

# General Terms of Sale

of MC Technologies GmbH, Kabelkamp 2, 30179 Hannover

## § 1 General; Applicability

- (1) Our terms of sale shall be applicable exclusively. We shall not recognize any terms of the purchaser which conflict with, or deviate from, our terms of sale unless we have explicitly accepted them in writing. Our terms of sale shall also be applicable in cases where we perform delivery to the purchaser without reservation, knowing about terms of the purchaser that conflict with, or deviate from, our terms of sale.
- (2) The contract includes in writing all agreements made between us and the purchaser for the purpose of its implementation.
- (3) Our terms of sale shall only apply to companies as defined by § 310 para. 1 BGB (German Civil Code).
- (4) Partial delivery has to be accepted as far as the delivery is reasonable.

## § 2 Offer; Offer Documents

- (1) If the order is to be considered an offer under § 145 BGB we may accept it within 2 weeks.
- (2) We shall reserve ownership and copyright of any illustrations, drawings, calculations and other documents. This shall also apply to written documents classified as "confidential". The purchaser shall not hand them over to third parties unless explicitly authorized to do so by us in writing.

## § 3 Prices; Payment Terms

- (1) Unless specified otherwise in our order acceptance our prices shall apply "ex works", not including packaging, which shall be charged separately.
- (2) Our prices shall not include statutory value-added tax. VAT shall be listed separately in the invoice at the statutory rate applicable on the invoice date.
- (3) Discounts shall not be applicable unless agreed explicitly in writing.
- (4) Unless specified otherwise in the order acceptance the full net sales price shall be due for payment within 30 days from the invoice date. The statutory provisions for consequences of default in payment shall be applicable.
- (5) The purchaser shall not have any rights to offset mutual claims unless his counter-claims have been legally established and are uncontested or have been recognized by us. Furthermore he shall have the right to retain payment to the extent his counter-claim is based on the same contractual relationship.
- (6) In so far as we have assumed the erection or assembly function unless otherwise agreed the purchaser shall bear all the necessary ancillary costs in addition to the agreed compensation, e. g. travelling costs, costs for the transport of tools and of personal luggage.

## § 4 Delivery Period

- (1) The delivery period specified by us shall begin once all technical issues have been clarified.
- (2) Purchaser's timely and proper fulfilment of his obligations shall be a prerequisite for us to meet our obligation to deliver. We shall reserve the right to the defence of non-performance of the contract.
- (3) If the customer is in default of acceptance or violates by negligence or intent any other obligations to co-operate we shall have the right to claim compensation for any damage we have suffered including any extra expenditure. We shall reserve the right to make any further claims.
- (4) If the conditions described in para. (3) apply the risk of accidental loss or accidental deterioration of the object of sale shall be transferred to the purchaser at the moment when he has defaulted on acceptance or payment.
- (5) We shall bear the statutory liability if the underlying contract is a transaction for delivery by a fixed date under § 286 para. 2 no. 4 BGB or § 376 HGB (German Commercial Code).

We shall also bear the statutory liability if a default in delivery for which we are responsible results in the purchaser's right to state that he has lost interest in the further implementation of the contract.

- (6) We shall also bear the statutory liability if our default in delivery was due to our breach of contract by intent or gross negligence. Culpable action by our representatives or vicarious agents shall be attributable to us. Unless the default in delivery is based on our intentional breach of contract our liability for damages shall be limited to the foreseeable damage that may typically occur.
- (7) We shall also bear the statutory liability if our default in delivery was due to our culpable violation of a material contractual obligation. In such cases our liability for damages shall be limited to the foreseeable damage that may typically occur.
- (8) In the event of default in delivery we shall further bear the statutory liability up to a lump sum compensation for default of 0.5 % per full week of default, the maximum being 5 % of the value of the delivery.
- (9) Further statutory claims and rights of the purchaser shall be reserved.

## § 5 Transfer of Risk; Packaging Costs; Assembly and Erection; Acceptance

- (1) Unless specified otherwise in our order acceptance the agreed form of delivery shall be "ex works".
- (2) In so far as delivery is agreed with erection or assembly the risk shall be transferred on the date of acceptance in the own operations of the purchaser or, if agreed, after a perfect trial run.
- (3) For the return of packaging are subject to separate agreements.
- (4) In so far as we insist on acceptance of delivery after completion the purchaser shall undertake this within two weeks. If this is not done acceptance will be deemed to have been made. Acceptance shall equally be deemed to have been made if delivery has been put into service or if agreed upon after the end of an agreed trial period.
- (5) If requested by the purchaser we shall take out a transportation insurance for the delivery. The according costs shall be borne by the purchaser.

## § 6 Liability for Defects

- (1) The purchaser shall not have the right to make claims based on defects unless he has fulfilled the duty to examine the goods/service and give notice under § 377 HGB.
- (2) If the object of sale has a defect the purchaser shall be entitled, at his discretion, to remedy by repair or to delivery of a new, flawless object of sale. In the event of remedy by repair we shall be obliged to bear all necessary costs of the repair, especially transportation, travel, labour, and material costs, not including additional costs caused by transportation of the object of sale to a place other than the place of delivery/performance.
- (3) If remedy fails the purchaser shall have the right, at his discretion, to demand rescission of the contract or a price reduction.
- (4) We bear the statutory liability if the purchaser asserts claims for damages on the grounds of actions involving our, our agents' or our vicarious agents' intent or gross negligence. Unless we are charged with intentional breach of contract our liability for damages shall be limited to the foreseeable damage that may typically occur.
- (5) We bear the statutory liability if we culpably violate any material contract provision. In such cases our liability for damages shall be limited to the foreseeable damage that may typically occur.
- (6) Liability for culpable injury to life, body and health shall remain unaffected. The same shall apply to mandatory

liability under the German Product Liability Act. An essential contractual obligation exists if the breach relates to a duty on whose fulfillment the customer relies on and could also rely.

- (7) Unless specified otherwise above any liability shall be excluded.
- (8) The limitation period for claims based on defects shall be 12 months, beginning upon transfer of risk.
- (9) The limitation period in the event of recourse on delivery under §§ 478, 479 BGB shall remain unaffected. It shall be five years, beginning upon delivery of the defective goods.
- (10) Our guaranty may be refused in the event of delay of payment or loss of credit.

#### **§ 7 Total Liability**

- (1) Any further liability for damages beyond the provisions of § 6 shall be excluded, regardless of the legal nature of the asserted claim. This shall apply especially to claims for damages resulting from culpa in contrahendo, breach of other obligations or claims in tort for compensation of property damage under § 823 BGB.
- (2) As far as our liability for damages has been excluded or restricted the same shall apply with regard to the personal liability for damages of our staff, representatives and vicarious agents.

#### **§ 8 Retention of Title**

- (1) We shall retain title to the object of sale until all payments under the delivery contract have been received. In the event of a breach of contract by the purchaser, especially default in payment, we shall have the right to take the object of sale back. Taking back the object of sale shall not constitute a rescission of the contract unless we have explicitly declared rescission in writing. Seizure of the object of sale by us shall always constitute a rescission of the contract. After taking back the object of sale we shall have the right to realize it. The realization revenue shall be subtracted from the purchaser's obligations to us – less adequate realization costs.
- (2) The purchaser shall treat the object of sale with care. He shall be obliged to insure it, at his own expense, against damage caused by fire, flood and theft at a sufficient repurchase value. Any necessary maintenance and inspection work shall be done by the purchaser in good time at his own expense.
- (3) In any event of seizure or other third party action the purchaser shall immediately inform us in writing to allow us to take legal action under § 771 ZPO (German Code of Civil Procedure). Unless the third party is able to refund our court expenses and legal fees of an action under § 771 ZPO the purchaser shall be liable for the loss suffered by us.
- (4) The purchaser shall be entitled to sell the object of sale in the course of regular business. However, by entering the contract with us the purchaser shall already assign to us any claims against his customer or third parties from such sale up to our total invoice sum (incl. VAT). This provision shall apply regardless of whether or not the object of sale has been processed before sale. Notwithstanding such assignment the purchaser shall have the right to collect such claims. Our right to collect such claims ourselves shall remain unaffected by this clause. We undertake not to collect any claims as long as the purchaser meets his payment obligations from the revenue he has received, does not default on payment and as long as no bankruptcy, composition or insolvency proceedings have been opened or cessation of payments has occurred. If this is the case, however, we shall have the right to demand that the purchaser inform us of all assigned claims and the respective debtors, hand over to us all documents required for collection and inform the debtors (third parties) of the assignment.

- (5) Any processing or transformation of the object of sale by the purchaser shall be on our behalf. If the object of sale is processed with other objects not belonging to us we thereby acquire an ownership share in the new object on a pro rata basis relating to the value of the object of sale (total invoice sum, incl. VAT) and the value of the other processed objects at the time of processing. Otherwise the provisions governing our object of sale delivered with reservation of title shall also be applicable to the object created by processing.
- (6) If the object of sale is inseparably mixed with other objects not belonging to us we shall thereby acquire an ownership share in the new object on a pro rata basis relating to the value of the object of sale (total invoice sum, incl. VAT) and the value of the other objects mixed with it at the time of blending. If mixing occurs in such a manner that the purchaser's object is to be considered the main object the agreement is that the purchaser shall transfer a pro rata ownership share to us. The purchaser shall keep the property in our ownership or co-ownership on our behalf.
- (7) In order to secure our claims against the purchaser the purchaser shall also assign to us such claims against third parties as arise from the combination of the object of sale with a piece of real property.
- (8) We undertake to release, upon the purchaser's request, the securities provided to us to the extent the achievable realization value of our securities exceeds the secured claims by more than 10%. We shall have the right to select the securities to be released.

#### **§ 9 Place of Jurisdiction; Place of Performance**

- (1) If the purchaser is a merchant the place of jurisdiction shall be our company seat. We shall also have the right to bring an action against the purchaser in the court of his residence.
- (2) German law shall be applicable. Application of the UN Sales Convention shall be ruled out.
- (3) Unless specified otherwise in our order acceptance the place of performance shall be our company seat.

#### **§ 10 Severability clause**

This contract shall remain valid even if individual provisions thereof are ineffective or are invalid. This shall not apply if adherence to the contract would cause an unreasonable hardship for one of the parties. The parties to this contract will cooperate in order to replace the invalid provision by a valid provision which comes closest to the original economic intention of the parties.