

Terms and Conditions of Purchase of MAB GmbH, Status: May 2020, Page 1/4

I. General Provisions

1. Scope

- 1.1. The following Terms and Conditions of Purchase of MAB GmbH ("MAB") and its affiliated companies within the meaning of Sec. 15 et seqq. of the German Stock Corporation Act (Aktengesetz, AktG) ("Affiliated Companies") ("Terms and Conditions") shall apply exclusively. They shall also apply to all future business transactions with the supplier. This shall also apply even if the Terms and Conditions are not expressly agreed upon again.
- 1.2. Terms and conditions of the supplier that are contrary to or deviate from the Terms and Conditions shall not be deemed accepted unless MAB expressly consents to their validity in writing. The Terms and Conditions of MAB shall also apply if MAB performs the delivery or the services vis-à-vis the supplier without reservation in full awareness of contradictory or deviating terms and conditions of the supplier.
- 1.3. Any and all agreements regarding deliveries are documented in writing in the contracts concluded between MAB and the supplier. Deviating agreements concluded between MAB and the supplier shall be stipulated in text form in the relevant contract and any supplementary agreements.
- 1.4. These Terms and Conditions only apply vis-à-vis entrepreneurs pursuant to Sec. 14 para. 1 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) and legal entities under public law as well as special funds under public law within the meaning of Sec. 310 para. 1 BGB. An entrepreneur within the meaning of this section is a natural or legal person or a partnership having legal capacity who or which, when entering into a legal transaction, acts in exercise of his/her/its trade, business or profession.

2. Conclusion of Contract, Amendments

- 2.1. All orders by MAB are non-binding and subject to change (freibleibend). The supplier may accept MAB's offers within 14 days unless otherwise indicated in the order. Unless otherwise agreed, any and all communication relevant to the contract shall be made either by mail, fax or by email exclusively using the following email address: einkauf@mab-fertigung.de.
- 2.2. Oral agreements will become effective with the content of their confirmation in text form.
- 2.3. The documents submitted and information provided by MAB, such as drawings, plans, weights and measurements, shall only be binding on the supplier if MAB expressly lists or refers to them in the order confirmation.

3. Delivery, Delivery Documents and Passing of Risk

- 3.1. The goods shall be delivered DDP (Incoterms® 2020) to the place indicated in the order or to the place of business of MAB ("Place of Delivery") during its regular business hours; the supplier shall also bear the costs and the risk of unloading. The Place of Delivery shall be the place of performance (Erfüllungsort).
- 3.2. The risk passes at the point in time when the goods are handed over or service performance is completed at the Place of Delivery unless an acceptance was agreed in accordance with or is required by statutory law in which case the point in time of acceptance shall be the decisive moment for the passing of the risk.
- 3.3. Unless otherwise agreed, the supplier shall add a delivery note to the delivery and send a copy thereof to logistik@mab-fertigung.de. The delivery note must contain MAB's order number, the item, material and/or article numbers as well as a reference.
- 3.4. MAB is not obliged to accept partial deliveries unless agreed in advance. Where partial deliveries have been agreed, MAB can determine their chronological order. The acceptance of a partial delivery shall not constitute an acknowledgement of the entire delivery as being in conformity with the contract.
- 3.5. MAB is entitled to reject excess and short deliveries outside the limits customary in the industry. Deliveries which deviate from the order volume by more than 5% must be approved by MAB in advance in writing in any case.
- 3.6. MAB is not obliged to accept early deliveries and reserves the right to charge storage costs related to early deliveries to the supplier's account until the actual delivery date. This shall not affect the point in time and consequences of the passing of risk.
- 3.7. The goods to be delivered shall be packed in accordance with customary commercial practices or, if requested by MAB, shall be delivered in MAB's packaging or other particular packaging materials. Each external packaging shall be marked and labelled with details regarding the respective product as well as quantities and sizes.

4. Delivery Dates, Delay in Delivery

- 4.1. The delivery date indicated in the order shall be binding ("Delivery Date").
- 4.2. If the supplier is unable to meet the Delivery Date, the supplier shall immediately notify MAB in writing once the delay becomes evident, indicating the reasons and duration of the estimated delay. This does not affect the supplier's obligation to comply with the delivery date.
- 4.3. In case of a delayed delivery, notwithstanding any further rights or claims for damages that MAB may have, MAB shall be entitled to claim liquidated damages from the supplier in the amount of 0.5% of the net price of the delayed goods or services for each full calendar week of the default, however, limited to a maximum of 5% of the net price of the delayed goods or services. The supplier has the right to dispute such amounts if it can demonstrate that MAB did not suffer any damage or that such damage was lower than set out above. The claim for liquidated damages due to the delay will be set off against further claims for damages. MAB may also request liquidated damages due to a delay if it does not explicitly reserve the right to do so upon acceptance of the goods.

5. Title

- 5.1. Title to the goods shall transfer upon handover or acceptance of the goods (Abnahme). Any retentions of title shall be excluded.

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5.2. In the event the supplier retains the title, MAB performs any processing or adjustments of the delivered goods exclusively for itself.

6. Prices and Terms of Payment

6.1. The agreed prices are fixed prices including all related additional expenses (e.g. costs of packaging, costs of freight including possible transport and liability insurance as well as travel costs) and, if applicable, statutory VAT. The supplier shall pay any applicable public charges and taxes.

6.2. Invoicing must be in euros unless another currency is specified in the order.

6.3. The agreed price is due for payment within 30 calendar days from the handover of the goods and receipt of an accurately issued invoice.

6.4. MAB is entitled to withhold payments that are due for payment if and to the extent that MAB has any claims against the supplier due to incomplete or defective performances.

6.5. MAB may set off claims and exercise rights of retention at its own discretion. The supplier's right to set off claims and exercise rights of retention shall be limited to legally established or undisputed counterclaims.

6.6. The invoice must contain MAB's order number, the item, material and/or article numbers, a reference as well as the approved work performance records, if any, and information on the invoice and performance period. A separate invoice must be issued for each order and/or delivery note. The supplier shall ensure that all formal layout requirements for invoices set forth by the tax authorities are complied with.

7. Warranty

7.1. The supplier warrants to MAB that the goods and services correspond to the specifications. Representations made regarding product quality are deemed to be binding. The acceptance or approval of submitted prototypes or samples does not represent a waiver of warranty claims.

7.2. MAB's inspection and notification obligations pursuant to Sec. 377 and Sec. 381 of the German Commercial Code (Handelsgesetzbuch, HGB) are considered to be exercised in due time if the supplier is notified of obvious defects within five calendar days from receipt of the goods or five calendar days from the identification of any non-obvious defects.

7.3. The delivery of a defective product entitles MAB to subsequent performance by the supplier at MAB's option either by repair or replacement with non-defective goods. If the supplier fails to meet this obligation twice within a reasonable period of time set by MAB or if subsequent performance is unreasonable (unzumutbar), MAB may reduce the purchase price, rescind the contract and/or claim damages in accordance with the applicable statutory provisions.

7.4. The warranty period shall be three years from the passing of risk of the goods unless the product is perishable or has a shorter shelf life.

7.5. The provisions of Sec. 478 BGB (recourse of the entrepreneur) regarding MAB's right of recourse against the supplier shall remain unaffected.

8. Liability and Insurance

8.1. The supplier is liable in accordance with statutory law.

8.2. MAB's liability is limited as set out below:

8.2.1. MAB is fully liable for loss or damage due to intent and gross negligence.

8.2.2. If MAB breaches a contractual obligation in a slightly negligent manner, which is essential for the purpose of the transaction, and if the supplier relies on its fulfilment (cardinal duty), MAB is only liable for foreseeable damage that typically occurs in these kinds of contractual relationships. With respect to any other damage resulting from slight negligence, a liability of MAB shall be excluded.

8.2.3. The foregoing limitations of liability or exclusions shall not apply to claims resulting from fraudulent concealment of a defect, acceptance of a guarantee, claims pursuant to the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG) and to damage arising from injuries to life, body or health.

8.2.4. If MAB's liability is excluded or limited, this also applies to the personal liability of its employees, representatives and vicarious agents.

8.3. Unless not possible due to the nature of the goods and services to be provided, the supplier is required to take out and maintain insurance policies for product liability, commercial general liability and professional liability with an appropriate minimum coverage. The supplier shall provide MAB with copies of the relevant insurance documentation upon MAB's request.

9. Audit

9.1. During regular business hours, the supplier shall permit MAB or, at MAB's discretion, professionally qualified independent auditors, access to its premises and to any of its personnel, systems and relevant records as may be reasonably required in order to check whether the supplier complies with this contract and all applicable laws and whether the goods and services are provided in accordance with this contract. The supplier may refuse access to any information that constitutes a trade secret.

9.2. The supplier will provide MAB and its auditors, as applicable, with all reasonable co operation, access and assistance in relation to each audit.

10. Intellectual Property Rights, Materials

10.1. The supplier warrants that neither the goods nor the services nor MAB's use thereof for the intended purpose infringe any intellectual property rights. Otherwise, this constitutes a defect.

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- 10.2. The supplier shall remedy the infringement of intellectual property rights within the framework of the warranty for defects either by procuring at its own expense a respective licence regarding the infringed right or by changing or replacing the infringing parts of the goods or services; in the latter case, the quality of the goods or services must not change.
- 10.3. Where such goods or services are bespoke products designed, made or performed specially for MAB, all intellectual property rights therein shall pass to MAB upon delivery of the goods or performance of the services or upon termination of the contract. If not all intellectual property rights, such as copyrights, can be transferred to MAB for legal reasons, the supplier grants to MAB an exclusive, transferable and sublicensable right of use and exploitation free of charge unlimited in time, place and content.
- 10.4. All materials of MAB that may have been provided to the supplier, such as tools, shall remain the exclusive property of MAB. MAB grants to the supplier free of charge a non-exclusive and non-transferable right to use any MAB materials provided to the supplier for the term of the contract for the purpose of delivering the goods and/or services to MAB. Any such MAB materials shall not be made available to third parties. If the supplier no longer needs the materials for the purpose of fulfilling the contract, the supplier shall return the materials to MAB immediately or, in any case at the latest upon termination of the contract or contract negotiations.
- 11. Confidentiality**
- 11.1. The supplier shall keep the provisions of the contract as well as all information and content of documents regarding MAB's business activities, products and business secrets confidential ("Confidential Information") during the term of the contract and for a period of five years after the termination of the business relationship.
- 11.2. Only with MAB's express written approval may the supplier disclose Confidential Information to third parties, except for (a) its employees and professional advisors who need to know the Confidential Information for the purpose of the contract and who are subject to statutory professional confidentiality and (b) public authorities within the scope of statutory disclosure obligations. The supplier is entitled to disclose Confidential Information to authorised subcontractors provided that it binds such subcontractors to the same level of confidentiality as set out in this clause.
- 11.3. The confidentiality obligations as set out in this clause do not apply to information that is or becomes generally known or available to the public through no fault of the supplier, was in the supplier's possession before receipt from MAB, is lawfully obtained from a third party who has the right to make such disclosure or has been independently developed without reference to any of MAB's Confidential Information.
- 12. Assignment**
- 12.1. The supplier is not entitled to assign its claims arising from the contractual relationship to any third party. This does not apply to any claims for payment.
- 12.2. MAB is entitled to assign individual rights under the contract or to assign or transfer the entire contract to third parties. MAB shall notify the supplier thereof in text form.
- 13. Final Provisions**
- 13.1. The laws of the Federal Republic of Germany shall apply to these Terms and Conditions of Purchase, the contract and the entire business relationship (contractual and non-contractual) between MAB and the supplier. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 13.2. The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Weiden, Germany.
- II. Specific Provisions for Contracts for Works and Materials (Sec. 650 BGB) and Contracts for the Performance of Work (Sec. 631 BGB)**
- 1. Scope**
- If the supplier is obliged to manufacture goods or perform, install, repair or carry out other work ("Work"), the following provisions shall apply in addition to Sec. I of these Terms and Conditions of Purchase.
- 2. Terms of Payment**
- In addition to the provisions set forth in Sec. I.6.3, payment shall only become due after a declaration of acceptance unless MAB did not reject the declaration of acceptance within a reasonable deadline set by the supplier based on a defect.
- 3. Acceptance**
- 3.1. The supplier shall notify MAB once the Work is completed and shall provide MAB with all associated documents.
- 3.1. MAB shall declare acceptance of the Work or its refusal within 15 calendar days after receiving notice of the completion of the Work.
- 3.2. If an acceptance requires that the Work is put into operation for testing purposes, it will only be declared upon a successful completion of the tests.
- 3.3. The supplier will prepare an acceptance certificate to be signed by MAB.
- 3.4. The mere use of the Work by MAB or any third party shall not replace the formal declaration of acceptance as required by Sec. II.3.2.
- 3.5. Any acceptance inspection reports shall be sent to MAB by mail or by email exclusively using the following email address: apz@mab-fertigung.de.
- 4. Warranty, Statute of Limitation**
- 4.1. In case of delivery of defective Work, MAB is entitled to subsequent performance at MAB's option either by repair of the defect or by delivery

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of an object which is free from defects. If the supplier fails to meet this obligation within a reasonable period set by MAB twice or if setting a period is unreasonable, MAB may remedy the situation on its own and demand reimbursement, reduce the purchase price, rescind from the contract and/or claim damages according to the applicable statutory provisions.

4.2. Changes of either nature or composition of the materials or the construction, in comparison to similar prior works of the supplier, require the prior written consent of MAB.

4.3. In addition, warranty claims shall be subject to the applicable statutory provisions.

5. **Termination**

MAB may terminate the contract at any time prior to completion of the Work. If MAB terminates the contract, the supplier is entitled to request reimbursement of the costs incurred within the context of fulfilling the contract as well as a compensation for lost profits which would have been allocated to the already performed portion of the Work.

III. **Specific Provisions for Contracts for the Performance of Services (Sec. 611 BGB)**

If the supplier's contractual obligation is to perform services, Sec. I.3, Sec. I.5 and Sec. I.7 as well as Section II do not apply.