

I. General, Scope of application

Supplies, services and quotations of MEDAN GmbH (hereinafter referred to as ME) shall be rendered solely on the basis of the present Terms and Conditions of Business. They shall apply to all current and future business relations, including where this has not been specifically agreed again. By placing an order the purchaser declares that the Terms and Conditions of Business are known to him and that he consents to same.

Any diverging, conflicting or supplementary general terms and conditions of business shall not form part of the contract, even upon knowledge thereof, including where ME has not objected to the present Terms and Conditions of Business, unless written consent has been specifically given to their application.

II. Quotations and conclusion of contract

1. Quotations submitted by ME shall be without obligation and non-binding unless explicitly designated otherwise. Documents included in the quotation such as figures, drawings, weights and dimensions shall be merely approximate unless specifically indicated as binding. ME shall reserve its proprietary rights to cost estimates, drawings and other documents, which may not be made accessible to third parties.
2. With his order the purchaser makes a binding declaration of his willingness to purchase the ordered goods.
3. ME shall be entitled to accept the contractual offer made in the order within two weeks after receipt. Acceptance may be declared either in writing or by delivery of the goods to the purchaser. Any information pertaining to the goods and services supplied by ME shall only form part of the contract where listed in a binding quotation, a written confirmation of order or a written contract. Information and quotations shall relate to customary standard quality and design. General information about quality and design should only be regarded as approximate values. Subsidiary agreements and modifications are subject to written confirmation by MEDAN.
4. Any discrepancies between the invoice or delivery note and the actual goods delivered must be reported immediately by the purchaser in writing, at the latest 3 days after receipt of the goods.
5. Conclusion of the contract shall be subject to correct and timely delivery to ME by its suppliers. This shall only apply where ME is not responsible for failure to deliver, in particular with conclusion of a congruent covering transaction with ME's supplier. The purchaser shall be immediately informed about the non-availability of performance. Counter-performance shall be effected at once.

III. Prices

1. Products shall be sold by ME on the basis of the price list applicable on the date of delivery.
2. Prices are quoted ex warehouse, not including packaging, transport, insurance or installation. Shipping and insurance costs as specified in item 5 of the Terms and Conditions of Business shall be for the customer's account unless expressly agreed otherwise, whereby any such arrangement must be agreed in writing.
3. All prices are quoted exclusive of value-added tax at the statutory rate currently applicable. ME price lists shall not constitute a contractual offer.

IV. Terms of delivery and transfer of risk

1. Delivery dates or delivery periods, whether binding or non-binding, must be agreed in writing.
2. The delivery period shall commence on dispatch of the confirmation of order, but not before the provision of any documents, approvals and releases to be supplied by the customer or before the receipt of any agreed down payment.
3. The agreed delivery period shall be deemed to have been observed where the consignments have left the warehouse or where they are ready for shipment by the deadline and the purchaser has been notified accordingly.
4. The duty to deliver shall end where delivery is frustrated either wholly or partially through force majeure or due to other unforeseeable events. This shall also apply where one of ME's suppliers is affected by such circumstances. In such cases ME may either withdraw from the contract or defer delivery for the duration of the hindrance plus any appropriate start-up period. In the latter case the purchaser shall not be entitled to cancel orders, reject partial deliveries or assert claims for compensation of any nature whatsoever. ME may only rely on the aforementioned circumstances where it has immediately informed the customer thereof.
5. On collection the risk shall pass to the purchaser as soon as the delivery leaves ME's warehouse, and otherwise with shipment on handover to the carrier or forwarder. This shall also apply where a special agreement has been concluded regarding acceptance of the shipping costs by ME or where shipment is effected with vehicles belonging to ME.
6. Where shipment is frustrated through no fault on the part of ME, the risk shall pass to the purchaser with the notice of readiness for shipment.

V. Insurance

1. Subject to special instructions of the customer, ME shall insure all deliveries against loss, theft or other damage during transit at the customer's expense.
2. The customer shall be obliged to take the measures required under local law to permit the settlement of claims for damage occurring in transit.

VI. Payment

1. The terms of payment specified by ME in the confirmation of order shall apply. The prerequisite for the granting of any discount agreed is that the purchaser must not be in default with the payment of other outstanding accounts.
No discount shall be allowed for the set-off of credit notes.
2. Where it is necessary to issue payment reminders after expiry of the payment period, any costs incurred thereby shall be charged to the customer.
3. From the due date for payment ME shall be entitled to charge interest on default at 8% above the discount rate of the European Central Bank currently applicable, and in the case of consumers it shall be entitled to charge interest on default at 5% above the discount rate of the European Central Bank currently applicable.
4. Where the customer is in default with the payment of an invoice, all other outstanding invoices shall become immediately payable, regardless of their respective due dates.
5. ME shall be entitled to set off payments against earlier debts of the purchaser, including where provided otherwise by the purchaser's terms and conditions. Where interest and costs have already been incurred, ME shall be entitled to firstly set off payment against costs, then against interest and lastly against the primary obligation. ME shall inform the purchaser about the method of charging applied thereby.
6. Where the customer fails to fulfil his payment obligations and in particular where he fails to honour a cheque and suspends payments or where ME subsequently learns of unfavourable circumstances affecting the financial position or creditworthiness of the contracting partner, ME shall be entitled to demand advance payment or the provision of security for all other contracts and to withdraw from the contracts after a period of grace of reasonable length and to claim compensation for failure to perform.
7. The purchaser shall only be entitled to effect set-off where his claims are undisputed or recognised by declaratory judgement. The purchaser may only exercise a right of retention where his counter-claim is based on the same contractual relationship and said claim is undisputed or recognised by declaratory judgement.
8. ME shall be entitled to demand cash in advance from a purchaser where, according to the credit report of a bank, SCHUFA or similar agency punctual payment of the purchase price does not appear to be assured. Where in such a case the purchaser fails to effect payment of the purchase price within two weeks following the request of ME, the latter shall be entitled to withdraw from the contract. ME shall then be entitled to claim compensation amounting to 25% of the agreed purchase price. The customer shall be obliged to prove a lesser loss.

VII. Reservation of title

1. The goods supplied by ME shall remain the property of ME until payment of the full amount outstanding under the contractual relationship, and in particular until the settlement of any accounts receivable and in the event of payment by cheque, until same has been honoured in full.
2. Where the purchaser is in breach of contract, in particular with any default in payment, ME shall be entitled to reclaim the delivered item, and the purchaser shall be obliged to hand back said item. Except where the reclaiming of the delivered item by ME is governed by provisions of the German Consumer Credit Act, this shall not constitute withdrawal from the contract unless this has been expressly stated in writing by ME.

3. Where goods have been processed by the purchaser and combined or commixed with third-party objects, ME's reservation of title shall also extend to said new objects and to the claims arising therefrom. ME shall in this regard be deemed the manufacturer and shall acquire the title to such objects in accordance with §§ 947, 948, 950 of the German Civil Code. Where the delivered item is processed with other objects not belonging to ME, ME shall acquire co-ownership of the new object in proportion to the other items also processed at the time of processing. Where the delivered item is processed with other objects not belonging to ME, ME shall acquire co-ownership of the new object in proportion to the other items also processed at the time of processing.
4. The goods may not be pledged, assigned by way of security or otherwise encumbered with third-party rights until the full payment of all outstanding accounts. ME must be informed immediately of any such third-party attachment by registered letter.
5. Irrespective of whether the delivered goods are processed, unprocessed or combined with other items, the purchaser may only resell same in the ordinary course of business provided that he is not in default. The purchaser shall hereby assign to ME by way of security the claims relating to the goods that arise from resale or on other legal grounds (including all balance claims for accounts receivable). Where in such case the purchaser fails to fulfil his obligation of payment, ME shall be entitled to inform the purchaser's customers accordingly and demand that payment be made to ME. In this instance the purchaser shall be obliged to offer ME immediate access to all records, documents and information required to assert such claims.
6. ME revocably authorises the purchaser to collect the claims assigned to ME in his own name and for his account. Such authority to collect may only be revoked where the purchaser fails to fulfil his payment obligations in the proper manner.
7. The consent in respect of resale shall not however extend to the sale of goods to a third party who makes the assignment of claims owed by himself dependent on his consent.
8. ME undertakes at the purchaser's request to release security held by ME where it is no longer required, not merely temporarily, as security for the claims and in particular where such security exceeds the claim to be safeguarded by more than 20% on a lasting basis.

VIII. Warranty

1. ME shall offer no warranty for minor, manufacturing-based deviations that do not either impair appearance or function.
2. ME warrants that the delivered goods are free of major manufacturing or material defects.
3. The warranty shall be limited to subsequent improvement or substitute performance, as preferred by ME. Should subsequent improvement or substitute performance fail, the purchaser shall be entitled to demand a reduction in the purchase price (deduction) or cancellation of the contract (avoidance). The purchaser shall not however be entitled to withdraw from the contract in the case of only a minor breach of contract, in particular in the case of merely insignificant defects. Any parts that are replaced shall be excluded from the transfer of title.
4. The purchaser shall be obliged to notify ME of any obvious defects within a period of two weeks from receipt of goods; otherwise, the assertion of warranty claims shall no longer be allowed. The period for asserting such claims shall be deemed to have been observed where notification is dispatched in a timely manner. The full burden of proof regarding all prerequisites for a claim shall lie with the purchaser, in particular as regards the defect itself, the time at which the defect was ascertained and timely notification of the defect.
5. Where the purchaser chooses to withdraw from the contract due to a defect as to quality or to title and where subsequent performance has failed, he shall then not be entitled to claim compensation in respect of the defect. If the purchaser chooses to receive compensation following the failure of subsequent performance, the goods shall remain with the purchaser provided that this can be reasonably expected of same. Compensation shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply where ME has caused the breach of contract by fraudulent intent.
6. The warranty period shall be 6 months from the transfer of risk for the goods. The warranty shall not apply to used products.
7. As regards the quality and nature of the goods only the product description of the manufacturer shall be deemed to have been agreed as a general rule. Public statements, promotional claims or advertising by the manufacturer do not constitute any contractual declaration of the quality or nature of the goods. Where the purchaser is supplied with erroneous assembly instructions, ME shall only be obliged to supply assembly instructions which are free of errors, whereby this shall additionally only apply if proper assembly is precluded by the error in said assembly instructions.
8. No warranty shall be given for losses arising on the following grounds: Unsuitable or improper use, incorrect assembly and/or commissioning by the purchaser or third parties, natural wear and tear, improper or negligent handling, unsuitable operating resources, replacement materials, improper processing, unsuitable foundations, chemical, electrochemical or electrical influences, provided same are not attributable to any fault on the part of ME.
9. Following consultation with ME, the purchaser must offer ME the necessary time and opportunity to carry out any subsequent improvements or substitute performance that ME, at its reasonable discretion, should deem necessary. Otherwise ME shall be relieved of liability for defects. The purchaser shall be entitled to rectify the defect himself or arrange for rectification by third parties and ask ME for reimbursement of the costs incurred only in urgent cases where operating safety is at risk and to avert a disproportionately high loss, in which case ME shall be notified at once, or where ME is in default with rectification of the defect.
10. Modifications or repairs which are carried out improperly by the purchaser or third parties without the prior approval of ME shall exclude any liability or warranty.

IX. Limitations of liability

1. Claims for compensation relating to impossibility of performance, positive violation of contractual duty due to culpa in contrahendo and tortious acts may not be brought against ME, its agents or vicarious officers except on the basis of wilful intent or gross negligence. This shall also apply to claims for compensation in respect of non-performance, but only to the extent that compensation is claimed for indirect or consequential damage due to defects except where liability is based on an assurance safeguarding the purchaser against the risk of such damage. ME shall assume no liability with any breach of minor contractual obligations due to slight negligence on its part.
2. In the case of merchants, however, no compensation shall be given in the event of gross negligence for damage which is not typical of the contract and was not foreseeable on conclusion of the contract unless compensation is due in respect of a warranted characteristic.
3. The above limitations of liability shall not apply to any claims of the purchaser arising from product liability. Nor shall the limitations of liability apply to attributable bodily injury, harm to health or loss of life on the part of the purchaser.
4. Claims for compensation asserted by the purchaser due to a defect shall become time-barred one year after takeover of the goods. This shall not apply where ME can be charged with gross negligence and in the event of bodily injury, harm to health or loss of life on the part of the purchaser.

X. Severability

Should individual provisions of the contract including the present general Terms and Conditions of Business be or become invalid either wholly or in part, this shall not affect the validity of the remaining provisions. The provision that is either wholly or partly invalid shall be replaced by a provision which comes as close as possible to the commercial intention and purpose of the invalid provision.

XI. Place of performance and legal venue

1. The present Terms and Conditions of Business and all legal relationships between ME and its business partners shall be solely governed by the law of the Federal Republic of Germany. UN Law on the International Sale of Goods shall not apply.
2. The place of performance and legal venue for all disputes arising from the contractual relationship shall be the registered office of ME. This shall likewise apply where, following conclusion of the contract, the contracting partner transfers his place of domicile or usual place of abode to another country or if his place of domicile or usual place of abode is not known.

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