country.

XIV. Prohibition of Assignment

The assignment of the Purchaser's claims against the Supplier shall only be assigned to third parties after the written consent of the Supplier.

XV. Place of Performance, Place of Jurisdiction, Applicable Law

1. Place of performance and payment is Wedel, Germany.
2. Litigations shall only take place in front of ordinary courts. If Purchasers are merchants, legal entities under public law or special funds under public law, the place of business of the Supplier shall be an additional place of jurisdiction. Lawsuits against the Supplier can only be filed in the judicial district where the Supplier's place of business is located.
3. German law is exclusively applicable excluding the CISG.

XVI. Confidentiality

1. The Purchaser is obliged to keep information about the commercial and technical know-how of the Supplier, he got to know during the commercial relationship, strictly confidential and shall use it only for the contractual purposes. This obligation is valid for the duration of the commercial relationship. Additionally, it is valid for another three years after termination of the commercial relationship. General public knowledge, which became known without a breach of this obligation of confidentiality, is not included in this provision.
2. In every case of a culpable breach of the obligation in accordance with clause XVI.1. by the Purchaser, the Purchaser has to pay a contractual penalty set by the Supplier with reasonable discretion. The Purchaser may verify the reasons and the amount of the contractual penalty by judicial decision. The enforcement of further claims for damages is not affected.

XVII. Data Protection

The Supplier may edit and safe data received about the Purchaser within the commercial relationship in accordance with the German Act of Data Protection and instruct a third party to do so, even if the Supplier received the data from a third party.

Stand: February 2017