

General Terms and Conditions

Terms of Delivery

§ 1 Scope

(1) All goods, services and quotations from MKG Göbel Solutions GmbH (hereinafter referred to as the "Seller") are delivered, rendered or submitted exclusively on the basis of these General Terms and Conditions of Delivery. These form part of all contracts which the Seller concludes with its contractual partners (hereinafter also referred to as "Clients") for the goods or services which it offers. They also apply to all future goods, services or quotations delivered, rendered or submitted to the Client even if they are not separately agreed again.

(2) The terms and conditions of business of the Client or third parties will not be applicable even if the Seller does not separately reject their application in any individual instance. Even if the Seller refers to a letter containing the terms and conditions of business of the Client or a third party or alludes to such conditions, this will not constitute agreement to the application of such terms and conditions of business.

§ 2 Quotation and conclusion of a contract

(1) All quotations from the Seller are subject to confirmation and non-binding unless they are explicitly marked as binding or contain a specific deadline for acceptance. The Seller can accept orders or contracts within 14 days of their receipt.

(2) The contract concluded in writing including these General Terms and Conditions of Delivery is exclusively determinative for the legal relationships between the Seller and the Client. This contract reflects in full all understandings between the contracting parties in relation to the object of the contract. Verbal commitments by the Seller before the conclusion of this contract are legally non-binding and verbal agreements between the parties will be replaced by the written contract unless explicitly agreed otherwise between the contracting parties.

(3) Additions and amendments to the agreements reached including these General Terms and Conditions of Delivery must be made in writing in order to be effective. The requirement for written form is satisfied by transmission by telecommunication means, particularly by fax or email.

(4) Details supplied by the Seller on the object of the delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as representations of the same (e.g. drawings and illustrations) are only approximately authoritative unless usability for their contractual purpose requires an exact match. They do not represent guaranteed characteristics, merely

descriptions or characterisations of the goods or service. Customary variances and variances caused by legal regulations or which represent technical improvements as well as the replacement of components by equivalent parts are permitted provided they do not affect usability for the contractual purpose.

(5) The Seller reserves title to or copyright in all quotations and cost estimates which it submits as well as drawings, illustrations, computations, brochures, catalogues, models, tools and other documentation and aids which it makes available to the Client. The Client may not make such items available to third parties as such or in substance, reveal them, use or duplicate them itself or through third parties without the explicit consent of the Seller. At the request of the Seller, it must return such items to the Seller in full and destroy any copies it may have made of them if it no longer needs them in the normal course of business or if negotiations do not lead to the conclusion of a contract. The storage of data provided electronically for the purpose of customary back-ups forms an exception to the above provision.

§ 3 Prices and payment

(1) Prices apply to the scope of goods and services listed in the order confirmations. Additional or special services will be invoiced separately. Prices are in euros and are to be understood as ex works plus packaging, the statutory rate of VAT and in the case of exports, customs as well as fees and other public charges.

(2) For orders executed more than three months after the contract has been concluded, the Seller will be entitled to adjust the prices by the same percentage as any increase of at least 5% in the cost of materials, energy or transport.

(3) Invoices must be paid within seven days without any deductions unless otherwise agreed in writing. The receipt of payment by the Seller determines the date of payment. If the Client fails to pay by the due date, interest will be charged on the outstanding amounts from the due date at a rate of 9 percentage points above the base rate; claims for higher interest and further damages in the event of late payment will remain unaffected.

(4) The Client is only permitted to set off its counterclaims or to withhold payments due to such claims if such counterclaims are uncontested or have been upheld in a court of law or they result

from the same order under which the delivery in question has been made.

(5) The Seller is entitled to only deliver outstanding goods or render outstanding services against payment in advance or on provision of collateral if it becomes aware of circumstances after the contract has been concluded which are likely to significantly reduce the Client's creditworthiness and as a result of which payment by the Client of the Seller's outstanding claims resulting from the particular contractual relationship (including other individual orders applicable to the same umbrella contract) is put at risk.

§ 4 Delivery and lead time

(1) Deliveries are made ex works.

(2) If the prospect of certain deadlines and dates for goods and services is raised by the Seller, such dates or deadlines will only apply approximately unless a fixed deadline or a fixed date has been explicitly promised or agreed. If shipment has been agreed, delivery deadlines and dates relate to the time of handover to the forwarding agent, carrier or any third party otherwise charged with transport unless explicitly specified otherwise by us.

(3) Notwithstanding its rights derived from the Client's late payment – the Seller can request from the Client an extension to delivery or performance deadlines or a postponement of delivery or performance dates by the same amount of time as the time during which the Client fails to meet its contractual obligations towards the Seller.

(4) The Seller will not be liable if delivery is impossible or for delivery delays if caused by force majeure or other events not foreseeable at the time the contract was concluded (e.g. operational interruptions of any kind, difficulties in procuring material or energy, transport delays, strikes, lawful lockouts, lack of workers, energy or raw materials, difficulties in obtaining the necessary official permits, pandemics or epidemics, official measures or suppliers' failure to deliver, to deliver the correct goods or to deliver on time in spite of a matching hedging transaction concluded by the Seller) for which the Seller is not responsible. If such events make it significantly harder or impossible for the Seller to deliver goods or perform services and the impediment is not merely of temporary duration, the Seller will be entitled to withdraw from the contract although in this case it will remain entitled to invoice the Client for goods and services already delivered or performed. In the case of obstacles of temporary duration, delivery or performance deadlines will be extended or delivery or performance dates postponed by the duration of the obstacle plus an appropriate start-up phase. In this case, too, the Seller will be entitled to

invoice the Client for goods and services already delivered or performed.

(5) The Seller will only be entitled to make partial deliveries if

- the partial delivery can be used by the Client as part of the intended contractual purpose,
- delivery of the remaining goods ordered is guaranteed, and
- the Client will not incur any significant additional expenditure of time and effort or costs as a result (unless the Seller signals that it is prepared to assume such costs).

(6) If the Seller is late with a delivery or in performing a service or it becomes impossible for it to deliver the goods or render the service for whatever reason, the Seller's liability for damages will be limited to compensation in accordance with Sec. 8 of these General Terms and Conditions of Delivery.

§ 5 Place of performance, despatch, packaging, transfer of risk, acceptance

(1) The place of performance for all obligations arising from the contractual relationship is Öhringen unless otherwise determined. If the Seller is also responsible for installation, the place of performance will be the site where the installation takes place.

(2) The type of shipping and the packaging are subject to the Seller's professional judgement.

(3) If it has been agreed that the goods will be shipped and the Seller has not assumed responsibility for transport or installation, the risk will be transferred to the Client on handover of the goods (determined by the start of the loading procedure) to the forwarding agent, carrier or third party otherwise charged with carrying out the shipping. If shipping or the handover is delayed due to a circumstance caused by the Client, the risk will be transferred to the Client from the day on which the item to be delivered is ready to be shipped and the Seller has notified the Client accordingly. If installation services are provided, the risk will be transferred when the service has been completed, in particular on completion of assembly work.

(4) The Client will bear storage costs after risk has been transferred. If the Seller puts goods into storage, the storage costs will be 0.25% of the invoice amount for the goods to be stored per week completed. The right to assert and provide evidence of higher or lower storage costs is reserved.

(5) The shipment will only be insured by the Seller against theft, breakages, transportation damage, fire and water damage or other insurable risks at the express request and expense of the Client.

(6) If final acceptance has been agreed or partial acceptance of individual construction phases which

can be claimed at any time by the Seller, the purchased item will be deemed to have been accepted if

- delivery and installation, provided the Seller is also responsible for installation, have been completed,
- the Seller has informed the Client accordingly pointing out assumed acceptance under Sec. 5 (6) of these terms and conditions and has requested that the delivery be accepted,
- 14 working days have elapsed since delivery or installation or the Client has started using the purchased item (e.g. has commissioned the system delivered) and in this case, 14 working days have elapsed since delivery or installation and
- the Client has refrained from conducting acceptance in this period for a reason other than due to a defect reported to the Seller which makes it impossible to use the purchased item or significantly impairs such use.

§ 6 Warranty, material defects

(1) The warranty period is five years from delivery or, if acceptance is required, from acceptance. This period does not apply to the Client's claims for compensation arising from injury to life and limb or deliberate or grossly negligent breaches of its obligations by the Seller or its vicarious agents which expire in accordance with statutory regulations.

(2) The items delivered must be carefully inspected immediately upon delivery to the Client or the third party nominated by the Client. With respect to obvious defects or other defects which would have been discernible in any immediate, careful examination, the items are deemed to have been accepted by the buyer if no written notice of defects is received by the Seller within five working days of their delivery. With regard to other defects, the items delivered are deemed to have been accepted by the buyer if no notice of defects is received by the Seller within five working days of the date on which the defect was revealed; however, if the defect was already obvious at an earlier juncture during normal use, this earlier point in time determines the start of the period for complaints. At the request of the Seller, any delivery item which is the subject of a complaint must be returned to the Seller carriage paid. In the case of a justified notice of defects, the Seller will reimburse the cost of the least expensive means of shipping; this does not apply if the cost increases because the item delivered is in a different location to the one where it is intended to be used.

(3) If the items delivered exhibit material defects, the Seller will be obliged and entitled initially to remedy the defect or to supply a replacement in accordance with a choice to be made within a suitable

period of time. In the event of failure, i.e. if rectification or replacement prove impossible, unreasonable, is refused or is subject to unacceptable delay, the Client may withdraw from the contract or reduce the purchase price appropriately.

(4) If the Seller is responsible for a defect, the Client can demand compensation on the conditions defined in Sec. 8.

(5) If the components of other manufacturers are defective and the Seller is unable to rectify the defects for licensing or factual reasons, the Seller can at its own discretion assert its warranty claims against the manufacturers and suppliers at the Client's expense or assign such claims to the Client. Warranty claims against the Seller only apply to such defects under the other conditions and in accordance with these General Terms and Conditions of Delivery if it has proved impossible to enforce the above-mentioned claims against the manufacturer and supplier in a court of law or, for example, any such attempt would be futile due to insolvency. For the duration of the legal dispute, the expiry of the Client's relevant warranty claims against the Seller will be stayed.

(6) Warranty will not apply if the Client changes the delivery item or has it changed by third parties without the Seller's consent, thus making it impossible or unreasonably difficult to rectify the defect. In any case, the Client must bear the additional cost of rectifying the defect incurred by the change.

(7) Any delivery of used items agreed with the Client in a single instance will be made to the exclusion of any warranty for material defects.

§ 7 Property rights

(1) The Seller guarantees in accordance with Sec. 7 of these terms and conditions that the delivery item is unencumbered by industrial property rights or third-party copyrights. Each contracting party will inform the other in writing without delay if claims are asserted against it due to the infringement of such rights.

(2) In the event that the delivery item infringes an industrial property right or a third-party copyright, the Seller will, at its own discretion, either modify or replace the delivery item at its own expense in such a way that third-party rights are no longer breached but the delivery item continues to meet the contractually agreed functions, or obtain right of use for the Client by concluding a licence agreement with the third party. If the Seller is unsuccessful in these endeavours within a reasonable amount of time, the Client will be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages on the part of the Client will be subject to the restrictions of Sec. 8 of these General Terms and Conditions of Delivery.

(3) If products of other manufacturers supplied by the Seller infringe rights, the Seller will at its own discretion assert its claims against the manufacturers and suppliers at the Client's expense or assign such claims to the Client. Claims against the Seller only apply in such cases in accordance with Sec. 7 of these terms and conditions if it has proved impossible to enforce the above-mentioned claims against the manufacturers and suppliers in a court of law or, for example, any such attempt would be futile due to insolvency.

§ 8 Liability for damages due to culpability

(1) The Seller's liability for damages, for whatever legal reason, in particular due to impossibility, delay, unsatisfactory or incorrect delivery, breaches of contract, infringement of obligations in contract negotiations and tort, to the extent that it is based on culpability in each case, is limited in accordance with Sec. 8 of these terms and conditions.

(2) The Seller will not be liable in the event of simple negligence on the part of its management bodies, legal representatives, employees or other vicarious agents unless it concerns a breach of material contractual duties. Material contractual duties include the obligation to deliver and install the delivery item on time, ensure that it is free of defects of title and any material defects which impair its functionality or suitability for use to a more than insubstantial degree, as well as advisory, protective and custodial duties which are intended to enable the Client to use the delivery item for its contractual purpose or to protect the life and limb of the Client's personnel or its property from substantial damage.

(3) To the extent that the Seller is basically liable for damages under Sec. 8 (2), such liability will be limited to damage which the Seller has foreseen as a possible consequence of a breach of contract when concluding the contract or which it should have foreseen if it had exercised due care and attention. Indirect damages and consequential damages which result from defects in the delivery item, will only be subject to compensation if such damages are typically to be expected when using the delivery item for its intended purpose. The above provisions of this paragraph 3 do not apply in the event of wilful or grossly negligent conduct on the part of management members or senior executives of the Seller.

(4) In the case of liability for simple negligence, the Seller's obligation to pay compensation for material damage and any further financial damage resulting from it is limited to an amount of EUR 200,000 per claim even if it concerns a breach of material contractual duties.

(5) The above exclusions and limitations of liability apply to the same extent in favour of management

bodies, legal representatives, employees and the Seller's other vicarious agents.

(6) If the Seller gives technical information or acts in a consulting capacity and such information or advice does not form part of the contractually agreed scope of services owed by the Seller, this will be performed free of charge and to the exclusion of any liability.

(7) The restrictions of Sec. 8 of these terms and conditions do not apply to the Seller's liability due to wilful conduct, for guaranteed characteristics, due to injury to life and limb or in accordance with the Product Liability Act.

§ 9 Retention of title

(1) The Seller reserves title to the goods it delivers and services it renders to secure all claims against the Client to which it is entitled resulting from the present and future business relationship.

(2) The title covers new products created from processing the reserved goods. If the goods are processed, combined or mixed with items not belonging to the Seller, the Seller will acquire co-ownership in proportion to the invoice value of its reserved goods in relation to the other materials.

(3) The Client will exercise ownership of the reserved goods on the Seller's behalf as the custodian with due diligence and insure the reserved goods against theft, damage from the elements and other risks and implement all measures to ensure that the reservation of title is neither impaired nor cancelled.

(4) To secure the Seller's claims in each case pursuant to paragraph 1, the Client will already assign all receivables from the sale of reserved goods including bills of exchange and cheques to the Seller. When goods in which we have co-ownership pursuant to paragraph 2 are sold, the assignment is limited to the share of the receivable corresponding to the Seller's co-ownership share.

(5) If payment is delayed or suspended or in the event that the Client applies for insolvency proceedings to be opened, the Client must at the Seller's request disclose any assignment under paragraph 4 to its customers, give the Seller all the necessary information and take steps to secure the Seller's rights. In particular, the Seller must be notified immediately of any access by creditors to the reserved goods or receivables assigned to the Seller.

(6) Insofar as the Client has entrusted material to the Seller, the Client will give the Seller right of lien on the material and any claims replacing it in order to secure all present and future claims resulting from the business relationship with the Client. If the Client is in default with regard to a payment or loan, the Seller will be entitled to realise the pledged material at the average market price in Germany on the

day of the payment or loan default in any way it sees fit.

(7) The parties agree that until all the Seller's claims against the Client have been paid in full, any system parts installed by the Seller in the course of providing its services will not form an integral part of the property as defined by Sec. 94 of the German Civil Code (BGB). The system parts are temporarily installed on the property. There is no permanent connection.

(8) The Seller will release the reserved goods and any items or claims in lieu of them if their value exceeds the level of claims secured by more than 30%. The choice of items to be subsequently released lies with the Seller.

(9) If the Seller withdraws from the contract in response to conduct in breach of the contract on the part of the buyer – particularly payment arrears – (enforcement event), it will be entitled to demand the surrender of the reserved goods.

§ 10 Final provisions

(1) If the Client is an entrepreneur, a legal entity under public law or a special public fund or if it has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all disputes arising from the business relationship between the Seller and the Client will be Öhringen or the Client's Head Office at the Seller's discretion. For actions brought against the Seller, however, Öhringen will be the sole place of jurisdiction. Mandatory statutory provisions governing sole places of jurisdiction will remain unaffected by this arrangement.

(2) Relationships between the Seller and the Client are subject exclusively to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) dated 11/4/1980 does not apply.

(3) Insofar as the contract or these General Terms and Conditions of Delivery contain loopholes, legally effective provisions which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had been aware of the loophole, will be deemed to have been agreed to fill these loopholes.