

General terms and conditions of delivery



I. General

1. These general terms and conditions of delivery (hereinafter GTCD) shall apply, unless the contracting parties have agreed otherwise in writing, to all deliveries and services in the context of sales and delivery contracts between MABEG Systems GmbH (hereinafter 'MABEG') and the customer (hereinafter 'orderer') insofar as the orderer is an entrepreneur (Section 14 of the German Civil Code (BGB)), a public law entity or a special fund under public law in accordance with Section 310 (1) BGB.
2. These GTCD shall apply exclusively. Conflicting or deviating terms and conditions of the orderer shall not become part of the contract either due to unreserved acceptance of the order or due to failure to expressly object to them.
3. These GTCD shall also apply to all future transactions with the orderer, even if they are not separately agreed again.

II. Offer and contract completion

1. All offers shall be non-binding.
2. Information provided by MABEG concerning the object of the delivery or service (e.g. technical documents, weights, dimensions, operating costs, etc.) are merely descriptive in character and shall only be binding if this is expressly stated.
3. The legal relationships between MABEG and the orderer shall be governed solely by the delivery contract concluded in writing, including these GTCD. Oral assurances given prior to the conclusion of the contract shall not be legally binding and shall be replaced by the written contract unless expressly agreed otherwise between the contracting parties in each case.
4. Additions and amendments to the agreements concluded, including these GTCD, shall be made in writing in order to be valid.
5. If customary clauses concerning the method of delivery are agreed, the INCOTERMS of the Paris International Chamber of Commerce (ICC) in the version valid on the date of contract completion shall apply as regards their interpretation.
6. MABEG shall retain title and the copyright to all submitted offers and quotations as well as documents and aids made available to the orderer (drawings, illustrations, calculations, models, quotations, etc.); these shall not be made accessible to third parties and shall be returned immediately on request or on failure to place the order.

III. Scope of delivery

1. MABEG's written order confirmation shall be authoritative as regards the scope of delivery. Ancillary agreements shall require written confirmation.
2. MABEG reserves the right to make changes to the technical design to the extent that these shall be regarded as standard equipment by the time of delivery.
3. The regulations of the German Association for Electrical, Electronic & Information Technologies (VDE) shall apply to electrical engineering material.
4. If the supplied item is used outside of the Federal Republic of Germany, the scope of delivery for occupational safety devices shall be based on the agreement concluded.
5. If taxes or other duties are incurred in the orderer's country or in the country of installation in connection with the delivery, these shall be borne by the orderer. MABEG shall grant the orderer the temporally unlimited, non-exclusive, transferable and non-sub-licensable right for the resale of the supplied item to use computer programs that are stored in the supplied item in the context of the proper use of the supplied item. Unauthorised changes to the programs can deactivate programmed safety functions. MABEG shall not accept any liability or warranty claims for resulting risks or damage. The orderer shall indemnify MABEG against third-party claims in this regard.

6. MABEG shall be entitled to carry out partial deliveries if
 - a) the delivery of the remaining ordered items is ensured,
 - b) and the orderer does not incur any significant additional work or costs as a result.
 - c) the partial deliveries can be used by the orderer in the context of the contractual intended purpose.

IV. Installation

If it is agreed that MABEG will undertake the installation of the supplied item, MABEG's terms and conditions for installation, repair and other contract work shall additionally apply to processing.

V. Prices

1. The prices shall apply to the scope of services and deliveries listed in the offers or order confirmations. Additional or special services shall be invoiced separately.
2. The prices are stated in EUR plus the respective statutory amount of value added tax. For deliveries within the Federal Republic of Germany, the prices stated shall be ex works or ex works shipping warehouse. Excluding loading, packaging, transport insurance, freight and installation plus the respective statutory amount of value added tax. For deliveries abroad, the prices stated shall be ex works or ex works shipping warehouse. Excluding loading, packaging, transport insurance, freight, installation, duty, fees and public charges plus the respective statutory amount of value added tax.
3. The prices are calculated on the cost basis of the offer. We reserve the right to adjust prices in the event of changes in material prices, wages, freight or other cost factors. However, this shall only apply to deliveries carried out four months or more after contract completion and in which the price adjustment does not exceed 10% of the original price. In the case of higher rates, a new price agreement between the parties shall be required. If no such agreement is forthcoming, both parties shall have the right to withdraw from the contract in writing within 14 days.

VI. Terms and conditions of payment

1. Payments shall be made by transfer to one of MABEG's accounts on the agreed dates. The value added tax shall be due for payment when the invoice is issued; in the case of taxable advance payments, it shall be due on a pro rata basis on the agreed payment dates. Any agreed acceptance of bills of exchange shall take place for the purpose of performance.
2. Offsetting or a right of retention can only be asserted in the case of counterclaims that have been established by a court or are undisputed.
3. If the orderer fails to pay on the due date, the outstanding amounts shall be subject to interest as of the due date at 5% p.a. above the European Central Bank's respective interest rate for main refinancing operations; this shall have no bearing on the assertion of higher interest and further damages in the event of default.
4. If the orderer fails to meet its payment obligations or the obligations arising from the retention of title, if its financial circumstances deteriorate significantly or if it ceases to make payments, the entire remaining debt shall become due even if bills of exchange with a later maturity date are ongoing.

VII. Retention of title

1. The supplied item shall remain the property of MABEG until all claims related to the delivery contract have been fulfilled in full. This shall also apply if the claims are included in a current account.
 - a) Any processing of the supplied item subject to retention of title as well as its combination with third-party items by the orderer or third parties shall be carried out for MABEG. MABEG shall be entitled to co-ownership of newly created items corresponding to the value of the supplied item.

- b) The orderer shall hereby assign its claims arising from the resale of the supplied item to MABEG to secure its claims and up to this amount.
 - c) The orderer shall be authorised to collect its claims. MABEG reserves the right to undertake such collection.
 - d) In the event of conduct in breach of contract by the orderer, particularly in the event of default on payment, MABEG shall be entitled to take back the supplied item following a reminder and the orderer shall be obliged to surrender it. The orderer shall bear liability for all damages incurred as a result of taking back the supplied item. If the supplied item has been used, MABEG shall be entitled to offset a 25% reduction in value for the first six months of use and 5% for each additional six months at the expense of the orderer. The orderer shall have the right to prove a lower reduction in value.
2. If the law of a country does not permit retention of title, but allows the reservation of comparable rights, MABEG can exercise all rights of this kind. The orderer shall be obliged, at its own expense, to implement measures that are necessary to ensure that these rights to the supplied item are valid and to maintain them.
 3. Throughout the duration of the retention of title or any other right pursuant to number 1, the orderer shall insure the supplied item against the relevant risks, provided that MABEG is entitled to the rights arising from the insurance contract. The policy and the premium receipts shall be submitted to MABEG on request.
 4. The orderer shall immediately inform MABEG in the event of seizures or other impairments of the owner's interests.

VIII. Delivery and delivery time

1. The delivery period shall not commence prior to the receipt and clarification of documents and permits to be obtained by the orderer or prior to the receipt of an agreed advance payment. It is adhered to if the notification of readiness for shipping has been sent to the orderer by the time it expires.
2. Time periods and deadlines promised by MABEG shall only ever be regarded as approximate unless a fixed deadline has been expressly agreed. Insofar as shipping has been agreed, time periods and deadlines shall refer to the point in time of transfer to the forwarder or carrier.
3. The delivery date shall be postponed appropriately - even within a delay in delivery - in cases of force majeure and on occurrence of unforeseen events (e.g. strike, war, lockouts, operational disruptions, pandemics or epidemics, delays in delivery by subcontractors or other delays that are not the fault of MABEG, insofar as these events affect the performance of the contract in good time). MABEG shall immediately inform the orderer of the occurrence and the likely duration of such events. The delivery date shall also be postponed appropriately if the orderer is in arrears with its payment and other obligations or if the technical and commercial issues are not clarified within an appropriate period of time.
4. The occurrence of a delay in delivery on the part of MABEG shall be determined in accordance with the statutory regulations. In each case, however, a reminder by the orderer shall be required. If MABEG defaults on delivery, the orderer shall be entitled, subject to the exclusion of further claims, to claim default compensation amounting to 0.5% of the net price (delivery value) for each completed calendar week, up to a maximum total of 5% of the delivery value of the delayed delivery. The compensation to be paid by MABEG in accordance with this shall be settled in the final invoice. MABEG shall have the right to prove lower damages. If shipping is delayed for reasons that are not the fault of MABEG, the costs incurred due to storage shall be charged to the orderer, starting one month after notification of readiness for shipping, or 0.5% of the invoice amount for each month in the event of storage at MABEG's premises. The orderer shall have the right to prove lower costs.

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IX. Performance, passage of risk, acceptance

1. Unless otherwise specified, the place of performance for all obligations arising from the contractual relationship shall be Mörfelden-Walldorf. If MABEG is also obliged to carry out installation, the place of performance shall be the location in which installation is to take place.
2. The method of shipping and packaging shall be at MABEG's due discretion.
3. If shipping is agreed and MABEG has not undertaken transport or installation, the risk shall pass to the orderer at the latest on transfer of the supplied item to the forwarder, carrier or other third party intended to carry out shipping. If shipping or transfer is delayed due to a circumstance caused by the orderer, the risk shall pass to the orderer from the day on which the supplied item is ready for shipping and MABEG has notified the orderer of this.
4. Storage costs following the passage of risk shall be borne by the orderer. In the event of storage by MABEG, the storage costs shall be 0.5% of the invoice amount of the supplied items to be stored per full week. The right to assert and prove higher or lower storage costs shall be reserved.
5. The shipment shall only be insured against theft, breakage, transport, fire and water damage or other insurable risks by MABEG at the express request of the orderer and at its expense.
6. If acceptance is to take place, the supplied item shall be regarded as accepted when:
 - a) delivery and, if MABEG is also required to perform it, installation has been completed;
 - b) MABEG has requested the orderer to carry out acceptance;
 - c) five working days have passed since delivery or installation, or the orderer has begun to use the supplied item.

X. Warranty, material defects

1. The warranty period shall be one year as of delivery or, if acceptance is required, as of acceptance.
2. This period shall not apply to claims for damages on the part of the orderer due to injury to life, body or health or from intentional or grossly negligent breaches of duty by MABEG or vicarious agents, which shall become statute-barred in accordance with the statutory regulations in each case.
3. The supplied items shall be inspected immediately following delivery to the orderer or a third party specified by it. With respect to obvious defects or other defects that would have been recognisable in the event of immediate and careful inspection, they shall be regarded as approved if MABEG does not receive written notice of defects within seven working days of delivery. With respect to other defects, the supplied items shall be regarded as approved if MABEG does not receive any notice of defects within seven working days of the point in time at which the defect was revealed. At the request of MABEG, a rejected supplied item shall be returned to MABEG carriage paid. If a notice of defects is justified, MABEG shall reimburse the costs of the most inexpensive shipping method; this shall not apply if the costs increase because the supplied item is situated in a location other than the location of intended use.
4. In the event of material defects, MABEG can carry out subsequent improvement or supply a replacement within a reasonable period of time as it so chooses. Replaced parts shall become the property of MABEG. In the event of failure (impossibility or unreasonableness), the orderer can withdraw from the contract or appropriately reduce the purchase price. In the event of partial impossibility, the right of withdrawal shall only apply if the partial delivery is verifiably of no interest to the orderer.

If this is not the case, the orderer shall pay the contractual price due for the partial delivery. Otherwise, the orderer can demand a reasonable reduction in the purchase price. If the impossibility occurs during the delay in acceptance or due to the fault of the orderer, the orderer shall remain obliged to pay the consideration. If the impossibility is not the fault of either of the contracting parties, MABEG shall be entitled to a part of the purchase price corresponding to the service provided.

5. The warranty shall not apply to natural wear or parts that are subject to premature wear due to their material properties or after use; nor shall it apply to damage as a result of improper storage, handling or use of unsuitable service products, defective construction work or foundations, unsuitable subsoil, chemical, electrochemical or electrical influences. This shall also apply to other circumstances that occur after the passage of risk through no fault of MABEG.
6. The orderer can then only assert a warranty claim against MABEG if
 - a) the supplied item was installed by personnel authorised by MABEG;
 - b) MABEG was notified in writing of the defect covered by the warranty within the time periods set down here;
 - c) MABEG's regulations concerning the handling and maintenance of the supplied item have been observed and, in particular, any specified inspections have been carried out properly;
 - d) no subsequent fulfilment work has been carried out without the consent of MABEG;
 - e) no replacement parts that are not original MABEG parts or parts approved by MABEG have been installed;
 - f) no unauthorised changes have been carried out on the supplied item.

XI. Liability

1. MABEG shall be liable
 - a) in the event of intent and gross negligence on the part of its bodies, legal representatives, employees or other vicarious agents,
 - b) in the event of culpable breach of cardinal contractual duties,
 - c) in the event of culpable injury to life, limb and health,
 - d) in the event of defects that have been fraudulently concealed,
 - e) on assumption of a guarantee for the characteristic of an item,
 - f) if and insofar as liability is borne in accordance with the German Product Liability Act for personal injury or property damage to privately used items.

A characteristic/property of the supplied item shall only be regarded as guaranteed within the meaning of the law if this characteristic/property is explicitly referred to as a 'guaranteed characteristic' in the contractual text.

2. Irrespective of this, MABEG shall always be liable to the extent to which MABEG's existing manufacturer's liability insurance provides compensation. The manufacturer's liability insurance is based on the general insurance terms and conditions for liability insurance (GLTC).
3. Insofar as MABEG is liable for the breach of cardinal contractual duties, the scope of liability shall be limited to damage caused directly to the supplied item itself and the amount to the damage foreseeable at the time of contract completion and typical for the contract.
4. Claims other than those listed in these terms and conditions or regulated in the contractual text shall be excluded. This shall particularly apply to further contractual and statutory claims for damages.

XII. Non-transferability of the contractual rights

The orderer shall not transfer its contractual rights to third parties without the express consent of MABEG.

XIII. Property rights

1. In accordance with this article, MABEG shall ensure that the supplied item is free from third-party industrial property rights or copyrights. Each contracting party shall immediately notify the other party in writing if claims are asserted against it due to the infringement of such rights.
2. In the event that the supplied item infringes a third-party industrial property right or copyright, MABEG shall modify or exchange the supplied item at its discretion and at its expense such that no third-party rights are infringed, but that the supplied item continues to fulfil the contractually agreed function or shall obtain the right of use for the orderer by concluding a licence agreement with the third party. If MABEG fails to achieve this within a reasonable period of time, the orderer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately.

XIV. Concluding provisions

1. The place of jurisdiction for all disputes arising from this contractual relationship shall be Darmstadt. MABEG can also file a lawsuit at the orderer's registered office.
2. If court of arbitration proceedings are agreed with an orderer with a registered office outside of the Federal Republic of Germany, all disputes arising from the contract or concerning its validity or the validity of the arbitration agreement shall be finally decided on by a court of arbitration formed in accordance with the rules of conciliation and arbitration of the Paris International Chamber of Commerce by three arbitrators in accordance with these rules subject to the exclusion of ordinary legal recourse. As long as the court of arbitration has not been called upon, the contracting parties shall be free to file a lawsuit at the ordinary court with jurisdiction for the registered office of the defending party.
3. The relationships between MABEG and the orderer shall be exclusively subject to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980 shall not be applied.
4. If part of the contract or these GTCD is invalid or contains loopholes, the legally valid regulations that the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these GTCD if they had been aware of the lack of validity or the loophole shall apply. This shall have no bearing on the validity of the other provisions.

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