

## General Terms & Conditions of Sale of Masterwork Machinery GmbH

### § 1 Scope of application

Unless agreed otherwise in writing, these Terms & Conditions of Sale issued by **Masterwork Machinery GmbH (MK)** shall apply to all transactions between **MK** and the customer, especially quotations, purchase contracts, orders, purchase orders, order confirmations and deliveries.

They also apply to future business relations with the customer, even if not expressly agreed again.

Any conflicting general terms set out by the customer shall only be binding if explicitly acknowledged by **MK**.

### § 2 Conclusion of contract

(1) Quotations issued by **MK** shall be subject to confirmation unless they are expressly said to be binding in the written quotation.

In the case of non-binding quotations, the contract shall not be concluded until **MK** has issued the customer with written confirmation of the purchase order (order confirmation).

(2) The scope and details of the services to be rendered by **MK** shall be as specified in the quotation.

(3) **MK** will only furnish a guarantee if **MK** expressly agrees to do so in the order confirmation.

(4) The purchased items shall be subject to technical modifications, as compared to the features agreed at the time of conclusion of contract, if the changes in question are acceptable to the customer.

### § 3 Assumption of risk and transport

(1) The risk shall pass to the customer upon dispatch of the purchased item from the factory or agreed place of dispatch.

If dispatch is delayed due to circumstances for which **MK** is not responsible, the risk shall pass to the customer upon notification of readiness for dispatch.

(2) **MK** will take out insurance on behalf of and for the account of the customer to cover the relevant risks to the purchased items in transit from the factory or from the agreed place of dispatch.

(3) Where commercial clauses are agreed, the Incoterms shall apply as amended at the relevant time.

### § 4 Delivery time and force majeure

(1) Delivery times which are not expressly said to be binding by **MK** shall be subject to change.

(2) Delivery times shall be extended accordingly while awaiting receipt of a down payment from the customer or fulfillment of duties of cooperation by the customer.

Delivery times shall be extended by the duration of any operational disruptions due to circumstances for which **MK** is not responsible and which affect the manufacture or delivery of the purchased item (especially natural disasters and industrial disputes affecting **MK** or subcontractors of **MK**).

If the delivery time is extended due to the aforementioned circumstances, or if **MK** is released from the obligation to deliver, the customer shall not be entitled to assert liability claims of any kind against **MK**.

**MK** shall not be liable for operational disruptions ensuing through no fault of its own, even during a delay. **MK** will be required, however, to inform the customer about the occurrence of any such circumstances.

(3) **MK** shall be entitled to make part deliveries and issue invoices in installments to such extent as is reasonable before expiry of the delivery period.

(4) If the delivery of the purchased item is delayed due to circumstances which have their origin within the sphere of risk and liability borne by the customer, the customer shall be required to reimburse **MK** for the costs incurred for the storage and for the interest on the capital employed in respect of the purchased item.

Where the items are stored by **MK**, the latter shall be entitled to claim at least 1.0 % of the outstanding invoice amount for each month or part thereof, with effect from one month after notification of readiness for dispatch. The customer shall be at liberty to provide evidence of lesser damage.

**MK** shall be entitled to dispose of the purchased item otherwise or elsewhere, after allowing an additional period of time to no avail, and to supply the customer with a replacement by such extended deadline as is reasonable.

### § 5 Prices and adjustment of prices

(1) Deliveries shall be made at the prices charged by **MK** at the applicable time.

All prices are quoted ex works or agreed place of dispatch.

They are quoted in euros exclusive of transport, packaging and insurance costs and exclusive of value added tax at the applicable rate.

(2) Prices quoted are based on the cost factors applicable at the current time in any given case. Where changes occur after conclusion of contract (especially to the costs of raw materials, parts supplied, energy or wages), **MK** shall be entitled to adjust the price accordingly, in which case the prices valid on the day of delivery shall be deemed to have been agreed. If the changes do not relate to services provided on a recurring basis, this will only apply if there are at least four months between the conclusion of contract and the envisaged service.

### § 6 Payment and set-off

(1) Payments must be made without any deductions and free of transaction charges for **MK**. Unless agreed otherwise in writing, one third of the purchase price for machines, systems and plants shall be due on receipt of the order confirmation as a down payment; another third shall be due for payment after expiry of half of the agreed delivery time, and the final third shall be due on receipt of notification of readiness for dispatch. In case of other deliveries, payment shall be due immediately on receipt of invoice and delivery (ex works or agreed place of dispatch).

(2) Where payments are made in installments, **MK** shall be entitled to demand immediate payment of the entire remaining purchase price if the customer is in arrears with two or more consecutive installments and the amount in arrears is more than 10 % of the total purchase price.

(3) The customer shall only be entitled to rights of set-off or retention if the claims of the latter are undisputed, acknowledged or recognized by declaratory judgment.

### § 7 Reservation of title

(1) **MK** reserves title to the purchased items until such time as they have been paid for in full.

The reservation of title shall also continue to apply until such time as all claims arising from the business relationship with the customer have been settled (overall reservation of title).

(2) Any processing or alteration shall always be carried out for **MK** as the manufacturer.

(3) The following shall apply for the duration of the reservation of title:

a) The customer shall have the right to use the purchased item, but shall not have the right to place it at the disposal of third parties or to sell it or subject it to an encumbrance.

b) The customer shall be required to protect the purchased item from access by third parties at its own expense and to inform **MK** immediately in writing about any impending instances of access, including access to the customer's business premises.

c) Any change of location of the purchased item shall be subject to the prior written consent of **MK** and, unless otherwise agreed in writing, may only be carried out by employees or authorized agents of **MK**. Any costs incurred shall be borne by the customer.

d) The customer must keep the purchased item in perfect condition. The customer must also take out and pay for insurance cover for machine breakdown, fire, burglary and mains water damage in respect of the purchased item for the benefit of **MK** and provide **MK** with proof of the insurance cover and premium payments on request.

e) The customer shall permit **MK** or its authorized agents to inspect the purchased item and shall allow access to its premises for this purpose. No recompense shall be due for this.

f) The customer shall hold the property of **MK** free of charge.

(4) Any drawings and system designs prepared by **MK** in the context of negotiating or implementing contracts shall remain the property of **MK**.

They may not be duplicated or placed at the disposal of third parties.

### § 8 Claims for defects and limitation period

(1) Claims for defects brought by the customer shall be subject to the due fulfillment by the latter of the obligations of inspection and immediate notification of defects under section 377 of the German Commercial Code (Handelsgesetzbuch - HGB). The customer will have the following rights in cases where the purchased item is defective:

a) **MK** undertakes to effect supplementary performance by choosing to rectify the defect or deliver an item free of defects. Replaced parts shall become the property of **MK**.

b) The subsequent performance will be deemed to have failed following three unsuccessful attempts and the customer will then be entitled to withdraw from the contract or to ask for a reduction of the purchase price. The customer may not withdraw in cases involving only slight breach of duty on the part of **MK**.

c) The customer must allow **MK** the necessary time and opportunity to carry out all the repairs and replacement deliveries which it deems necessary, failing which **MK** shall be released from liability for the consequences arising therefrom. The customer must bear any additional costs incurred by the urgent call-out of a service engineer or by any requests for work to be carried out outside normal working hours for operational reasons (e.g. overtime costs, long journeys).

d) Claims for defects shall be subject to a limitation period of one year from delivery (ex works or agreed place of dispatch).

(2) Claims for defects shall be excluded in accordance with the following provisions:

a) No liability for defects shall apply in the case of used machines or other used items, unless expressly agreed in writing.

b) Liability for defects shall not be accepted in respect of consumption and wear of materials and parts which, by their nature, are subject to unavoidable and regular wear and tear.

c) No liability for defects shall apply if the purchased item is used by the customer in its operations in functional connection with existing or externally sourced hardware or software components if the fault is caused by said components or by their lack of compatibility with the item delivered by **MK**. In cases where **MK** has guaranteed compatibility with third-party products, this shall only relate to the current version of the product at the time of this guarantee but not to older or future versions (software upgrades, service releases or software updates).

d) Liability for defects shall lapse if and insofar as a malfunction is due to the fact that the customer failed to ensure conformity with the technical specifications outlined in the documentation and relevant supplementary documents.

e) Liability for defects shall lapse if and insofar as a malfunction is due to the fact that the customer fails to carry out the maintenance and service work prescribed in the operating manuals or fails to make the necessary arrangements for this work to be carried out.

(3) The customer shall bear sole responsibility for any loss or damage resulting from unavoidable regular wear and tear, faulty or negligent handling, excessive stress, unsuitable operating materials, unsuitable installation sites, especially foundations, lack of stability or unsuitable protection of the power supply, chemical, electrochemical or electrical influences, exposure to the elements and other natural influences.

(4) The customer shall bear any additional costs of subsequent performance incurred as a result of moving the purchased item to a place other than the place of delivery.

(5) In cases where consumables are found to be defective, these must be quarantined as found and held for inspection in this condition by **MK**. Otherwise they shall be deemed to have been approved as delivered without further liability on the part of **MK**.

### § 9 Liability for damage

(1) **MK** will be liable in accordance with the statutory provisions in case of injury to life, limb or health based on willful or negligent breach of duty by **MK** or by one of its legal representatives or servants.

(2) The following shall apply in respect of other damage:

a) **MK** will be liable in accordance with the statutory provisions for damage which is based on willful breach of duty or gross neglect of duty by **MK** or by its legal representatives or servants.

b) Where damage is based on failure to fulfill fundamental contractual obligations as a consequence of ordinary negligence on the part of **MK**, its legal representatives or servants, the liability of **MK** shall be limited to such damage as is foreseeable and typical under such contracts and capped at the value of the purchased item.

c) Claims may not be made for damage arising from failure to attend to collateral duties or non-fundamental obligations in case of ordinary negligence.

d) Claims may not be made for damage arising from default based on ordinary negligence; the statutory rights of the customer after expiry of a reasonable period of grace shall remain unaffected. Insofar as the liability of **MK** for damage is excluded or limited, this shall also apply with regard to the personal liability for damage of the employees, workers, staff members, representatives and servants of **MK**.

(3) The exclusions of liability or limitations will not apply if **MK** has fraudulently concealed a defect or has furnished a guarantee for the condition and quality of the delivered item.

(4) This is without prejudice to the entitlement of the customer to claim reimbursement of expenses incurred in vain instead of damages in lieu of performance.

### § 10 Liability for indirect damage

**MK** shall only be liable for indirect damage resulting from a defective delivery, such as production downtime, lost profit and additional consumption of materials, in cases of deliberate intent or gross negligence.

### § 11 Rescission of the purchase contract

(1) In the event of rescission of the purchase contract (e.g. due to withdrawal), the customer shall be obliged to return the purchased item to **MK** as a prior act, irrespective of the subsequent procedure as outlined in the following paragraphs.

**MK** shall be entitled to have the purchased item collected from the customer's premises; § 7 (3) e) shall apply accordingly.

(2) **MK** may seek reasonable compensation from the customer for the deterioration or destruction of the purchased item or for impossibility of recovery of the purchased item for any other reason within the sphere of risk and liability borne by the customer.

(3) **MK** may also demand compensation for the use or application of the purchased item if the value of the item has decreased between the completion of its installation and its full direct repossession by **MK**.

The decline in value shall be the calculated difference between the total price according to the purchase agreement and the current value, as determined by the sales proceeds or, if a sale is not possible, as estimated by a sworn expert. In all cases, a decrease in value specific to the scope of delivery in any given case (customization), including the relevant development costs, must be compensated.

### § 12 Items provided by the customer

(1) Any job-related production equipment, devices and test equipment provided by the customer and any workpieces to be processed shall be made available to **MK** free of charge. The conformity of the production equipment provided with the contractual specifications and any drawings or samples provided will only be checked by **MK** on the basis of an express agreement.

(2) The customer must advise of any existing property rights before handing over production equipment or workpieces to **MK**. Even after handover, the customer shall still bear the costs and risks for its production equipment or workpieces, especially in respect of their storage and maintenance. **MK** will take due and proper care of the items, exercising the same duty of care as with its own affairs. **MK** may modify items provided by the customer at the latter's expense and risk if this appears necessary for production reasons and causes no changes to the workpiece. The customer must pick up its production equipment within a reasonable period of time after notification by **MK**; § 3 shall apply accordingly. **MK** may destroy the production equipment after expiry of a reasonable period of time, as agreed beforehand.

### § 13 Confidentiality

(1) The customer and **MK** must abide by a code of confidentiality, duly observing the secrecy of confidential information belonging to the other party in any given case and respecting their trade and business secrets. They may not use this information outside the business relationship or disclose it to third parties.

(2) Confidential information is such information as is explicitly marked as classified where transmitted in writing or is said to be confidential where passed on verbally.

(3) Where necessary for the provision of its services, **MK** may pass on confidential information to third parties and subcontractors. In this case **MK** will impose the same duty of confidentiality upon the third parties or subcontractors.

(4) The contracting parties shall at no time take the information disclosed to them and marked as confidential and refer to it in applications for property rights, nor shall they use them to object to property right applications submitted by the other party in any given case.

(5) The duty of non-disclosure shall not apply to such confidential information as is common knowledge, as can be shown to have been known to the receiving party prior to its communication, as can be shown to have been independently compiled or lawfully obtained by either party, as became known elsewhere without breach of duty by either party, or as was disclosed by necessity by one of the parties on the basis of an official directive, court order or another legal obligation.

(6) The duty of confidentiality with regard to classified information shall cease to apply in any event three years after the last delivery of the purchased item. The duty of confidentiality with regard to trade and business secrets shall apply indefinitely.

(7)

In the event of a breach of the code of confidentiality with regard to trade secrets, the law of 4/18/2019 on the protection of trade secrets (Geschäftsgeheimnisgesetz - GeschGehG) shall in particular apply. This shall be without prejudice to further statutory rights of **MK**.

(8) The customer shall most notably be prohibited from obtaining secret information incorporated within a product or object received from **MK** through reverse engineering.

### § 14 Assignment

The assignment of the rights of the customer under the contract shall be strictly subject to the written consent of **MK**.

### § 15 Export control regulations

The purchased items may be subject to the export control regulations in force in the Federal Republic of Germany, the European Union, the United States of America or in other states. If the purchased item is exported to a foreign country at a later date, the customer shall be responsible for complying with the relevant statutory provisions.

### § 16 Place of jurisdiction and applicable law

(1) Düsseldorf shall be the place of exclusive jurisdiction in case of contracts with traders, legal entities under public law and special funds under public law.

(2) Where no firm arrangements are set out in the above conditions, German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

Last revised: June 2019

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