

## General Terms and Conditions

status 01/01/2024

### § 1 Scope, form

- (1) These General Terms and Conditions (GTC) apply to all of our business relationships with our customers ("Buyers"). The GTC apply only if the Buyer is a business (Sec. 14 BGB [German Civil Code]), a legal entity of public law or public-law investment fund.
- (2) The GTC apply in particular to contracts on the sale and/or delivery of movable items ("Products"), regardless of whether we manufacture the Products ourselves or procure them from suppliers (Sec. 433, Sec. 650 BGB). Unless agreed otherwise, the GTC shall apply as a master agreement in the version valid at the time of the Buyer's order or in the version most recently notified to it in text form and it shall also be valid for future contracts of the same kind, without requiring any reference to be made to them again by us in each individual case.
- (3) Our GTC apply exclusively. Deviating, contrary or supplementing general terms and conditions of the Buyer shall only become part of the contract if and insofar as we have expressly agreed to their applicability. This requirement of agreement shall apply in all cases, for example, also if we perform the delivery to the Buyer unconditionally in awareness of the Buyer's GTC.
- (4) Individual agreements concluded in the specific case with the Buyer (including side agreements, additions and changes) shall always take precedence over these GTC. Subject to proof of the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
- (5) Declarations and notifications from the Buyer that are relevant in legal terms, and which relate to the contract (e.g. setting of deadlines, notice of defects, withdrawal or reduction) shall be submitted in writing, i.e. in text form (e.g. letter, email, or fax). Statutory provisions on form and further verifications, in particular, in cases of doubt as to the legitimation of the party giving the declarations, shall remain unaffected.
- (6) Notices as to the applicability of statutory regulations shall have only clarifying meaning. Therefore, the statutory provisions shall apply, even without such a clarification, unless they are directly modified or expressly excluded in these GTC.

### § 2 Conclusion of the contract

- (1) Our offers are non-binding and subject to change. This also applies if we have made catalogues, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents available to the Buyer – also in electronic format – to which we reserve property and copyrights.
- (2) The Buyer's order of the Product shall be regarded as a binding offer of contract. Unless stated otherwise in the order, we shall have the right to accept this offer of contract within 14 days after we have received the declaration.
- (3) Acceptance can be declared in writing, in text form by email (e.g. in an order confirmation) or by delivery of the Products to the Buyer.

### **§ 3 Delivery period and delay in delivery**

(1) The delivery period shall be agreed in each specific case and, respectively, be indicated by us on acceptance of the order. If this is not the case, the delivery period shall be approx. 8 weeks from the conclusion of the contract.

(2) If we cannot keep the binding delivery periods for reasons outside of our responsibility (unavailability of service), we shall inform the Buyer of this immediately and indicate the expected new delivery period at the same time. If the service is not available within the new delivery period either, we shall be entitled to fully or partly withdraw from the contract; any consideration already paid by the Buyer shall be refunded by us without delay. Deemed a case of unavailability of the service in this sense is in particular belated supply to us by our subcontractors, if we have concluded a congruent covering transaction, or neither the subcontractor nor we are at fault, or if we have no procurement obligation in the specific case.

(3) The occurrence of our delay of delivery is determined according to the statutory provisions. However, a warning from the Buyer shall be required in any case. If we are delayed with the delivery, the Buyer may demand a lump-sum compensation for its default damage. The lump-sum damage compensation for each full calendar week of delay shall be 0.5% of the net price (delivery value), whereas in total at most 5% of the delivery value of the product delivered late. It shall remain reserved for us to prove that no loss or only a much lower loss than the aforementioned lump sum has been incurred by the Buyer.

(4) The Buyer's rights under § 9 of these GTC and our statutory rights, in particular, in the event of an exclusion of the performance obligation (e.g. due to impossibility or unreasonableness of the performance and/or subsequent fulfilment) shall remain unaffected.

### **§ 4 Delivery, transfer of risk, acceptance, delay of acceptance**

(1) The delivery will be made ex-warehouse, which shall also be the place of performance and any subsequent performance of the delivery. On request and at the cost of the Buyer, the Products can be shipped to another place of destination (sale by delivery to a place other than the place of performance). Unless agreed otherwise, we shall be entitled to determine the type of shipment itself (in particular, transport companies, route of shipment, packaging).

(2) The risk of accidental destruction and accidental deterioration of the Products shall transfer to the Buyer at the latest on the handover. In case of a sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the Products, as well as the risk of delay shall already transfer on delivery of the Products to the freight forwarder, the carrier or other person or entity assigned with the performance of the shipment. If an acceptance is agreed, it shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for works and services shall apply analogously to an agreed acceptance also in other respects. It is held equal to a handover or acceptance when the Buyer is delayed with the acceptance.

(3) If the Buyer is in delay of acceptance, fails to perform its actions in cooperation or if the delivery is delayed for other reasons at the Buyer's fault, we shall be entitled to demand compensation for the loss incurred for this reason, including any additional expenses (e.g. warehousing costs). For this, we will charge a flat compensation fee of EUR 1 per calendar day, starting on the delivery deadline or – if no delivery period has been agreed – on the notification of the readiness for shipment of the Products. Proof of a higher loss and our statutory claims (in particular, for the refund of additional expenses, appropriate compensation, and termination) shall

remain unaffected; however, the lump sum shall be deducted from further monetary claims. It shall remain reserved for the Buyer to prove that no loss at all or only a much lower loss than the aforementioned lump sum has been incurred by us.

## **§ 5 Force majeure**

(1) "Force majeure" means the occurrence of an event or circumstance, which prevents one of the Parties from performing one or more of its contractual obligations under this contract, if and insofar as the Party affected by this obstruction proves that: (a) this obstruction is outside of its reasonable control; and (b) it was not reasonably predictable at the time of the conclusion of the contract; and (c) the effects from the obstruction could not have been avoided or overcome by the affected Party by reasonable means.

(2) Before proof of the contrary, it will be presumed for the following events, which affect one of the Parties, that they fulfilled the conditions under para. 1 lit. (a) and lit. (b) pursuant to (1) of this clause: (i) war (whether it is declared or not), hostilities, attacks, acts by foreign enemies, comprehensive military mobilisation; (ii) civil war, unrest, rebellion and revolution, military or other coups d'état, uprising, acts of terrorism, sabotage or piracy; (iii) currency and trade restrictions, embargo, sanctions; (iv) legitimate or illegitimate official acts, adherence to laws or government orders, dispossession, takings of factories, requisition, socialisation; (v) pest, pandemic, epidemic, natural disaster or extreme natural phenomenon; (vi) explosion, fire, destruction of equipment, longer outage of means of transport, telecommunication, information systems or energy; (vii) general labour disputes such as boycott, strike and lockout, slowdown strike, occupation of factories and buildings.

(3) A Party, which successfully invokes this clause, shall be released from its duty to perform its contractual obligations and from any liability for damage compensation or from any other contractual remedy for reason of a breach of duty as of the time when the obstruction makes the Party's fulfilment of the obligation impossible; provided the Party immediately notifies of this circumstance. If the notification is not given without delay, the release shall become effective from the time when the notification is received by the other Party. If the effect of the claimed obstruction or event is temporary, the consequences described above shall apply only for as long as the invoked obstruction hinders the performance of obligations by the affected Party. If the duration of the claimed obstruction entails that the Parties are deprived to a significant extent of what they could rightly expect by virtue of the contract, each Party shall have the right to terminate the contract within an appropriate period by giving notice to the other Party. Unless agreed otherwise, the Parties expressly agree that the contract can be terminated by each of the Parties if the obstruction persists for a period of more than 120 days.

## **§ 6 Prices and terms of payment**

(1) Unless agreed otherwise in the individual case, our current prices as at the signing date of the contract apply, notably ex-warehouse, plus the statutory value added tax.

(2) For sale by delivery to a place other than the place of performance (§ 4 (1)), the Buyer shall bear the transport costs ex-warehouse and the costs of the transport insurance, if such is requested by the Buyer. Any customs duties, fees, taxes and other public levies shall be borne by the Buyer.

(3) The purchase price shall be due and payable within 30 days from the date of invoicing and delivery or acceptance of the Products. However, we shall be entitled at any time to fully or partly

perform a delivery only against prepayment, even under a current business relationship. We shall declare a corresponding reservation at the latest on the order confirmation.

(4) On expiration of the foregoing payment period, the Buyer will be in default. The purchase price shall bear interest at the respectively applicable statutory default interest rate for the period of default. We reserve claiming further default damages. Our claim against businesses for commercial interest as of the due date (Sec. 353 HGB [German Commercial Code]) remains unaffected.

(5) The Buyer shall be entitled to rights of set-off or withholding only to the extent that its claim has been found valid by final and absolute judgment or to the extent that it is uncontested. In case of defects of the delivery, the Buyer's opposing rights, in particular pursuant to § 8 (6) sent. 2 of these GTC, shall remain unaffected.

(6) If it becomes apparent after the conclusion of the contract (e.g. based on an application being filed for the opening of insolvency proceedings) that our claim to the purchase price is at risk due to the Buyer's absent ability to pay, we shall be entitled to withdraw from the contract pursuant to the legal regulations of the right to refuse performance and, if applicable, after setting a grace period (Sec. 321 BGB). In case of contracts on the manufacturing of non-fungible objects (custom-made items), we can declare withdrawal immediately; the legal regulations on the expendability of setting a grace period remain unaffected.

## **§ 7 Reservation of title**

(1) We reserve the titles to the Products sold by us up until the complete payment of all of our present and future claims under the sales contract and in a current business relationship (secured claims).

(2) The products subject to the reservation of title may neither be pledged nor transferred by way of security to third parties before the complete payment of the secured claims. The Buyer shall inform us in writing without delay if it has been filed for the opening of insolvency proceedings or third parties take control over the Products in our ownership (e.g. attachments).

(3) In the event of any actions by the Buyer contrary to the contract, in particular, in case of non-payment of the due purchase price, we shall have the right to withdraw from the contract pursuant to the statutory provisions and/or demand the surrender of the Products on the basis of the reservation of title. The demand for surrender does not simultaneously include the declaration of withdrawal; we are instead entitled to merely demand the surrender of the Products and reserve withdrawal. If the Buyer does not pay the due purchase price, we may claim these rights only if we have previously set an appropriate deadline to the Buyer for payment without success or if such setting of a deadline can be omitted in accordance with the statutory provisions.

(4) Until revocation according to lit. (c) below, the Buyer shall be permitted to resell and/or process the Products subject to the reservation of title in the course of ordinary business. In that case, the following provisions apply in addition.

(a) The reservation of title shall also cover products in their full value, which are created in result of processing, mixing or combination with our Products and of which we are regarded as the manufacturer. If the property right of third parties remains unaffected from any processing, mixing or combination with the products of these third parties, we shall acquire the co-ownership at the same rate as the invoiced values of the processed, mixed or combined products. For the rest, the same shall apply to the created product as to the products delivered under the reservation of title.

(b) As security, the Buyer assigns to us on this day already the claims against third parties opposing the resale of Products or the Product in full or in the amount of the presumed co-ownership we share according to the previous paragraph. We hereby accept the assignment. The Buyer's duties specified in para. 2 shall also apply in consideration of the assigned claims.

(c) The Buyer shall remain authorised to collect the receivables besides ourselves. We undertake not to collect the receivables for as long as the Buyer fulfils its payment obligations to us and its ability to pay is not impaired, and we do not claim the reservation of title by exercise of one of the rights according to para. 3. If this is the case, however, we may demand that the Buyer disclose the assigned receivables and their debtors, provide all information required for collection, surrender the related documents, and inform the debtors (third parties) of the assignment. Furthermore, we shall be entitled in this case to revoke the Buyer's authorisation for resale and processing of the Products subject to the reservation of title.

(d) If the realisable value of the securities exceeds our receivables by more than 10%, we shall be obligated on the Buyer's request to release securities at our choice.

## **§ 8 Buyer's warranty rights**

(1) Unless determined otherwise hereinbelow, the legal regulations apply to the Buyer's rights in case of property defects and defects of title (including incorrect or short delivery, and inappropriate assembly or defective assembly instructions). The special legal regulations shall remain unaffected in all cases, on final delivery of the unprocessed products to a consumer, even if the consumer has processed them further (supplier recourse according to Sec. 478 BGB). Claims arising from supplier recourse are excluded if the defective product has been processed further by the Buyer or another business, e.g. by installation into a different product.

(2) Our warranty for defects is foremost based on the agreements made regarding the properties and condition of the Products. All product descriptions and manufacturer specifications that are part of the individual contract or published by us (in particular, in catalogues or on our internet homepage) at the time of the conclusion of the contract shall be deemed agreements on the properties and condition of the Products.

(3) Insofar as nothing has been agreed regarding properties and condition, whether or not a defect is present shall be evaluated pursuant to the statutory provisions (Sec. 434 (1) sent. 2 and sent. 3 BGB). However, we do not accept any liability for the public statements by the manufacturer or other third parties (e.g. promotional statements), which have not been identified to us as being decisive for the purchase by the Buyer.

(4) We shall generally not be liable for defects the Buyer knows or gross negligently fails to know on the conclusion of the contract (Sec. 442 BGB). The Buyer's warranty rights require that it has fulfilled its statutory duties of inspection and notification of defects (Sec. 377, Sec. 381 HGB). For building materials and other products intended for installation or other further processing, an inspection shall be carried out directly before the processing in all cases. If a defect becomes apparent on delivery, in the inspection or at any later point in time, we shall be informed thereof by email without delay. Obvious defects shall be notified in any case within 10 workdays from delivery and defects not detectable in the inspection shall be notified by email within the same period from discovery. If the Buyer fails to carry out the proper inspection and/or give the notice of defects, our liability for the defect not notified or not on time, or not notified in the correct manner shall be excluded pursuant to the statutory provisions.

(5) If the delivered object is defective, we may initially choose between subsequent performance by repair of the defect (reworking) or by delivery of an object without defects after fulfilment

(replacement delivery). Our right to refuse subsequent performance on the legal conditions remains unaffected.

(6) We shall be entitled to make the owed subsequent performance contingent on the Buyer's payment of the due purchase price. The Buyer shall be entitled, however, to withhold an appropriate part of the purchase price in proportion to the defect.

(7) The Buyer shall give us sufficient time and opportunity to perform the owed subsequent performance, in particular hand over the rejected products for testing purposes. In the event of a replacement delivery, the Buyer shall return the defective object to us in accordance with the statutory provisions. The subsequent fulfilment includes neither the deinstallation of the defective object nor the renewed installation, unless we were obligated to install it.

(8) The expenses required for the purpose of inspection and subsequent fulfilment, in particular transport, travel, work and material costs and, if applicable, deinstallation and installation costs shall be borne or refunded by us in accordance with the statutory provision if a defect is in fact present. Otherwise, we can demand compensation from the Buyer for the costs arising from the unjustified request for the correction of defects (in particular the costs for inspection and transport), unless the missing defectiveness was undetectable to the Buyer.

(9) In urgent cases, e.g. if there is a risk to operating safety, or so as to avert disproportionate damages, the Buyer shall have the right to correct the defect on its own and demand compensation from us for the expenses objectively required for this purpose. We shall be informed of such self-remedy of defects without delay and in advance wherever possible. The right of self-remedy shall not apply if we were entitled to refuse a corresponding subsequent performance pursuant to the statutory provisions.

(10) If the subsequent performance fails or if an appropriate period to be set by the Buyer for the subsequent performance has passed unsuccessfully, or if such a deadline can be omitted pursuant to the statutory provisions, the Buyer may withdraw from the sales contract or reduce the purchase price. However, no right of withdrawal shall apply in the event of a minor defect.

(11) Claims of the Buyer for damage compensation or the refund of useless expenses, including in cases of defects, shall apply exclusively in accordance with § 9 and be excluded for the rest.

## **§ 9 Further liability**

(1) Unless stated otherwise in these GTC including the following provisions, we shall be liable for a breach of contractual and non-contractual duties pursuant to the statutory provisions.

(2) We shall be liable for damage compensation – regardless of the legal reason – within the scope of the liability for fault in cases of intent and gross negligence. Subject to statutory liability limitations (e.g. care applied to own matters, minor breach of duty), we shall be liable for simple negligence, only

(a) for damages resulting from the injury to life, body or health;

(b) for damages arising from the breach of an essential contractual duty (duty the fulfilment of which enables the correct performance of the contract in the first place and the fulfilment of which the contractual partner regularly relies upon and may rightly rely upon); in this case, our liability, however, shall be limited to the predictable, typically occurring damage.

(3) The liability limitations resulting from para. 2 shall also apply in relation to third parties and in cases of breaches of duty by persons (also in their favour) for whose fault we are accountable pursuant to the statutory provisions. This shall not apply, insofar as we have fraudulently

concealed a defect or given assurance for the Products' properties and conditions, nor to claims of the Buyer pursuant to the Product Liability Act.

(4) The Buyer may withdraw from or terminate the contract on grounds of a breach of duty only if we are responsible for the breach of duty. A discretionary right of the Buyer to terminate the contract (in particular pursuant to Sec. 650, Sec. 648 BGB) is excluded. For the rest, the statutory requirements and legal consequences apply.

## **§ 10 Consulting relating to application technology**

Consulting relating to application technology, which has been requested by the customer shall be provided by us according to our best knowledge and according to the technological state of the art. All statements and information about the suitability and application of the delivered Products shall therefore be understood as suggestions. The implementation must be checked by the customer. Solely the customer is responsible for compliance with legal and regulatory requirements in the use of the delivered Products.

## **§ 11 Limitation**

(1) In deviation from Sec. 438 (1) no. 3 BGB, the general limitation period of 24 months from delivery shall apply to claims arising from property defects and defects of title. As relates to Products manufactured by us of the brand mk-messtechnik, the general limitation period of 36 months from delivery shall apply to claims arising from property defects and defects of title. If the Products are used products, the limitation period of 12 months from delivery shall apply to claims arising from property defects and defects of title. If an acceptance is agreed, the limitation period shall generally begin on the handover.

(2) If the Product is a building or an object, which has been used according to its customary manner of use and which has caused the defectiveness of the building or similar object (building material), the limitation period shall be 5 years from delivery in accordance with the legal regulation (Sec. 438 (1) no. 2 BGB). Further special statutory provisions on limitation shall remain unaffected (in particular Sec. 438 (1) no. 1, 71 (3), Sec. 444, Sec. 445b72 BGB).

(3) The aforementioned limitation periods under the law governing contracts on the sale of goods shall also apply to contractual and non-contractual damage compensation claims of the Buyer, which are based on a defect of the product, unless the application of the regular statutory limitation period (Sec. 195, Sec. 199 BGB) would lead to a shorter limitation period in the individual case. Damage compensation claims of the Buyer according to Sec. 9 (2) sent. 1 and sent. 2 (a) and pursuant to the Product Liability Act shall lapse by limitation exclusively according to the statutory limitation periods.

## **§ 12 Digital products/Products including digital products**

(1) We shall provide updates for our digital products free of charge in order to keep them in conformity and secure, if needed, over a period of 5 years. The period begins with transfer of risks and dangers (delivery) to the customer. Delivery can be made, for example, on a data-storage, by sending the download link or as a pre-installation on a device. We shall provide these updates exclusively for the operating system approved in the offer or documentation of the digital product and the minimum requirements defined therein for the hardware used. We shall make the update and instructions for the installation of the update available for download and inform our customer by email as soon as the updates are available.

(2) We reserve the right to modify and/or expand digital products at any time.

## **§ 13 Choice of law and place of jurisdiction**

(1) These GTC and the contractual relationship between the Buyer and us shall be governed by the law of the Federal Republic of Germany, to the exclusion of international uniform law, in particular, the UN Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is a merchant in the definition of the German Commercial Code, a legal entity of public law or a public-law investment fund, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the place of our registered office in 73274 Notzingen (Germany). The same applies if the Buyer is a business in the definition of Sec. 14 BGB. However, we shall also be entitled in all cases to file suit in the place of the performance of the delivery obligation according to these GTC or according to an individual agreement taking precedence, or in the court at the Buyer's general place of jurisdiction. Any legal regulations taking precedence, in particular regarding exclusive jurisdiction, shall remain unaffected.

**mk-messtechnik GmbH**  
Zeppelinstraße 1 - 73274 Notzingen - Deutschland  
[info@mkemc.com](mailto:info@mkemc.com) - [www.mkemc.com](http://www.mkemc.com)