

## **1. Scope**

1.1 Our terms and conditions provided below shall apply to all deliveries and services unless contradictory provisions have been agreed in writing. Our general terms and conditions shall also apply if we are aware of the customer's contradictory or deviating conditions and if the customer's order is filled without reservation. Our terms and conditions shall furthermore provide the basis of all future transactions with the customer.

1.2 Our terms and conditions shall only apply to entrepreneurs within the meaning of section 310 of the German Civil Code.

## **2. Offers**

2.1 Our offers are non-binding.

2.2 No contract is formed until a written confirmation of the order has been provided. The contract shall also be formed by the customer's acceptance of the delivery under these terms and conditions without a written order confirmation.

2.3 Any deviations from the offer are deemed to have been accepted and do not affect the execution of the contract, provided the customer can reasonably be expected to accept such deviations. This applies especially to changes for improvements and adjustment to the current state of technology and production.

## **3. Order documentation**

We reserve property rights and copyrights of all documents made available to the customer such as offers, descriptions, drawings and measurement reports. Any documents prepared by us shall not be made available to third parties without our prior written consent. Any information and ideas provided in our documents, sketches and drawings shall not be used without our express written approval.

## **4. Delivery time**

4.1 Delivery times are only binding, if they have been agreed in writing. Partial deliveries are allowed and shall terminate a delay in delivery.

4.2 Delivery deadlines will be met subject to timely delivery by our own suppliers. Notification of delays will be provided as soon as possible.

4.2 If we fail to deliver within the agreed deadline, the customer will give us an adequate grace period. If delivery is not effected within this period, the customer is entitled to withdraw from the contract.

At our request, the customer will inform us within a reasonable period whether he will avail himself of his right to withdraw from the contract.

4.3 Any damage claims by the customer for non-performance shall be excluded.

4.4 Further claims for delay of delivery are subject to the provisions in section 9.

## **5. Prices/payment**

5.1 The agreed prices do not include value-added tax. The current value-added tax will be stated separately in our invoices. Any deduction of discounts is subject to prior written agreement.

5.2 Unless otherwise agreed by an individual contract, our invoices are payable within 30 days from the date of the invoice without any deductions.

5.3 A set-off shall only be permitted, if the corresponding counterclaims are undisputed or have been determined by a court of law.

5.4 To refuse performance, the customer may only rely on rights of retention, if the customer's counterclaims are based on the same contractual relationship and are undisputed or have been determined by a court of law.

## **6. Passage of risk/transport**

6.1 Unless otherwise agreed in the contract, the goods will be delivered ex works.

6.2 The goods will be shipped at the customer's risk and expense, irrespective of whether they are delivered carriage free or by our own means of transport. The choice of the route, the means of transport and the carrier is within our discretion.

## **7. Retention of title**

7.1 The title of the delivered goods will remain with us until all claims including future claims that the customer owes to us have been settled.

7.2 The customer is entitled to resell the delivered product within the ordinary course of business. The customer assigns to us in advance all claims resulting from the resale of the product. This assignment will be accepted by us. After the assignment, the customer shall be entitled to collect the assigned claims. We reserve the right to collect the claims if the customer does not properly meet his payment obligations and makes default. In this case, the customer will disclose, at our request, the assigned claims and the debtor, and provide all information required for the collection of the claims, make available the relevant documents and inform the customer's debtor about this assignment.

7.3 Any processing of or modification to the delivered products by the customer shall be on our behalf. In the event that the product is processed with goods not owned by us, we shall obtain co-ownership of the new product in an amount equivalent to the ratio of the value of the product supplied to the value of the other goods at the time of processing. The same applies to the product resulting from the processing. If the delivered product is combined or mixed with goods not owned by us, we shall obtain co-ownership of the new product at the ratio of the value of the delivered product to the value of the goods combined or mixed with this product at the time of combination or mixture. If the combination or mixture has been carried out in such a manner that the customer's goods are regarded as the main product, it is deemed agreed that the customer shall assign proportional co-ownership to us. The customer agrees to preserve sole ownership or co-ownership for us.

7.4 If the security rights we are entitled to exceed the secured claims by more than 20%, we shall release the portion of these rights exceeding the secured claims by more than 20%, at the customer's request. The choice of the security rights to be released is within our discretion.

## **8. Liability for defects**

8.1 The customer can only make warranty claims, if he has met his obligation to inspect the product and to give notice of defects as provided in section 377 of the German Commercial Code. Notice of defect must be given in writing and in a timely manner, i.e. within three days after receipt of the product. Hidden defects must be reported in writing within three days after discovery.

8.2 We do not provide any warranty in case of operational waste, damage caused by improper handling, excessive load, inappropriate operating conditions, unsuitable operating materials and inadequate assembly.

8.3 Any effects caused by indirect paths of sound transmission, by other sound sources or other effects not directly due to the operating characteristics of the product shall be excluded from claims under warranty.

8.4 Minor deviations from the agreed quality shall not be regarded as defects of the product.

8.5 We provide warranty for proper processing and machining and for materials free of defects. With regard to the load imposed on our products, our warranties cover normal operating conditions according to the operating characteristics of these products. Any higher mechanical or chemical load is only permissible if it was known and confirmed in writing at the time our offer was made.

8.6 We reserve the right to decide whether a defective product will be repaired or replaced. In the event that we are not prepared or in a position to repair or replace the product, especially if this would cause a disproportionate delay for reasons we are responsible for or after the failure of repair or replacement, the customer is entitled to demand cancellation of the contract or an adequate reduction of the sales price, at the customer's discretion. The customer agrees to state, at our request and within a reasonable period of time, whether he will avail himself of his right to withdraw from the contract. Supplementary performance may be refused as long as the customer has not met his payment obligations to an extent corresponding to the proper execution of the order.

8.7 Any compensation claims of the customer for increase in expenditure in connection with supplementary performance, especially for costs of transport, travel expenses, labour costs and costs of materials shall be excluded, if increased expenditure arises because the product was moved to a place different from the customer's facilities.

8.8 The customer shall take the sole responsibility for compliance with current provisions in the marketing area.

8.9 Supplementary performance may be refused as long as the customer has not met his payment obligations to an extent corresponding to the proper execution of the order.

8.10 Liability for compensation claims shall be subject to the provisions in the following section 9.

## **9. Joint liability**

9.1 We are liable without limitation only in the event of intention or gross negligence, and for intention or gross negligence of our representatives and vicarious agents. As long as we are not charged with willful misconduct, our liability is limited to typically occurring, foreseeable damage.

9.2 In the event of a culpable breach of essential contractual obligations (cardinal obligations), we, our representatives and vicarious agents shall be liable for merely slight negligence. Under these circumstances, our liability is also limited to typical, foreseeable damage. Essential contractual obligation relates to an obligation that the customer expects and can reasonably expect to be fulfilled.

9.3 In the event of liability for slight negligence, our liability based on the contract and the offence is limited to the contract value.

9.4 The aforesaid exclusions of or limitations to our liability and of the liability of our representatives and vicarious agents shall not apply to culpable damage to life, body or health. Furthermore, we shall be liable without limitation for the absence of explicitly guaranteed product characteristics that were promised to protect the customer from damage not caused to the product supplied, and if the damage is due to circumstances which have been the subject of our warranty. We shall also be liable without limitation for malicious concealment of a defect. There will be no limitation to our liability associated with the circumstances of risk liability as provided in the Product Liability Act. This will not affect any possible liability based on the principles of entrepreneur's recourse in accordance with the provision of sections 478 et seq of the German Civil Code.

9.5 Unless otherwise provided, liability is excluded for whatever legal basis.

9.6 The same applies to claims due to negligence in contracting.

9.7 As regards reimbursement of costs with the exception of those provided in section 439 II of the German Civil Code, the above sections 9.1 to 9.5 shall apply accordingly.

9.8 The exclusion of or limitation to liability shall also apply to our legal representatives and vicarious agents.

9.9 None of the above provisions is aimed at modifying the legal or judicial burden of proof.

#### **10. Statutory limitation**

Unless otherwise agreed by an individual contract, the customer's claims made for whatever legal reasons come under the statute of limitation within 24 months after the passage of risks. The deadlines provided by law shall apply to compensation claims according to section 9.4.

#### **11. Non-disclosure**

11.1 The customer agrees to treat all information and documents provided by us strictly confidential, also after the expiry of the contract, and not to disclose their contents to third parties. The customer furthermore agrees to make this information accessible only to employees who need to know such data and information in their area of responsibilities. The employees must be enjoined to secrecy.

11.2 The customer agrees not to use the information and documents provided by us for his own purposes or for third parties and to abstain for applying for property rights.

#### **12. Plea of uncertainty**

We shall be entitled to refuse performance if, after the conclusion of the contract, we become aware that our claims for consideration are jeopardized by the customer's bad financial situation. The right to refuse performance lapses when consideration or adequate security is provided. Furthermore, we shall have the right to set an appropriate deadline within which the customer has to provide step by step consideration or security, at his discretion, concurrently with our performance. If he fails to do so, we shall be entitled to withdraw from the contract.

#### **13. Place of fulfilment, legal venue and applicable law**

13.1 Unless otherwise provided in the contract, place of fulfilment will be our commercial domicile.

13.2 The venue for business transactions with merchants or legal entities of public law is Dortmund.

However, we shall be entitled to take legal proceedings against the customer at his place of business.

13.3 The contractual relationship shall be subject to German law. The application of the Law of Conflicts and the UN Convention on Contracts on the International Sale of Goods (CISG) shall be excluded.

**MEDAS GmbH**