

# General terms and conditions of sale

## Company: MDS GmbH & Co. KG

### I. General- Applicability

- (1) Our terms and conditions of sale are exclusively valid for all current and future business relationships; MDS does not accept any terms that deviate from our terms of sale. Our terms of sale are still valid if we carry out an unconditional delivery to the customer while being aware that the customer's terms may contradict or deviate from our terms.
- (2) All agreements that are made between us and the customer for the purpose of fulfilling the contract are included in writing in this contract.
- (3) Our terms of sale are only valid for independent contractors. Contractors, as defined in our terms of sale, are considered to be real people, legal entities, or partnerships that have a legal capacity, with whom we have a business relationship that is based on the execution of commercial activities or self-employed occupational activities.

### II. Offers – Bidding Documents

- (1) If the contracting party's (= purchaser) order qualifies as an offer according to § 145 of the *BGB* (German Civil Code), we can accept the order within 4 weeks. The quotes that we make are subject to change without notice until acceptance of the bid as been issued. If the order is made electronically (internet, email), we will confirm receipt of the order without delay. Confirming the receipt of the order does not represent a binding acceptance of the order itself. A confirmation letter for the receipt of the order can be sent by us together with a letter of acceptance of the order. If the order takes place electronically the text of the contract is saved by us and it can be sent by email to the purchaser, along with the present General Terms and Conditions, upon request.
- (2) Property rights and copyrights of depictions, drafts, calculations, estimates of costs and any other documents are reserved by MDS and they are to be considered binding, only if we have explicitly declared them to be valid and binding. The aforementioned is also valid for written documents that have been marked as "confidential". Before passing them on to a third party the explicit consent of MDS is necessary. Apart from that, the items subsequently mentioned in section II, paragraph 3, line 2 continue to be agreed upon.
- (3) Drafts, tools, mockups, models, brands, designs, or the like, as well as finished products and semi-finished goods, which are ceded for use by MDS or produced on behalf of MDS, remain the property of MDS and for passing them on to a third party, an explicit written agreement is necessary. Subject to any other agreements made in individual cases, these materials have to be given back to MDS immediately after the order is completed, without MDS having to make a special request for their return.

### III. Scope of Delivery – Confirmation of Orders

- (1) The scope of delivery is defined by our written confirmation of the order through which a contract between the purchaser and MDS is made. Merely sending a non-binding offer and the offer documents by MDS does not represent an offer for conclusion of the contract. The conclusion of the contract takes place on our part with reservations for correct and punctual delivery from our suppliers. This is valid only in the case where MDS is not responsible for the non-delivery, in particular for arranging congruent deals for covering work with suppliers. The purchaser is to be informed immediately in the case of the non-availability of services. The consideration in return is to be reimbursed immediately.
- (2) Design or dimensional modifications, which are ascribed to improvements in the engineering, or more specifically, to the requirements of lawmakers, remain valid during the delivery period, as long as the delivery item does not need to be significantly changed and the modifications are reasonable for the purchaser.
- (3) At the request of MDS, the purchaser has to provide an adequate quantity of sample parts for free. Damage to the samples by using the delivery items cannot be ruled out by us. MDS assumes liability only for intentional damage and gross negligence. In the case of a negligent violation of duty MDS's liability is limited to foreseeable, contractually typical, and direct damage typical for the type of item in question. The previously mentioned provisions concerning liability are also valid for the negligent violation of duty made by our legal representatives or vicarious agents. The purchaser has to insure all items provided on his own at his own expense.

### IV. Delivery Deadline

- (1) The delivery period amounts to \_\_\_\_\_ weeks.
- (2) The delivery period begins when the written confirmation of the order is sent, however it doesn't start until the documents, concessions, releases of documents are obtained, down payments that have been agreed to have been received, and all technical and commercial questions are clarified. The unfulfilled contract remains subject to exceptions. Adhering to delivery obligations presumes that the purchaser duly fulfills any of his obligations.
- (3) The delivery deadline is met, if the purchaser has been informed that the items to be delivered are ready for dispatch or have already left the factory by the end of the delivery period.
- (4) The delivery period is to be extended by special arrangements in the unlikely event of industrial disputes, especially strikes and lockouts, and if there are any unforeseeable events which are beyond our control, like an interruption of operations and delays in the delivery of some essential materials, insofar as it can be proved that these obstacles significantly hinder the delivery of the items to be delivered. The same is also true, if these types of events affect our subcontractors, with whom no congruent hedging transactions have been made. The delivery date is extended appropriately for the duration of these types of sanctions and obstacles. MDS does not have to cover the aforementioned circumstances if they occur during an already existing delay. MDS is to inform the purchaser of the beginning and ending of such events without delay.
- (5) The delivery deadline is to be extended appropriately if modifications are made after a contract has been signed, which will lead to a delay of the productive time and if the provision of goods on the part of the purchaser is delayed.

- (6) Partial deliveries are permitted within the named delivery periods, as long as it doesn't result in any drawbacks for its use.
- (7) If the purchaser is in default for not accepting a delivery, or if the purchaser infringes any other cooperation duties, MDS is then allowed to claim damages for the harm caused, including reimbursement for additional expenditures, like for example, costs of storage and dismantling. The right to make further claims is reserved.
- (8) As long as the conditions from paragraph 6 exist, the risk of accidental destruction or of a coincidental deterioration of the delivery item is transferred to the purchaser at the time of its acceptance or debtor's delay.
- (9) If the sales contract represents a just-in-time sale in terms of § 323 paragraph 2 number 2 of the *BGB* (German Civil Code), the purchaser has the right to cancel the contract, if MDS does not provide the goods and services by the date defined within the contract. In doing so, the purchaser assumes the obligation to indicate that the goods and services, which were supposed to be delivered on time - as stipulated at the signing of the contract and where fault has been clearly defined - were indeed not received. The purchaser can also withdraw from the contract if it is the result of a delayed delivery, for which MDS is responsible, and the interests of the purchaser to execute the contract are discontinued.
- (10) The purchaser is not allowed to claim damages if the delay in delivery is merely caused by a culpable breach of an inessential contractual obligation.

### V. Cancellation Charges

If the purchaser withdraws from a contract and is not authorized to do so, MDS has the option of claiming a higher actual loss and is allowed to claim 20 % of the sales price for the costs incurred by processing the contract and for the loss of profit. Proof of smaller damages remains reserved for the purchaser.

### VI. Prices– Payment Terms

- (1) So far as the confirmation of the order does not contain any other stipulations, the prices of MDS are valid ex works, excluding packaging. This is separately invoiced (cf. below VII). Spare parts, wear parts and miscellaneous accessories (excluded from the scope of supply) are separately invoiced and payment is due within 14 days after the date of invoice.
- (2) The statutory sales tax (VAT) is not included in our prices and is calculated on the day of issuing the invoice in accordance with the statutory percentages.
- (3) Allowances for discounts require a special written agreement.
- (4) As long as the confirmation of the order does not state otherwise, the net purchasing price (without deductions) is due in full:
  - a) In the amount of 30 % immediately upon receipt of our order confirmation by the purchaser, whereby it is assumed that the confirmation of the order is received by the purchaser within 3 days after it is mailed.
  - b) In the amount of 60 % at the time of delivery of the delivery item, at the latest 10 days after we notify the purchaser that item to be delivered is ready for delivery.
  - c) In the amount of 10 % after the purchaser brings the delivery item into service, at the latest 60 days after we notify the purchaser that the item to be delivered is ready for delivery.
- (5) Should payments be delayed or made later than agreed, interest shall be charged in an amount of 8 % above the annual base lending rate (prime rate). If MDS can verify that more damage was caused by delay, we are entitled to reimbursement for these damages as well.
- (6) The purchaser is only legally entitled to charging rights if his counterclaims are legally recognized, uncontested or accepted by MDS. Moreover, the purchaser is only allowed to use his right of retention if his counterclaim is based on the same contractual relationship.
- (7) The purchaser is required to provide standard bank securities for our outstanding bills, if we request them.
- (8) The right for a short delivery or an additional delivery of up to 10 % of the total quantity ordered and its related price adjustments - especially for special parts - is reserved by MDS.

### VII. Statute of Limitations

Our entitlements to labor compensation lapse in five years.

### VIII. Price Adjustments

MDS reserves the right to adjust prices accordingly, if after making a contract costs decrease or increase, especially due to changing wage agreements or changing prices for materials. Proof of these new prices will be submitted to the purchaser upon request.

### IX. Packaging

- (1) Packaging becomes the property of the purchaser (packing extra) and is invoiced separately, as are expenses for postal and packing charges. The shipping method is made to the best of MDS's judgment, as far as no written agreements have been made.
- (2) Shipping and all other packaging according to packaging regulations are non-returnable, with the exception of pallets which have to be sent back by the purchaser or to replace its value. The purchaser is required to dispose of the packaging at his own expense.

### X. Factory Acceptance Test and Transfer of Risk

- (1) The purchaser must accept the delivery item without exception. Unless any other agreements were made, delivery is considered "ex works," which means our delivery obligations are met when the delivery items are held ready for shipping at our plant. The purchaser is entitled to check the delivery item at the factory within 14 days after being informed that the goods are ready for delivery on demand. The purchaser is obliged to accept the delivery item within the same period of time unless the purchaser is temporarily unable to accept the delivery items due to no fault of his own.

- (2) If the purchaser does not accept the delivery item within the 14 days after he has been notified of the readiness for delivery because he is being willfully or wantonly negligent, MDS is permitted to take the legal consequences and effects mentioned in §§ 300-304 of the BGB (German Civil Code).
- (3) The transfer of risk to the purchaser starts with the notification of readiness for delivery. That is also valid, if only part deliveries take place or MDS has assumed the responsibility of providing other goods and services.
- (4) Upon the purchaser's request, the delivery item can be sent to a place other than the designated site. Also in these cases, the transfer of risk to the purchaser starts with the notification of readiness for delivery. However, MDS guarantees that transport companies who are known as reliable to us are commissioned to do the shipping. If the purchaser wishes, MDS will insure the shipment for damages in transit, damages due to theft, fire, and breakage, and damages caused by water. The costs incurred have to be bared by the purchaser.

#### **XI. Warranty**

- (1) The purchaser's warranty rights require that we are notified of material defects in writing within a period of two weeks following the delivery of the goods, otherwise the assertion of any liability based on material defects shall be excluded. Sending the notice in on time is sufficient for complying with the time limit. The purchaser is solely responsible for providing evidence that his claim is justified, especially for showing defect itself, the moment that the defect was noticed, and for submitting the notice of defects in time.
- (2) In principle, for the nature or quality of the contracted goods only the declared product description, as it was agreed upon, is valid. In addition, any official statements, comments or ads made by MDS, are not considered contractually binding descriptions of the contracted goods' properties or characteristics.
- (3) As long as a defect of the delivery item is detected by MDS, MDS is allowed to repair or to replace the defects as we see fit. The rectification of defects should first be attempted to be done by telephone, which would save costs. In the case where rectifying defects is necessary, MDS is obliged to bear the costs for shipping, travel, labor and materials, as long as these costs are not increased because the delivery item was transported to a different place other than where the goods and services were to be delivered.
- (4) Should the subsequent rectification of defects or delivery of replacements fail, in principle the purchaser may, at his option, withdraw from the contract or demand a reduction of the purchasing price. In the case of only a minor infringement of the contract, especially because of minor defects, the purchaser does not have the right to withdraw from the contract.
- (5) If the purchaser decides to withdraw from the contract because of a defect that couldn't be rectified, he will no longer be legally entitled to claims for compensation for the defect.
- (6) In addition, the warranty for compensation claims on losses suffered is excluded in this respect, as MDS is not liable for defects which did not arise on the delivery item itself. In addition, usual wear is absolutely excluded from the warranty.
- (7) The warranty period amounts to 12 months or 2000 operating hours from the moment of the transfer of risk to the purchaser. The period of time is subject to the statute of limitations and is also valid for claims for replacing goods that suffered consequential damage, as long as there are no claims from crimes that can be made valid.
- (8) The purchaser does not receive any warranties in the legal sense from MDS. Other warranties from third parties - especially those from suppliers - remain unaffected.

#### **XII. Limitations of Liability**

- (1) A more extensive liability for damages, as is stipulated in X - without any regard to the legal nature of the argued claim - is excluded. In the case of negligent violations of contractual duties, our liability shall be restricted to the foreseeable, contractually typical, and direct typical damage given the nature of the contracted goods. This is also valid for negligent violations of contractual duties made by MDS's legal representatives or proxies.
- (2) The liability for the negligent violation of insignificant contractual obligations by MDS is completely excluded.
- (3) The preceding exclusion of liability shall not apply to the purchaser's claims that stem from product liability. Furthermore, the limitations of liability are not valid for bodily harm, damages caused to someone's health, or for the purchaser's loss of life.
- (4) The indemnity claim of the purchaser because of a defect lapses a year after the transfer of risk is made. This is not valid if bodily harm, damage to health, or a loss of life is attributable to us.
- (5) As long as the liability for damages is excluded or restricted, the aforementioned is also valid with respect to the personal liability for damages made by our legal representatives, workers, employees, staff and proxies.

#### **XIII. The Provision of Collateral for Title Retention**

- (1) MDS retain proprietary rights for the delivery items until the total balance is paid in full for all business activities stemming from the current business relationship.
- (2) MDS is entitled to withdraw from the contract and to reclaim the contracted goods, if the purchaser behaves in a way that violates the contract, especially if he is late in remitting payments or neglecting the duties specified in clauses No. 7 and 9.
- (3) Enforcing the retention of title and the seizure of the delivery items by MDS is not considered to be withdrawing from the contract, as long as the clauses in the Consumer Credit Act apply or this is explicitly stated in writing.

During its application to merchants, the following also applies to a judicial person of public law or a special fund under public law:

- (4) The purchaser is entitled to resell delivery items in the regular course of business. However, the purchaser transfers to us the receivables in the amount of the agreed price between MDS and the purchaser (inclusive VAT) that accrued from the resale, regardless of whether the delivery items were resold without adaptations or after adaptations were made. MDS accepts the assignment of debt at this point. The purchaser is authorized to collect the receivables after the assignment is made. MDS's authorization to collect the receivables is not affected by this, and MDS is obliged not to collect the receivables, as long as the

purchaser fulfills his obligation to pay and is not late in making payments. However, if this is not the case, MDS is allowed to demand that the purchaser disclose the assigned receivables and their creditors, include all of the required information for their collection, surrender all related documents and inform the their debtors (third parties) about the assignment.

- (5) Work on or modifications to the contracted goods by the purchaser are done for MDS. If the delivery items are manufactured in combination with items which are not the property of MDS, MDS acquires some common property rights for new product. Their property rights will be in proportion to the value of the delivery items and the other manufactured items at the moment it was manufactured.
- (6) If the delivery items are mixed up with other items not belonging to MDS, MDS acquires the common property of the new goods in proportion to the value of the delivery items and the other intermixed items (total amount of the invoice including VAT). The purchaser stores the common property for us.
- (7) The purchaser is neither allowed to mortgage the delivery items nor to use them as collateral. If seizures, confiscations or any other decrees are made by a third party, the purchaser has to inform MDS immediately and to provide all information and documents which are necessary for full protecting the rights of MDS (in particular according to § 771 of the German Code of civil Procedure (ZPO)). Executory officers or a third party has to be informed of MDS's property rights.
- (8) Should the value of the securities owed to us exceed the receivables by 20 %, we are obligated to release the securities, at the request of the party placing the order, as long as this is not paid and is more than 20 %.
- (9) The purchaser is obliged to take care of the delivery item and he must insure the delivery item against fire, water, theft, and larceny at its value when new. If maintenance and technical services are necessary, they have to be carried out in time at the purchaser's expense.

#### **XIV. Secrecy**

- (1) All parties are bound to treat the following confidentially, as if they were company secrets: all exchanged information and acquired knowledge on basic principles, procedures, manufacturing, new production developments, improvements and any other details that are related to the products, as well as those concerning the execution of the contract for relevant operational processes. This is not valid, if the information and acquisitions were attained legally from a third party, if they are common knowledge, or if disclosure is necessary in order to fulfill the purpose of contract. The duty to observe secrecy is valid for all staff members and has to be included in every employment contract.
- (2) Secrecy is unlimited and indefinite.

#### **XV. Documentation**

The handling and maintenance of the delivery item is described in detailed in our documentation. The documentation is comprised of a set of drawings for assembly parts, wearing parts, spare-part lists, and user manuals according to our standards which are in German. All included instructions and regulations, especially safety installations and safety warnings, have to be followed exactly. If the purchaser receives documentation that is inadequate or incomplete, MDS is only required to deliver documentation that is complete and adequate. However, this is also the case when the shortcomings or flaws in the documentation are in conflict with duly bringing the contracted goods into service.

#### **XVI. Trade Mark Rights of Third Parties**

- (1) MDS guarantees that our deliveries are not hindered by the rights of a third party. Otherwise, MDS is authorized to choose how to rectify the defects or to take back the said delivery or services by making agreements with a third party or by carrying out other measures (technical).
- (2) MDS does not guarantee that with delivery the product is free from rights of third parties. A guarantee for this is the responsibility of the purchaser.

#### **XVII. Place of Delivery and Applicable Law**

- (1) Place of fulfillment is MDS's place of business.
- (2) For all conflicts that stem from the contractual relationship, lawsuits are to be filed in a court of law which has jurisdiction for our headquarters' location, if the purchaser is a merchant who is entered in the commercial register, a judicial person of public law or it concerns a special fund under public law. The above mentioned is also valid, if the purchaser does not have a legal venue in Germany or if a place of general jurisdiction in Germany is not known at the time a suit is filed. Moreover, MDS is also allowed to file a suit in a court of law that has jurisdiction over the purchaser's home office.
- (3) German law is exclusively applicable without exception. The regulations in the UN's Uniform Law on the International Sale of Goods are not valid.

#### **XVIII. Miscellaneous**

- (1) The contract contains all relevant agreements. There are no other subsidiary agreements. Modifications and amendments have to be made writing. This also applies for eliminating the requirement to have all agreements in writing.
- (2) The deliveries and services, which are rendered either in their entirety or in part and which have not been mentioned by name in this contract, are not elements of the delivery contract. Such deliveries and services have to be arranged explicitly in writing in riders and they have to be calculated and charged separately.
- (3) Should individual clauses in this agreement be deemed invalid, the invalidity of the remaining provisions shall remain unaffected thereby. The contracting parties are required to replace an invalid clause with a valid provision that most closely reflects the original intent and purpose of the invalid clause.