

## I. General provisions

1. All offers, contracts, deliveries and other performances including consultancy services, information etc. are subject exclusively to the terms and conditions set out below. The placing of an order implies the buyer's unreserved agreement with these terms and conditions.
2. Any deviating arrangements are valid only subject to special agreement and written confirmation. The buyer's terms and conditions of purchase represent no commitment on the part of the seller, even if they are not explicitly challenged.
3. Pending any agreement to the contrary, these terms and conditions apply to all current and future business transactions, even in the event of no special reference being made to these terms and conditions on placement of an individual order within the scope of an existing business relationship.

## II. Offer and conclusion of contract

1. All offers are made without engagement. The legal validity of orders is subject to their written confirmation, whose content is decisive for the contractual relationship. An order becomes binding on delivery. Agreements made verbally or by telephone and arrangements with agents have no legal validity until they have been confirmed in writing. Transmission faults in enquiries made by telephone are the responsibility of the buyer.
2. Documents belonging to the offer, such as illustrations, drawings, or data on weight and dimensions, are only approximately decisive unless they have been designated explicitly as binding. The seller retains the title to and the copyright on cost estimates, drawings and other documents; they must not be made accessible to third parties. The seller is under obligation not to allow third parties to have access to plans designated by the buyer as confidential without the buyer's consent.

## III. Price and payment

1. The prices are quoted in EUR and are without engagement. In the absence of special written agreements, they are valid ex works, exclusive of packaging. The quoted prices are subject to value-added tax at the respective statutory rate. In the case of sales not negotiated in EUR, the buyer bears the seller's exchange risk from the date on which the sale was confirmed by the seller until payment has been completed. In the event of the contractual currency being devalued or of the EUR being revalued, the price confirmed by the seller is increased correspondingly. If the buyer is a merchant in the sense of the German Uniform Commercial Code (HGB) our prices shall remain subject to prior sale.
2. In the absence of other written agreements, invoices are payable without deductions within 30 days of the date of the invoice. If payment is made within 10 days of the date of the invoice, the seller grants 2 percent discount, subject to no other claims against the buyer being unsettled. No discount is allowed on invoices for services, rentals, freight and other auxiliary performances.
3. Payments to be made against the remittance of a bill of exchange issued by the seller and accepted by the buyer are deemed to have been made only when the bill of exchange has been discharged by the buyer and the seller has been exempted from the endorser's liability, so that the agreed retention of title (notwithstanding any farther-reaching agreements) as well as the other reserved rights remain valid, at least until the bill of exchange has been discharged to the benefit of the seller.
4. In the event of the value of an order being EUR 100.00 or less, a so-called small-quantity surcharge of EUR 50.00 is added.
5. In the event of the buyer not making payments in accordance with the above terms and conditions or with special contractual agreements, he defaults even without being reminded. In this case the seller is entitled to charge default interest at the level of his own credit costs, but at least at a rate of 5 percent above the respectively valid base lending rate, from the date on which payment was due. The right to assert further claims is reserved.
6. In the event of the buyer defaulting in payment, the seller is entitled to withdraw from all contracts concluded with him. Any claims deferred or not yet due then become due for payment without any deduction. The same applies in the event of any other obvious deterioration in the buyer's financial situation, in particular if an application is made for insolvency proceedings to be opened or if other court enforcement measures are taken. In these cases, any scheduled discounts, bonuses etc. are deemed to have lapsed, so that the buyer has to pay the invoiced gross prices.
7. The buyer renounces the assertion of any right of retention from previous or other transactions of the current business relationship. The offsetting of counter-claims is admissible only in so far as they are recognized by the seller and are due for payment or have been established with legal validity. Non-traders in the context of the German Commercial Code (HGB) are subject to the statutory regulations alone.

## IV. Deliveries, transfer of risk and acceptance

1. The risk is transferred to the buyer no later than on dispatch of the ordered parts, even if delivery is made by instalments or the seller has also taken over other performances, e.g. carriage and installation or the costs incurred in these. At the buyer's request, the consignment will be insured by the seller at the buyer's expense against theft, breakage, damage in transit, damage by fire or water, as well as other insurable risks. The seller is not under obligation to take out an insurance policy.
2. The term of delivery starts with the dispatch of the acknowledgement of the order, but not before submission of the documents, authorizations and clearances to be obtained by the buyer, nor before receipt of an agreed advance payment. The term of delivery has been observed if the item to be delivered has left the factory or the buyer has been notified that it is ready for shipment before it expires.
3. For the rest, data on delivery deadlines are deemed to be only approximate unless the seller has given a written commitment explicitly as binding. Events of force majeure or circumstances that are unpredictable or exceptional and for which the seller is not to blame (transport disturbances, stoppages, delays in the delivery of raw materials, strike and lock-out) and other industrial disputes release the seller from his duty to perform for the duration of the disturbance or of its after-effects. The same applies if subcontractors are affected by these circumstances. The seller is entitled to execute the performance later or to withdraw from the contract at his own discretion. The seller will inform the buyer at the earliest opportunity of such circumstances and, in the case of contract cancellation, reimburse the buyer for services already performed.
4. In the event of the performance being delayed or becoming impossible for reasons for which the seller is responsible, any claims for compensation on the part of the buyer are precluded unless they are based on willful intent or gross negligence on the part of the executive bodies or of senior staff as well as of other members of staff or vicarious agents of the seller, or the claims relate to compensation for loss resulting from fatal injury, physical injury or impairment of health.
5. In the event of shipment being delayed at the buyer's request, the costs incurred in storage, but in the case of storage at the seller's factory at least half a percent of the invoiced sum per month will be charged to the buyer, starting one week after notification that the consignment is ready for shipment. The seller is, however, entitled, after the setting and expiry of a reasonable deadline to no effect, to dispose elsewhere of the item to be delivered and to make a delivery to the buyer with a reasonably extended term of delivery.
6. The installation and the supervision of the commissioning of the delivered item are subject to special conditions.

## V. Provision of securities

1. If the buyer defaults with a due payment from current or previous transactions or if circumstances reducing the buyer's credit status come to the seller's attention after conclusion of the contract, the seller is automatically entitled to demand immediate payment or, by way of security, surrender of the delivered goods, with simultaneous declaration of withdrawal from the contract; furthermore advance payments or security for goods still to be delivered can be demanded at the discretion of the seller, or the contract can be totally rescinded.

## VI. Warranty terms

1. The seller always endeavors to ensure the impeccable quality of all m-tec products. Should the buyer nevertheless have reason for complaint against the seller, he is entitled to claims under warranty against the seller from whom he purchased the product. In addition we as seller give the buyer our guarantee that the product is free from defects in the material and in the manufacturing process. However, should such defects become manifest within the warranty period (calculated from the date of purchase from the seller respectively), the buyer is entitled to send in the product to our Central Service Station in Neuenburg. We will then rectify the defect free of charge. If we fail to rectify the defect on two successive occasions, the buyer is entitled to withdraw from the purchase contract or to reduce the purchase price. Farther-reaching claims are not covered by the warranty. The warranty period is 12 months. Shipment is undertaken at the buyer's risk. The costs of transport are charged to the buyer. Any performance by us under warranty is precluded if we find that the product has been tampered with.

2. No responsibility is accepted for damage resulting from the following factors:
  - a. Inappropriate or improper use, faulty installation or commissioning by the buyer or by a third party, normal wear and tear, faulty or negligent handling, inappropriate consumables, substitute materials, defective construction work, inappropriate foundation, chemical, electrochemical or electrical influences in so far as they are not due to negligence on the part of the seller.
  - b. Failure on the part of the buyer to observe the statutory requirement to inspect incoming goods and to give notice of defects in accordance with § 377 German Commercial Code (HGB) without delay, but no later than 14 days after arrival of the goods at their destination.
3. The purchase of used products is not subject to the warranty terms and is thus exempt from any claims whatsoever.
4. For execution of all repairs and replacement deliveries appearing necessary to the seller at his reasonable discretion, the buyer has to give the seller the necessary time and opportunity after coming to an understanding with the seller; otherwise the seller is exempt from liability for defects.
5. The warranty period for the replacement and the repair work is 6 months. However, it runs at least until expiry of the original warranty period for the delivered item.
6. In the event of modifications or repair work being undertaken by the buyer or by a third party without the prior consent of the seller, the seller is exempt from all liability.
7. Liability for assigned products after delivery or transfer of the products, the buyer has sole responsibility for any damage incurred in relation with the products supplied by m-tec. All products transferred with or without charge to the customer are inspected by m-tec or by a specially appointed third party for safety and performance. This does not release the buyer from his own obligations to inspect all transferred products for their proper safety status prior to putting them into service. The buyer is liable for any damage, including those involving third parties, caused by failure to carry out safety checks or by inappropriate use of products. The buyer is also liable for the loss of the assigned products (e.g. theft) and has to take appropriate security precautions in this respect. Any liability by m-tec is confined in all cases to premeditation of willful intent or gross negligence by m-tec.
8. Further claims by the buyer, in particular a claim for compensation for damage not caused to the object of the performance itself, are precluded. These include in particular claims for compensation arising from infringement of contractual accessory obligations, negligence in contracting, tort, also in so far as such claims are in connection with warranty rights on the part of the buyer, unless they are based on the exclusions stated in point 4.4. This exemption from liability does not apply in cases where defects in the delivered subject cause physical injury (life, body and health) or in the case of enforced liability in accordance with product liability act.

## **VII. Right to terminate the contract**

1. The buyer can terminate the contract if complete performance becomes definitively impossible for the seller prior to the passing of the risk.
2. If performance is delayed in terms of section IV. 4 of the Terms and Conditions of Delivery and if the buyer has granted the defaulting seller an adequate respite, the buyer is entitled to terminate the contract.
3. The buyer can terminate the contract or reduce the purchase price if the seller has twice attempted unsuccessfully to repair or replace the delivered item.
4. In the case of unforeseen events in terms of section IV of the Terms and Conditions of Delivery, as far as they amend the economic significance or the content of the performances substantially or have a substantial impact on the seller's business, and in case of execution proving subsequently to be impossible, the contract will be commensurately adapted. If this is not economically justifiable, the seller is entitled to terminate the contract in whole or in parts.
5. Claims for indemnity by the buyer on account of such termination are inadmissible. If the seller wishes to make use of his right to terminate the contract, he has to notify the buyer of this immediately on recognizing the implications of the event, even if an extension to the term of delivery was initially agreed upon with the buyer.

## VIII. Retention of title

1. The seller retains the title to the delivered item until payment and obligations are fully met. If the buyer is a merchant in the sense of the German Uniform Commercial Code the seller reserves the property right of the delivered subjects until all claims arising from the business relationship on the part of the seller against the buyer, including any occurring in the future, also from simultaneously or subsequently concluded contracts, have been settled. This also applies if individual or all claims on the part of the seller have been taken over into a current account and the balance has been drawn and acknowledged.
2. In the case of garnishment or other interventions by third parties, the buyer must inform the seller in writing without delay. The buyer is entitled to resell the delivered item in the ordinary course of business. However, he assigns even now to the seller all claims accruing to him from the resale against the customer or against third parties, irrespective of whether the item subject to retention of title is resold without or after being processed. The buyer is authorized to collect this claim even after the assignment. He is not, however, authorized to have such claims through assignment to third parties.
3. The authority of the seller to collect the claims himself is unaffected by this; however, the seller undertakes not to collect the claims as long as the buyer meets his financial obligations correctly. The seller is entitled to demand that the buyer notifies him of the assigned claims and their liable parties, makes all statements necessary for action, surrenders the relevant documents and notifies the liable parties of the assignment. If the delivered item is resold together with other goods not belonging to the seller, the claim by the buyer against the customer is deemed to be assigned at the level of the delivery price agreed between seller and buyer.
4. The buyer's right to own the conditional subject expires if he fails to meet his commitments from this or other existing contracts. The seller is then entitled, without any respite or advice of cancellation, to enter the buyer's business premises and to take possession himself of the goods subject to retention of title and to sell them in the most favorable manner by private contract or at auction, irrespective of the financial or other commitments on the part of the buyer towards the seller. The proceeds will be offset against the buyer's financial obligations after deduction of the costs. Any surplus will be paid to him.
5. We commit to release existing securities of our choice, in this respect, as their current market value exceeds the securable liability by 20%.

## IX. Place of performance and place of jurisdiction

1. The place of performance for all deliveries and services is the registered office of the seller.
2. If claims are asserted by dunning procedure, the competent court is explicitly agreed to be the District Court of Freiburg. The same applies if the buyer's domicile or customary place of residence is unknown at the time of the action being filed. For the rest the civil courts in Freiburg have local competence if the buyer is a registered trader, a legal entity under public law or a trust under public law, or if he has no general place of jurisdiction in the Federal Republic of Germany. The contractual relationship is subject to German law. In this case the provisions of the German Uniform Commercial Code (HGB) have supplementary validity for business transactions among registered merchants.
3. The validity of the United Nations convention on contracts relating to international trading (Hague Convention) is excluded.
4. The buyer is advised that personal data (Name, address and invoice details) may be stored and processed by m-tec for the transaction of business and may be made available to Commerce & Industry Agencies. Within this scope and where appropriated we may report data pertaining to proper or improper conduct during the transaction of contractually binding agreements with the buyer to the aforementioned Commerce & Industry Agencies. Such data shall be made available only in strict adherence to the Federal Data Protection Act and only as necessary for the protection of our vested interests, or the vested interests of the Commerce & Industry Agency's approved partner(s) and those of the general public; and only as long as protected affairs of the buyer are not compromised by the disclosure of such information. The Commerce & Industry Agencies will store the corresponding data in order to provide its affiliated companies with information about customer's credit ratings. The Commerce & Industry Agency shall make such information available to its affiliated partners only if proof for a legitimate interest in the transmission of such data can be provided.

## X. Nullity Clause

1. Individual agreements of delivery and payment terms that are not applicable will not affect the validity of the contract.