

# **General Terms and Conditions for the supply of products and services of Mazurczak GmbH (As at 01.12.2022)**

## **1. General provisions**

**1.01** The following Terms & Conditions form the basis of all our quotations, deliveries and services in the course of business transactions and are deemed to come into force when an order is accepted by us. Contracts for delivery are only deemed to have come into existence if they have been either individually confirmed by us or if the goods are shipped by us in fulfilment of the order. The mutually agreed terms are decisive as regards the extent of the deliveries. Terms & Conditions of the buyer are only recognised insofar as they are in compliance with our own or are individually and explicitly agreed with us and approved by us for individual deliveries or services.

**1.02** Where declarations and certifications issued to the user, within the context of these General Terms & Conditions, require the "written" form ("in writing"), this means print form (email, letters, fax etc.) as defined under Sec. 126 b German Civil Code (BGB), which does not require a signature.

**1.03** We retain all property rights and copyright without exception in all our price quotations, drawings and all other documents (hereinafter: documents) issued by us. These documents may not be made available to Third Parties unless and until our explicit prior approval has been granted and if we are not awarded the contract, all our documents are to be returned immediately at first request. Subsection 1 and 2 above apply equally to the property rights and copyright in documents issued by the Buyer; where, however, we reserve the right to make these available to any Third Parties to whom we have subcontracted deliveries within the framework of the agreement, provided the documents provided by the Buyer are necessary for the fulfilment of these deliveries.

**1.04** Partial deliveries are permitted provided they are reasonable for the Buyer.

## **2. Prices and terms & conditions of payment**

**2.01** Our prices are considered to be ex works excluding packaging and plus the currently applicable rate of value added tax.

**2.02** Payments are to be made without deduction to the place of payment of the user. If, after the contract has been concluded, we become aware that our claim to the consideration under this contract is in jeopardy due to the Buyer's inability to deliver payment, we reserve the right to refuse to provide our services or products until the Buyer has made payment in full, or provided collateral for that payment. The same applies if the Buyer is in arrears with a payment.

**2.03** The Buyer is only entitled to offset claims against payments if these claims are either non-contentious or have been declared legally enforceable by a court of law.

## **3. Delivery**

**3.01** Adherence to the agreed delivery periods assumes timely provision, in accordance with the contractual arrangements, of all documents, all necessary approvals and adherence to agreed terms & conditions of payment and other obligations by the Buyer. If these preconditions are not met in good time, the delivery periods are deemed to be extended accordingly. We retain the right to define a new grace period in accordance with Sec. 315 German Civil Code (BGB). This does not apply if we are responsible for causing the delay.

**3.02** If, at the request of the Buyer, either the shipping or delivery is delayed by more than one month after notification of readiness to ship, we reserve the right to charge the Buyer storage fees amounting to 0.5% of the price of the goods to be delivered for each month or part of a month, where the total charged is not to exceed 5% of the total amount invoiced for our deliveries and services, unless we are able to demonstrate that the actual storage costs were, in fact, higher. The Buyer is entitled to demonstrate that no storage costs at all were incurred or that these were considerably lower than the above flat rate.

## **4. Packaging and transfer of risk**

**4.01** Unless prescribed provisions in German packaging legislation or other prescribed legislative provisions provide otherwise, the goods will be delivered in the kind of packaging demanded by the nature of the shipment. This packaging will be charged, is not returnable and will not be reimbursed.



**4.02** Risk is transferred to the Buyer (this also applies to freight-paid delivery) for deliveries, when they are dispatched or picked up i.e. as soon as they are handed over to the forwarding agent or driver. If so requested and at the expense of the Buyer, insurance against the usual transport risks can be arranged.

**4.04** If delivery or the receipt of the ordered goods at the recipient's facility is delayed for reasons for which the Buyer is responsible or if the Buyer defaults on acceptance of the goods for any other reason, the risk is transferred to the buyer.

## **5. Complaints concerning defective work**

**5.01** The disclaimers given in these General Terms & Conditions shall not apply to liability for damages resulting from injury to life and limb or health generally caused by, at least, negligent breach of duty by us or wilful or negligent breach of duty by one of the officers of the company or its agents. On receipt, the products supplied must be inspected without delay, where this is feasible in the course of proper commercial practice, to ensure conformity. Self-evident defects must be reported to us immediately in writing.

**5.02** If the products supplied are defective in any way, we will deliver non-defective goods or the defect is being remedied by way of remedial performance. A sufficient period of time and the opportunity will be allowed us to remedy the defects. Where we are not granted sufficient time and opportunity, our liability to remedy defects lapses, provided remedial performance was not impossible. Without prejudice to the provisions in 5.03 above, the right to withdrawal from the contract or a reduction in price or remuneration are excluded.

**5.03** In the event that remedial performance is unsuccessful or if we refuse to provide a replacement delivery or reworked goods or if remedial performance is considered by the Buyer to be unacceptable, that party is granted the right, at its discretion, either to reduce the purchase price or remuneration or withdraw from the contract and claim damages. Remedial performance is considered to have failed if, after the second unsuccessful attempt, there is no different result in particular in regard to the nature of the goods or the defect or other circumstances.

**5.04** We are liable for material defects over a period of 12 months (taking into account a normal operating time of 8 hours/day) from the time of transfer of risk. The Buyer's claims due to defective workmanship are subject to the statute of limitations one year after commencement of the limitation period; this period is deemed to be extended by an additional time period to accommodate the time typically required in such cases to detect the defects in the goods subject of the complaint. The period defined above shall not apply in cases to which Sec. 438(1) no. 2 and Sec. 634a(1) no. 2 German Civil Code (BGB) apply.

**5.05** Where a justified complaint has been lodged, the Buyer is entitled to withhold payment in an amount which bears a reasonable relation to the extent of the defects. As a rule, an amount equivalent to twice the costs required to remedy the defect is reasonable.

**5.06** Our liability for defects does not extend to natural wear and tear or damage occurring after transfer of risk as a result of improper treatment or handling which is careless or not in compliance with the intended purpose, or is caused by excessive use, unsuitable ancillary materials or particular external influences. If the Buyer or a Third Party performs improper modifications to or repairs on the products, the liability for defects for these components and liability for any resulting consequences shall be void.

Within the context of the contractual liability for defects, the contractor is only liable in the event of criminal damage or gross negligence both for itself and its employees, representatives and agents unless otherwise defined below, except in the event of death, injury or damage to health. Our liability for simple or minor negligence is excluded unless this involves the infringement of obligations under the contract within the context of decisions by the German Federal Supreme Court. Obligations under the contract are deemed to be those whose fulfilment is an essential feature of contract performance and our adherence to those obligations a matter on which the customer can depend. Where the above disclaimer cannot be applied due to infringement of obligations under the contract, the contractor is only liable to the extent that the damage was foreseeable at the time the contract was concluded and typical as a result of the infringement of substantial contractual obligations. No further claims by the customer will be entertained. The above restrictions and exclusions of liability do not apply in the event of the failure of the parties to notify each other of any salient points affecting the contract before the contract was concluded.

The contractor's liability under product liability legislation remains unaffected. Liquidated damages will not be entertained.

**5.07** No further claims for defects by the contractual party will be entertained.



## 6. Proprietary rights and copyright

**6.01** Where Third Parties make a justified claim against the Buyer as a result of an infringement of proprietary rights or copyright (hereinafter: proprietary rights) for a product supplied by us and used in accordance with the contract, our liability towards the Buyer is as follows:

- a) The provisions of subsection 5.03 above will apply with the proviso that we are required, at the discretion of the Buyer, either to obtain permission to use the product, or to modify the product so that it does not infringe those proprietary rights or to exchange the product for one which does not carry this defect. In addition, the provisions under subsections 5.04, 5.06 and 5.07 above apply.
- b) Our obligation to cover damages due to the delivery of goods which are subject to proprietary rights is excluded if the Buyer has not notified us immediately in writing of the claims made by the Third Parties, or if it has accepted the infringement or if we are precluded from exploiting all possible avenues of defence and negotiation and the extent of the damage increases as a result. If the Buyer ceases to use the products with a view to reducing the amount of damages claimed or for any other important reason, it is obliged to notify the Third Parties that ceasing to use the product is not tantamount to accepting liability for a possible infringement.

**6.02** The Buyer's claims are excluded where it is responsible for the infringement of proprietary rights rather than us.

**6.03** Claims by the Buyer are also excluded where the infringement of proprietary rights has come about due to special specifications requested by the Buyer, or due to a specific application of the machine which was not anticipated by us or if it was caused by the Buyer's own modifications to the machine or if it is used in conjunction with products not supplied by us.

**6.04** No further claims by the Buyer will be entertained. This does not apply in the event of the failure of the parties to notify each other of any salient points affecting the contract before the contract was concluded.

## 7. Restrictions on liability beyond liability for defects

In the event of damage not covered by Point 5.06, the liability of the contractor is restricted as defined at Point 5.06 - except in the event of damage arising from injury to life and limb or health generally. By way of derogation from the provisions of Point 5.06, which apply in the event of a breach of obligations under the contract as defined in judgements published by the German Federal Supreme Court and which allow for liability only where the damage was foreseeable at the time the contract was concluded and typical as a result of the infringement, we may accept liability if we are looking after or storing objects belonging to the customer, but only to the value of the material cost of the damaged or destroyed items. Obligations under the contract are deemed to be those whose fulfilment is an essential feature of contract performance and our adherence to those obligations a matter on which the customer can depend.

The above restrictions and exclusions of liability will also not apply in the event of the failure of the parties to notify each other of any salient points affecting the contract before the contract was concluded. Liquidated damages will not be entertained either within or outside the warranty.

## 8. Retention of title

**8.01** The goods delivered by us remain our property unless and until all claims against the Buyer resulting from the transaction have been settled.

**8.02** As long as retention of title exists, the Buyer is not permitted to pledge or use the goods delivered as further collateral and resale is only permitted to resellers in the normal course of business on condition that the reseller obtains payment from its customer at the latest on transfer of the goods or, alternatively, makes transfer of title to the new customer conditional upon that customer making payment for the goods in full.

**8.03** If the Buyer resells goods subject to a retention of title, it undertakes to assign to us here and now by way of security any and all future claims against its customer resulting from such resale including all rights and subsidiary rights – including any outstanding balances – so that it is not necessary to make a specific additional declaration. If the goods delivered under this contract are resold together with other goods in such a way that the goods under this contract are not assigned a specific individual price, the Buyer implicitly assigns to us a portion of the total amount owing to it which is equivalent to the amount we invoiced to the Buyer for those goods.



**8.04** Where we are able to substantiate reasonable grounds, the Buyer undertakes to provide us with any information we may require to secure our rights against the customer and to transfer any documents required to us, provided they are in its possession.

**8.05** Until further notice, the Buyer is entitled to collect the assigned claims from the resale. Where an important reason exists, in particular default of payment, cessation of payments, commencement of insolvency proceedings, contentious bills of exchange or similar reasons which amount to suspected insolvency of the Buyer, we reserve the right to cancel the Buyer's right to collect payment. In addition, in these circumstances, we reserve the right, after giving advance notice to the Buyer, to disclose the assignment of the collateral, collect the assigned outstanding amounts and require the Buyer to disclose to its customer the assignment of the collateral.

**8.06** Where goods are made subject of a distraint or confiscation order or other seizure or action by Third Parties, the Buyer undertakes to inform us immediately.

## **9. Court of jurisdiction, place of performance**

Where the commissioning party is a businessman, legal entity under public-law or special fund under public law, the Court of jurisdiction for both parties is the registered office of the contractor. Disputes under chapter 1 may also be settled at the Court of law responsible for the branch office concerned. The place of performance is our registered office unless it is a matter of warranty claims or claims in connection with the rescinding of a contract.

The contract is subject to German law and the provisions of the United Nations "Convention on Contracts for the International Sale of Goods" (CISG) are expressly excluded.

## **10. Severability**

If any clause in these Terms & Conditions should be or become void, ineffective or unenforceable, the remainder of the provisions and the contract to which they apply shall remain unaffected.

