

## General Terms and Conditions of MB Maschinen GmbH Biebergemünd

### Valid in respect of:

1. a person acting in pursuit of a commercial or independent professional activity at the time of formation of the contract (entrepreneur);
2. legal persons under public law or a federal asset.

### I. General

1. All goods and services of the firm MB Maschinen GmbH (referred to hereinafter as MB) are based on these terms and conditions and any separate contractual agreements. Any dissenting terms and conditions of purchase of the customer shall not form part of the contract even if an order is accepted. In the absence of any agreement to the contrary, a contract shall come about upon our written confirmation of order.
2. We reserve all title and copyright to specimens, cost proposals, drawings and similar information of a tangible and intangible nature, including in electronic form; such information may not be made accessible to third parties. MB undertakes to make information and documents designated by the customer as confidential available to third parties only with the consent of the customer.

### II. Price and payment

1. In the absence of any agreement to the contrary, prices shall be ex works including loading in the factory, but exclusive of packaging. Prices are subject to value-added tax payable at the statutory rate.
2. Unless otherwise agreed, the payment for the purchase of machines shall be made as follows:
  - 50% down payment upon receipt of order confirmation;
  - 50% after delivery or transfer of risk.In each case, net within 30 days after receipt of invoice.
3. Invoices for repair services or servicing work and for deliveries of spare parts shall be due for payment in full immediately.
4. Cheques will only be accepted on account of performance and shall not be considered payment until credited without reservation.
5. The customer shall only have the right to withhold payments or set payments off against counterclaims if his counterclaims are undisputed or have been declared final.

6. From the time of default we may levy default interest at nine percentage points p.a. above the respective base rate. This does not affect our right to demand interest at 3% p.a. above the respective base rate, and at least 5% p.a., from the due date in the case of a commercial act between both parties.
7. Unless otherwise specified by the confirmation of order, the prices of the price list valid at the time of formation of the contract shall apply. Should there be more than 4 months between the date of formation and the agreed delivery and should demonstrable price increases have occurred that increase MB's cost prices by more than 5%, we shall be entitled to demand a corresponding adjustment in the price.
8. If we ship the delivery item, shipment shall be at the expense of the customer.
9. If we have accepted erection and assembly of the delivery item in addition to delivery, delivery will be to the place of erection, also at the expense of the customer. In addition to the agreed consideration, the customer shall also bear all necessary incidental expenses, e.g. travel expenses and field allowance for the assembly personnel.
10. If we perform training services, our price list for training that is valid at the time of performance shall apply unless otherwise indicated in the confirmation of order.
11. We will charge a reduced quantity supplement of € 15 if the value of the order is less than €50.
12. Fees for foreign payments generally have to be borne by the customer.

### **III. Time of delivery, delay in delivery**

1. The time of delivery or acceptance date will derive from the agreements between the parties. A time of delivery or acceptance date shall only be considered approximate, so that a delay of up to 6 weeks shall still be considered timely. Our observance thereof shall presuppose that all commercial and technical issues between the parties hereto have been clarified and that the customer has met all obligations incumbent upon him, e.g. provision of the necessary official certification or approvals or performance of an advance payment and, where appropriate, the preparations for erection and assembly.  
If this is not the case, the time of delivery will be extended accordingly. This shall not apply if MB is responsible for the delay. If shipment or the acceptance of the delivery item is delayed for reasons within the control of the customer, he will be charged the costs arising from the delay, beginning one month after notification of readiness for shipment or acceptance. If the customer is in default of acceptance, the risk of accidental loss and accidental deterioration of the purchased goods passes to the customer at the time the latter is defaulting in acceptance or in delivery.
2. If non-observance of the time of delivery or acceptance date is due to force majeure, labour disputes, interruptions of business for us or our contractors or other events outside our responsibility which prevent us, without our culpability, from supplying the delivery item or making it ready for acceptance on the agreed date, the dates and periods shall be postponed by the duration of the interruptions caused by these circumstances. MB will inform the customer as soon as possible of the beginning and end of such circumstances. We shall be entitled to rescind the contract if we are permanently unable to supply due to failures of supplies from contractors.

3. In the case that MB is unable to perform or late in performing an obligation relating to a partial delivery, this shall only entitle the customer to exercise rights in relation to the partial performance unless he has a justified interest in rejecting the rest of the delivery. If that is not the case, the customer shall remain bound to accept and to pay for partial deliveries that are not impaired in accordance with the contractual arrangements.
4. The delivery period shall be considered observed if the delivery item has left our works by the time it expires or readiness for shipment or, if agreed, readiness for acceptance, has been notified.
5. In the event of delay in delivery, MB will be liable in accordance with statutory provisions, whereby the right of self-performance or through procurement from third parties is restricted in accordance with VII.2.

#### **IV. Passage of risk, acceptance**

1. The risk of accidental loss or deterioration of the delivery item shall pass to the customer when the delivery item has been brought for shipment or has been collected.  
If MB commissions the transport company, we hereby assign to the customer all claims against the haulage firm in connection with deficient or improper delivery. We shall only be answerable for having acted carefully in the selection of the haulage firm.
2. If an acceptance inspection is to take place, we may demand that the customer accepts the delivery immediately after completion of the assembly or erection of the delivery item. If this does not happen within 14 days of notification of the readiness for shipment or acceptance, acceptance shall be considered to have taken place. Acceptance shall likewise be considered to have taken place if the delivery item is used. The customer may not refuse to accept or take delivery of the item on account of a minor fault.
3. As soon as MB has confirmed an order, the customer may only rescind the contract with our express written consent.

#### **V. Reservation of title**

1. MB reserves title to the delivery item until the customer has discharged all claims arising from the business relationship, including claims arising from contracts formed at the same time or later.
2. The customer shall be entitled to dispose of the delivery item in the ordinary course of business. The customer, however, herewith assigns to MB all claims in the amount of the commercial invoice (total amount including value-added tax) of the claim which may accrue to him against his customers or third parties from reselling, regardless of whether the item of sale was or was not subjected to further processing or finishing before resale. The customer shall continue to be authorised to collect this claim even after such assignment. This does not affect MB right to collect the claim themselves. MB undertakes, however, not to collect the claim as long as the customer meets his payment obligations from the earned proceeds, does not default in payment, and, in particular, as long as no petition in bankruptcy, composition, or insolvency is filed, or as long as there is no suspension of payments. In the event that the reserved goods are combined or mixed with other items,

the supplier shall in principle accrue joint title to the new item in the proportion of the value of the reserved goods in the value of the new item.

3. If and insofar as the reservation of title exists, the customer may neither pledge the delivery item nor assign it as security. He shall notify MB immediately in the case of attachments and of seizure or other disposition by third parties.
4. Should the customer act in breach of contract, particularly in the case of default in payment, we shall be entitled to recover the delivery item after due notice and the customer shall be bound to surrender same.
5. We may only demand recovery of the delivery item on account of the reservation of title if we have rescinded the contract.
6. Petition for the institution of insolvency proceedings against the customer shall entitle us to rescind the contract and to demand immediate recovery of the delivery item.
7. If the customer has resold the delivery item in accordance with Section V, Para (2) in the course of regular business, MB shall have the right to demand that the customer inform MB about the assigned claims and their debtors, provide all and any information necessary for collection, turn over all pertinent documentation, and inform the debtors (third parties) of such assignment.
8. MB undertakes to release the securities it is entitled to upon request of the customer to the extent the realisable value of the securities due to MB exceeds the claims to be secured by more than 10%. MB shall be responsible for selecting the securities to be released.

## **VI. Material defects and deficiency in title**

Subject to Section VII, MB warrants the delivery against material defects and deficiency in title as follows to the exclusion of further claims:

### **Material defects:**

Delivery is effected subject to our standard specifications or the agreed specifications. Characteristics of the goods which the customer can expect according to public statements of the supplier or those of his vicarious agents, in particular in catalogues, brochures etc., in advertising or in the labelling of the goods, or on the basis of commercial practice, will only be considered an agreed quality if MB has indicated so in writing in a binding offer or confirmation of order. Guarantees shall only be binding if MB indicates them as such in writing and has detailed its obligations under the guarantee. The supply of specimens shall not constitute any agreement as to quality unless this is expressly agreed with the buyer in writing. The decision on the suitability of the delivery item for a concrete purpose shall be the responsibility of the user. Information and details provided within the scope of advice by us shall not release the customer from the duty to carry out his own tests or inspections. The customer shall examine whether the delivery item is of the contractually agreed quality. If this examination is omitted or is not carried out in the due extent or if identifiable defects including wrong deliveries are not notified in writing immediately after delivery/assembly, the delivery item shall be considered approved. Nonidentifiable defects shall be considered approved if they are not notified to us in writing immediately after discovery, but no later than 12 months after delivery of the goods.

If the delivery of used machines is agreed, liability for material defects is excluded in full subject to Number VII.2. Used machines will be delivered with the accessories still present in the condition in which they are found at the time of formation of the contract. Any liability for obvious and hidden defects is also excluded if the machine had not previously been inspected by the customer.

1. All parts which prove to be defective as a result of a circumstance existing before the passage of risk shall at our option be improved or replaced free of charge. We shall be notified in writing of the discovery of any such defects. Replaced parts shall become our property.
2. The customer shall, after notifying MB, give us the necessary time and opportunity to carry out all improvements and substitute deliveries we consider necessary; otherwise we shall be released from liability for the consequences arising therefrom. Only in urgent cases of danger for operational reliability or to avert disproportionately greater damage, in which case MB shall be informed immediately, shall the customer have the right to rectify the defect himself or have it rectified by third parties and to demand from MB reimbursement of the necessary expenses.
3. Of the costs arising from improvement or substitute delivery, MB will, if the complaint proves to be justified, reimburse the costs of the spare part, including the costs of shipment.
4. The customer shall have the right to rescind the contract within the scope of statutory regulations if MB - after consideration of the exceptions allowed by law - allows a reasonable period of time set for the improvement or substitute delivery on account of a material defect to pass without result. If the defect is only minor, the customer shall only have a right to a reduction in the contract price. The right to a reduction in the contract price otherwise remains excluded. Further claims are regulated in Section VII.2 of these terms and conditions.
5. No warranty is offered for the following cases in particular: unsuitable or inexperienced use, deficient assembly or start-up by the customer or third parties, natural wear and tear, deficient or negligent treatment, improper maintenance, unsuitable operating resources, deficient construction work, unsuitable foundations and harmful environmental influences, unless these are the responsibility of MB.
6. If the customer or a third party effects improper improvement, the supplier shall not be liable for the consequences arising therefrom. The same shall apply for modifications to the delivery item made without our prior consent.

Deficiencies in title:

7. Delivery to the destination country is to the best of our knowledge and conscience free of industrial property rights or copyrights of third parties (hereinafter "property rights"). If a third party brings justified claims against the customer on account of a breach of property rights through goods supplied by us and used in accordance with contract, MB will be answerable to the customer as follows:
8. MB will at its option and at its expense either bring about a right of use for the relevant delivery, modify it so that the property right is not breached or replace the delivery with perfect goods.

9. If MB is unable to do so under reasonable conditions, the customer shall accrue the statutory rights of rescission or reduction in price. The duty to pay compensation shall be governed by law with the limits of liability set out in Number VII.
10. Subject to Section VII.2, the duties of the supplier laid down in Section VI.7 are final for the case of a breach of property rights or copyright. They shall only exist if
  - the customer informs MB immediately of the breaches of property rights or copyright asserted by a third party;
  - the customer supports MB to a reasonable extent in our defence against asserted claims or enables us to carry out the modification measures in accordance with Section VI.7;
  - MB retains the right to take all defensive action, including settlements out of court;
  - the deficiency in title is not founded on an instruction of the customer; and
  - the breach was not caused by the customer modifying the delivery item himself or using it in a way other than as permitted in the contract.

## **VII. Liability**

1. If the customer is unable to use the delivery item according to contract through our fault as a result of the omission or deficient execution of proposals and advice given before or after formation of the contract or through a breach of other secondary duties under the contract, in particular instructions for operation and maintenance of the delivery item, the regulations of Sections VI and VII.2 shall apply to the exclusion of further claims of the customer.
2. MB will only be liable for damage not caused to the delivery item itself, on whatever legal grounds, in the case of
  - a. intent;
  - b. gross negligence on the part of the proprietor / institutions or managerial employees;
  - c. culpable injury, loss of life or damage to health;
  - d. deficiencies which MB maliciously failed to disclose or whose absence we guaranteed;
  - e. defects in the delivery item if liability is mandatory under product liability laws for personal injury or material damage to items of private use.

In the case of a culpable breach of substantive contractual duties, MB shall also be liable for the gross negligence of non-managerial staff and in the case of slight negligence, limited in the latter case to the damage reasonably foreseeable for a typical contract of this kind.

3. Other claims are excluded.

### **VIII. Limitation period**

All claims of the customer, on whatever legal grounds, shall become time-barred in 12 months.

Claims to compensation under Section VII.2.a - e shall be governed by statutory periods. These shall also apply for deficiencies of a structure or for delivery items which were used for a structure in accordance with their usual method of use and which caused the deficiency of the structure.

### **IX. Use of software**

If software is included in delivery, the customer is granted a non-exclusive right to use the supplied software, including its documentation. It is provided for use on the intended delivery item. Use of the software on more than one system is prohibited.

The customer may only duplicate, revise or translate the software to the extent allowed by law (§§ 69 a ff. German Copyright Law). The customer undertakes not to remove manufacturer's details, in particular copyright notices, or to amend same without our prior express consent.

All other rights to the software and the documentation, including copies, remain with MB or the software supplier. No sub-licences may be granted.

If the software is not produced by us, the licence conditions of the relevant software manufacturer shall apply.

In the case that the software is defective, MB assigns to the customer all claims accruing to it against the software manufacturer. The customer must initially assert defects in the software against the software manufacturer. MB will only be liable in the subsidiary if claims cannot be pursued against the manufacturer. No duty to supply software updates or upgrades shall exist.

### **X. Applicable law, jurisdiction, validity**

1. All legal relations between MB and the customer shall be governed solely by the laws of the Federal Republic of Germany prevailing for legal relations between domestic parties.

2. The court competent for the registered office of the supplier shall have jurisdiction. However, MB shall be entitled to pursue legal proceedings at the head office of the customer.
3. These terms and conditions of supply shall apply for business relations from January 2015 and shall remain in force until such time as they are replaced by a new version.

## **XI. Data protection**

MB saves and processes personal details of the customer required for the transaction of business. We are also entitled to have these details processed and stored by third parties within the scope of a contract.