

**General Terms and Conditions of Sale and Delivery of MAX MOTHES GmbH, Fuggerstr. 9, 41468 Neuss****1. General provisions / Scope**

- 1.1 These General Terms and Conditions of Sale and Delivery (hereinafter referred to as "General T&Cs") of Max Mothes GmbH, Fuggerstr. 9, 41468 Neuss, Germany (hereinafter referred to as "Max Mothes" or "we/us") apply exclusively to businesses within the meaning of Section 14 *BGB* [German Civil Code] i.e. natural persons or legal entities, which, in respect of the purchase of goods or services, are acting in the performance of their commercial or independent professional activities (hereinafter referred to as "Customer").
- 1.2 Max Mothes GmbH provides its services exclusively on the basis of these General T&Cs. Differing Terms and Conditions of Purchase or other General Terms and Conditions of the Customer are herewith excluded. Silence regarding differing General Terms and Conditions of the Customer shall not be deemed in particular to be recognition or consent, and this shall also apply to future contracts or in the case of references made by the Customer in the Customer's purchase orders.
- 1.3 All agreements, collateral agreements, assurances and contract amendments, including amendments of these General T&Cs, shall only be valid when given in writing. This shall also apply to the waiver of this requirement itself. The written form shall also be maintained by transmissions using email as well as digital/electronic signatures and signatures (e.g. DocuSign). This shall also apply if these General T&Cs require the written form. The precedence of the individual agreement in written, text or verbal form (Section 305b *BGB*) shall remain unaffected for individual agreements in any form.

**2. Quotation, conclusion of contracts, scope of delivery**

- 2.1 Our quotations are subject to change and are not binding. If the Customer places a delivery order (purchase order) based on quotations subject to change, a contract shall be concluded, also in day-to-day business, only upon our written order confirmation if the Customer requests such confirmation. In all other cases, the contract shall be concluded by delivery of the goods. If an order confirmation is provided by us, this alone shall govern the content of the contract, in particular the scope of delivery and date of delivery.
- 2.2 Unless otherwise expressly agreed, a purchase order from the Customer shall be binding for the Customer for 4 weeks and can be accepted by us within that period by means of order confirmation or delivery (see paragraph 2.1 above).
- 2.3 Prices and performance data and other declarations or assurances shall be binding for us only if they have been made or confirmed by us in writing and were expressly specified as binding. If sampling takes place, only the specifications agreed according to this shall be deemed to be a binding stipulation of the properties.
- 2.4 Any documents, drawings, details of weight, samples etc. enclosed with a quotation by us are neither a guarantee nor is hereby a procurement risk assumed, unless this is expressly designated in writing as "guaranteed by law" respectively "assumption of the procurement risk".
- 2.5 We shall only be obliged to deliver from our own stock. The assumption of a procurement risk or a procurement guarantee is also not based solely on our obligation to deliver an item which is defined solely by its class.

**3. Passing of risk, shipment, transport insurance**

- 3.1 If shipment of goods has been agreed with the Customer, the risk shall pass to the Customer upon handover to the freight forwarder or carrier but at the latest when the goods leave the works or warehouse at Max Mothes (EXW Incoterms 2020). Unless otherwise agreed, the goods shall be delivered without packaging and not protected against rust. Freight charges and agreed packaging, if applicable, shall be invoiced to the Customer.
- 3.2 The means of transport and transport route shall be left to the Customer's discretion. The Customer shall determine the freight forwarder and the carrier. Unless otherwise agreed, the goods shall be shipped without packaging. The costs of transport and packaging shall be borne by the Customer. Max Mothes is entitled - but not obliged - to insure the goods against transport risks. The insurance costs shall be charged to the Customer. The minimum order value is € 100.00 (excl. VAT). Purchase orders with an order value of less than € 100.00 (excl. VAT) shall entitle us to make a flat rate service charge of € 25.00 (excl. VAT), irrespective of any rebate agreements, in consideration of the handling costs required.
- 3.3 Goods notified as ready for shipment must be called off immediately. Max Mothes shall otherwise be entitled at its own discretion to store the goods at the Customer's risk and expense.
- 3.4 Max Mothes shall be entitled to make partial deliveries to the extent reasonable for the Customer.
- 3.5 In the case of contracts with continuous delivery, call-offs and grade classifications are to be specified to us, otherwise we shall be entitled to make the determinations at our reasonably exercised discretion (Section 315 *BGB*).

**4. Prices, payment terms, quantities**

- 4.1 Unless otherwise agreed, prices are ex works Max Mothes and subject to value added tax at the respective statutory rate.
- 4.2 Payment shall be due within 10 days net as of invoicing but at the latest 10 days after performance or shipment of the goods by Max Mothes. Compliance with the period shall be determined by receipt of the money on the Max Mothes account.
- 4.3 The Customer shall have a right of retention and an authorisation of set-off only to the extent that the counterclaims are undisputed or have been recognised by declaratory judgment. Max Mothes shall be entitled to assign the claim against the Customer to third parties.
- 4.4 In the case of the Customer's default in payment or where there is a risk to the claim due to deterioration in the Customer's creditworthiness, Max Mothes shall be entitled to declare claims to be due and payable, irrespective of the term of agreed payment periods. Max Mothes shall also then be entitled to execute deliveries still outstanding only against prepayment or provision of security.
- 4.5 In the case of purchase orders for mass-produced parts (from 1000 pieces), we shall be entitled to supply excess or short quantities of up to +/- 10% as customary in the industry. In such case, the invoice amount shall be proportionally adjusted.
- 4.6 We shall have the right at our reasonably exercised discretion (Section 315 *BGB*, subject to judicial review according to Section 315 (3) *BGB*) to increase the prices for our deliveries unilaterally where production costs, material/raw material costs and/or procurement/logistics costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to legal requirements, environmental charges, currency regulations, changes in customs duties and/or other public charges increase if these have a direct or indirect impact on the costs of our contractually agreed deliveries and services and increase by more than 5% and if more than 2 months elapse between conclusion of the contract and the agreed delivery. An increase as mentioned above shall be excluded if the increase in costs for individual or all of the above-mentioned factors is set off by a reduction in costs for other of the mentioned factors with respect to the overall cost burden for the delivery (cost balancing). If above-mentioned cost factors are reduced, without the reduction in costs being set off by the increase in cost factors other than those mentioned above, the reduction in costs shall be passed on to the Customer through a price reduction. If the new price based on our right to adjust prices as stated above is 25% or more above the original price, the Customer shall be entitled to rescind contracts not yet executed in full with respect to the part of the contract not yet fulfilled. The Customer can, however, assert this right only immediately after notification of the increased price.

## **5. Retention of title**

- 5.1 The supplied goods and services shall remain the property of Max Mothes (goods subject to retention of title) until satisfaction of all claims, especially also the respective balance claims, to which Max Mothes is entitled against the Customer within the scope of the business relations.
- 5.2 Goods subject to retention of title shall be treated and processed for Max Mothes as manufacturer within the meaning of Section 950 *BGB* but without obligation on the part of Max Mothes. The processed goods are deemed goods subject to retention of title within the meaning of paragraph 5.1. If goods subject to retention of title are processed, combined and mixed with other goods by the Customer, Max Mothes shall be entitled to co-ownership in the new article in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If the property of Max Mothes ceases to exist as a result of combining or mixing, the Customer shall already now transfer to Max Mothes the property rights in the new stock or article, to which Max Mothes is entitled, to the extent of the invoice value of the goods subject to retention of title and shall safeguard them free of charge for Max Mothes.
- 5.3 The Customer may resell goods subject to retention of title only in the ordinary course of business under the Customer's normal terms and conditions and as long as the Customer is not in default, provided that the Customer has agreed retention of title with its customer and that the claims from the resale according to paragraph 5.4 and paragraph 5.5 pass to Max Mothes. The Customer shall not be entitled to make other disposals of goods subject to retention of title.
- 5.4 The use of goods subject to retention of title to fulfil contracts for work and services and contracts for labour and materials is also deemed to be resale.
- 5.5 The Customer's claims arising from the resale of goods subject to retention of title are already now assigned to Max Mothes; where the resale claim is included in a current account, this shall also apply to the amount of the respective balance claims. The assigned claims serve as security to the same extent as the goods subject to retention of title.
- 5.6 If goods subject to retention of title are resold by the Customer together with other goods not supplied by Max Mothes, the claims arising from the resale respectively the respective balance claims shall be assigned to Max Mothes in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods. Where goods are resold, in which Max Mothes has co-ownership shares pursuant to paragraph 5.2, a portion of the claim corresponding to the co-ownership share shall be assigned to Max Mothes.
- 5.7 The Customer is entitled to collect claims arising from the resale or balance claims, unless Max Mothes revokes this. At the request of Max Mothes, the Customer shall be obliged to notify its customers immediately of the assignment to Max Mothes, unless Max Mothes undertakes this itself, and to provide Max Mothes with the information and documents required for collection.

- 5.8 The Customer shall not be entitled under any circumstances otherwise to assign the claims. This shall also apply to factoring transactions; such transactions are also not permitted to the Customer by reason of the collection authorisation. Max Mothes is, however, prepared in individual cases to consent to factoring transactions if the equivalent value from this definitively accrues to the Customer and satisfaction of the claims of Max Mothes is not jeopardised.
- 5.9 In the event of default in payment, insolvency, inability to pay or any other risk to the security interest of Max Mothes, Max Mothes can revoke the authorisation to resell or to collect the claims assigned to Max Mothes. In such cases and in the event of violation of the obligations under paragraph 5.3 by the Customer, Max Mothes can also require the return of goods subject to retention of title at the Customer's expense, excluding any rescission of the contract.
- 5.10 If the value of existing securities exceeds the secured claims in total by more than 25%, Max Mothes shall be obliged in this respect at the Customer's request to release securities at the Customer's option. The Customer must notify Max Mothes immediately of any attachment or other impairment by third parties.

## **6. Warranty / Claims for defects**

- 6.1 Where we have reached explicit and binding agreements with the Customer concerning the quality, properties, specifications etc. and/or quantity of the ordered goods ("Agreed Quality"), these shall take precedence over the objective requirements of Section 434 (3) *BGB*. Furthermore, it can be assumed, unless the parties have expressly agreed otherwise, that the goods are suitable for the use presupposed according to the contract as far as they correspond to the Agreed Quality. Section 434 (2) No 3 *BGB* shall remain unaffected.
- 6.2 The Customer shall inspect the goods immediately upon receipt and taking into account the respective durability insofar as this is feasible in the ordinary course of business and, if a defect is found, shall notify us immediately in writing. By negotiations on any notices of defects, we shall not waive the objection that the notice was not in due time, unfounded in fact or otherwise insufficient.
- 6.3 Obvious damages sustained during transport or other defects identifiable already at the time of delivery must also be confirmed by the deliverer's signature on the respective transport document when delivery is accepted. The Customer shall ensure that a corresponding confirmation is provided.
- 6.4 The Customer is aware that a complete absence of defects cannot be ensured when supplying mass-produced parts (from 1000 pieces). A defect rate of 1% is deemed to be accepted by the Customer and accordingly does not constitute a defect, unless a lower ppm defect rate was expressly agreed.
- 6.5 In the case of a defect, the defective product shall, within the scope of statutory obligations, be rectified or taken back and replaced by goods free from defects by Max Mothes at its option. In the case of products which can be sent to Max Mothes without disproportionate expense, remedy of defects shall take place at the registered office of Max Mothes. The Customer shall properly package and deliver the defective product, including any necessary accessories. Further statutory provisions shall remain unaffected, unless otherwise expressly provided in these General T&Cs.
- 6.6 Claims by the Customer for defects shall not exist if and insofar as the defects are based on inappropriate handling or further processing by the Customer or third parties.
- 6.7 Further rights based on defects shall exist exclusively in accordance with paragraph 7.
- 6.8 The Customer's warranty shall be limited to one year from the passing of risk. This shall not apply in the cases pursuant to paragraph 7.1 of these General T&Cs; in this respect statutory time limits shall apply.

## **7. Limitation of liability**

- 7.1 Max Mothes shall be liable for own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by its legal representatives or vicarious agents. Max Mothes shall also be liable for the violation of material contractual obligations (i.e. such obligations that define the contract and on which the Customer may rely, hereinafter referred to as "Material Contractual Obligations") in the case of any fault and in the event of impossibility for which Max Mothes is responsible as well as in the event of injury to life, limb and health in the case of any fault, also by legal representatives or vicarious agents. The same shall apply in other cases of liability mandatory by law, especially according to the *Produkthaftungsgesetz* [German Product Liability Act].
- 7.2 In the case of slight negligence, Max Mothes shall be liable, in the case of violation of Material Contractual Obligations as well, only for damage typical for the contract and foreseeable damage.
- 7.3 Liability for damages other than the liability stipulated in the above paragraphs shall be excluded without regard for the legal nature of the asserted claim. This shall apply in particular to claims for damages arising from fault when concluding the contract, due to other breach of duty or due to claims in tort for compensation in respect of property damage.
- 7.4 There is no connection between the reversal of the burden of proof and the foregoing provisions.

## **8. Delivery time, delays in delivery, force majeure**

- 8.1 Delivery dates are in principle not binding, unless they are expressly designated as "binding" or "fixed".
- 8.2 Delivery periods agreed as binding in writing shall commence upon receipt of the order confirmation by the Customer but not before all details about the execution of the order, especially commercial and technical questions, have been clarified and all other requirements to be fulfilled by the Customer (e.g. receipt of

- documents, authorisations and clearances etc. to be provided by the Customer) are met. The same shall apply to delivery dates. Deliveries shall be admissible before expiry of the delivery period.
- 8.3 If we do not receive deliveries or services from our sub-suppliers or third-party suppliers to provide our deliveries or services which are owed under the contract, despite proper, timely and adequate commissioning in terms of quantity and quality under our delivery or service agreement with the Customer or they are incorrect or not in due time, for reasons for which we are not responsible, we shall notify the Customer in due time in writing or text form. In such case, we shall be entitled to postpone the delivery for the duration of the obstruction or to rescind the contract in whole or in part for the part not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk in accordance with the provisions of these General T&Cs.
- 8.4 Paragraph 8.3 shall apply accordingly in cases of force majeure of not insignificant duration (i.e. duration of longer than 1 week). Events of force majeure are in particular: war, strikes, lockouts, official intervention, general shortage of raw materials, epidemics and pandemics (incl. COVID-19), transport bottlenecks through no fault of our own, company obstructions through no fault of our own, e.g. due to fire, water and damage to machinery, and any other obstructions which, when considered objectively, were not culpably caused by us.
- 8.5 A case of force majeure pursuant to paragraph 8.4 above shall also exist in the event of a shortage or even temporary shutdown or failure of electricity, gas or other energy directly or indirectly required for the production, processing, delivery etc. of the product concerned, therefore at the level of third-party suppliers and/or vicarious agents as well, for which we are not responsible (in particular based at least indirectly on circumstances stated in paragraph 8.4). This shall also apply in the case of so-called "blackouts" and/or "brownouts" (electricity cuts or reductions in the supply of electricity as a consequence of electricity quotas or controlled shutdown of companies in the event of an impending blackout) e.g. as a result, at least indirectly, of the shutdown of nuclear power plants due to statutory nuclear power phase-out regulations or other measures not within our sphere of responsibility and influence.
- 8.6 If a delivery date and/or service date or a delivery period and/or service period has been agreed with binding force and the agreed delivery date or service date or the agreed delivery period and/or service period is exceeded due to events according to paragraphs 8.3 - 8.5, the Customer shall be entitled, at the latest after the impediment to the delivery/service has persisted for 4 weeks and after a reasonable period of grace has elapsed without effect, to rescind the contract for the part not yet fulfilled. The Customer shall have no further claims, especially claims for damages, in such case if we have met our duty to provide information as stipulated above. The above provisions pursuant to sentence 1 and 2 of paragraph 8.6 shall apply accordingly if, for the reasons stated in paragraphs 8.3 - 8.5, also without contractual agreement of a fixed delivery date and/or service date, further adherence to the contract is objectively unreasonable for the Customer.
- 8.7 Further rights arising from default in delivery, especially claims for damages, shall exist exclusively in accordance with paragraph 7.

## **9. Confidentiality**

- 9.1 The Customer undertakes to keep confidential such facts, documents and knowledge, which come to the attention of the Customer in the course of performing the business relations with ourselves and contain technical, financial, business, product-related or market-related information about our company, our product or our customers, if we have designated the respective information as subject to confidentiality or have an obvious interest in its confidentiality (hereinafter referred to collectively as "Confidential Information"). The Customer shall use the Confidential Information solely for the purpose of the implementation and performance of the contractual relationship with ourselves as provided in the contract.
- 9.2 Disclosure of Confidential Information to third parties by the Customer shall require express and prior written consent on our part.
- 9.3 There shall be no obligation to maintain confidentiality if it is proved that the respective Confidential Information:
- a) is state of the art in the public domain or this information becomes state of the art without action by the Customer; or
  - b) was already known to the Customer or is made known by a third party authorised to disclose it; or
  - c) is developed by the Customer without action by ourselves and without exploitation of other information or knowledge acquired through the contractual contact; or
  - d) must be disclosed due to mandatory statutory provisions or court or administrative orders.
- 9.4 Provisions of any non-disclosure agreement concluded by the parties shall remain unaffected by this and shall take precedence over the above regulations.

## **10. REACH/ROHS**

Insofar as relevant with regard to the respectively supplied products, Max Mothes shall observe the relevant obligations pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH"). The same shall apply to any relevant obligations arising from Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ("RoHS 2") or the ordinance on the restriction of the use of hazardous substances in electrical and electronic equipment (*Elektro- und Elektronikgeräte-Stoff-Verordnung, "ElektroStoffV"* [German Ordinance on Hazardous Substances in Electrical and Electronic Equipment]), the German implementation of RoHS 2.

**11. General provisions**

- 11.1 Place of performance for all services is the registered office of Max Mothes.
- 11.2 Any disputes arising from and in connection with the contract existing between the parties shall be settled exclusively before a competent Düsseldorf court of law. In addition, Max Mothes is also entitled to bring an action against the Customer before the respective courts at the Customer's place of general jurisdiction.
- 11.3 All legal relations between the parties shall be governed exclusively by the law of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).