

ManufakturMücke GmbH General Terms and Conditions (as of December 2014)

Sec. 1 Validity

(1) Any and all deliveries, services and offers of ManufakturMücke GmbH (hereinafter referred to as the "**Seller**" or "**Contractor**") are exclusively provided based on these General Terms and Conditions ("**Terms and Conditions**"). These form an integral part of any and all contracts concluded between the Seller and its contractual partners (hereinafter also referred to as "**Principal**") regarding the deliveries and services offered by the Seller. They also apply to any and all future deliveries, services or offers to the Principal even if they are not separately agreed upon in each individual case.

(2) Terms and conditions of the Principal or of any third party shall not be applicable even if the Seller does not separately object to their validity in each individual case. Even though the Seller makes reference to a document which contains or refers to terms and conditions of the Principal or of any third party, the Seller thereby does not agree to the validity of any such terms and conditions.

(3) These Terms and Conditions shall only apply vis-à-vis entrepreneurs, legal entities under public law or special funds under public law within the meaning of Sec. 310 para. 1 of the German Civil Code (*BürgerlichesGesetzbuch, BGB*).

Sec. 2 Offer and Conclusion of Contract

(1) Any and all offers of the Seller shall be non-binding and subject to change, unless they are expressly marked as binding or contain a specific period of acceptance. The Seller may accept orders or contracts within fourteen days from receipt.

(2) Specifications provided by the Seller regarding the subject matter of the delivery or service (e.g. weights, dimensions, functional values, load-bearing capacities, tolerances and technical data) as well as the Seller's presentation of such subject matter (e.g. drawings and illustrations) shall only be regarded as approximate information, unless the usability for a contractually agreed purpose requires exact conformity. Such specifications shall not be construed as guaranteed characteristics of quality, but rather as a description or identification of the delivery or service. Deviations customary in the trade and deviations resulting from legal provisions or constituting technical improvements as well as the substitution of components with equivalent parts shall be admissible as long as they do not impair the usability for the contractually agreed purpose.

(3) The Seller reserves the title or copyright to any and all offers and cost estimates submitted by it and to any drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and auxiliary instruments provided to the Principal. Without the Seller's express consent, the Principal may not make these objects (per se or their contents) available to any third parties, disclose them or use or reproduce them itself or through any third parties. Upon request of the Seller, the Principal is obliged to fully return these objects to the Seller and to destroy any copies made thereof if it no longer requires them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

(4) The Contractor is entitled to deploy subcontractors for the performance of the services.

(5) A right of the Principal to terminate a contract for convenience (*freiesKündigungsrecht*) (in particular pursuant to Secs. 651, 649 BGB) shall be excluded.

Sec. 3 Prices and Payment

(1) The prices apply to the scope of services and deliveries as indicated in the order confirmations. Additional or special services are charged separately. The prices are quoted in euros ex works and exclusive of packaging, statutory value added tax, and customs, in case of export deliveries, as well as fees and other public charges.

(2) The purchase price shall be due and payable immediately on the day the invoice is issued. The statutory default interest will be charged after the due date. We reserve the right to assert further damages for default. If the Principal has failed to effect payment by the due date, statutory default interest will be charged on the outstanding amounts as per the due date; the assertion of higher interest and further damage in case of default shall remain unaffected.

(3) Offsetting against counter-claims of the Principal or a retention of payments due to such claims shall only be permitted if these counter-claims are not contested or established with final legal effect.

(4) The Seller is entitled to perform or render any outstanding deliveries or services only against payment in advance or provision of a security if, after conclusion of the contract, it becomes aware of any circumstances which may significantly reduce the Principal's creditworthiness and by which the payment of the Seller's outstanding claims by the Principal resulting from the respective contractual relationship (including other individual orders to which the same framework agreement applies) is jeopardised.

(5) If no individual payment plan is agreed, we may request a part payment for partial services (Sec. 4 (5)) in the amount in which the ordering party has obtained an "added value" because of the service.

Sec. 4 Delivery and Delivery Period

(1) Deliveries shall be made ex works.

(2) Any deadlines and dates for deliveries and services set by the Seller shall always be considered as approximate, unless a fixed deadline or a fixed date is expressly confirmed or agreed. If dispatch has been agreed, the delivery deadlines and dates relate to the point in time of the handover to the forwarder, carrier or other third party commissioned with the transport.

(3) The performance of the services presupposes the timely and proper fulfilment of the Principal's obligations. This includes in particular the provision of design specifications by the Principal as well as the provision of further records, documents, images and logos required for the performance of the contract.

(3) The Seller may – without prejudice to its rights resulting from a default of the Principal – request from the Principal an extension of delivery and service deadlines or a postponement of delivery and service dates by the period in which the Principal does not fulfil its contractual obligations vis-à-vis the Seller.

(4) The Seller shall not be liable for impossibility of delivery or for delays in delivery if such impossibility or delay was caused by force majeure or other events which were not foreseeable at the time when the contract was concluded (e.g. interruptions of operation of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, lack of workforce, energy or raw materials shortages, difficulties in obtaining necessary official approvals, measures taken by the authorities or non-delivery, incorrect or late delivery by suppliers) for which the Seller is not responsible. If such events considerably impair the delivery or service or render it impossible and if such impairment is not of a temporary nature, the Seller is entitled to withdraw from the contract. In the event of impediments of a temporary nature, the delivery or service deadlines are extended or the delivery or service dates postponed by the period of such impediment plus an appropriate lead time. If, as a result of the delay, the Principal cannot reasonably be expected to accept the delivery or service, the Principal may withdraw from the contract by way of immediate written declaration to the Seller.

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

- the Principal can use the partial delivery for the contractually agreed purpose,
- delivery of the remaining ordered goods is ensured and

- this does not cause the Principal considerable additional work and/or expenses (unless the Seller agrees to bear such costs).

(6) If the Seller is in default with a delivery or service or if it becomes impossible for the Seller to perform or render a delivery or service for whatever reason, the Seller's liability for compensation shall be limited pursuant to Sec. 7 of these Terms and Conditions.

Sec. 5 Place of Performance, Dispatch, Packaging, Passing of Risk, Acceptance

(1) Unless agreed otherwise, the place of performance for any and all obligations under the contractual relationship shall be **Detmold**, Germany. If the Seller also owes assembly, the place of performance shall be the place where the assembly has to be carried out.

(2) The mode of dispatch and packaging shall be subject to the Seller's due discretion.

(3) The risk shall pass to the Principal at the latest at the handover of the delivered object (with the commencement of loading being the decisive factor) to the forwarder, carrier or other third party commissioned with the transport. This shall also apply in case of partial deliveries or if the Seller has taken over any other services (e.g. dispatch or assembly). If the dispatch or handover is delayed as a result of a circumstance for which the Principal is responsible, the risk shall pass to the Principal from the day on which the delivered object is ready for dispatch and the Seller has notified the Principal of such readiness for dispatch.

(4) Storage costs after the passing of risk shall be borne by the Principal. In case of storage by the Seller, the storage costs amount to 0.25% of the invoice amount of the delivered objects to be stored per full week of storage. The assertion and proof of further or lower storage costs shall remain reserved.

(5) Upon express request by and at the expense of the Principal, the Seller will insure the shipment against theft, breakage, transport, fire and water damage or other insurable risks.

(6) Insofar as an acceptance has to take place, the purchased item shall be deemed accepted, if

- the delivery and, insofar as the Seller also owes an assembly, the assembly is completed,
- the Seller informed the Principal of such completion referring to the notional acceptance under this section 5 (6) and requested the Principal to effect acceptance,
- twelve working days have passed since the delivery or assembly or if the Principal started to use the purchased item (e.g. put the delivered unit into operation) and if, in this case, six working days have passed since the delivery or assembly and
- the Principal failed to effect acceptance within this period for any reason other than because of a defect which was notified to the Seller and which renders the use of the purchased item impossible or considerably impairs such use.

Sec. 6 Warranty, Material Defects

(1) The warranty period is one year from delivery or, if an acceptance is required, from acceptance.

(2) The delivered objects are to be inspected carefully immediately after delivery to the Principal or to a third party appointed by the Principal. With regard to apparent defects or other defects which would have been recognised during an immediate and careful inspection, these objects are deemed accepted by the buyer if the Seller does not receive a written notification of defects within seven days after delivery. With regard to any other defects, the delivered objects shall be deemed accepted by the buyer if the Seller does not receive the notification of defects within seven working days after the day on which the defect became apparent; however, if the defect was recognisable for the Principal at an earlier point in time during the normal use, this earlier point in time shall be

applicable with respect to the commencement of the period for the notification of defects. Upon the Seller's request, a faulty delivered object shall be returned to the Seller free of freight. In case of a justified notification of defects, the Seller will reimburse the costs for the cheapest form of dispatch; this does not apply if the costs increase because the delivered object is located at another place than the place of intended use.

(3) In case of material defects of the delivered objects, the Seller is initially obliged and entitled to a subsequent improvement or a replacement delivery at its own choice within a reasonable period of time. In case of a failure, i.e. impossibility, unacceptability, refusal or unreasonable delay of the improvement or replacement delivery, the Principal shall be entitled to withdraw from the contract or to reasonably reduce the purchase price.

(4) If the Seller is responsible for the defect, the Principal shall be entitled to claim damages if the requirements set forth in Sec. 7 are fulfilled.

(5) Warranty does not apply if the Principal changes the delivered object or commissions a third party to change it without the Seller's consent and if this unreasonably complicates the removal of defects or makes such removal impossible. In any case, the Principal is obliged to bear the additional costs of the removal of defects incurred due to the change.

(6) Warranty for material defects shall be excluded in individual cases where a delivery of used objects was agreed upon with the Principal.

Sec. 7 Liability for Damages due to Fault

(1) Unless otherwise stipulated in these Terms and Conditions including the following provisions, we shall be liable for breaches of contractual and non-contractual obligations as set forth in the applicable statutory provisions.

(2) We can be held liable for damages – irrespective of their legal grounds – in cases of intent and gross negligence. In cases of slight negligence, we shall only be liable

- for damage resulting from injuries to life, body or health,

- for damage resulting from the breach of a material contractual obligation (i.e. obligations regarding a timely delivery and assembly of the delivered object, the delivered object being free from any defects which considerably impair its functionality or suitability for use, as well as obligations of advice, protection and the obligation to exercise proper care which are to enable the Principal to use the delivered object as set forth in the contract or to protect the health and life of the Principal's staff or to protect the Principal's property from severe damage); in this case, however, our liability is limited to the reimbursement of the foreseeable, typically occurring damage.

(3) Indirect damage and consequential damage due to defects of the delivered object is also only to be reimbursed if such damage is typically to be expected during the intended use of the delivered object.

(4) The above exclusions and limitations of liability shall apply in the same scope to the benefit of the executive bodies, statutory representatives, employees and other vicarious agents of the Seller.

(5) If the Seller provides technical information or advice and if such information or advice is not part of the contractually agreed scope of services to be provided by the Seller, this shall be free of charge and exclusive of any liability.

(6) The limitations of this Sec. 7 shall not apply with regard to the Seller's liability due to intent, for guaranteed characteristics, due to an injury of life, body or health or pursuant to the German Product Liability Act (*Produkthaftungsgesetz, ProdHaftG*).

Sec. 8 Principal's Duty to Cooperate

(1) The performance of our services presupposes the timely and proper fulfilment of the Principal's obligations. This includes in particular the provision of design specifications by

the Principal as well as the provision of further records, documents, images and logos required for the performance of the contract.

(2) If the assembly of products or objects of the Principal was agreed upon, the Principal shall, in time and without a specific request being necessary, provide the Contractor with any and all technical information and instructions which are necessary for the professional assembly and operation of the assembled products.

(3) Unless otherwise agreed, the Principal shall be responsible for the (technical) infrastructure and its availability at the place of assembly and/or exhibition. This includes in particular the water and power supply.

Sec. 9 Retention of Title

(1) We retain title to the goods until full receipt of all payments. In case of breaches of contract by the Principal, including default in payment, we are entitled to take back the goods.

(2) The Principal shall treat the goods with care, obtain reasonable insurances for the goods and, if required, maintain them.

(3) If the purchase price has not been paid in full, the Principal shall immediately inform us in writing if the goods are encumbered with any third-party rights or subject to any other interferences of third parties.

(4) The Principal shall be entitled to resell goods under retention within the framework of the ordinary course of business. In this case, it hereby assigns to us any and all claims arising from such a resale, regardless of whether the resale took place before or after a possible processing of the goods under retention. Irrespective of our right to collect the claim ourselves, the Principal shall remain entitled to collect the claim also after the assignment. In this context, we undertake not to collect the claim as long and insofar as the Principal meets its payment obligations, no application for the opening of insolvency or similar proceedings has been filed and there is no suspension of payments.

(5) Insofar as the above-mentioned securities exceed the claims to be secured by more than 10%, we are obliged to release the securities at our discretion upon request of the Principal.

Sec. 10 Final Provisions

(1) If the Principal is a merchant, a legal entity under public law or a special fund under public law or does not have a general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any and all disputes arising from the business relationship between the Seller and the Principal shall be the registered office of the Contractor. Mandatory statutory provisions regarding exclusive places of jurisdiction shall remain unaffected by this provision.

(2) The relationships between the Seller and the Principal shall exclusively be governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply.

(3) Should the contract or these Terms and Conditions contain a gap, those legally valid provisions shall apply which the contracting partners would have agreed upon with respect to the economic goals of the contract and the purpose of these Terms and Conditions if they had been aware of this gap.