

General Terms for Deliveries and Services of Moehwald GmbH, Michelinstrasse 21, 66424 Homburg

(In accordance with the terms recommended by the Deutscher Maschinen- und Anlagenbauer e.V. (VDMA) [The German Engineering Federation or VDMA])

For usage with regard to:

1. Any person who, upon conclusion of this contract, is acting on behalf of his/her own commercial or professional business (business owner);
2. Juristic persons under public law and public-law special funds

I. General information

1. All deliveries and services are based on these terms as well as any separate contractual agreements. Purchaser terms of purchase that deviate from this shall not become a subject of the contract as a result of acceptance of an order.
A contract arises -- in the absence of special agreements -- with the written order confirmation from the Supplier.
2. The Supplier shall retain ownership rights and copyrights regarding samples, quotations, drawings, and information in physical or non-physical format -- including in electronic format; said items shall not be made available to third parties. The Supplier is hereby obligated to make information and documents stipulated by the Purchaser as being confidential available to third parties only with the agreement of said Purchaser.

II. Price and Payment

1. In the absence of any other agreement, prices shall be FOB from the factory including loading at the factory, however, excluding packing and unloading. Value-added tax in the relevant legal amount shall be added to the prices.
2. In the absence of any other agreement, payment shall be made without any deduction on account of the supplier.
3. The withholding of payments or setoff due to any counter claims on the part of the Purchaser that are contested by the Supplier shall not be permissible.

III. Delivery Time, Delivery Delay

1. The delivery time shall be generated from the agreements between the parties to the contract. Adherence to these times on the part of the Supplier presupposes that all business and technical questions between the parties to the contract have been clarified and that the Purchaser has fulfilled all obligations incumbent upon him/her such as producing all official certifications or authorizations required or made required payments. If this is not the case, the delivery time shall be extended appropriately. This does not apply insofar as the Supplier is the sole cause of the delay.
2. Adherence to the delivery period is subject to correct and timely deliveries to us. The supplier shall provide notification regarding evolving delays as soon as possible.
3. The delivery period is considered to be adhered to after the goods for delivery have left the factory or the readiness for shipment has been indicated. Insofar as there has to be an acceptance inspection, excluding cases of legitimate refusal to accept, the inspection date shall be applicable or the notification of readiness to accept.
4. If the shipment and/or the acceptance of the delivered goods are delayed for reasons on the part of the Purchaser, the costs arising from the delay shall be calculated at the expense of said Purchaser beginning one month after notification of the shipment and/or readiness for acceptance.
5. If the failure to adhere to the delivery time can be traced back to reasons related to acts of God, labor disputes or other events that lie outside the control of the Supplier, the delivery time shall be extended appropriately. The Supplier shall inform the Purchaser of the beginning and end of these types of circumstances as soon as possible.
Section X is in effect as well.
6. The Purchaser can withdraw from the contract with no advance notice, if performance in its entirety finally becomes impossible for the Supplier before transfer of risk. The Purchaser can additionally withdraw from the contract if, for a given delivery, the execution of part of said delivery becomes impossible and he/she has a legitimate interest in refusing the partial delivery. If this is not the case, then the Purchaser shall pay any contractual price resulting from the partial delivery. The same applies for inability to comply on the part of the Supplier.
Section VII.2 is in effect as well.
In the event of impossibility or inability to comply during the time of the delivery delay, or if the Purchaser is solely or predominately responsible for these circumstances, then he/she shall remain obligated for counter-performance.
7. If the Supplier becomes delayed and thus causes damages on the part of the Purchaser, then he/she is entitled to demand compounded compensation for damages resulting from said delay. This shall be 0.5% for each full week of delay, to total not more than 5% of the value of said part of the whole delivery that, as a result of the delay, cannot be used in a timely manner or cannot be used according to the contract.
If the Purchaser presents the Supplier -- having considered cases that are legal exceptions -- with a reasonable time period for performance after the due date, and the time period is not adhered to, then the Purchaser shall be authorized to withdraw within the realm of the legal regulations.
Additional claims resulting from delivery delay shall be governed exclusively by section VII.2 of these terms.
8. Section XII is also in effect for export deliveries.

IV. Transfer of Risk, Acceptance Inspection

1. Risk shall be passed on to the Purchaser the point at which the goods for delivery have left the factory; this also applies to partial deliveries or if the Supplier has taken on responsibility for additional services, e.g. shipping costs or delivery and setup. Insofar as there has to be an inspection, then this is applicable for the transfer of risk. It must be conducted without delay before the acceptance date or after the Supplier's notification concerning the readiness for acceptance. The Purchaser shall not be eligible to refuse the acceptance in cases where there is no significant defect.
2. If the shipment or acceptance inspection is delayed or has not occurred as a result of circumstances that are not ascribed to the Supplier, then the risk shall be transferred to the Purchaser as of the date of the notification regarding shipping readiness or readiness for acceptance. The Supplier is hereby obligated to obtain insurance, at the expense of the Purchaser, that said Purchaser requires.
3. Partial deliveries shall be permitted, insofar as they are acceptable for the Purchaser.
4. 6 weeks after notification of readiness for acceptance, the acceptance of the delivered goods is considered to be accomplished.

V. Reservation of Ownership

1. The Supplier hereby reserves ownership in the goods for delivery until all payments from the contract for supply of goods have been deposited.
2. The Supplier is hereby authorized to insure, at the expense of the Purchaser, the goods for delivery against theft, as well as breakage, fire, water and other damages, insofar as it is not proven that the Purchaser has obtained his/her own insurance.
3. The Purchaser shall not be authorized to assign, pledge or transfer ownership of the delivered goods for collateral purposes. The Purchaser shall inform the Supplier without undue delay in the event of levies of execution as well as seizure attachments or other dispositions from third parties.
4. If the Purchaser breaches the contract, especially regarding payment delay, the Supplier is hereby authorized to return of the delivered goods after official notification, and the Purchaser shall be obligated to surrender such goods.
5. Based on the reservation of ownership principle, the Supplier can only claim recovery of the delivered goods if he/she has withdrawn from the contract.
6. A petition in insolvency authorizes the Supplier to withdraw from the contract and to demand the immediate return of the delivered goods.

VI. Warranty Claims

The Supplier shall provide warranty for the quality and warranty in title of the delivery excluding additional claims -- subject to section VII -- as follows:

Quality defects

1. All parts that turn out to be defective due to a condition existing before the transfer of risk shall either have their defects remedied or be replaced with parts that are free of defects, free of charge, according to the Supplier's choosing. The determination of such defects shall be reported to the Supplier in writing without delay. Replaced parts shall remain the property of the Supplier.
2. In order to execute all remedies mentioned and deemed necessary by the Supplier as well as replacement deliveries, the Purchaser shall allow for the required time and opportunity to do this upon arrangement with the Supplier; if this is not the case, then the Supplier shall be free of liability for any and all consequences resulting thereof. Only in extreme cases of endangerment to operational security and/or to counter disproportionately large damages, whereby the Supplier shall be informed immediately, shall the Purchaser have the right to remedy the defect in-house or via third-parties and thereby the right to demand replacement of the resulting expenses from the Supplier.
3. The Supplier shall bear the direct costs resulting from the remedies and/or replacement delivery -- insofar as the complaint if found to be legitimate -- the costs of the replacement parts to include shipment. In addition, he/she shall bear the costs for uninstalling and installing as well as any costs required for the necessary technicians and workers excluding transportation costs, insofar as this does not create a disproportionate burden on the Supplier.
4. The Purchaser has the right, within the scope of legal regulations, to withdraw from the contract if the Supplier -- having considered cases that are legal exceptions -- lets the deadline for remedying or replacing parts due to a quality defect allowed to him/her by law pass fruitlessly. If the defect cannot be corrected, then the Purchaser has the sole right to a reduction in the contractual price. This right to a reduction in the contractual prices shall otherwise remain excluded.

Additional claims are governed by section VII. 2 of these terms.

5. There shall be no acceptance of claims in the following cases in particular: Unsuitable or improper usage, faulty assembly and/or commissioning on the part of the Purchaser or third parties, normal wear and tear, faulty or careless handling, improper maintenance, unsuitable operating materials, defective construction, unsuitable site, chemical, electronic or electrical influences -- insofar as they are not caused by the Supplier.
6. If the Purchaser or a third party remedies a defect improperly, then the Supplier shall assume no liability for any consequences resulting thereof.
The same applies to any changes to the goods delivered that are carried out without prior agreement from the Supplier.

Defects of Title

7. If usage of the delivered goods leads to infringement of an industrial property right or copyright laws within the country of use, the Supplier shall in essence acquire for the Purchaser the right to additional usage or modify the delivered goods in such a way as to be acceptable for the Purchaser at the expense of the Supplier, so that the property right infringement no longer exists.
If this is not possible with regard to reasonable commercial terms or within a reasonable period of time, the Purchaser shall be entitled to withdraw from the contract. The Supplier retains the right to withdraw from the contract under said preconditions as well.
The Supplier shall additionally release the Purchaser from undisputed claims or claims from the proprietor of the industrial right concerned that are determined to be non-appealable.
8. The Supplier's obligations named in section VI. 7 shall be considered final, subject to section VII.2, for cases of property or copyright infringement.

Such obligations shall only arise if

- the Purchaser instructs the Supplier without delay regarding property or copyright infringements that have been raised,
- the Purchaser supports the Supplier, to a reasonable degree, in the defense of the raised claims and/or enables the Supplier to implement the modification measures according to VI.7,
- the Supplier retains the right to all defensive measures including extrajudicial regulations,
- the title defect is not based on an order of the Purchaser and
- the infringement of rights was not caused as a result of the Purchaser changing the delivered goods without authorization or using the goods in a manner not in keeping with the contractual terms.

VII. Liability

1. If the Purchaser cannot use the delivered goods in a way that is in accordance with the contract due to fault on the part of the Supplier as a result of a faulty or omitted execution of the recommendations and advice occurring before or after conclusion of the contract or as a result of the infringement of any other contractual obligations -- particularly instructions for operation and maintenance of the delivered goods -- then the regulations from sections VI and VII.2 shall be in effect accordingly, excluding additional claims.
2. The Supplier shall only be liable for damages not directly on the delivered goods -- regardless of the legal cause -- in cases of
 - a. intent,
 - b. gross negligence on the part of the holder / the bodies or management,
 - c. culpable bodily injury or death,
 - d. defects that the Supplier has fraudulently concealed or whose absence he/she has guaranteed,
 - e. defects in the goods for delivery, insofar as liability arises according to product liability law for personal injury or property damage to privately used property.

In cases of negligent infringement of significant contractual obligations, the Supplier shall be liable for gross negligence on the part of non-managerial employees and for minor negligence, limited in the latter to damages that are contractually typical and reasonably foreseeable.

Additional claims are hereby excluded.

VIII. Limitation of Actions

All claims on the part of the Purchaser – regardless of the legal cause – become statute-barred in 12 months. The legal time limits are in effect for compensatory damages in accordance with section VII.2 a – e. They are also in effect for defects in a building or for delivered goods that were used in the normal manner for a building and that have caused said defectiveness.

IX. Terms of Use for Software

Insofar as software is included within the scope of delivery, the Purchaser shall be granted a non-exclusive right to use the delivered software including its documentation. This shall be entrusted for usage on items intended for this. Usage of the software on more than one system is hereby forbidden.

The Purchaser may only distribute, revise, or translate the software or convert the object code to the source code within the legally permissible scope (§§ 69 a ff. The German Copyright Act). The Purchaser is hereby prohibited from removing or changing any manufacturer's instructions – particularly copyright notices – without prior written approval of the Supplier.

The Supplier and the software suppliers shall retain all other rights to the software and the documentation including copies. The assignment of sublicenses is not permitted.

In addition, section XIII is in effect for software deliveries.

X. Acts of God

Each party is authorized to discontinue the fulfillment of his/her contractual obligations insofar as said fulfillment is made impossible due to the following circumstances or is reasonably impeded: Industrial conflicts and all circumstances outside the control of the parties such as fire, war, general mobilization of troops, uprising, requisitioning, seizure attachment, embargo, and energy restrictions as well as defective or delayed deliveries from sub-contractors due to the conditions listed in this item.

The party claiming an act of God shall notify the other party in writing and without delay of the start and end of such circumstance. If an act of God hinders the Purchaser in the fulfillment of his/her contractual obligations, then he/she must compensate the Supplier for costs incurred in insuring and protecting the factory.

Notwithstanding all effects stipulated in these General Terms of Business, each party has the right to withdraw from the contract by notifying the other party in writing, if the discontinuance in fulfilling the contract due to an act of God lasts longer than six months. In this case, the Supplier shall be reimbursed for all his/her costs arising up to that point (particularly for material, labor costs, and supplier contracts).

XI. Applicable Law, Legal Venue

1. The relevant law of the Federal Republic of Germany for the legal relationships among domestic parties shall be exclusively valid for all legal relationships between the Supplier and the Purchaser.
2. The legal venue shall be the court with jurisdiction for the Supplier's domicile. The Supplier is however authorized to raise complaints in the Purchaser's domicile.
3. If, in spite of item XI.1., individual provisions of these delivery terms should no longer be in effect for contracts with customers outside of Germany due to legal provisions in the country where the purchase is taking place, the regulations that come the closest to the intent and purpose of the provisions that are no longer in effect shall be in effect in their place as agreed upon. Insofar as necessary, the Customer shall be obligated to undertake all measures to reach this goal.

XII. Supplemental Provisions for Export Deliveries

1. Deliveries and technical support outside the jurisdiction of the Federal Republic of Germany and the economic area within the European Union are subject to special restrictions (also see the information in the contract data, delivery notes and invoices).
Orders shall be taken by Moehwald GmbH subject to the granting of authorization from the relevant authorities and/or exemption from authorization.
2. If an additional transfer takes place via the customer, then said customer shall be responsible for adhering to any export requirements based on legal regulations and any official orders.
3. In the event of a breach, we shall have the right to void the current orders in addition to the claim for compensatory damages.

XIII. Supplemental Provisions for Software

The following shall be in effect for the delivery of software as a supplement to the General Terms of Business for Deliveries and Services of Moehwald GmbH (known as MH):

1. Software delivered by MH is copyright protected. All copyright-protection rights and usage rights shall be for exclusively for MH or its licensor. If the customer is the user of software products from MH, he/she acquires a right of usage upon payment of the purchase price; the manner, contents and scope of said usage right are modeled exclusively according to the directive of the following provisions. Purchase terms from the Customer are hereby contradicted. The term, software products, in this supplement to the General Terms of Business means all computer programs including the corresponding documentation.
 - 1.1 Single license: MH grants the Customer the non-exclusive right, free of charge and without time limit, to use the software on one unit (target hardware).
 - 1.2 Multiple license: A multiple license is the granting of a number of single licenses.
 - 1.3 Network license / server license: The network license and/or server license grants the Customer the right to install the software on a network server and usage by the acquired number of users simultaneously.
 - 1.4 For software MH has acquired from third parties and included in the delivery and/or installed and included in the delivery, the usage and license terms of said third party shall be in effect as well.
 - 1.5 The Customer can transfer the software from one unit to another with the presupposition that the software is only being used on one unit at any given point in time. Usage on a network server is only permitted with a network license.
 - 1.6 A transfer of usage rights to third parties on the part of the Customer is hereby expressly forbidden by MH.
 - 1.7 The Customer is prohibited from changing, translating, performing reverse engineering, or disassembling the software or from creating software that deviates from the factory-produced software or from removing parts of the software. The customer is furthermore prohibited from removing alphanumeric identifiers from the data carriers and shall distribute said software, insofar as distribution is authorized, unchanged. The customer is only granted decompilation authority within the scope of §69e of The German Copyright Act and only with the presupposition that MH has not provided the customer with the necessary information for creating the interoperability of the computer programs within a written, legally reasonable time period.
 - 1.8 Insofar as the software is not copy-protected, the customer shall be allowed to produce a back-up copy. The removal of any existing copyright notices in the software as well as any registry information included is prohibited.

2. Warranty

- 2.1 It is hereby acknowledged that it is not possible to develop the software in such a way that it can be used in all applications and all combinations without errors. The scope of service and function of the software products shall be governed by the valid product descriptions at the conclusion of the contract. Additional services such as individual creation or adjustment of software products as well as guarantees and service commitments must be expressly agreed to in writing. The Customer shall bear responsibility for the correct selection of software and the consequences of usage thereof as well as the intended or targeted results of such usage.
 - 2.2 MH shall ensure that the data carrier delivered is free of material and manufacturing defects, that the software has been correctly duplicated and that it can be run on the error-free hardware that is indicated in the corresponding documentation, under normal operating conditions, with correct maintenance of the system, and normal handling and storage of the data carrier. The fulfillment of this warranty shall take place exclusively via replacement delivery after return of the delivered data carrier.
 - 2.3 The Supplier shall provide warranty up to the interface for software that the Customer or a third party has expanded via an interface provided by the Supplier. MH shall not provide warranty that the delivered software is compatible with the data processing environment used by the Purchaser -- particularly with software and hardware products placed into use by the Customer.
 - 2.4 The Customer shall undertake all reasonable measures to prevent or limit damaging consequences from software errors. Notification of defects in accordance with §377, 381II of the German Civil Code to be carried out in writing without undue delay. The Customer shall provide the documentation regarding error notification via documents, which can be examined by MH, concerning the type and appearance of deviations from the service description and shall furthermore help MH in limiting errors. The Customer shall ensure the protection of programs as well as data entered and to be processed.
 - 2.5 Warranty claims become statute-barred in 12 months. The preceding provision shall not be in effect insofar as the law according to §§ 438 section 1 no. 2 (Buildings and Matters regarding Buildings) and § 634a (Structural Defects) of the German Civil Code stipulate longer time periods.
The statutory period of limitations for quality defects begins with the commissioning and/or the installation of the software, to be no longer than six months after delivery or after notification of readiness for the acceptance inspection at our location for each case.
 - 2.6 In the event that errors appear in the software delivered by MH within this time period that significantly influence the value or suitability, then MH shall check such errors and, insofar as it involves a warranty-covered defect, remedy these errors according to internal criteria via correction of the defect or delivery of software that is free from defects. Program errors shall be corrected either by demonstrating a "workaround" procedure for the error that is acceptable to the customer or by delivering a corrected version. If the Customer denies access to the license material for the preceding purposes and/or if the Customer does not install the corrected version in the usage environment, then the subsequent fulfillment shall not be considered a failure to fulfill. If, in the event of a warranty case, the correction of defects via delivery of a replacement remains unsuccessful after a number of attempts, the Customer shall be entitled to a proportionate decrease in the purchase price or to rescind the contract.
 - 2.7 Customer claims concerning the costs incurred in correcting the error, particularly for transport, labor and material costs are hereby excluded, insofar as the costs are increased because the software has been brought to a different location than that of a branch of the Customer, unless such transfer corresponds to the Customer's usage according to the provisions.
 - 2.8 Additional claims, particularly claims for compensatory damages that do not involve the software directly, such as loss or faulty processing of data, are hereby excluded.
3. Liability
Insofar as something to the contrary is not contained in these provisions, we shall be liable for compensatory damages and compensation of costs awarded within the meaning of § 284 of the German Civil Code (subsequently "Compensatory Damages") regarding breach of contractual or non-contractual obligations only in the event of gross negligence on the part of our legal representatives or vicarious agents, personal injury or death, due to the transfer of a guarantee or procurement risk, or the breach of significant contractual obligations based on compulsory liability according to the Product Liability Act or other compulsory liability. Compensatory damages for the breach of significant contractual obligations is however limited to contractually typical, foreseeable damages, insofar as intent or gross negligence on the part of our legal representatives or vicarious agents is not a factor or liability does not arise due to personal injury or death or the transfer of a guarantee or a procurement risk. Any change in the burden of proof to the disadvantage of the Purchaser shall not be connected to the existing regulations.
4. Termination
 - 4.1 The usage authorization for the software ends automatically, with no termination required, if the Customer breaches a significant provision of these contract terms.
 - 4.2 The Customer is obligated upon termination of the contract to return or destroy the original software, all reproductions and partial reproductions of the delivered software as well as the corresponding documentation and to confirm this in writing.
 5. Export Restrictions
 - 5.1 Export of the software and documentation can – e.g. based on the type or intent of application – be subject to approval (also see information in the order data, delivery notes and invoices).
 - 5.2 If an additional delivery takes place via the Customer, then said Customer shall be responsible for adhering to any export requirements based on legal regulations and any official orders.
 - 5.3 In the event of a breach, we shall have the right to void the current orders in addition to the claim for compensatory damages.