

**General Terms of Sale of  
MEHLER ENGINEERED PRODUCTS GMBH, Fulda**

**§ 1. General**

These General Terms of *Sale* (hereinafter also referred to as "*Conditions*") are applied in the conclusion of contracts of MEHLER ENGINEERED PRODUCTS GMBH (hereinafter referred to as "Vendor") with companies, § 310 paragraph 1 BGB (German Civil Code), public corporations or separate estates under public law (hereinafter also referred to as "Customer", "Ordering Party" or "Purchaser"). All deliveries of the Vendor and the associated performance shall be undertaken solely on the basis of these General Terms of Sale. References of the Purchaser to his General Terms and Conditions are hereby expressly contradicted. The following terms of sale also apply for future transactions. Deviations from these conditions may only be undertaken with the express acknowledgement of the Vendor. The Purchaser and the Vendor shall hereinafter also be referred to jointly as "Contracting Parties".

**§ 2. Offer and conclusion of contract**

- 2.1 All offers of the Vendor are subject to change and non-binding, unless expressly designated as binding or where a specific acceptance period is contained. The Vendor may accept orders or assignments within fourteen days of their receipt.
- 2.2 Solely definitive for the legal relationships between Vendor and Purchaser is the contract of sale, recorded in writing, including these conditions, concluded between the Vendor and the Purchaser, which comes into being with the order of the Purchaser (offer) and written order confirmation of the Vendor (acceptance) or in case of offer expressly designated as binding with the offer and the order of the Purchaser. This contract contains all agreements between the contracting parties regarding the subject of contract, in their entirety. Verbal commitments of the Vendor prior to the conclusion of this contract are legally non-binding and verbal agreements of the contracting parties shall be replaced by the written contract, to the extent that it is not expressly stated respectively therein that these shall continue to apply bindingly. Supplements and amendments to the agreements made, including these general terms and conditions, shall require text form for their validity. With the exception of managing directors and company officers the employees of the Vendor are not entitled to make verbal agreements deviating from this. Communication via fax is sufficient to satisfy the requirement of text form, telecommunicative communication, in particular via e-mail, is sufficient.
- 2.3 Statements of the Vendor regarding the subject of the goods or services (e.g. weight, dimensions, practical value, capacity, tolerances and technical details) as well as his illustrations of the same (e.g. drawings and illustrations) are only approximate, although communicated as accurately as possible, yet non-binding upon the Vendor, to the extent that no contractual agreement regarding this exists. These are not guaranteed characteristics, rather descriptions or characterisations of the goods or services. Deviations standard in trade and deviations due to legal specifications or technical improvements as well as the replacement of components with components of equal value are permissible, to the extent that these do not inhibit the suitability of the goods for the contractually foreseen purpose.
- 2.4 The Vendor reserves title and/or copyright to all offers and cost estimates submitted by him as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and materials made available to the Customer. Without express written authorisation of the Vendor the Customer may not wholly or as extract - make them available to third parties, use them himself or via third parties or reproduce them. At the request of the Vendor he is to return these objects completely and destroy any copies if they are no longer required by him in the course of orderly business or where negotiations do not result in the conclusion of a contract.

**§ 3. Prices and payment**

- 3.1 The prices apply to the goods and services listed in the order confirmations. Additional or special performance will be calculated separately. Prices are in EURO gross for net ex works, including loading at works but excluding unloading, unless otherwise agreed between Purchaser and Vendor in writing. The prices do not include the statutory level of value-added tax, for export deliveries customs duty and other public fees. In the case of goods and services in the

EU the Purchaser shall provide the Vendor, prior to the transaction, his respective VAT identification number under which he pays turnover tax in the EU, as well as inform the Vendor if a so-called chain transaction exists in the VAT law sense.

- 3.2 Where no separate agreement exists, payment is to be made to the account of the Vendor, without any deduction or costs. Bills of exchange and cheques shall only be accepted on account of performance.
- 3.3 In the case of immediate shipping of the goods the price list valid on the day of delivery is definitive, in other cases the price named in the order confirmation or, where the order confirmation states no price details, the price of the price list valid on the day of order confirmation. The Vendor reserves the right to amend the prices stated in catalogues and in the price lists enclosed here.
- 3.4 The invoices fall due and are payable at the time point named in the invoice or agreed between the contracting parties. Where no other term or agreement has been made, payment shall be within 30 days of invoice date, without deduction. The value date of the invoice amount in the bank account of the Vendor is definitive for timeliness of payment.
- 3.5 The Vendor is entitled to supply outstanding goods and services only against payment in advance or provision of security where, following conclusion of the contract, he becomes aware of circumstances that significantly reduce the creditworthiness of the Customer, and which endanger the payment of the outstanding claims of the Vendor against the Customer arising from the respective contractual relationship (including from other individual contracts for which the same framework contract applies). Furthermore, in such a case the Vendor is also entitled to render all accounts receivable against the Purchaser payable with immediate effect.
- 3.6 Irrespective of further claims, the Vendor shall be entitled, in the event of any late payment, to cease deliveries to the Purchaser until all payment arrears from the business relationship have been settled and, in the case default, default interest to the statutorily foreseen amount as well as reminder charges. In the case of payments after falling due default interest shall be charged at a rate of 8 % p.a. above the basic rate of interest. The right to reject checks or bills of exchange is expressly reserved. Discount and bill of exchange charges shall be borne by the Purchaser and fall due immediately. The Vendor shall not be liable for timely presentation. In the case of payment by cheque day of receipt shall be deemed to be the day on which the cheque amount is irrevocably credited to the account of the Vendor. The Vendor is fundamentally entitled to offset payments against other debts of the Purchaser and he shall inform the Purchaser of the nature of the offsetting undertaken. This shall also apply in the event of deviating terms of the Purchaser. If costs and interest have already been incurred, then the Vendor shall be entitled to offset the payment initially against the costs, then the interest and finally the main performance.
- 3.7 The Purchaser shall only be entitled to retain payments or offset against counterclaims to the extent that his counterclaims are undisputed or determined in a legally-binding manner.
- 3.8 Should, in the period between conclusion of contract and delivery, price increases or reductions that are unforeseeable to the Vendor and which he cannot influence occur as a result of changes in price for the raw materials and supplies of greater than 10 %, then the Vendor or Purchaser shall be entitled to request an adjustment of the agreed purchase price from the respective other contracting party, via renegotiation. The validity of the remainder of the contract shall not be affected by these renegotiations. Should the renegotiations fail to result in agreement, then both the Vendor and the Purchaser shall be entitled to withdraw from the contract.
- 3.9 The same also applies accordingly where officially-determined consumer indexes deviate for the whole of Germany by greater than 5 % against the status at the time of ordering in the time between conclusion of contract and delivery in an unforeseen manner not influenced by the Federal Office of Statistics.

**§ 4. Delivery time, delays in delivery**

- 4.1 The delivery time is determined by the agreements of the contracting parties. Meeting of the delivery time by the Vendor requires that all commercial and technical issues have been clarified between the contracting parties and that the Purchaser has fulfilled all of the duties

- to which he is bound. If this is not the case, then the delivery time shall be extended appropriately, where the delay is not caused by the Vendor. Where shipping has been agreed, delivery periods and delivery dates shall refer to the time of handover to the freight forwarder, haulier or third party otherwise assigned with the transport.
- 4.2 If, as a consequence of the culpability of the Purchaser, shipping or acceptance fails to be completed in good time, then the Vendor may choose, following the setting of a period of respite of 12 days, between either charging the total amount and keeping the goods ready for collection by the Purchaser, withdrawing from the contract or claiming compensation.
- 4.3 The Vendor is not liable for impossibility of delivery or for delays in delivery where these are caused by force majeure or other circumstances not foreseen at the time of conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in procuring material or energy, transport delays, strikes, legal lockouts, shortage of labour, energy of raw materials, difficulties in procuring necessary official permits or missing, incorrect or unpunctual delivery from suppliers) for which the vendor is not responsible. In the event of such circumstances significantly complicating the supply of goods or services by Vendor, or rendering this impossible, and where the hindrance is not only of temporary nature, then the Vendor shall be entitled to withdraw from the contract. In the case of hindrances of temporary nature the delivery period shall be extended or postponed by the time period of the hindrance, plus a reasonable warm-up period. If, as a consequence of the delay, the Customer cannot be expected to accept the delivery of goods or services, then he may withdraw from the contract with a prompt, written declaration to the Vendor.
- 4.4 The Purchaser may withdraw from the contract without the provision of notice if the entire performance is rendered conclusively impossible for the Vendor prior to the transfer of risk. Moreover, the Purchaser may also withdraw from the contract if the completion of a part of the delivery proves impossible for an order and he has justified interest in rejecting partial delivery. If this is not the case, then the Purchaser shall pay the contractual price incurred for the partial delivery. The same shall also apply in the case of incapacity on the part of the Vendor. Otherwise
- 4.5 If the Vendor enters into default with goods or services or if delivery of goods or services proves impossible for him, for whatever reason, then the liability of the Vendor for compensation shall be limited as per § 9 of these conditions.

**§ 5. Place of performance, shipping, packaging, delivery and acceptance**

- 5.1 Place of performance for all performance from the contract concluded between the Vendor and the Purchaser is the place of the trading branch of the Vendor. If the Vendor also owes installation, then place of performance shall be the place at which the installation is to take place.
- 5.2 Unless otherwise agreed, delivery of the goods is ex domestic works - EXW as per 2010. The shipping costs shall be borne by the Purchaser. The Purchaser may specify the freight forwarder. The goods are to be sent unsecured. A dispatch notification may be agreed upon. The shipment shall only be insured by the Vendor against theft, breakage, transport, fire and water damage or other insurable risks at the express request, and at the expense of, the Customer.
- 5.3 Packaging costs for specialist packaging such as, for example, sleeves etc., shall be borne by the Purchaser, unless the parties reach a deviating agreement in this respect.
- 5.4 Partial shipments shall be sorted and, in the case of goods sold as combinations, sorted ready for sale, to the extent that this is reasonable for the Purchaser or has been announced in advance. Unsorted partial shipments may only take place with the agreement of the Purchaser.
- 5.5 Risk shall be transferred to the Purchaser when the delivery item has left the works, also where partial shipments are undertaken or where the Vendor has undertaken other performance, such as shipping costs or delivery and installation. This applies irrespectively of which clause of Incoterms 2010 has been agreed in the individual case. Where acceptance has been agreed, this shall be definitive for transfer of risk. This acceptance must be carried out without delay, by the acceptance date, where possible following the reporting of readiness for acceptance on the part of the Vendor. The Purchaser may not refuse acceptance in the event of existence of an insignificant defect.
- 5.6 If shipment or acceptance are delayed as a result of circumstances that the Vendor cannot be held responsible for, then the risk shall be transferred to the Purchaser from the day of reporting of shipment or readiness for acceptance.
- 5.7 3.6 Storage costs following passing of risk shall be borne by the Customer. In the case of storage by the Vendor storage costs shall

constitute 0.25% of the invoice amount of the goods that are to be stored per completed week. The right to pursue and provide evidence of additional or lower storage costs is reserved.

- 5.8 To the extent that acceptance has taken place, the purchased object shall be deemed to have been accepted where
- 5.8.1 the delivery and, where the Vendor also undertakes installation, the installation has been completed,
- 5.8.2 the Vendor has informed the Customer of this with reference to the deemed acceptance according to this § 5 and has requested his acceptance,
- 5.8.3 twelve working days have passed since the delivery or installation or the Customer has begun to use the purchased object (e.g. has begun to operate the delivered plant) and in this case six working days have passed since delivery or installation, and
- 5.8.4 the Customer has failed to declare acceptance within this time period for a reason other than a defect on the part of the Vendor that renders use of the purchased object impossible or significantly inhibits this.

**§ 6. Retention of title**

- 6.1 The goods remain the property of the Vendor until complete payment of all claims from delivery of goods from the entire commercial relationship between Vendor and Purchaser, including subsidiary claims, claims for compensation and the redemption of cheques and bills of exchange have been effected. The retention of title also exists where individual claims of the Vendor are incorporated into a running account and the balance is established and acknowledged.
- 6.2 Should the privileged goods be combined, mixed or processed by the Purchaser to form a new movable item, this shall be undertaken on behalf of the Vendor, without him being obligated thereby. The combination, mixing or processing does not result in the Purchaser acquiring title to the new object as per §§ 947 et seq. BGB. In the case of combination, mixing or processing with objects that do not belong to the Vendor the Vendor shall acquire joint ownership of the new object according to the ratio of the invoice value plus VAT of his privileged goods to the overall value. Otherwise, the object created as a result of processing shall be subject to the same conditions as the purchased object delivered subject to retention of title.
- 6.3 To the extent that a central regulating body is involved in the commercial transaction between Vendor and Purchaser that undertakes the contingency reserves, the Vendor shall transfer title on shipment of the goods to the central regulating body subject to the condition of payment of the purchase price by the central regulating body. The Purchaser will only be deemed discharged after payment by the central regulator.
- 6.4 The Purchaser is only entitled to sell on or further process under consideration of the following conditions.
- 6.5 The Purchaser may sell or process the reserved goods only in the course of ordinary business operations and provided that his financial situation does not deteriorate sustainably.
- 6.6 The Purchaser hereby assigns the claims with all ancillary rights from the selling on of the privileged goods - including any current account balance claims - to the Vendor.
- 6.7 If the Purchaser has sold the claims in the scope of genuine factoring, then the Purchaser assigns the claims against the factor to the Vendor and forwards his sale proceeds proportionate to the value of the rights of the Vendor to the goods to the Vendor. The Purchaser is obliged to notify the factor of the assignment when he falls into default in the settlement of an invoice by more than 10 days or where his asset situation deteriorates significantly. The Vendor accepts this assignment.
- 6.8 The Purchaser is entitled to collect the assigned claims so long as he meets his payment obligations. The direct debit authorisation lapses with default of payment on the part of the Purchaser or significant deterioration of the asset situation of the Purchaser. In this case the Vendor is hereby authorised by the Purchaser to inform the consumer of the assignment and to collect the claims himself.
- 6.9 The purchaser must provide the necessary information for the enforcement of the assigned claim and must allow this information to be checked. In particular, he shall provide the Vendor, on request, with a precise listing of the claims to which he is entitled, with name and address of the consumer, amount of the individual claims, invoice date etc.
- 6.10 Should the value of the security for the Vendor exceed all claims by more than 10 %, then the Vendor shall be obliged, on request of the Purchaser, to release security of his choice to this extent.
- 6.11 Should third parties access the privileged goods, in particular by way of attachment, the Purchaser shall inform them of the title of the

Vendor without delay and inform the Vendor of this, in order to enable him to enforce his property rights. Should the third party not be in a position to reimburse the Vendor for the court or out-of-court costs incurred in this process, the Purchaser shall be liable to the Vendor for these.

- 6.12 Should the Vendor, in the exercising of his right of retention, take back the delivered item, this shall constitute a withdrawal from the contract, should the Vendor expressly declare this. The Vendor may freely dispose of the returned privileged goods.
- 6.13 The Purchaser shall store the privileged goods for the Vendor at no cost. He shall insure them against all common risks such as fire, theft and water to the standard extent. The Purchaser hereby assigns his compensatory claims for loss of the aforementioned kind against insurance companies or other parties obliged to compensate to the Vendor to the amount of the invoice value. The Vendor accepts this assignment.

#### **§ 7. Guarantee**

- 7.1 The guarantee period comprises one year from delivery or, where an acceptance is required, from acceptance.
- 7.2 The delivered goods shall be examined carefully by the Customer or a third party appointed by him without delay following delivery. Notification of defects is to be made to the Vendor within 12 days of receipt of the goods.
- 7.3 Following cutting to size or the commencement of any other form of processing of the delivered goods any notification of apparent defects is excluded.
- 7.4 Minimal, technically unavoidable deviations in quality, colour, width, weight, equipment or design may not be the subject of complaint. This also applies for standard deviations in the trade, unless the Vendor has issued a written declaration of delivery according to pattern/sample. In the case of justified complaints the Vendor has the choice of rectification of defect or the delivery of replacement goods free from defects. In this case the Vendor shall bear the freight costs. For the implementation of all rectification and replacement deliveries that the Vendor deems necessary the Purchaser, following consultation with the Vendor, shall grant the time and opportunity required for this; otherwise the Vendor is freed from liability for the resultant consequences. Only in urgent cases in which operational safety is compromised and/or to prevent disproportionately greater damage, in which case the Purchaser shall notify the Vendor immediately, shall the Purchaser have the right to arrange for repairs or replacement himself or through a third party and to demand reimbursement from the Vendor. At the request of the Vendor the delivery item subject to complaint is to be sent back to the Vendor freight paid. In the case of justified complaint the Vendor shall reimburse the costs of the cheapest shipping option; this shall not apply where the costs are increased as a result of the delivered item being in a location other than that of the specified use of that item.
- 7.5 In the scope of the statutory regulations the Purchaser shall have the right to withdraw from the contract where the Vendor - taking account of the statutory exceptions - has failed to successfully meet a period of respite set for the improvement or replacement delivery due to a material defect. If the defect is not a significant one, then the Purchaser shall only be entitled to reduce the contract price. The right to reduce the contract price is otherwise excluded.
- 7.6 Claims for compensation for defects in the subject of the contract may only be pursued subject to the limitations of § 9.
- 7.7 No guarantee for the subject of the contract is undertaken in particular in the following cases:
- 7.8 Unsuitable or incorrect use, faulty installation by the Purchaser or third parties, natural wear and tear, incorrect or negligent treatment, chemical, electro-chemical or electrical influences, to the extent that the Vendor has no responsibility for these.
- 7.9 If the Purchaser or a third party improves the object incorrectly, then the Vendor shall have no liability for the subsequent consequences.

#### **§ 8. Trademark rights**

- 8.1 Should the use of the delivery item result in the infringement of domestic commercial trademark rights or copyrights, then the Vendor, at his expense, shall procure the rights to continued use for the Purchaser or modify the delivery item in a manner reasonable to the Purchaser and that ensures that the trademark rights are no longer infringed.
- 8.2 Should this not prove possible under economically reasonable conditions or within a reasonable period of time, then both the

Purchaser and the Vendor shall be entitled to withdraw from the contract. In addition, the Vendor shall release the Purchaser from undisputed or legally ascertained claims of the respective trademark rights holder.

- 8.3 The obligations of the Vendor stated in § 8.1., subject to the reservations of § 8.2., are conclusive for the event of infringement of trademark rights or copyright.
- 8.4 The obligations stated in § 8.1 and § 8.2 shall only exist where
- 8.4.1 the Purchaser notifies the Vendor of the enforcement of the trademark rights or copyright infringements without delay,
- 8.4.2 The Purchaser supports the Vendor to a reasonable extent in defending against the claims enforced or enables the Vendor to undertake the implementation of modification measures pursuant to § 8.1,
- 8.4.3 the Vendor reserves the right to undertake all defensive measures including out-of-court settlements,
- 8.4.4 the legal defect is not due to an instruction of the Purchaser and
- 8.4.5 the infringement has not been caused by the Purchaser independently amending the delivery item or using it in a manner not in keeping with the contractually-agreed manner.

#### **§ 9. Liability for compensation due to culpability**

- 9.1 The liability of the Vendor for compensatory claims, regardless of the legal basis, in particular due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations in contractual negotiations and unauthorised action, to the extent that this involves culpability, is limited as per this § 9.
- 9.2 The Vendor shall not be liable
- 9.2.1 in cases of simple negligence of the Vendor or his organs, legal representatives, employees or other agents
- to the extent that this does not involve the breach of significant contractual obligations. Significant contractual obligations include the obligation to deliver and install in a timely fashion goods that are free of essential defects, advisory, protective, custodial and duty of care obligations that enable the Customer to use the item delivered in the contractually prescribed manner or whose purpose is to protect the lives and health of the employees of the Customer or third parties or the property of the Customer against significant loss.
- 9.3 To the extent that the Vendor is liable for compensation as per § 9.2., this liability shall be limited to loss that the Vendor could reasonably have foreseen as possible consequences of a breach of contract at the time of conclusion of the contract or should have been able to foresee applying due diligence. Liability for direct loss (e.g. loss of earnings or loss of use etc.) is excluded where this is permissible.
- 9.4 The aforementioned exclusions and limitations of liability apply to the same extent in favour of the organs, legal representatives, employees and other agents of the Vendor.
- 9.5 To the extent that the Vendor provides technical information or is active in an advisory role and this information or advice does not belong to the scope of performance that he owes and which is contractually agreed, then this shall be made at no expense and under exclusion of all liability.
- 9.6 The limitations of this § 9 do not apply to the liability of the Vendor for intent or gross negligence, guaranteed properties and condition, to damage to life, limb or health or under product liability law.

#### **§ 10. Export Control and Foreign Trade data Regulations**

- 10.1 The Purchaser is obliged to comply with all applicable national, European and US export control regulations, including all European or US sanctions lists and other embargos (together "export control regulations") insofar as not inadmissible under § 7 AWV. He agrees, the seller voluntarily making note of the concrete AL or ECCN number for the event to announce that to be delivered goods or their components in the Export Control List, Annexes I and IV or the Commerce Control List ("CCL") are listed. The Purchaser is obliged if before or after conclusion of the contract circumstances become known or suspicion which justify the adoption of a possible or actual infringement of export control regulations to notify the Vendor in writing without any delay. Existence of such circumstances or suspicions is - notwithstanding further claims of the Vendor - a default of acceptance of the Vendor is excluded for a reasonable period to give the Vendor the opportunity to review of this circumstances or suspicions.

10.2 The Vendor shall not be obligated to fulfill the agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions, unless the Vendor was or should have been aware of these obstacles when the agreement was concluded.

**§ 11. Compliance with Laws**

11.1 The Parties will generally and for the duration of the Agreement comply with all applicable laws, regulations and rules, including all applicable anti-corruption laws and regulations, including, without limitation, the UK Bribery Act and U.S. Foreign Corrupt Practices Act. The Purchaser will not commit any prohibited acts in connection with the contractual services from this contract, either directly or indirectly. In particular, prohibited acts include promising, offering, or granting, or requesting or accepting any improper benefit or benefit to improperly influence actions. Reference is made to the Code of Conduct of the Vendor, which can be found on the website "www.mehler-ep.com".

11.2 In the event of a breach of the obligation by the Purchaser in para. 11.1 the Vendor is entitled to terminate this contract in writing without notice and without further obligations or

liability towards the Purchaser. The Purchaser shall indemnify the Vendor against all damages, losses, withholding of payments, claims and claims of third parties arising out of or in connection with the termination.

11.3 The contracting parties undertake to comply with the provisions of the EU General Data Protection Regulation and the Federal Data Protection Act in the case of the processing of personal data. Reference is made to the privacy policy of the Vendor, which can be found on the website "www.mehler-ep.com".

**§ 12. Final terms**

12.1 For all legal relationships between the Vendor and the Purchaser the definitive law of the Federal Republic of Germany in its application to legal relationships between domestic parties shall apply.

12.2 Place of jurisdiction is the court with jurisdiction for the registered office of the Vendor. However, the Vendor is entitled to pursue actions at the registered office of the Purchaser at any time.

12.3 To the extent that the contract or these General Terms of Sale contain loopholes, the closure of these loopholes shall agreed to be effected with the legal regulations.

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