

# General Terms and Conditions

## I. General – scope of application

1. These General Terms and Conditions apply to all **current and future** legal relationships between MackSmaTec GmbH and the ordering party.
2. The General Terms and Conditions of MackSmaTec GmbH shall apply exclusively. Terms and conditions of the ordering party that conflict with or differ from these General Terms and Conditions shall not be acknowledged, unless MackSmaTec GmbH has given its express written consent that they apply.
3. All agreements between MackSmaTec and the ordering party shall not be valid unless given in writing. There are no verbal collateral agreements.
4. Rights to which we are entitled by law above and beyond these General Terms and Conditions shall remain unaffected.

## II. Confirmation of orders and conclusion of contracts

1. Our offers shall be without commitment. Orders shall not be binding until they are confirmed in writing. The terms and conditions specified in the order confirmation shall additionally apply to all sales.
2. Terms and conditions of purchase of the ordering party shall not be binding on us, even if we do not explicitly object to them.
3. We reserve rights of ownership and copyrights to cost calculations and estimates, illustrations, drawings and other documents. They must not be passed on or otherwise made available to third parties.

## III. Delivery and delivery deadlines

1. Delivery deadlines shall be binding only if they are agreed in writing. In cases of doubt, the delivery deadlines specified in the order confirmation shall apply.
2. Delivery deadlines shall be calculated at the earliest from when the questions to be clarified with the ordering party before the start of production have been finally resolved; so that MackSmaTec GmbH can meet the deadlines, the ordering party must first have fulfilled its obligations properly and on time. If these requirements are not met, the deadline shall be extended by a reasonable period of time or new delivery dates shall be agreed.
3. The delivery deadline shall be regarded as having been observed if the deliverable has left the works or notice is given that it is ready to be shipped by the time the delivery deadline expires. Unforeseen, unavoidable events in production and other impediments for which we are not responsible, such as force majeure, disruptions in our own business operations or those of our suppliers, import and export restrictions, etc., shall authorise us to extend the delivery deadline by the duration of the impediment. If acceptance is required, the acceptance deadline or alternatively the time when we declare that the deliverable is ready for acceptance shall be authoritative, except in cases where refusal to conduct acceptance is justified. If the ordering party is in delay in accepting delivery or culpably violates other duties of cooperation, we shall be authorised to demand reimbursement of damage we incur in that connection, including any extra costs.
4. We shall not be liable for delays if our customer does not fulfil its duties of cooperation or does not fulfil them on time.

## IV. Prices and payment

1. Unless otherwise agreed in writing, our prices shall be ex works, excluding packaging and insurance; value-added tax at the applicable statutory rate shall be payable on top of them. The day on which the payment is credited to our account without reservations shall determine whether the deadline for payment and any agreed periods for payment have been met.
2. If, after a contract has been concluded, there are changes to the bases of calculation due to higher material costs, an increase in statutory value-added tax or other circumstances, in particular changes in cost calculation for technical reasons, we shall be authorised to recalculate the price specified in the contract to reflect the ratio of the change in the base of calculation.
3. The ordering party shall be entitled to offset its counterclaims only if they have been legally established with final and binding effect, are not disputed or have been acknowledged by us.

## V. Shipment and passage of risk

1. The deliverable shall be shipped by us ex works and at the ordering party's risk. Risk shall pass to the ordering party when the deliverable is shipped, but no later than when it leaves the works/warehouse. That shall apply regardless of whether the goods are shipped from the place of performance.
2. If shipment is delayed through no fault of our own or the ordering party is in delay in taking delivery of the goods, risk shall pass to the ordering party when we notify it that the goods are ready for shipment.
3. The goods shall be insured against damage in transit only at the ordering party's explicit request and expense. The packaging shall be charged at cost price and shall not be taken back.

## VI. Reservation of title

1. We reserve ownership of the supplied object until all payments due under the delivery contract have been received in full. If the ordering party acts in breach of contract, in particular if it is in delay in payment, we shall be authorised to take back the purchased object.

2. The ordering party shall be obligated to treat the purchased object with care; in particular, it shall be obligated to insure it adequately at the reinstatement value against damage by fire, water and theft at its own expense.

The ordering party shall notify us about any attachment or other forms of seizure by third parties in writing without undue delay so that we can, if applicable, take legal action in accordance with Section 771 of the German Code of Civil Procedure (ZPO). If the third party is not able to reimburse us for the court and out-of-court costs of legal action in accordance with Section 771 of the German Code of Civil Procedure (ZPO), the ordering party shall be liable to pay us for the resultant loss.

3. The ordering party shall be authorised to resell the reserved goods in its ordinary course of business; however, it hereby assigns to us all claims to the amount of the final invoice total agreed with us (including value-added tax) to which it is entitled due to resale of the object from its purchasers or third parties. The ordering party shall remain authorised to collect this claim even after assigning it. Our authorisation to collect the claim ourselves shall remain unaffected thereby. However, we undertake to refrain from collecting the claim as long as the ordering party fulfils its payment obligations, does not default in payment and no application for instigation of insolvency proceedings against it has been filed.
4. If the purchased object is processed with other objects that do not belong to us, we shall acquire co-ownership of the new object to the ratio of the value of the purchased object (the final invoice total, including value-added tax). The same provisions as for a purchased object supplied under reservation of title shall apply to the object created through processing.

## VII. Warranty claims

### Defects

1. All parts that prove to be defective due to a circumstance before the passage of risk shall – at or choice – either be repaired or replaced by parts that are free of defects. Replaced parts shall become our property. Such defects must be reported to us in writing without undue delay, but by no later than seven days after delivery. Defects that cannot be discovered within this period of time even despite very careful examination must be reported in writing as soon as they are discovered, by no later than expiry of the agreed period of limitation, and any working or processing of them must be ceased immediately.
2. Subject to agreement with us, the ordering party shall give us the time and opportunity required to make any repairs and deliveries of substitute parts as we deem necessary; otherwise, we shall be released from liability for the resultant consequences.
3. After an agreed acceptance procedure for the contractual goods has been conducted by the ordering party, any complaints about defects that could have been identified in the agreed type of acceptance procedure shall be excluded.
4. If a complaint about defects is justified and submitted in time, we shall have the choice either to rectify the defect or supply an object that is free of defects (subsequent remedy). If the complaint is justified and submitted on time, we shall bear the direct costs of repair or substitute delivery, provided said costs are reasonable in the individual case, in particular relative to the purchase price for the contractual goods and do not exceed 100% of the value of the contractual goods. If a defect is merely insignificant, the ordering party shall only have the right to reduce the price specified in the contract. Otherwise, the right to reduce the price specified in the contract shall be excluded. We shall not bear expenses incurred due to the fact that the sold contractual goods have been moved to a location other than the place of business or premises of the ordering party, unless that was done in compliance with their use in accordance with the contract.
5. MackSmaTec GmbH shall not assume any liability after the passage of risk in the following cases in particular: Unsuitable or improper use of the goods; incorrect installation or commissioning of them by the ordering party or a third party; natural wear and tear; incorrect or negligent treatment; incorrect maintenance; incorrect storage; use of unsuitable operating resources; defective construction work; unsuitable building ground; operation of the contractual goods together with other devices, elements, systems or accessories that do not come from MackSmaTec GmbH and which we have not explicitly pledged in writing as being compatible with the goods of MackSmaTec GmbH; software errors that cannot be reproduced; only slight deviation from the agreed quality or only slight impairment to usability; damage due to excessive stressing or use of the contractual goods; chemical, electrochemical or electrical influences – unless we are responsible for them.
6. If the ordering party or a third party repairs the deliverable incorrectly or without our prior written consent, we shall not be liable for the resultant consequences. The same shall apply if changes are made to the deliverable without our prior written consent.
7. MackSmaTec GmbH shall be liable to pay the costs incurred for rectification of a defect by the ordering party itself or a third party only if MackSmaTec GmbH has given its prior written consent to the rectification measure and the associated costs and the rectification work has been carried out properly.

### Legal imperfections in title

1. If use of the deliverable results in infringement of industrial property rights or copyrights in Germany, we shall in principle and at our expense obtain the right for the ordering party to continue using it or modify the deliverable in a manner the ordering party can reasonably be expected to accept so that the infringement of the proprietary rights no longer exists.
2. In addition, we shall indemnify the ordering party against claims by the respective holders of the proprietary rights that are undisputed or have been legally established with final and binding effect.
3. The provisions of this Section VII shall apply mutatis mutandis to legal imperfections in title that are not due to the violation of third-party proprietary rights.

#### Limitation of actions

All claims of the ordering party – on whatever legal grounds – shall become time-barred in 12 months. The period of limitation shall not begin anew in cases of subsequent remedy. The statutory periods of time shall apply to claims for damages pursuant to Section VIII No. 2 a) to d) and f).

#### VIII. Liability on the part of the supplier, exclusion of liability

1. If the deliverable cannot be used by the ordering party in accordance with the contract due to the fact that we have culpably provided incorrect suggestions or advice, or culpably neglected to provide suggestions or advice, before or after conclusion of the contract or due to the fact that we have culpably violated other secondary contractual obligations, the following provisions shall apply, with further claims by the ordering party being excluded.
2. We shall be liable for damage not incurred on the deliverable itself – on whatever legal grounds – only
  - a) in the case of wilful intent,
  - b) in the case of gross negligence of the owner / the management bodies or executive employees,
  - c) in the case of culpable injury to life, body or health,
  - d) if we have not disclosed a defect with intent to deceive,
  - e) if we have promised a warranted quality,
  - f) if the deliverable is defective, where we are liable for injury to persons and damage to privately used objects under the German Product Liability Law (*Produkthaftungsgesetz*).

In the event of culpable violation of cardinal contractual obligations, we shall also be liable in the case of gross negligence by non-executive employees and in the case of slight negligence, with liability in the latter case being limited to damage that is typical of the contract and can reasonably be foreseen. In cases of wilful intent and gross negligence on the part of the owner or the management bodies, liability for the violation of contractual obligations, in particular due to impossibility of performance, delay, culpa in contrahendo or tortious act, shall likewise be limited to damage that is typical of the contract and was foreseeable when the contract was concluded. This shall also apply to executive employees and other vicarious agents.

Further claims shall be excluded.

#### IX. Proprietary rights

1. We shall be entitled to the industrial property rights to drafts, drawings, software and devices created or designed by us, even if the ordering party has assumed the costs of them.
2. Where permissible and unless otherwise agreed, we shall not assume any liability if the products we supply infringe third-party industrial property rights. The ordering party shall be obligated to notify us as soon as it becomes aware of such infringements or such infringements are reported to it.

#### X. Miscellaneous

1. The law of the Federal Republic of Germany shall apply solely. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
2. We shall be authorised to process the data we receive from our customers as a result of the business relationships with them in accordance with the provisions of the German Federal Data Protection Act (BDSG).
3. **In addition, the “Conditions for the Delivery of Machine Tools for Domestic Transactions”** pursuant to VDW 502, in the version applicable when an offer is submitted, shall also apply.
4. Unless specified otherwise in the order confirmation, our place of business shall also be the place of performance. The court of the place where MackSmaTec GmbH is domiciled shall have jurisdiction in any disputes.
5. If one or more of the above provisions are or become invalid or these General Terms and Conditions contain a gap, this shall not affect the validity of the other provisions. Any provisions that become invalid shall be replaced by new arrangements that are intended to have the same economic effect.

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