

General Terms and Conditions for Purchasing of Mahltechnik Görgens GmbH

1. Scope

- 1.1 These General Terms and Conditions for Purchasing ("GTCP") of Mahltechnik Görgens GmbH ("MTG") apply to all legal relationships between the supplier and MTG, in particular to the production of works and all goods ordered from the supplier (referred to below as "deliveries") and to the performance of services (referred to below as "services"), where the supplier is a business.
- 1.2 These GTCP apply exclusively. General terms and conditions of the supplier which deviate from or supplement these GTCP shall not be binding on MTG, even if MTG does not expressly object to them or if the supplier states that he will only deliver and/or perform services subject to his general terms and conditions or attaches those general terms and conditions to his acknowledgement of order as provided for by clause 2.1 or to the delivery note or work record. The acceptance of deliveries and services by MTG or payment for these shall also in no way constitute acceptance of the supplier's general terms and conditions. Likewise, any previously agreed terms of contract of the supplier that contradict or supplement these GTCP shall no longer be accepted.
- 1.3 These GTCP in their latest version shall also apply as a framework agreement to future contracts for deliveries and/or services with the same supplier, without MTG being obliged to refer to them in each individual case.
- 1.4 To the extent that individual agreements (including side agreements, supplements and changes) have been made with the supplier in individual cases, they shall have priority over these GTCP. The contents of such agreements shall only be effective, subject to proof to the contrary, when stated in a written contract or confirmed in writing by MTG.
- 1.5 Legally relevant statements and notifications which are to be made to MTG by the supplier after conclusion of the contract (e.g. setting of deadlines, reminders or declarations of withdrawal) shall only be effective if made in writing.

2. Order, Conclusion of contracts, Call-off, Amendments

- 2.1 Orders and commissions (referred to below as "orders") from MTG may be considered binding at the earliest upon written confirmation and only be accepted by the supplier by means of written acknowledgement within a period of five (5) working days after the supplier's receipt of the confirmation. The deadline shall be determined by the date of receipt of the acceptance by MTG.
- 2.2 The supplier is to draw attention before issuing his acceptance to any obvious errors (e.g. clerical errors or miscalculations) or incompleteness in the order for the purpose of having it corrected or completed; the contract shall otherwise be deemed not to have been concluded.
- 2.3 Additions or amendments to orders shall require written confirmation by MTG.
- 2.4 The acceptance of orders is to contain all essential ordering information, in particular the precise designation of the deliveries and services ordered, the order number as well as the order date and delivery date. Delays resulting from an infringement of this provision by the supplier shall be at the supplier's responsibility.
- 2.5 Within the scope of the contractually agreed scope of delivery, MTG may freely determine the quantity and time of the respective delivery by means of a call-off. From the quantity and the date of past call-offs no claim of the supplier on demand by MTG over a certain quantity and/or at a certain time for the future shall result.
- 2.6 MTG may, within the limits of reasonableness for the supplier, require amendments in the design and performance of the service as well as the order, conclusions and call-offs. The effects, in particular with regard to the additional and reduced costs as well as the delivery dates, are to be settled appropriately by mutual agreement.
- 2.7 Should the supplier make amendments and/or additions (e.g. deviations from specifications, material, dimensions, production method, place of manufacture, assignment to third parties, etc.) to the delivery item or its parts (in particular after previous delivery in accordance with the standards specified by MTG), MTG shall be informed in writing before the amendments and/or additions are made. Amendments and/or additions by the supplier require in each case the written agreement by MTG.

3. Prices, Terms of payment, Set-off, Assignment

- 3.1 The price stated in the order or in call-offs shall be binding and exclude any additional charges or price increases. Unless otherwise agreed, the price includes all work and ancillary work by the supplier (e.g. assembly and installation) and all ancillary costs (e.g. suitable packaging, and transport costs including any transport and liability insurance required free to the specified place of receipt). All prices are exclusive of value added tax at the applicable statutory rate unless it is stated separately.
- 3.2 Payments by MTG will be made by bank transfer to the account stated by the supplier, either within fourteen (14) days of delivery or acceptance and receipt of the invoice with deduction of a 3% prompt payment discount or within thirty (30) days without deduction, depending on the subject of the contract. When a prompt payment discount is stipulated in the order, the deduction of that discount shall also be permissible in the case of setting-off or the justified exercise of rights of retention on account of defects. Payment is made subject to verification of the invoice. Payments do not signify acknowledgement that the deliveries or services are as stipulated in the contract.

- 3.3 If premature deliveries are accepted, the due date depends on the agreed delivery date.
- 3.4 MTG is entitled to the right of set-off and retention as well as objection to the non-performance of the contract to the statutory extent. In case of defective or incomplete delivery, MTG is in particular entitled to withhold due payments pro rata until proper performance. The supplier shall only have a right of setting-off or retention with respect to counter-claims which are undisputed or recognized by declaratory judgement or reciprocal.
- 3.5 The supplier shall not be entitled to assign his claims against MTG or to have them collected by third parties without the prior written consent of MTG, which may not be unreasonably refused. If there is a prolonged retention of title, the consent is considered granted. If the supplier assigns his claim against MTG contrary to sentence 1 to a third party without its consent, the assignment is nonetheless valid. However, MTG may, at its discretion, make payment to the supplier or the third party with discharging effect. Section 354a of the German Commercial Code (HGB) shall remain unaffected.
- 3.6 Invoices are to be sent in a single copy to the registered office of MTG with the valid order number; they must not be enclosed with the consignments. Deliveries and services are to be billed separately in individual invoices; a total invoice is not recognized by MTG.

4. Delivery, Delivery dates, Place of performance

- 4.1 Quantities, delivery and service dates or deadlines are specified exclusively in purchase orders or in call-offs and are binding. The supplier must ensure the necessary capacities to be able to fulfil the quantities incl. preview quantities according to orders or call-offs.
- 4.2 Place of performance for deliveries or services of the supplier is the place of receipt specified in the order. If a place of receipt is not specified and does not result from the nature of the obligation, the place of performance shall be the registered office of MTG.
- 4.3 The timeliness of delivery shall be determined by the time of receipt at the place of receipt designated by MTG. The timeliness in case of delivery with installation or assembly as well as the associated services shall be determined by the acceptance of performances. The timeliness of services shall be determined by the successful performance.
- 4.4 The supplier is obliged to notify noticeable delays immediately in writing. A statement of reasons and the expected duration of the delay must be provided.
- 4.5 If the agreed delivery or service time is exceeded, the supplier shall be in default without special reminder, unless the delivery is not made due to a circumstance for which the supplier is not responsible.
- 4.6 If the supplier is in default with the delivery or service, MTG may claim a contractual penalty of 0.3% for each commenced working day of the delay, but in total no more than 5% of the net contract value. If no corresponding reservation is made upon acceptance of the deliveries, services or supplementary performance, the contractual penalty may nevertheless be asserted until the final payment. MTG shall be entitled to demand the contractual penalty in addition to performance and as a minimum amount of the damages owed by the supplier in accordance with the statutory provisions; the assertion of further damages remains unaffected. If MTG accepts the delayed performance, the contractual penalty will be asserted at the latest with the final payment.
- 4.7 The unconditional acceptance of the delayed delivery or service does not constitute a waiver of any rights for exceeding the delivery or service time.
- 4.8 If goods are delivered in excessive quantity, MTG is entitled to refuse the excess quantities and to return them at the supplier's expense.
- 4.9 Advance deliveries and services as well as deliveries and services after the agreed date or other deviations from the orders are only permitted with the written consent of MTG. Partial deliveries are generally inadmissible, unless MTG has expressly agreed to them.
- 4.10 The supplier shall in detail notify MTG in advance in writing of any addition or amendment, including those of transitory nature, of raw materials, production process or production location that may affect deliveries.
- 4.11 The supplier is not entitled to have the delivery or service owed by him performed by third parties (e.g. subcontractors) without the prior written consent of MTG.
- 4.12 The supplier shall bear the procurement risk for his deliveries unless otherwise agreed in an individual case (for example, limitation to stock).

5. Property to goods

MTG acknowledges a declared simple retention of title by the supplier. Any extended retention of title by the supplier is excluded.

6. Dispatch, Transfer of risk, Export control

- 6.1 Unless otherwise agreed, the delivery shall be made „free delivery“ to the place of performance in accordance with clause 4.2. If the supplier is domiciled outside the Federal Republic of Germany, the delivery is delivered duty paid ("Delivered Duty Paid" according to Incoterms® 2010) to the place of performance according to clause 4.2.

- 6.2 The supplier must properly package, dispatch and insure his deliveries and comply with all relevant packaging and dispatch regulations. The supplier shall be liable for all damages that MTG incurs from improper or insufficient packaging, dispatch or insurance.
- 6.3 MTG is only obliged to return packaging material if expressly agreed, unless otherwise provided by law.
- 6.4 Shipping documents, such as delivery notes and packing slips are to be enclosed with the deliveries. The delivery note is to be enclosed in duplicate and must contain the following information: Place of receipt, date of issue and dispatch and on the content of the delivery the article number, order number, number of pieces. Additional costs incurred by MTG as a result of non-compliance with the above provisions shall be borne by the supplier.
- 6.5 If no special agreement has been made, the risk of accidental loss and accidental deterioration of the goods in the case of deliveries without installation or assembly shall be transferred upon arrival of the goods at the place of receipt specified by MTG. For deliveries with installation or assembly, the risk shall be transferred upon acceptance to be performed at the place of installation.
- 6.6 Assumption of acceptance is excluded if MTG refuses acceptance within a reasonable deadline set by the supplier stating at least one defect.
- 6.7 The supplier shall be obliged to comply with relevant export restrictions and to inform MTG immediately in writing of any authorization requirements for (re-) exports of his goods in accordance with German, European and US export and customs regulations as well as the export and customs regulations of the country of origin of his goods. The supplier shall reimburse MTG for all additional costs and other damages that arise as a result of incomplete or incorrect information, insofar as he is responsible for them.

7. Force Majeure

- 7.1 Force majeure, labor disputes, riots, official measures and other unforeseeable, unavoidable and serious events release the contracting parties from the performance obligations for the duration of the disruption and to the extent of their effects, provided that the supplier, upon occurrence of the event, but not later than three (3) days after the occurrence, gives written notice thereof to MTG. This also applies if these events occur at a time when the affected contracting party is in default, unless it has caused the default intentionally or through gross negligence.
- 7.2 The contractual partners are obliged to provide the required information without delay and to adjust their obligations to the changed circumstances in good faith.

8. Control of outgoing goods, Examination obligation, Notice of defects

- 8.1 The supplier shall ensure that before each delivery a comprehensive control of outgoing goods is carried out at his expense. MTG may request reports/material certificates from the supplier at any time.
- 8.2 The commercial obligations to examine and to give notice of defects shall be as set out in law (Sections 377 and 381 of the German Commercial Code (HGB)) with the following proviso: MTG's obligation to examine shall be limited to defects which openly come to light at the control of incoming goods under an external inspection including the delivery documents and at the quality control by way of the random sample test procedure (eg transport damage, wrong and short delivery). Where an acceptance is owed by MTG under statutory or contractual provisions, there shall be no obligation to examine the goods. For the rest, it shall depend on the extent to which an examination is feasible in the ordinary course of business, taking into account the circumstances of the individual case. The obligation to give notice of defects discovered later shall remain unaffected. In all cases, MTG's complaint (notification of defects) shall be deemed to have been made without delay and in due time if received by the supplier within seven (7) working days. In this respect, the supplier waives the objection of delayed notice of defects.

9. Quality and Documentation

The goods must be free of defects and comply with the documents on which the order is based, with the factory standards, delivery instructions and technical specifications of MTG and with the applicable statutory provisions (eg the Equipment and Product Safety Act), with the relevant ordinances, regulations and directives (eg the Accident Prevention Regulations and the VDE standards), with the DIN standards and other recognized most recent rules of technology as well as with all relevant regulations, directives and requirements on environmental protection and must be equipped and suitable for the intended purpose and be marked accordingly. The quality and documentation requirements for deliveries and/or services arise from the separately agreed quality assurance agreement with the supplier. Other contractual or legal quality and documentation requirements shall not be restricted by this.

10. Service and Spare parts

The supplier guarantees a smooth provision of spare parts at market prices for a period of at least five (5) years from the day of delivery.

11. Liability for defects

- 11.1 The supplier warrants that all goods delivered by him are free of defects, esp. that they
- comply with the performance specifications and other specifications, samples, drawings and other stated requirements;
 - are free of faults, especially in design, manufacture and material;
 - are of a quality customary on the market,
 - are suitable for the specific purposes for which they are purchased.
- 11.2 Deviating from Section 442 para. 1 cl. 2 of the German Civil Code (BGB), MTG shall be entitled to assert claims for defects without restriction, even if the defect remained unknown at the conclusion of the contract due to gross negligence.
- 11.3 MTG shall be entitled to assert the statutory and contractual claims for defects unrestrictedly. If deliveries do not correspond to the aforementioned warranties („defective delivery“), MTG may, at its discretion, demand rectification of the defect or delivery of a non-defective item or production of a new work. In the event of a defective delivery, MTG will give the supplier the opportunity to sort out prior to the beginning of the production. MTG's right to claim damages and reimbursement of expenses, in particular the right to claim damages instead of performance, is expressly reserved.
- 11.4 If the supplier does not fulfil his obligation of supplementary performance within an appropriate deadline set by MTG, MTG may itself or through a third party remedy the defect and demand compensation from the supplier for the necessary expenses or a corresponding advance. If the supplementary performance by the supplier has failed or is unreasonable for MTG (for example due to special urgency, endangerment of operational safety or imminent occurrence of disproportionate damages), there shall be no need to set a dead line; MTG shall promptly inform the supplier of such circumstances, if possible beforehand. An unreasonableness of the supplementary performance by the supplier is to be assumed in particular if the delivery is already in the production process of MTG or a customer.
- 11.5 If the supplier fulfils his supplementary performance obligation by replacement delivery, the limitation period shall begin to run anew for the goods delivered as replacement after the delivery. This shall also apply in the case of remedy of defects by rectification, unless during the rectification, the supplier has expressly and correctly reserved the right to carry out the rectification only as a matter of goodwill, to avoid disputes or in the interest of continuing the supply relationship.
- 11.6 In the event of resale, the statutory provisions of Sections 445a and 445b of the German Civil Code (BGB) shall apply to claims for recourse by MTG, with the stipulation that the statute of limitations, deviating from Section 445b para. 1 of the German Civil Code (BGB), is thirty-six (36) months.
- 11.7 Insofar as the goods have already been installed and delivered to MTG's customer and insofar as the defective goods are not submitted to MTG for inspection by its customer, the supplier shall acknowledge there cognition of a defect by MTG's customer or by a third party commissioned by him (eg a workshop) as proof of the defect even without the presentation of defective goods.
- 11.8 In the case of defective delivery, the supplier shall bear all expenses (including transport, travel, sorting, handling, material and labour costs) arising in connection with the supplementary performance, in particular also installation and removal costs. In this respect, the statutory regulation of Section 439 para. 3 of the German Civil Code (BGB) shall apply.
- 11.9 The supplier shall bear the costs incurred for the purpose of examination and supplementary performance according to clause 11.8 even if it turns out that in actual fact there was no defect. The liability for damages in the case of unjustified remedy of defects shall remain unaffected; in this respect, however, MTG is only liable if it has recognized or grossly negligently failed to recognize that there was no defect.
- 11.10 In the case of defects of title, the supplier also releases MTG from any claims of third parties, unless the supplier is not responsible for the defect of title.
- 11.11 The supplier shall be responsible for the fault of his vicarious agents as if it was his own fault.
- 11.12 With regard to MTG's supplementary performance claims, the place of performance is the location of the item.
- 11.13 The warranty period is thirty-six (36) months from the transfer of risk.

12. Rights of MTG on infringement of obligations under service contracts

In deviation from clause 11, MTG's rights in the case of infringement of obligations arising from service contracts shall be determined by the provisions of the law.

13. Liability and insurance

- 13.1 The supplier shall indemnify MTG against or release MTG from all direct and indirect claims (including claims for killing, injury to the body or the health or the infringement of property), damages (including all indirect and consequential damages), costs, expenses and losses („damages“) caused by the delivery of defective goods or breach of a contractual obligation. In the case of liability regardless of fault this shall not apply if the supplier is not at fault.
- 13.2 The supplier shall be obliged to ensure adequate insurance cover (in particular, public liability, product liability and recall insurance) for his contractual obligations. The supplier must provide MTG with a corresponding certificate from the insurer.

- 13.3 If the supplier's deliveries and/or services include work on the premises of MTG or one of its customers, the supplier shall take all necessary precautions to prevent personal injury and property damage during the course of this work. The supplier shall indemnify MTG against and release MTG from any damage caused by the supplier's work on the premises, unless the supplier is not at fault.
- 13.4 The supplier is liable for his representatives or subcontractors to the same extent as for his own behavior.

14. Property rights

- 14.1 The supplier shall be liable for claims arising from the infringement of property rights and property rights applications in accordance with the contractual use if at least one of the property rights is published in the home country of the supplier, by the European Patent Office or in one of the following states: Federal Republic of Germany, France, Great Britain, Austria, or USA. This does not apply if the supplier proves that he is not at fault in this respect.
- 14.2 The supplier releases MTG and its customers from all claims arising from the use of such property rights.
- 14.3 The contracting parties undertake to inform themselves immediately of any known risks of injury and alleged cases of infringement and to give themselves the opportunity to counteract such claims by mutual agreement.
- 14.4 At the request of MTG, the supplier shall notify the use of published and unpublished own and licensed property rights and property rights applications in the delivery item.
- 14.5 To the extent that proprietary rights of the supplier are required for the use of the goods by MTG, the supplier grants MTG the worldwide, irrevocable, and free right to use, repair, or reproduce goods delivered under a delivery contract, either themselves or through third parties.
- 14.6 If a delivery contract contains development work that is compensated by MTG, whether through a one-time payment or the part price, all development results become the property of MTG. The supplier grants MTG an irrevocable, exclusive, free, worldwide license with the right to sublicense, to use or to cause to be used all property rights arising out of such development work or reasonably required by MTG for the use of development results.

15. Confidentiality

The confidentiality obligations of the supplier result from the separately agreed non-disclosure agreement. The contractual and statutory protection of business and trade secrets shall not be restricted thereby.

16. Production equipment, Confidential information

- 16.1 Models, dies, templates, samples, tools and other manufacturing equipment, as well as confidential information provided to the supplier by MTG or fully paid for by the supplier, may only be used for deliveries to third parties with the prior written consent of MTG. These are and shall remain the property of MTG or its customers, unless otherwise agreed in writing, and shall be provided to the supplier on a loan basis.
- 16.2 The property must be clearly marked as the property of MTG or its customers and kept safe and separate from the property of the supplier. The supplier shall maintain the property in good condition at its own expense and replace it if necessary. The supplier shall insure this at its own expense in an amount equal to the replacement cost of loss payable to MTG or its customers. The supplier hereby assigns all its payment claims against the insurer to MTG, and MTG accepts them.
- 16.3 The supplier agrees that MTG has the right to remove its property at any time and without reason or to demand its surrender. A right of retention shall not apply to the supplier.

17. Termination

- 17.1 In addition to any other rights of MTG to terminate a delivery contract, MTG may terminate delivery contracts or parts thereof at any time and without stating reasons by written notice with a reasonable notice period of three (3) months to the supplier
- 17.2 In addition to the statutory rights to termination for an important reason, MTG shall be entitled to terminate delivery contracts in full or in part with a reasonable deadline by written notice to the supplier if
- a) the supplier violates a fundamental obligation arising from the delivery contract and does not remedy the defect within a reasonable period of time from notification;
 - b) the supplier becomes insolvent, makes an application to open insolvency or liquidation proceedings, an insolvency administrator or trustee is appointed or liquidity arrangements take place;
 - c) there is a fundamental change in the ownership or shareholders' portions in the supplier's company, as a result of which MTG cannot reasonably be expected to continue the delivery contract.

18. Final Provisions

- 18.1 All legal relationships between MTG and the supplier shall be exclusively governed by the law of the Federal Republic of Germany, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 18.2 Should the supplier suspend payments, should a temporary insolvency administrator be appointed, or should insolvency proceedings be instituted against the supplier, MTG shall be entitled to withdraw from the contract wholly or partially or terminate the contract. In this case, MTG may utilize the equipment available for continuation of the work or the deliveries and services provided by the supplier up to that time, subject to reasonable remuneration.
- 18.3 If, at the time of the procedure initiating the proceedings, the supplier has his registered office in the European Union, Switzerland, Norway or Iceland, the exclusive venue for all disputes – including international disputes – arising directly or indirectly from the contractual relationship shall be a competent court at the location of MTG's registered office. However, in this case, MTG shall also be entitled to bring actions against the supplier at any other general or special place of jurisdiction.
- 18.4 Insofar as clause 18.3 GTCP does not apply, all disputes arising in connection with the respective delivery contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS), without recourse to the ordinary courts of law. The place of arbitration is Dormagen. The language of the arbitral proceedings is German.
- 18.5 Employees of MTG are not entitled to complement or deviate contents of the contract. This does not apply to MTG's institutions and proxy holder ("Prokurist") as well as to representatives authorised by MTG to this in writing.
- 18.6 Should any of the above provisions be or become ineffective, this shall not affect the validity of the remaining provisions. The parties shall be obliged to replace the ineffective provision with a stipulation that approximates to it in its commercial effect as closely as possible.