

§ 1 General definitions

1.1 In the following General Business Terms and Conditions MEA Befestigungssysteme GmbH, Industriestraße 8, 86551 Aichach-Ecknach, is referred to using the term "Supplier". The contractual partner of the Supplier is the "Customer", the contractual relationship to be entered into is the "Contract".

1.2 The object of the contractual duties of the Supplier, also insofar as this is oriented to the performance of deliveries, is the "Delivery".

§ 2 Scope of the terms and conditions

2.1 The deliveries and offers of the Supplier are carried out exclusively based on these General Terms and Conditions. These shall thus also apply for all future business relations, even if they are not expressly agreed again. These conditions shall be deemed as accepted no later than with acceptance of the delivery. Counter-confirmations of the Customer with reference to his terms and conditions of business and purchase are hereby opposed.

2.2 All agreements reached between the Supplier and the Customer for the purpose of executing this Contract, are to be recorded in writing. Changes and supplements to the Contract and/or its annexes and the waiver of the requirement for written form must be made in writing. There are no verbal collateral agreements.

§ 3 Orders and order acceptance

3.1 Offers of the Supplier are without obligation and not binding. The Supplier shall be entitled to resell the Delivery to a third party between offer and acceptance. Orders of the Customer shall only be binding for the Supplier if they have been expressly confirmed by the Supplier in writing or the Supplier has delivered the goods. A confirmed order can only be changed by the Customer with written consent and taking into account the conditions which may have been imposed by the Supplier. This shall apply accordingly for the modification of these General Terms and Conditions of Business.

3.2 The Delivery must only have the condition as specified in writing in the Contract. These specifications contain the final description of the Delivery. The Supplier shall be entitled to unilaterally change the condition if this is carried out owing to statutory regulations or represents a technical improvement and this does not impair the use as intended per Contract.

3.3 If the Supplier makes a pattern or a sample available to the Customer before or after conclusion of the Contract then these do not have to have the condition as in the Contract. Sentence 1 shall apply accordingly for drawings, diagrams, dimensions, weights and other data, which the Supplier makes available to the Customer before or after conclusion of the Contract.

3.4 The Supplier shall reserve all rights without reservation to all cost estimates, drawings, patterns, samples, diagrams or other documents ("Documents"), which he makes available to the Customer. Without the prior written consent of the Supplier the Customer shall not be entitled to make either the Documents themselves, nor their contents available to third parties. Upon request of the Supplier the Customer is obliged to hand over all Documents to the Supplier immediately and in full, if they are no longer required by the Customer in ordinary business transactions or if no more orders are placed by the Customer.

§ 4 Advertising, marking

In case of public statements of the manufacturer, the Supplier, an employee or other vicarious agents concerning the condition of the Delivery or the purchased object (e.g. weights, dimensions, practical values, load capacity, tolerances and technical data), in particular in advertising or with the marking it is presumed that these statements were not the cause for the conclusion of the Contract by the Customer.

§ 5 Prices

5.1 The prices of the Supplier are net prices. Freight costs, value added tax, material surcharges and other costs associated with the execution of the Contract ("Additional Costs") are not included. If and insofar as not otherwise regulated in the Contract, all information on prices of the Supplier are given in Euro.

5.2 Insofar as the Supplier has assumed additional costs, he may demand reimbursement from the Customer. This shall only apply for freight costs if the Supplier is responsible for the transport notwithstanding Par. 5.1.

5.3 The price is the price stated by the Supplier or, if this has not been carried out individually, the price listed in the actual price lists of the Supplier at the time of the order or the release order of the Delivery. The Supplier shall be entitled, after timely notification of the Customer and before execution of the Delivery, to increase the agreed price in the manner as deemed necessary owing to the general price development which is beyond the control of the Supplier (such as for example fluctuations in exchange rates, currency regulations, customs changes, increase in material or production costs) or owing to the change of suppliers.

5.4 Insofar as the Supplier takes a delivery back for reasons of goodwill without acknowledgement of a legal obligation, the Supplier shall be entitled to compensation for expenses in the amount of 20% of the invoice value of the respective delivery. The amount is to be reduced if the Customer proves that the actual expenses are to be fixed lower than the flat rate according to sentence 1.

§ 6 Delivery/delay in delivery

6.1 Delivery dates or deadlines can be agreed binding or non-binding.

6.2 An agreement concerning delivery times shall only be binding if the Supplier expressly declares in writing that he shall be liable if an agreed date/deadline is exceeded.

6.3 The Supplier shall not be responsible for delays in Delivery owing to force majeure or owing to events which make it very difficult to deliver or render impossible the Delivery for the Supplier not just temporarily – this includes in particular strike, lock-out and official orders even if they occur at sub-suppliers of the Supplier or their Sub-suppliers -, even in case of binding agreed deadlines and dates. They shall entitle the Supplier to postpone the Delivery by the duration of the impediment plus a reasonable start-up time or to cancel the Contract in part or in full owing to the part of the Contract which has not yet been satisfied. Sentences 1 and 2 shall apply accordingly in case of delays in Delivery owing to Documents and information not made available in time by the Customer to the Supplier before Delivery, and which are necessary for Delivery from the point of view of the Supplier.

6.4 If the delay in Delivery lasts longer than one month the Customer shall be entitled to cancel the contract with regard to the part of the contract not yet satisfied after setting a reasonable deadline.

6.5 Insofar as the Supplier is responsible for the non-observance of binding promised deadlines and dates and is in default, the Customer shall be entitled to compensation for delay in the amount of 0.5% of the invoice value of the respective delivery for each complete week of the delay a maximum however up to a total of 5% of the invoice value of the respective Delivery. The amount is to be reduced if the Supplier shall prove that the actual damages are to be fixed lower than the flat rate according to Sentence 1. Any claims beyond this are excluded unless the delay is due to wilful intent or gross negligence on the part of the Supplier.

6.6 The Supplier is entitled to make part deliveries at all times unless the part delivery is not of interest for the Customer. Independent of Sentence 1 the Supplier shall be entitled with the Delivery (e.g. with packaging units) to deviate from the agreed scope of Delivery by up to +/- 10 %. In the event of this deviation from quantity the Delivery of the Supplier shall be deemed as provided properly and in full with regard to the owed quantity. The Supplier shall be entitled to assign the rights and duties under the Contract including the provision of the Delivery to a third party.

6.7 Insofar as a Delivery is made by release order of the Customer the Customer is obliged to notify the Supplier of the release order with the concrete description of the Delivery and naming the delivery date, in writing at least four weeks before providing the Delivery.

6.8 Place of delivery is principally the plant or the delivery warehouse of the Supplier ("ex works"). Insofar as the goods are delivered ex works the risk of loss shall pass to the Customer on the date upon which the Supplier informs the Customer that the goods are ready for pick-up.

6.9 Insofar as deliveries are made free freight forwarder ("FCA") the place of hand-over shall be the registered seat of the Supplier.

6.10 If the Supplier sends the goods upon request of the Customer the risks of transport, independent of who bears the freight costs, shall be assumed by the Customer. This applies in particular for despatch or delivery by the Supplier without an obligation for the Supplier at the Customer [Bringschuld]. In the event that despatch is delayed as a result of circumstances for which the Customer is responsible, the risk of loss shall pass to the Customer from the date upon which the goods are ready for despatch. In the event that the Customer is in default of acceptance, the risk of loss shall pass to the Customer on the date upon which the Supplier offers the hand-over.

6.11 Insofar as the Supplier bears the freight costs either in whole or in part, the Supplier shall be entitled to determine both the means of despatch as well as the type of despatch. If the Customer demands another means of despatch and/or another type of despatch and if the Supplier satisfies this wish, the Customer shall bear the difference in costs between the type of despatch or the means of despatch he requested and the type of despatch or means of despatch determined by the Supplier. Incidentally Par. 6.10 shall apply accordingly.

6.12 In the cases of Par. 6.10 the Supplier shall store the goods at the risk and costs of the Customer.

6.13 Insofar as deliveries are made free construction site the Customer shall ensure accessible delivery routes, i.e. roads which can be driven with loaded heavy truck-trailer. Any delays, costs, damages and unloading times which may occur exceeding one hour per truck-trailer shall be borne by the Customer.

§ 7 Reservation of title

7.1 Until satisfaction of all claims (including all balance claims from current account), to which the Supplier shall be entitled for all legal reasons against the Customer either now or in future, the Supplier shall be granted the securities listed in the following paragraphs, which he shall release upon request at his choice, insofar as their value exceeds the total and the value of all claims in the long term by more than 20%.

7.2 The Supplier shall remain owner of delivered goods. Processing or conversion shall always be carried out for the Supplier as producer, however without obligation for him. If the property of the Supplier expires through combination then it is agreed now already that the property of the Customer to the uniform object shall pass to the Supplier pro rata (invoice value). The Customer shall store the property of the Supplier free of charge. Goods to which the Supplier is entitled to the property are described below as "Reserved Goods".

7.3 The Customer shall be entitled to process and sell the Reserved Goods in proper business transactions as long as he is not in default towards the Supplier. Pledges or assignment as security are not permitted. The Customer hereby now already assigns claims incurred from the resale or another legal reason (insurance, illicit act) regarding the Reserved Goods (including all balance claims from current account) as a precautionary measure in full to the Supplier. The Supplier authorizes the Customer revocably to collect the claims assigned to the Supplier for his account in own name. This authorization for collection can only be revoked if the Customer does not properly satisfy his payment obligations. After corresponding request by the Supplier the Customer shall disclose the assignment and provide the necessary information.

7.4 In case of accesses by third parties to the Reserved Goods the Customer shall refer to the property of the Supplier and inform him immediately. Costs and damages shall be borne by the Customer.

7.5 In case of behaviour of the Customer which is in breach of his duty – in particular default of payment – the Supplier shall be entitled to take the Reserved Goods back or if applicable demand assignment of the hand-over claim of the Customer against third parties. If the Supplier takes the goods back or in case of seizure of the Reserved Goods this shall – insofar as §§ 488 – 507 BGB do not apply – not be deemed as a cancellation of the contract.

7.6 If and insofar as Reserved Goods are installed by the Customer as an essential part of the real estate of a third party the Customer hereby now already assigns the claims incurred against the third party or the person whom it concerns for payment in the amount of the value of the Reserved Goods with all secondary rights including those for granting a collateral mortgage with rank before the rest; the Supplier accepts the assignment. The Customer is authorized to personally effect the entry of a collateral mortgage, however upon request by the Supplier obliged to assign the rights to the Supplier (cf. §§ 1153, 1154 Par. 3, 873 BGB [German Civil Code]). Cash payments, bank transfers or cheque payments, which are made against sending a bill of exchange issued by the Supplier and accepted by the Customer, shall not be deemed as satisfaction acc. Sentence 1 the bill of exchange has been redeemed by the drawee and the Supplier is thus released from the bill liability. The agreed reservation of title (irrespective of further agreements) shall continue to exist therefore until redemption of the bill of exchange for the benefit of the Supplier.

§ 8 Terms of payment

8.1 The Customer shall pay deliveries of the Supplier after their execution within 30 days from invoice date. Decisive for the timely payment is receipt of the money or the credit without reservation to the Supplier's account.

8.2 The payment must be made by transfer to the Supplier. The Supplier is not obliged to accept payment by cheque or bill of exchange; in any case cheques or bills of payment are only accepted as conditional payment. The acceptance does not lead to the deferral of a payment. The costs associated with using a cheque or bill of exchange shall be borne by the Customer. If payments of the Customer are made using means of payment which the Customer obtained through discounting to bills receivable then the payment claim shall only expire when the bill of exchange is redeemed by the Customer.

8.3 In the event that the Customer does not satisfy his payment obligation within the deadline determined in Par. 8.1 ("payment delay") the Supplier may demand maturity interest in the amount of 8 % above the respective base lending rate, which the Federal Bank last announced in the Federal Law Gazette hat, from the expiry of the deadline.

8.4 In case of delayed payment the Supplier can demand a one-time payment in the amount of 5% of the invoice amount as compensation for the incurred administra-

tion expenses. The amount shall be reduced if the Customer proves that the actual expenses are to be fixed lower than the flat rate according to Sentence 1.

8.5 If the Customer is in default with any payment obligation or in case of circumstances through which the net assets of the Customer deteriorate or its creditworthiness is impaired, all other claims of the Supplier against the Customer shall thus be due and payable immediately. The Supplier is in this entitled to cancel the contract and/or, after prior written notification towards the Customer to retain the performance of further deliveries until full payment or until change of the circumstances according to Sentence 1.

8.6 Insofar as not opposed by any statutory regulations the Customer can only set-off against claims of the Supplier with undisputed counter-claims which have been declared final or are ready for decision. The same shall apply for exercising the right of retention, including the rights from § 369 HGB [German Commercial Code].

8.7 Notwithstanding Par. 8.1 the Supplier can also demand payment before execution of the Delivery. In this case Par. 8.3 and Par. 8.4 shall not apply.

§ 9 Liability for defects of quality and acceptance

9.1 The liability for defects of quality for deliveries of the Supplier is oriented, insofar as not otherwise regulated below, towards the statutory regulations.

9.2 The claims for defects of quality of the Customer shall become statute-barred 12 months after Delivery. The deadline shall begin independent of the knowledge of the Customer of a defect to the Delivery from the date of hand-over to the Customer.

9.3 The Customer undertakes to inspect the Delivery directly after hand-over. The Customer must inform the Supplier immediately of defects recognisable in the inspection of the Delivery after hand-over, other defects notified in writing immediately after they are discovered, respectively by describing the defect and the date they were discovered. If the Customer does not properly satisfy this duty for notification in time, the Delivery is deemed as approved by the Customer. The Customer can initially only demand subsequent performance towards the Supplier. The Supplier can as subsequent performance at his choice remedy the defect or deliver a faultless object. If the subsequent performance by the Supplier fails, the statutory regulations shall apply with the condition that the Customer is only entitled to cancel the Contract if and insofar as the goods have not yet been installed as an essential part of real estate. In this case the Customer is only entitled to reduce the purchase price. In case of an insignificant fault the right to subsequent performance is excluded.

9.4 In case of breach of a delivery obligation by the Supplier, which does not exist in itself in a defect of the Delivery, the Customer is only entitled to cancel the Contract if the Supplier is responsible for breaching the delivery obligation. The Supplier shall not be responsible for the Delivery working without faults when combined with other products.

9.5 Insofar as not opposed by statutory regulations, claims for defects of quality by the Supplier are particularly excluded in the following cases:

- a) The Customer has had changes made to the Delivery by a third party or he processed the Delivery;
- b) The Customer fails to observe certain instructions for use of the Supplier connected with the delivery in particular the enclosed or stuck processing and/or assembly instructions or he uses accessories or spare parts unsuitable for the object of the contract in connection with Deliveries of the Supplier;
- c) The Customer does not use the Delivery for the purposes intended as per contract or the customary use, does not mount this correctly or does not put the Delivery into operation properly by observing the respective actual status of science and technology.

9.6 If the Delivery is faulty the Customer can, insofar as not opposed by statutory regulations, only assert a claim for damages against the Supplier under the following additional pre-requisites:

- a) If and insofar as the Supplier does not perform a due Delivery or not as agreed as per contract the Customer must set the Supplier a reasonable deadline for Delivery in writing. The setting of the deadline must include the declaration that the Customer refuses to accept Delivery expiry of the deadline. With the unsuccessful expiry of the deadline set by the Customer the claim for Delivery is excluded;
- b) If the Customer cancels the Contract with the Supplier owing to a defect to the Delivery, the Supplier can demand from the Customer that he declares within a deadline of 2 weeks from assertion of the cancellation in writing towards the Supplier whether he is adhering to the cancellation of the Contract or instead demands damages. If the Customer does not make use of his right of choice towards the Supplier in time, the Customer's claim for damages is excluded.

9.7 Insofar as acceptance is agreed, the Customer undertakes to carry this out within one week after notification of completion by the Supplier. The Customer is also obliged to accept the Delivery if insignificant defects exist which do not particularly impair the use.

9.8 For the event that the Customer does not accept Delivery for reasons for which he is responsible or accepts the Delivery and does not complain about any essential defects within ten days after use, the Delivery is deemed as accepted.

§ 10 Amount of damages

10.1 Independent of the legal reason the Supplier shall only be liable for damages which are a result of a defect to the Delivery itself or to an act or omission, to the extent of the typical contractual and foreseeable damages and only in the following limits:

- a) in case of wilful intent or gross negligence of legal representatives, an employee or other vicarious agents of the Supplier unlimited;
- b) in case of culpable breach of essential contractual duties (cardinal duties) by the Supplier, his legal representative or other vicarious agents without wilful intent or gross negligence limited to the invoice value of the Delivery.

10.2 For damages which are a result of the behaviour of an employee or vicarious agents, the Supplier shall only be liable if these persons acted while exercising their tasks. The Supplier is also exempted from this liability insofar as the damages are due to circumstances which he could not avoid and the consequences of which he could avoid even with the greatest care and attention (e.g. strike, force majeure).

10.3 For risks insured by the Supplier the Supplier's liability is limited per damaging event to the liability sum of the employer's insurance taken out by the Supplier.

10.4 For loss of data and programs or their recovery the Supplier shall also only be liable to the extent clear from Subclause 10.1 and 10.2 and also only to the extent that this loss could have been avoided through reasonable precautionary measures of the Customer, in particular the daily production of backup copies of all data and programs "accuracy checks".

10.5 Further liability of the Supplier, insofar as not opposed by mandatory legal regulations, is excluded. The Supplier shall in particular not be liable for breaches of secondary duties, a lack of commercial success, missed profits, indirect damages, subsequent damages from defects and damages from claims of third parties towards the Customer.

10.6 The liability restriction according to Par. 10.1 to Par. 10.5 shall not apply for injuries to body, life and health.

§ 11 Industrial property rights and copyrights

11.1 If and insofar as a third party asserts against the Customer justified claims owing to the infringement of an industrial property right or copyright (hereinafter "property rights") through a Delivery developed and/provided by the Supplier, the Supplier shall be liable, insofar as not opposed by statutory regulations, as follows:

- a) The Supplier shall at his choice and at his costs either obtain a right of use for the developed and/or performed delivery, change the Delivery so that the property right is no longer infringed or exchange the Delivery if this does not impair the use of the Delivery as intended per contract. If and insofar as the Supplier cannot finally grant the Customer the right of use owed by the Contract through the measures specified in Sentence 1, the Customer shall be entitled to cancel the contract after setting a reasonable final deadline;
- b) The Supplier is only obliged to the measures specified in a) Sentence 1 if the Customer advises the Supplier about the claims asserted by the third party immediately in writing and by describing the infringement, does not acknowledge an infringement and the Customer grants the Supplier all powers of decision concerning the defence of right and the execution of settlement negotiations without reservation. If the Customer suspends the use of the Delivery for reasons of minimizing damages or for other important reasons, he undertakes to point out to the third party that by suspending use this is not deemed as an acknowledgement of an infringement of property right.

11.2 Claims of the Customer according to Par. 11.1 are excluded if and insofar the Customer is responsible for the infringement of property right. Claims of the Customer are further excluded if and insofar the infringement of property right is caused by special stipulation of the Customer, through an application not foreseeable by the Supplier or is caused by the fact that the Delivery is changed by the Customer or used together with deliveries not provided by the Supplier.

11.3 The Customer undertakes to make the best efforts to support the Supplier in defending the infringement of property rights.

11.4 On the other hand, the Customer shall release the Supplier from all claims of third parties, which they assert against the Supplier owing to an infringement of an industrial property right or copyright if the infringement is a result of an express instruction of the Customer towards the Supplier or the Customer changes the Delivery or integrates it into a system of a third party.

11.5 Programs and relevant documentation made available by the Supplier are only determined for the personal use of the Customer within the framework of a simple, non-transferable licence and exclusively on deliveries made by the Supplier. The Customer may not make these programs and documentation accessible to third parties without the prior written consent of the Supplier, not even in case of resale of the Supplier's hardware. Copies may – without the assumption of costs or liability by the Supplier – only be prepared for the archiving as substitute or error diagnosis. Insofar as originals bear a remark referring to the copyright protection this shall be affixed to copies by the Customer.

§ 12 Place of jurisdiction, applicable law, escape clause

12.1 Without the prior written consent of the Supplier the Customer may not assign the rights and duties under the Contract with the Supplier to third parties.

12.2 Augsburg is the place of jurisdiction for all disputes ensuing from or in connection with the Contract and its performance.

12.3 The law of the Federal Republic of Germany applies exclusively for all legal relations between the Customer and the Supplier. The application of the UN Convention on the International Sale of Goods of 11 April 1980 is excluded.

12.4 Should one provision of these General Terms and Conditions of Business be invalid, not enforceable or contain loopholes, this shall have no effect on the validity of the other provisions. A provision shall be agreed to replace the invalid, not enforceable or missing provision which the parties would reasonably have agreed if they had been aware of the invalidity, lack of enforceability or loophole.