

# **MBS GmbH**

## **Terms and Conditions**

### **Purchase**

**(TC-P)**  
**Issued 1 April, 2016**

#### **1 Area of Application**

(1) These Terms and Conditions Purchase (TC-P) of MBS GmbH and the companies associated with it (hereinafter re-ferred to as "Purchaser") as well as provisions laid down in the contract are exclusively valid. Any conflicting or deviating terms and conditions of the seller (hereinafter referred to as "Seller") have no validity, even if the performance is accepted by Seller without objections or if the purchasing price was paid by Purchaser in the knowledge of conflicting or deviating terms.

(2) These TC-P apply as amended from time to time for this and all future contracts between the contracting parties without the requirement of a new reference thereto, unless the contracting parties agree to a different arrangement. This also applies, if Seller only obtained knowledge of these terms and conditions after the first contract was concluded between the contracting parties.

(3) These TC-P also apply for any inquiries by Purchaser, which are non-binding.

#### **2 Quotation, Conclusion of Contract, Parts of the Contract**

(1) Seller must comply with the inquiry by Purchaser in the quotation (compare figure 1 (3)) and specify any potential deviations in his offer. Preparing and submitting the quotations is free of charge for Purchaser and without any obligations.

(2) The contract comes about through orders, data retrievals or the like (hereinafter referred to as "Order") in textform, e.g. email, fax (sec. 126b German Civil Code) from a purchasing department of Purchaser. Orders from the associated companies are completed on their own behalf and at their own expense.

(3) Parts of the contract are in the following priority: 1. Purchaser's order, 2. If available, Purchaser's requirement description or Purchaser's technical specifications,

3. these TC-P,

4. Seller's essential contract parts (e.g. price, quantity).

#### **3 Quality Management, Environmental Protection**

(1) Seller must comply with Purchaser's requirements regarding quality management and environmental protection, if expressly required in the specifications.

In this case Seller has to demonstrate a quality management system corresponding with DIN EN ISO 9001:2000 or TL 9000 and supply data pursuant to the metrics described in the TL 9000 Quality Management System Measurements Handbook. Additionally, Seller is obliged to operate an Occupational Health and Safety Management System, OHSMS, within the framework of his risk management strategy.

(2) Seller has to supply the following documentation, if applicable, along with goods delivered by Seller to the contracting party free of charge and in the respective national language:

1. material specifications, such as specific test reports, showing product tolerances

2. safety data sheets

3. operating and processing instructions with tolerances

4. directions relevant to the operation, maintenance, application and service, such as user manuals

5. clearance certificates (especially clearance of the delivered goods in respect of dangers for life, body and health as well as compliance with product- and/or environmental conditions, for example REACH)

6. if necessary: movement certificate, certificate of origin

7. documentation showing the retraceability of the delivered goods.

The documents are to be regularly updated by Seller without specific request.

(3) Seller undertakes to comply with the provisions of the Electrical and Electronic Equipment Act (EEEA) and to carry out the obligations of Purchaser arising there from and, if these are not transferable, to support Purchaser in the implementation thereof. He specifically commits to attach the manufacturer code to the object of the contract as specified

by Purchaser pursuant to section 7, sentence 1 of the EEEA, free of charge to Purchaser, and mark said contract object with the symbol pursuant to section 7, sentence 2 of the EEEA in conjunction with Appendix 2 of the EEEA according to Purchaser's specifications.

(4) Seller is obliged to take back and properly pick up and dispose of packaging materials free of charge. This also applies to batteries, rechargeable batteries etc. within the scope of the Battery Act. Corresponding documentation regarding the legally compliant disposal must be maintained upon request. If Seller does not comply with this obligation, Purchaser is entitled to have the collection and disposal performed at Seller's expense.

#### **4 Scope, Prices and Payment Terms**

(1) The price agreed in the contract is a fixed price and includes the delivery "free to the point of destination" (Incoterms 2000). The agreed prices are net prices. All transporting, insurance, packaging and other incidental expenses and fees up to delivery/mounting in an operational condition at Purchaser's receiving point are deemed to have been paid unless agreed otherwise.

(2) Seller will provide his services and goods at the most favorable terms to Purchaser and his associated companies (section 15 of the German Companies Act), which he grants worldwide to Purchaser and/or any company associated with Purchaser for goods and services comparable in reference to quantity, quality and market conditions. In this respect, section 13 of the TC-P is not applicable for Purchaser and any associated companies.

(3) The price includes the costs of any installation, integration and transfer work that must be carried out by Seller without interfering with ongoing operations, and if necessary, also after the usual business hours.

(4) Each delivery must be accompanied by the delivery note. Delivery notes and, if specified separately, shipping notifications must contain:

- number, reference and date of the order

- number of any partial delivery

- number and date of the delivery note

- date of dispatch

- details of the type and volume of the delivery as well as any material numbers and item numbers noted in the order

- shipping method.

(5) If the billing of services is agreed at hourly rates, travel and waiting periods as well as travel costs are not reimbursed separately.

(6) The invoice is paid after completing the service. Payment terms are 14 days at a 3% discount, 30 days at a 2% discount or 90 days without a discount. The payment period starts on the first day after the receipt of the verifiable invoice, however, not prior to the fulfillment/acceptance of the service. The date on which Purchaser issues the payment order determines the payment period.

(7) The unconditional payment of the invoice amount by Purchaser does not imply the acceptance of Seller's performance as being in compliance with the contract.

(8) If the credit memo procedure is agreed, Purchaser makes payments without Seller submitting invoices. The payment period starts with the completion of the data entry by Purchaser, at least three working days after submitting the delivery note/service documentation, however not prior to the completion/acceptance of the delivery/service verification. The provisions of paragraphs 1 to 7 are otherwise valid.

#### **5 Delivery Period, Delay by Seller**

(1) Delivery dates and respective delivery times or periods specified in the order are binding and they are calculated from the day of the order. Seller is obliged to notify Purchaser's purchasing agency immediately in textform, if circumstances arise or become evident, which lead to the conclusion that the delivery date cannot be met. If Seller violates said notification duty, he is also liable for such delivery delays that are not his responsibility. An acceptance of a new delivery date is not indicated by the notification or by a lack of response to said notification.

(2) If Seller's delivery is performed prior to the date specified, Purchaser reserves the right to return the shipment at Seller's risk and charge any resulting costs (e.g. demurrage) to Seller and to recalculate the invoices accordingly.

(3) In case of a delivery delay that is Seller's responsibility, Purchaser is entitled to demand 0.5% of the contract amount as a lump sum delay compensation for each working day of the delay, however no more than 5% in total. Further legal claims are not affected by this provision; Purchaser specifically remains entitled to demand fulfillment in addition to the lump sum delay compensation and after an unsuccessful lapse of a reasonable deadline, demand damage compensation instead of the performance, and to withdraw from the contract. Seller has a right to prove that no damages or considerably lesser damages were incurred due to the delay.

(4) In case of a transaction for delivery by a fixed date within the scope of section 376 of the German Commercial Code, no deadline extension is required to exercise the right of withdrawal or to demand compensation.

## **6 Delay by Purchaser**

(1) A default in acceptance by Purchaser assumes that Seller requests Purchaser in textform, e.g. email, fax (sec. 126 b German Civil Code), to accept the delivery object within a period of at least two weeks. A default in acceptance is only possible, if Purchaser could not have declined acceptance of the delivery object.

(2) In the event that Purchaser delays payment, the legal provisions are applicable provided that Purchaser is only delayed in payments, if he does not provide payment after a reminder from Seller.

## **7 Rescission of the Contract**

(1) If Seller does not fulfill his contractual obligations or not pursuant to the contract, Purchaser can rescind the contract after an unsuccessful expiration of a reasonable period for the performance, or rescind the contract immediately and demand damage compensation instead of the performance. Purchaser has the right to rescind the contract immediately, if insolvency proceedings are opened against Seller's assets or if institution was declined due to the lack of insolvency assets in the amount of the proceedings, or if Seller suspends payments to third parties. Purchaser retains the same rights after receiving an application to open insolvency proceedings at court.

(2) The right to extraordinary termination for an important reason in case of a continuing obligation remains unaffected.

## **8 Product Liability**

(1) If Purchaser becomes responsible to a third party concerning product liability, and the corresponding defect is due to a defect of goods delivered by Seller, Seller indemnifies Purchaser from compensation claims by third parties. This also applies to all costs incurred by Purchaser in connection with warding off product liability claims, such as calling in legal assistance. Seller will also reimburse such expenditures to Purchaser within the framework of his liability for damages resulting from or in conjunction with a product recall.

(2) Seller is further obliged to sign a product liability insurance coverage for injuries and material damages in a coverage amount commensurate with the value of the order. If Purchaser is entitled to additional compensation claims, they remain unaffected. Purchaser is entitled to demand a copy of the insurance policy from Seller at any time.

(3) Purchaser will notify Seller of the enforcement of such compensation claims immediately, and make no payments or acknowledge receivables without prior consultation.

## **9 Risk Transfer / Acceptance/ Defect Inspection**

(1) Unless otherwise agreed, the goods are transported at Seller's risk and expense. The risk of an accidental destruction and / or loss is transferred to Purchaser with the arrival of the shipment at Purchaser's central office or at the location designated by Purchaser and a counter-signature of the delivery note. Purchaser only inspects the delivery for obvious defects. As for the rest, Purchaser is exempt from the inspection and defect notice responsibility pursuant to section 377 of the German Commercial Code.

(2) Delivery of movable items to be manufactured or produced, as well as their assembly, requires acceptance by Purchaser. Acceptance is required in textform, e.g. email, fax (sec. 126 b German Civil Code). Risk is transferred upon acceptance.

## **10 Liability for Defects**

(1) Seller assumes the liability for defects for the contract-compliant and faultless condition and the faultless functioning of the delivery at the risk transfer or, if an acceptance is defined, at the acceptance of the performance. Purchaser is entitled to choose between remediation of the defect and a new shipment (supplementary performance). A right to compensation, especially damage compensation instead of the performance

remains strictly reserved, even for insignificant material damages. Seller is obligated to bear all expenditures necessarily arising for the purpose of supplementary performance.

(2) The limitation period for claims for material defect liability is three years from delivery, unless a longer warranty period is applicable by statutory law (e.g., secs. 438 para. 1 no. 2, 634a para. 1 no. 2 BGB), or unless the compulsory provisions in sec. 478, 479 BGB are applicable.

(3) The limitation period pursuant to (2) above is extended by the time during which the defective delivery cannot be used within its intended use due to a material defect, this, however, not exceeding a further period of six months since impairment of use.

(4) Purchaser's claims due to a defective title expire within three years from delivery. The legal provisions apply in the event that Seller acts maliciously.

## **11 Property Rights of Third Parties**

(1) Seller warrants that the performances provided by him are free of any property rights of third parties within the territory of Germany that might limit or exclude their use according to the contract.

(2) Regarding possible third party rights outside the territory of Germany the provisions in the Order are applicable.

(3) If Purchaser is sued by a third party due to intellectual property rights infringements, Seller is obliged to indemnify Purchaser from these claims at his first request. This indemnification also includes the assumption of all expenditures incurred by Purchaser due to the claims by third parties. The aforementioned does not apply insofar as Seller proves not being responsible for the breach of duty underlying the infringement of third party rights..

## **12 Confidentiality**

(1) Both parties undertake to maintain the confidentiality of all non-public information that become known from the area of the other party due to business relations, and to not use these for their own purposes or the purposes of third parties.

(2) All documents provided to Seller by Purchaser to provide the delivery remain Purchaser's property and must be returned with all prepared copies, transcripts, etc at Purchaser's request or must be destroyed at his request.

(3) If performance is provided at a security-sensitive location of Purchaser or his customers, Seller must ensure that only personnel with security clearance under the security clearance directive are employed.

(4) The obligations of this section 12 remain also valid beyond the duration of the contract.

## **13 Contract Fulfillment by Third Parties**

Employing third parties as subsellers requires the consent of Purchaser in textform, e.g. email, fax (sec. 126 b German Civil Code. Purchaser may withhold his consent only upon good cause shown.

## **14 Invoice / Taxes**

(1) Seller must verifiably invoice his delivery. Invoices on account, partial invoices, partial final and final invoices must be marked as such; they must be listed separately and numbered consecutively. The ordering agency, order number as well as the receiving point must be recorded in the invoices. The invoice must also meet the requirements of section 14 of the German Value Added Tax Act. If the invoice does not meet the aforementioned requirements, Purchaser is not responsible for any payment delays. The invoice is to be issued on the day of the delivery according to the contract at the earliest, and must be sent to the invoice address provided in the order.

(2) Changes and additions to the contract must be specified in the invoice and will only be reimbursed, if a supplemental agreement was made for this delivery (cf. section 17, paragraph 1).

(3) In case of other deliveries and work performances that are subject to VAT in Germany and that are provided by foreign Sellers, the tax liability is transferred to Purchaser (sec. 13a, b German Value Added Tax Act). Seller may not include German VAT in the invoices for these deliveries. If Seller brings objects from a third country to Germany while providing the mentioned deliveries and if import VAT results in this conjunction, this VAT is Seller's responsibility.

(4) Purchaser has the right to deduct any applicable withholding tax from the total amount shown in the invoice and submit this to the tax authorities for Seller's invoice, if no valid exemption certificate is available for Seller.

(5) If a credit memo procedure is agreed, paragraphs 1 and 2 are replaced as follows:

The delivery/service is invoiced based on the delivery note/service verification. Seller receives a credit note from Purchaser as proof for the deliveries /services recorded by data processing on a monthly basis, always by the third working day of the following month. The deliveries/services are listed on the credit note according to type and quantity as well as the net prices, VAT rate and the VAT amount as well as the total amount per delivery note/service.

## **15 Transfer of Claims**

Any claims by Seller against Purchaser can only be assigned at the explicit written consent by Purchaser. Purchaser will only refuse consent for an important reason. Seller will inform Purchaser immediately, if he intends to assign the claims.

## **16 Offsetting; Right of retention**

(1) Seller has a right to set off only insofar as its counterclaim is legally established or undisputed.

(2) Seller has no right to retention insofar as its counterclaim results from a contract other than the Commission at hand, unless the counterclaim is legally established or undisputed.

## **17 Final Provisions**

(1) Changes or additions to the contract (supplemental agreements) are made by agreement in textform, e.g. email, fax (sec. 126 bGerman Civil Code), with a purchasing department of MBS GmbH or with an associated company.

(2) The place of fulfillment is the destination designated by Purchaser.

(3) German law applies with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(4) Seller is exclusively responsible for complying with customs and export regulations and relevant legal requirements.

(5) Purchaser's headquarters is the exclusive venue. However, Purchaser is entitled to also call on a court responsible for Seller's headquarters.

(6) If a provision of these TC-P or other contractual regulations is invalid or become invalid, the validity of all other provisions or agreements is not affected. This does not apply, if an adherence to the contract would present an unreasonable hardship to a party.