

General Terms and Conditions of Sale, Delivery and Payment (GTCS) of MITRAS MATERIALS GmbH (September 2022)

I. Scope and offers

1. These General Terms and Conditions of Sale, Delivery and Payment (GTCS) shall apply to all our - also future - sales, deliveries and services (hereinafter uniformly referred to as "Deliveries"). Our deliveries to companies, legal entities under public law or special funds under public law shall be made exclusively in accordance with these GTCS. We shall only recognise terms and conditions that are contrary to or deviate from our terms and conditions if we have expressly agreed to them in writing. Our GTCS shall also apply if we carry out the delivery to the purchaser without reservation and in the knowledge that the purchaser's or buyer's (hereinafter uniformly referred to as "purchaser") terms and conditions conflict with or deviate from our terms and conditions.
2. These terms and conditions shall also apply in the case of continuous business relations to future transactions in which no express reference is made to them, provided that they have been received by the purchaser in connection with an order previously confirmed by us.
3. Our offers are non-binding. Verbal agreements, promises, assurances and guarantees made by our employees in connection with the conclusion of the contract shall only become binding upon our written confirmation.
4. All information such as dimensions, weights, figures, descriptions, samples, price lists and other printed matter are provided to the best of our knowledge, but are only approximate and to that extent non-binding for us. The same applies to data of the works. Models and drawings remain our property

II. Prices and reservation of adjustment

1. In case of doubt, the prices are ex works, excluding freight, customs, import duties and packaging, plus value added tax at the legal rate.
2. If charges or other external costs included in the agreed price change later than four weeks after conclusion of the contract, or if they are newly incurred, we shall be entitled to change the price to the corresponding extent.
3. If, after submission of the offer or during the period of execution of the contract, a change in the manufacturing or purchasing conditions occurs, in particular an increase in costs as a result of an increase in the cost of raw materials, logistics and transport costs, energy costs, increased tariffs or other costs, as well as in cases of force majeure, we reserve the right and are entitled, in fulfilment of the contract, to charge a price surcharge corresponding to the market situation, even without prior notification.
4. If the dependence of the price on the part weight has been agreed, the final price will be determined by the weight of the approved reference samples.
5. In the case of new orders, including follow-up orders, there is no commitment to previous prices.

III. Payment conditions

1. All payments shall be made in € (EURO) in such a way that we can dispose of the amount on the due date.
2. Unless otherwise agreed, the purchase price for deliveries is payable without deduction within 30 days of the invoice date.
3. An agreed cash discount always relates only to the invoice value excluding freight and presupposes the complete settlement of all due liabilities of the purchaser at the time of the cash discount.
4. In the event that the agreed payment date is exceeded or payment is delayed, interest shall be charged at the legal rate of 8 percentage points above the respective prime rate of the ECB, unless a higher interest rate has been agreed. We reserve the right to claim further damages for delay.
5. The purchaser may only offset or assert a right of retention if its claims are undisputed or have been finally determined by a court of law.
6. If, after conclusion of the contract, it becomes apparent that our claim for payment is jeopardised by the purchaser's inability to pay or lack of performance, we shall be entitled to the rights under Art. 321 BGB (German Civil Code) (plea of uncertainty). We shall then also be entitled to declare due all claims not subject to prescription from the current business relationship with the purchaser. Otherwise, the plea of uncertainty shall extend to all other outstanding deliveries and services from the business relationship with the purchaser.

IV. Deliveries, delivery times and dates, force majeure

1. Our delivery obligation is subject to correct and timely self-delivery, unless the incorrect or delayed self-delivery is our fault.
2. Information on delivery times and dates are approximate. Delivery times shall commence after receipt of all documents required for the execution of the order, the down payment and the timely provision of materials, insofar as these have been agreed.
3. The time of dispatch ex works or ex warehouse shall be decisive for compliance with delivery times and dates. They shall be deemed to have been complied with upon notification of readiness for dispatch if the goods cannot be dispatched on time through no fault of our own.
4. If an agreed delivery time is not met due to our fault, and if we have not acted with gross negligence or intent, the purchaser shall be entitled, to the exclusion of any further claims, to claim compensation for delay or to withdraw from the contract after expiry of a reasonable grace period. The compensation for delay shall be limited to a maximum of 5% of that part of the delivery which has failed to perform in accordance with the contract. Withdrawal shall be excluded if the purchaser itself is in default of acceptance.

5. Reasonable partial deliveries as well as reasonable deviations from the order quantities of up to plus / minus 10 % are permissible.
6. In the case of call-off orders without agreement on duration, production lot sizes and acceptance dates, we reserve the right and are entitled to demand a binding determination of this no later than three months after order confirmation. If the purchaser does not comply with this request within three weeks, we shall be entitled to set a two-week grace period and, after its expiry, to withdraw from the contract and/or claim damages.
7. If the purchaser does not fulfil his acceptance obligations, we shall not be bound by the regulations on self-help sales, irrespective of other rights, and may rather sell the delivery item on the open market after prior notification of the purchaser.
8. Events of force majeure shall entitle us to postpone delivery for the duration of the hindrance and a reasonable start-up period. This shall also apply if such events occur during an existing delay.
Force majeure includes all unforeseeable and uncontrollable events such as war, civil war, social unrest, natural disasters, acts of sabotage, nuclear accidents, pandemics, strikes and lock-outs, etc. Equal to force majeure are monetary, trade policy and other sovereign measures, operational disruptions for which we are not responsible (e.g. fire, machine breakdowns, shortage of raw materials or energy, cyber-attacks), obstruction of traffic routes, delays in import/customs clearance and all other circumstances which, through no fault of our own, make deliveries significantly more difficult or impossible. In this respect, it is irrelevant whether these circumstances occur with us or with a pre-supplier. If, as a result of the aforementioned events, the execution of the contract becomes unreasonable for one of the contract parties, in particular if the execution of the contract is delayed in essential parts by more than 3 months, this party may demand the cancellation of the contract.

V. Packaging, shipping, transfer of risk and default of acceptance

1. Unless otherwise agreed, we choose the packaging, method of shipment and shipping route.
2. Even in the case of carriage paid delivery, the risk shall pass to the purchaser when the goods leave the supplier's delivery works. In the event of delays in dispatch for which the purchaser is responsible, the risk shall already pass upon notification of readiness for dispatch.
3. At the purchaser's written request, the goods shall be insured at his expense against risks to be specified by him.

VI. Retention of title

1. The deliveries shall remain our property (reserved goods) until all claims have been fulfilled, in particular also the respective balance claims to which we are entitled within the scope of the business relationship (balance reservation) and the claims which are unilaterally established by the insolvency administrator by way of choice of performance. This shall also apply to claims arising in the future and conditional claims, e.g. from acceptor's bills of exchange, and also if payments are made on specially designated claims. This reservation of balance shall finally expire upon settlement of all claims still outstanding at the time of payment and covered by this reservation of balance.
2. Any treatment or processing by the purchaser shall be carried out, excluding the acquisition of ownership in accordance with Art. 950 BGB (German Civil Code), on our behalf without obligating us. The processed goods shall be deemed to be goods subject to retention of title within the meaning of No. 1. If the reserved goods are processed, combined and mixed with other goods by the purchaser, we shall be entitled to co-ownership of the new item in proportion to the invoice value of the reserved goods to the invoice value of the other goods used.

If our ownership expires due to combination or mixing, the purchaser shall already now transfer to us the ownership rights to which he is entitled in the new stock or item to the extent of the invoice value of the goods subject to retention of title and shall hold them in safe custody for us free of charge. Our co-ownership rights shall be deemed to be reserved goods within the meaning of No. 1.

3. The purchaser may only resell the reserved goods in the ordinary course of business under his normal terms and conditions of business and as long as he is not in default, provided that the claims from the resale pursuant to nos. 4 to 6 are transferred to us. He shall not be entitled to dispose of the reserved goods in any other way.
4. The purchaser hereby assigns to us the claims arising from the resale of the reserved goods together with all securities which he acquires for the claim. They shall serve as security to the same extent as the reserved goods. If the reserved goods are sold by the purchaser together with other goods not sold by us, the claim from the resale shall be assigned to us in the ratio of the invoice value of the reserved goods to the invoice value of the other goods sold. In the event of the sale of goods in which we have co-ownership shares pursuant to No. 2, a part corresponding to our co-ownership share shall be assigned to us. If the reserved goods are used by the purchaser to fulfil a contract for work and services, the claim arising from the contract for work and services shall be assigned to us in advance to the same extent.
5. The purchaser is entitled to collect receivables from the resale. This authorisation to collect shall expire in the event of our withdrawal, but at the latest in the event of default in payment, non-redemption of a bill of exchange or application for the opening of insolvency proceedings. We shall only exercise our right of revocation if it becomes apparent after the conclusion of the contract that our claim for payment under this or other contracts with the purchaser is jeopardised by the purchaser's inability to pay. At our request, the purchaser is obliged to immediately inform his customers of the assignment to us and to provide us with the documents required for collection.
6. An assignment of receivables from the resale is not permitted, unless it is an assignment by way of genuine factoring, which is notified to us and in which the factoring proceeds exceed the value of our secured receivable. Our receivable becomes due immediately upon crediting of the factoring proceeds.
7. The purchaser must inform us immediately of any garnishment or other impairments by third parties. The purchaser shall bear all costs which have to be incurred in order to cancel the seizure or to return the reserved goods, insofar as they are not reimbursed by third parties.

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8. If the purchaser defaults on payment or fails to honour a bill of exchange when due, we shall be entitled to take back the reserved goods and, if necessary, to enter the purchaser's premises for this purpose. The same shall apply if, after conclusion of the contract, it becomes apparent that our claim for payment under this or other contracts with the purchaser is jeopardised by the purchaser's inability to pay. The take-back is not a withdrawal from the contract. The provisions of the Insolvency Code shall remain unaffected.
9. If the invoice value of the existing securities exceeds the secured claims, including ancillary claims (interest, costs, or similar), by more than 30% in total, we shall be obliged, at the purchaser's request, to release securities of our choice to this extent.

VII. Liability for material defects and warranty period

1. Decisive for the quality and design of the products are the reference samples, which will be submitted to the purchaser for test upon request. The reference to technical standards serves to describe the performance and is not to be interpreted as a guarantee of quality.
2. We do not give any warranty for a specific purpose or a specific suitability of the goods, unless expressly agreed otherwise in writing; in all other respects, the risk of use and application lies exclusively with the purchaser.
3. Material defects of the goods must be reported in writing immediately, at the latest seven days after delivery. Material defects which cannot be discovered within this period even after careful control must be reported in writing immediately after discovery, at the latest before expiry of the prescription period, with immediate cessation of any processing.
4. In the event of an insignificant reduction in the value or suitability of the goods, our liability for material defects shall be excluded. If goods have already been resold, processed or transformed, the purchaser shall only be entitled to the right of reduction.
5. If an acceptance has been agreed upon, after the purchaser has carried out the acceptance of the goods, the notification of material defects that were detectable during the agreed type of acceptance shall be excluded.
6. In the event of a justified notice of defect within the time limit, we may, at our discretion, remedy the defect or deliver a defect-free item (subsequent performance). In the event of failure or refusal of subsequent performance, the purchaser may reduce the purchase price or, after setting and unsuccessful expiry of a reasonable deadline, withdraw from the contract. If the defect is not significant, he shall only have the right to reduce the purchase price.
7. If the purchaser does not immediately give us the opportunity to convince ourselves of the material defect, in particular if he does not immediately make available the objected goods or samples thereof upon request, all rights due to the material defect shall lapse.
8. Unauthorised reworking and improper handling will result in the loss of all claims for defects. Only in order to prevent disproportionate damage or in the event of delay in rectification of the defect by us shall the purchaser be entitled, after having notified us in advance, to rectify the defect and to demand reimbursement of the reasonable costs thereof.
9. In the case of goods sold as B-goods, the purchaser shall not be entitled to any rights arising from material defects with regard to the stated reasons for declassification and such deviations as he must normally expect. In case of sale of B-goods, our liability for material defects is excluded.
10. We shall bear expenses in connection with subsequent performance only to the extent that they are reasonable in the individual case, in particular in relation to the purchase price of the goods, but in no case in excess of 150% of the value of the goods. The costs in connection with the installation and removal of the defective item are excluded, as are the costs incurred by the purchaser for the self-remedy of a defect, without the legal requirements for this being met. We shall not be liable for any expenses incurred as a result of the goods sold having been taken to a place other than the purchaser's registered office or branch, unless this is in accordance with their contractual use.
11. The rights of recourse of the purchaser according to Art. 478 BGB (German Civil Code) remain unaffected.
12. Unless otherwise agreed, all claims for defects are prescribed twelve months after the transfer of risk. Insofar as the law prescribes longer periods, these shall apply, for example in accordance with Art. 438 para. 1 no. 2 BGB, 479 para. 1 BGB and Art. 634a para. 1 no. 2 BGB (German Civil Code).

VIII. General limitations of liability

1. Due to the breach of contractual and non-contractual obligations, in particular due to impossibility, delay, culpa in contrahendo and tort, we shall be liable - also for our executives and other vicarious agents - only in cases of intent and gross negligence, in the latter case limited to the typical contractual damage foreseeable at the time of conclusion of the contract.
2. These limitations shall not apply in the event of culpable breach of essential contractual obligations, insofar as the achievement of the purpose of the contract is jeopardised, in cases of mandatory liability under the Product Liability Act, in the event of damage to life, limb and health and also not if and insofar as we have fraudulently concealed defects in the item or guaranteed their absence. The rules on the burden of proof shall remain unaffected.
3. Unless otherwise agreed, contractual claims which the purchaser may have against us on the grounds of or in connection with the delivery of the goods shall be prescribed one year after delivery of the goods, unless they involve compensation for physical injury or damage to health or typical, foreseeable damage or are based on intent or gross negligence on the part of the seller. Our liability for intentional and grossly negligent breaches of duty as well as the prescription of legal recourse claims shall remain unaffected. In cases of subsequent performance, the prescription period shall not start to run again.

IX. Forms/rollers/tools

1. The price for forms/rollers/tools also includes the costs for one-time sampling, but not the costs for testing and processing devices and for changes initiated by the purchaser. The costs for further sampling for which we are responsible shall be borne by us.
2. Unless otherwise agreed, we shall remain the owner of the forms/rollers/tools produced for the purchaser by us or by a third party commissioned by us. forms/rollers/tools shall only be used for orders placed by the purchaser as long as the purchaser meets his payment and acceptance obligations. We are only obliged to replace these forms/rollers/tools free of charge if they are required to fulfil an output quantity promised to the purchaser. Our obligation to store expires two years after the last delivery of parts from the forms/rollers/tools and prior notification of the purchaser.
3. If, according to the agreement, the purchaser is to become the owner of the forms/rollers/tools, ownership shall pass to him after full payment of the purchase price for them. The transfer of the forms/rollers/tools to the purchaser is replaced by the storage for the benefit of the purchaser. Irrespective of the purchaser's legal claim to handover and of the service life of the forms/rollers/tools, we shall be entitled to their exclusive possession until termination of the contract. We shall mark the forms as third-party property and insure them at the purchaser's request and expense.
4. In the case of the purchaser's own forms/rollers/tools in accordance with paragraph 3 and/or forms/rollers/tools made available by the purchaser on loan, our liability with regard to storage and care shall be limited to the care we take in our own affairs. The costs of maintenance and insurance shall be borne by the purchaser. Our obligations shall lapse if the purchaser fails to collect the forms/rollers/tools within a reasonable period of time after completion of the order and a corresponding request. As long as the purchaser has not fulfilled his contractual obligations in full, we shall in any case have a right of retention to the forms/rollers/tools.

X. Provision of materials

1. If materials are delivered by the purchaser, they shall be delivered on time and in faultless condition at the purchaser's expense and risk with a reasonable quantity surcharge of at least 5%.
2. In the event of non-fulfilment of these requirements, the delivery time shall be extended accordingly. Except in cases of force majeure, the purchaser shall also bear the additional costs incurred for interruptions in production.

XI. Intellectual property rights and defects of title

1. If we have to deliver according to drawings, models, samples or using parts provided by the purchaser, the purchaser shall be responsible for ensuring that the intellectual property rights of third parties in the country of destination of the goods are not infringed thereby. We shall inform the purchaser of any rights known to us. The purchaser shall indemnify us against claims of third parties and pay compensation for any damage incurred. If we are prohibited from manufacturing or delivering by a third party with reference to an intellectual property right belonging to him, we shall be entitled - without checking the legal position - to stop the work until the legal position has been clarified by the purchaser and the third party. If the delay makes it unreasonable for us to continue the order, he shall be entitled to withdraw from the contract.
2. Drawings and samples provided to us which have not resulted in an order shall be returned upon request; otherwise, we shall be entitled to destroy them three months after submission of the offer. This obligation shall apply accordingly to the purchaser. The party entitled to destroy the goods shall inform the other party of its intention to destroy the goods in good time in advance.
3. We shall be entitled to the copyrights and, if applicable, industrial property rights, in particular all rights of use and exploitation to the models, forms/rollers/tools and devices, drafts and drawings designed by us or by third parties on our behalf.
4. If other defects of title exist, No. VII. shall apply to them accordingly.

XII. Place of performance, place of jurisdiction, severability clause

1. If the purchaser is a merchant, a legal person under public law or a special fund under public law, the place of performance for payments and the place of jurisdiction for both parties and for all present and future claims arising from the business relationship shall be Weiden in der Oberpfalz. We are also entitled to sue the purchaser at his place of business.
2. German law shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (BGBl (German Federal Law Gazette) 1989 p. 586) for the Federal Republic of Germany (BGBl 1990 p. 1477) is excluded.
3. If one or more provisions of these terms and conditions are not valid, the validity of the remaining provisions as well as the contract as a whole shall remain unaffected. The invalid clause shall be replaced by the statutory legal situation.