

General Terms and Conditions

1. Preliminary Remarks/Subject of the Agreement

Max Mothes GmbH, Registered Address: Neuss, AG Neuss, HRB 16283, offers his services as Contractor, to Customers exclusively according to the following terms and conditions and secondarily according to the involved further regulations. Any other terms of service of the AG is hereby refused. Agreements, especially if these change the aforementioned terms and conditions, become effective only if it is confirmed by the Contractor in writing.

2. Transfer of Risk, Dispatch, Delivered Quantities

2.1 If the Customer and the Contractor agreed in dispatching the product, the risks are transferred from the Contractor to the Customer with the handing over of the product to the shipping company or carrier, but the latest with the departure of the product from the factory or storage of the contractor. If the parties don't specify otherwise, the product is delivered unpacked and without corrosion protection. The shipping costs and the cost of the agreed packing is billed to the Customer.

2.2 For the interpretation of the commercial terms, the INCOTERMS 2010 are valid.

2.3 The method and route of transportation are to be chosen by the Contractor and these are determined by the shipping company or carrier. If the Parties don't specify differently, the products are delivered unpacked. The costs of transportation and packaging are borne by the Customer. The Contractor may, but not obliged to insure the product for risks arising from transportation. The costs of insurance are billed to the Customer. Notwithstanding any agreement of discount we are entitled to charge a service lump sum amounting to € 25,00 (excl. VAT) for orders with an order value under € 100,00 (excl. VAT) in consideration of the necessary treatment expenses. The right of over or under delivery of 10 % of the total order, will be reserved, particularly for special parts.

2.4 Products reported to be ready for dispatch are to be retrieved immediately. Otherwise, the Contractor is entitled to store them at own discretion, to the risks and costs of the Customer.

2.5 The Contractor is entitled for partial delivery. Customary additional- or undersupplies are accepted.

2.6 In case of completions with ongoing dispatch the retrievals and type allocations are given to us, in any other case the Contractor is entitled to fulfill the requirements with a lower-cost choice.

3. Taking Orders, Prices, Payments, Due Dates, Late Payments, Quantities, Errors

3.1 We reserve the right to take incoming offers (queries) within 4 weeks.

3.2 If not agreed differently, the prices are understood ex works without VAT (of the currently effective rate).

3.3 The payment is due within 10 days from the issue of the invoice, but 10 days after the date of service (the dispatch date of the product by the Contractor) the latest. If it is indicated in writing in the order confirmation or in the invoice, the contractor provides a discount for the Customer. In terms of respecting the deadline, the relevant date is the date when the money arrived to the account of the Contractor.

3.4 If the provisable services stretch out for more than 30 days, the Contractor is entitled to issue a monthly bill, in the form of a partial invoice. Partial invoices are always authorized for 90% of the provided services and are to be cleared within 10 days of issue of the bill, understood without VAT. If the partial delivery is ready for withdrawal, the Contractor is entitled to bill a 100% of the withdrawn partial delivery.

3.5 In case the payment deadlines are not adhered to, 1% of late penalty is charged for each started month, calculated from the due amount. Proving of a damage of a higher value is not reserved. For reminders, a reminder flat fee of € 10,00 is charged per reminder. In case of a late payment, the Customer is to bear all fees, costs and expenses.

3.6 The Customer is only entitled for right of retention and a right for compensation to the extent the counterclaims are undisputed or legally binding. The Contractor is entitled to transfer claims against the Customer to third Parties.

3.7 In case of a late payment by the customer or in case of endangering of the claim by decline of the credit status of the Customer, the Contractor is entitled to claim the debt immediately, regardless of the duration of the relevant exchange or agreed payment deadlines. The Contractor is entitled to change the condition of the delivery of due services to advance payment or the provision of collaterals.

3.8 The Contractor is entitled to bill the claims of the Contractor or associated companies in the sense of § 15 of the Stock Corporation Act (AktG) vs. all claims of the Customer or his associated companies according to the definition of § 15 of the Stock Corporation Act (AktG).

3.9 Quality, property classes and measurements are defined by the DIN standards and the Material Data Sheets. If no DIN standards or Material Data Sheets are available, the relevant EU standards are effective, if it is not present in the practices. In case of mass orders (from 1000 pc.) we are entitled for the customary deviations of +/- 10% of delivery. In this case, the billed amount will be proportionally adjusted.

3.10 The Contractor preserves the right to correct offered or confirmed prices until the dispatch or the provision of the service. If such correction entails more than 10% of a raise, the Customer explicitly has to agree to the correction. Furthermore, the Customer agrees to the correction if it is obvious that the total or individual prices are billed erroneously. This is the case if the agreed price differs from the customary price by more than 15% and in the case of a wrong currency indication (for example CHF or US\$ instead of €) Prices may not be corrected if the offer or the confirmed order explicitly indicates fixed timeframes and fixed prices.

4. Acceptance Inspection

4.1 If a later takeover by the customer was agreed upon when the order was placed, this has to be carried out as soon as possible after the product was reported to be ready for delivery at the site address of the Contractor. If, despite of the written report of readiness for delivery, the product is not taken over within 14 days or no qualified written information about an obstacle hindering the acceptance is sent by the Customer, the service or the product is considered taken over.

4.2 If the product/service is not accepted/taken over in a timely manner or the takeover is not complete for reasons beyond the responsibility of the Contractor, the Contractor is entitled to deliver the service/product without acceptance or to store the product for the costs and risk of the Customer.

5. Retention of Ownership

5.1 The delivered product or service remains the property of the Contractor (goods subject to retention of title) until the fulfillment of all claims, especially of the current account balance claims of the Contractor towards the Customer arising in connection with the business relation.

5.2 Processing of the goods subject to retention of Contractor's ownership as manufacturer in the sense of § 950 of the Civil Code (BGB) is done without imposing any responsibilities on him. The processed product is considered as a product subject to retention of ownership as defined in point 5.1. In case of processing, connecting and mixing the retained ownership product with other products by the Customer, the Contractor is the co-owner of the new product in the proportion of the value billed for the product with the retained ownership to the billed value of the other product used. If the ownership of the Contractor lapses by the connection or mixing, the Customer transfers the arising ownership rights to the new object or the product proportionate to the billed value of the product with the retained ownership to the Contractor and preserves them free of charge for the Contractor.

5.3 The Customer may only alienate the product with the retained ownership using the usual business procedure, with his normal terms and conditions and only as long as he is not late with the payment, on the condition that he agrees with his customer upon a reservation of ownership and that the claims of further alienating specified in points 5.4. and 5.5. transfer over to the Contractor. He is not entitled to other provisions with regards to products with retained ownership.

5.4 The use of a product with retained ownership for the purposes of fulfilling retainer agreements and service provision agreements.

5.5 The Customer's claims with regards to the re-alienation of the goods subject to retained ownership are assigned to the Contractor, and this is valid on the occasion of introducing the re-alienation claim in a current account to the extent of the current account balance claims. The scope of the assigned claims is the same as the goods subject to retained ownership.

5.6 If the product with the retained ownership is sold by the customer together with other products supplied by other parties than the Contractor, the Contractor's claims associated with the re-alienation and the current account balance claims will be granted to him in the proportion of the billed value of the product with the retained ownership to the billed value of the other product. If the products with partial ownership of the Contractor in accordance with point 5.2. are re-alienated, a partial ownership in the proportion of the claim will be assigned to the Contractor.

5.7 The Customer is entitled to collect the claims associated with the re-alienation or current account balance claims, unless the contractor waives these. Upon request of the Contractor and if the Contractor doesn't do this himself, the Customer is obliged to inform his customer about the assignment of claims to the Contractor immediately and to surrender the information and documentation required for the collection to the Contractor.

5.8 The Customer is not entitled for further assignment of claims. This is also valid for factoring - businesses. These are not authorized for the customer, based on the collection authorization. However, the Contractor is prepared to agree to the factoring of businesses on a case-by-case basis, if the proceeds of the factoring ultimately flow in to the Customer and the fulfillment of the claims of the Contractor are not endangered.

5.9 In the cases specified in point 3.7. the Contractor is also entitled to prohibit the processing and re-alienation of the product with the retained ownership. In these cases, and if the Customer doesn't fulfill the responsibilities specified on 5.3., the Contractor can demand the surrendering of the product with the retained ownership to the costs of the Customer, with the exclusion of the rights of retention. The Customer hereby authorizes the Contractor to enter his premises for the purpose of re-possessing the goods subject to retention of title. The re-possession is not considered as the termination of the Agreement.

5.10 If the value of the existing collaterals exceeds the secured claims with a total of more than 25%, upon request of the customer, the Contractor is obliged to the release of collaterals of the choice of the Contractor, to this extent. The Customer is to inform the Contractor of seizures or other obstacles by third Parties without delay.

6. Warranties

6.1 The Contractor guarantees the provision of goods/services delivered within the framework of sell-and purchase, retainer- and service provision agreements free of material- and legal defects.

6.2 Defects of products, items or contract production parts are to be presented to the Contractor as soon as possible. After the completion of an acceptance inspection of a product by the Customer, a complaint about defects visible via the agreed method of inspection is ruled out. Apart from that, § 377 of the Commercial Code (HGB) governs. In the case of mass production, a complete faultlessness cannot be attained. A defect rate of 1% is considered as authorized and represents no deficiencies, except when a lower fault rate was explicitly agreed upon. If the fault rate exceeds the barrier of 1% or the agreed fault rate, the defected product is corrected or taken back and replaced by a faultless product, by choice of the Contractor. In case of products that are to be sent to the Customer without excessive expenditures, the elimination of the fault happens at the site of the Customer. The Contractor is to properly package the products, including the necessary accessories. If the Contractor fails to repair or replace the goods, especially after an unsuccessful expiring of a suitable deadline set by the Customer, the Customer can claim to annul the Agreement or the reduction of the price.

6.3 Further rights based on defects, especially contractual or non-contractual claims of compensation not understood with the product itself are ruled out to the extent specified in point 7. This is not valid for the liability for malice or severe negligence.

6.4 The warranty assumed by the Contractor is limited to two years after the transfer of risk at the time of shipping the product or the provision of the service, namely the handover of the R&D results. This is also valid for warranty claims that are not subject to the statutory warranty period.

6.5 In the case of individual products, product groups or businesses, with the exception of a longer warranty period guaranteed by the Contractor, the liability of the Contractor is limited to the repair or replacement of the product, by the Contractor's choice.

7. Liability Limitations

7.1 The Contractor's liability is predominantly ruled by the content of this Agreement. With the exception of malice or severe negligence, all rights not explicitly governed by the Agreement, e.g. termination, withdrawal or price reduction and any kind of damage compensation, regardless of what caused it, especially frustration, unauthorized handling, positive breach of contract, faulty completion of the Agreement, consequential damages of defects, lost profit, are ruled out, except where statutorily authorized. The compensation for damages for the breach of a relevant contractual obligation is limited to foreseeable, typically arising damages, except of malice or severe negligence and as long as the liability is not involving the loss of life, bodily- or health injuries or guarantees transferred to the Contractor.

7.2 With the exception of malice or severe negligence, the Contractor's liability is limited to the value of the order and to the actually provided coverage of the liability insurance of the Contractor. The coverage amount is currently €2,500k for personal-, material or environmental damages and a plain product liability, € 1,000k € for further product liability and € 50k for damages in property-, activities and processing. Any further liability specified in the Product Liability Act remains unaffected by this.

8. Delivery Times, Late Deliveries

8.1 The agreed delivery responsibilities and delivery deadlines of the contractor are subject to proper and timely self-delivery. The delivery times are basically unbending, unless they are explicitly indicated as "binding" or "fix".

8.2 The agreed delivery- and service provision times are conditioned to the timely clarification of all details by the Customer and the timely fulfillment of all necessary responsibilities of the Customer, such as release of plans, required authority certificates, etc....

8.3 If the Contractor is hindered in fulfilling his responsibilities by an unforeseen incident that was not avoidable even with exercising reasonable care, e.g. strike, lockout, war, interventions from a higher authority, inner unrests, forces of nature, accidents and other operational disturbances and delays in the supply of relevant working materials or raw materials, the delivery- and service provision times are extended by the length of the obstacle and a suitable start-up period. If due to the obstacle, the delivery becomes impossible or unreasonable, the Contractor can withdraw from the Agreement. The Customer can do the same, if the delay renders the acceptance of the product/service unreasonable.

8.4 If the Contractor is late, after an extended deadline allocated to him in writing, the customer can withdraw from the Agreement. The same is valid, if due to reasons beyond his control, delivery or provision of the service by the contractor becomes impossible.

8.5 A reason for withdrawal arising on the part of the Customer or the Contractor basically extends to the part of the Agreement that has not been fulfilled yet. If already provided partial services are unusable for the Customer, he is entitled for the withdrawal to the extent of this partial delivery.

8.6 The agreement upon a contractual penalty for late delivery is subjected to the explicit consent of the Contractor. In any case, such contractual penalty is limited to 0.5% of the value of the late delivery per completed week of being late and to a total maximum of 5% of the value of the affected products.

8.7 Further rights resulting from late delivery, especially compensation claims are ruled out to the extent specified in point 7.

9. Non-Disclosure

9.1 During the effective time of the Agreement and 2 years after the termination of the Agreement, the Contractor and the Customer commit to handle mutually disclosed information and documentation strictly confidential and to take all required measures to hinder the access of third parties to said information. The confidentiality obligation is also valid against concerns, licensees or any other third party any kind of access to the non-disclosable information was granted to. The non-disclosure is valid, regardless of whether the information was/is disclosed orally, documented, machine-scannable or in the form of equipment, tests, samples or products. Parties commit to impose the same, above detailed obligations to their employees and persons with access to the disclosed information. Within the framework of the statutory possibilities, these obligations are imposed on employees for the time after they leave the company.

9.2 All documentation regarding the commodities supplied by the Contractor, especially drawings, remain the property of the contractor and may only be used without the separate consent of the Contractor for the contractually foreseen purposes. Upon request, these are to be returned.

9.3 The obligation of non-disclosure and non-use of mutually disclosed information is void if

- these were proven to have already been known to the other Party prior to their disclosure;
- these were known or accessible to the public prior to their disclosure;
- these became accessible to the public after their disclosure without the involvement or fault of the recipient Party

and if the information is basically corresponding to any information that was made accessible to the recipient Party by an authorized third Party at any time.

10. Miscellaneous Provisions

10.1 The place of service provision is the site of the Contractor.

10.2 In case of any of the individual provision of this Agreement loses its effect, the other provisions remain effective.

10.3 For all disputes, including exchange- and cheque processes, the Court of jurisdiction is Düsseldorf. Furthermore, the Contractor is entitled to file a lawsuit against the Customer at the current Court of its general jurisdiction.

10.4 For all legal relationship between the Contractor and the Customer, exclusively the law of the Federal Republic of Germany, governing the legal relationships of domestic Parties is valid, with the exclusion of the agreement of the United Nations Convention on Contracts with the International Sale of Goods, dated on 11. April 1980 (CISG)

10.5 The original version of the subject General Terms and Conditions is in German language. In case of contradictions between the German version and the English translation, applies the German version.