

General Terms and Conditions of Sale and Delivery - Mannstaedt GmbH

Status May 2015

1. Scope of Application

- (1) Our deliveries and services shall only be made under the following General Terms and Conditions of Sale and Delivery (hereinafter „Terms and Conditions“). Other terms and conditions of the buyer will not apply, even if Mannstaedt GmbH (hereinafter “Mannstaedt”) does not raise objection against these terms or executes the delivery without reservation. These Terms and Conditions do not apply to consumers in terms of sec. 13 German Civil Code.
- (2) The Terms and Conditions together with the document of which they form a part shall contain all relevant terms and conditions of the agreements entered into with the buyer.
- (3) These Terms and Conditions shall apply to all future business relationships with the buyer.

2. Offer

- (1) Any offers made by Mannstaedt are non-binding and subject to change unless otherwise stated in the confirmation of order or expressly acknowledged by Mannstaedt in writing. They merely constitute an invitation for the buyer to submit its own offer to contract. A contract does not become valid until Mannstaedt confirms the order in writing or executes the order.
- (2) Public statements of Mannstaedt, the manufacturer of the supplied goods or its agents, especially in advertising or in the denotation of the goods, do not constitute descriptions of the characteristics of the goods or a guarantee of them.

3. Prices, Costs of Contract Settlement, VAT

- (1) Prices set forth in the confirmation of order shall be firm and binding. Unless otherwise agreed in the confirmation of order prices are calculated ex works (“EXW” Incoterms 2010) and do not include package and packaging, freight, postage, insurance and the respective statutory value added tax; these will be invoiced separately.
- (2) In the event that costs change after the confirmation of order due to increases/decreases of e.g. raw material and wages, public charges or other costs, the parties shall agree to an appropriate price adjustment. This does not apply when the delivery shall take place within 4 months after the written confirmation of order by Mannstaedt. In case of a significant change of costs for e.g. raw material and wages, public charges or other costs during long-term contracts (i.e. contracts with a term of more than 12 months or contracts of unlimited duration), four weeks after the confirmation of order and prior to delivery, the parties shall be entitled to adapt the prices accordingly. Mannstaedt will provide the buyer with evidence for such cost increases upon request.
- (3) Where an acceptance procedure/material testing by buyer or a commissioned third party has been agreed upon, such acceptance procedure/material testing shall take place in the presence of Mannstaedt on Mannstaedts premises prior to delivery. The costs pertaining to the acceptance procedure/material testing, such as material costs and personnel costs, shall be borne by buyer.
- (4) In the event of deliveries to other EU member states the buyer shall prior to delivery inform Mannstaedt of his VAT identification number, under which he carries out the income

taxation within the European Union. Failing this, the buyer shall pay for Mannstaedt’s deliveries the VAT amount owed by Mannstaedt in addition to the agreed purchase price.

4. Terms of Payment

- (1) Payment shall be made by the 15th of the month following the date of delivery without any discount and without any amounts being retained or deducted from the price of the goods. Thereafter the buyer will be liable for default of payments pursuant to sec. 286 sub-sec. 2 number 2 German Civil Code. The legal consequences will be determined pursuant to sec. 288 German Civil Code.
- (2) In the event that the buyer fails to meet his payment obligations Mannstaedt is entitled to suspend further performance either in whole or in part until payment of the amounts due.
- (3) In the event Mannstaedt is obliged to deliver in advance and, following conclusion of the contract, becomes aware of any circumstances that the buyer’s financial situation deteriorates substantially, endangering the payment of the agreed price, e.g. filing of a petition of the commencement of insolvency proceedings upon the assets of the buyer, Mannstaedt shall be entitled - in addition to any legal provisions - to suspend performance until payment in advance or provision of security. If the buyer has failed to pay in advance or to provide security Mannstaedt is entitled after the expiry of a reasonable period of time to rescind the contract and/or to claim damages instead of performance (“*Schadensersatz statt der Leistung*”).
- (4) Where the contract provides for payment by letter of credit, the buyer is obligated to open such letter of credit and hand it over to Mannstaedt within seven (7) days. Under no circumstances Mannstaedt is obligated to fulfil the contract before receiving the letter of credit.
- (5) Set-off or retention rights of the buyer are only given if and to the extent his counterclaim is undisputed or has been confirmed by a final court decision.
- (6) The buyer is not entitled to assign any rights or claims under this contract to a third party without Mannstaedt’s prior written consent.
- (7) In case the buyer is overdue with his payments, completely or in part, Mannstaedt is entitled to demand payment of all outstanding invoices, even if not yet due.
- (8) In case of delivery of goods and provision of services to buyers abroad, it is expressly agreed that all court and out-of-court expenses incurred for the assertion of rights by Mannstaedt in case of the buyer’s default of payment shall be borne by buyer.

5. Offset

- (1) Mannstaedt is entitled to set off any claims which Mannstaedt may have against the buyer against all claims which the buyer may have, for whatever legal reasons, against companies in which Georgsmarienhütte Holding GmbH has a majority shareholding, either directly or indirectly.
- (2) The companies in which Georgsmarienhütte Holding GmbH currently has a majority shareholding can be found at

<http://www.gmh-gruppe.de>. Upon request buyer will be given the names of such companies.

6. Delivery, Production by third parties, Default of acceptance

(1) Time limits, in particular delivery dates stipulated by Mannstaedt, shall be deemed to be approximate dates. Delivery periods and dates shall be - without prejudice to the rights of Mannstaedt arising from default of the buyer - extended by the period the buyer is in default with meeting his obligations (e.g. concerning required information, specifications or cooperation).

(2) Periods of delivery shall be reasonably extended in the event of impediments beyond the control of Mannstaedt, in particular short falls in energy supply, embargo impositions or strikes. If Mannstaedt is unable to perform its obligations due to such impediments the order shall be deemed cancelled. Mannstaedt will inform the buyer of such impediments without undue delay.

(3) Mannstaedt is entitled to make partial deliveries unless such partial deliveries are unacceptable to the buyer.

(4) Mannstaedt is entitled to subcontract third parties with the production of the goods to be delivered by Mannstaedt.

(5) In the event that the buyer fails to accept the due delivery Mannstaedt is, without prejudice to any other remedies, entitled to store the goods at the buyer's risk and recover from the buyer any extra expenses (such as additional storage charges) incurred due to the buyer's failure of acceptance.

(6) If the buyer continues to fail to accept delivery after the expiry of a reasonable grace period, Mannstaedt is - following a prior warning - entitled to otherwise dispose of the delivered goods and to charge the buyer 20 % of the purchase price as minimum damage, unless the buyer is able to prove that the actual damage was considerably lower.

7. Dimensions, Weights, Quantities

(1) Discrepancies with regard to dimensions, weights and quantities shall be permitted within the scope of standard industry tolerance and applicable DIN standards. The information provided on dimensions and weights in Mannstaedt's offers and confirmations of order shall in no event constitute a quality guarantee.

(2) The weights are determined on the calibrated scales of Mannstaedt and are decisive for invoicing. The verification of weight occurs by presentation of the weight note. If individual weighing is not customary the complete weight of the delivery will apply. Any differences between the complete weight and calculated individual weights will be allocated to such individual weights proportionately.

8. Package, Packaging Costs, Delivery

(1) As far as customary in trade, Mannstaedt will deliver the goods packed and protected against corrosion. Mannstaedt retains the choice of appropriate packing. The relevant costs are borne by buyer.

(2) The buyer shall report any transport damages to the transport company without undue delay and shall, without undue delay, ascertain the facts.

(3) Unless otherwise expressly agreed the buyer shall be responsible for loading and unloading. Any wagons or loading units provided by Mannstaedt to the buyer shall be returned complete, empty and duly cleaned in accordance with

any applicable regulations to Mannstaedt.

9. Transfer of Risk, Place of Fulfilment

(1) Unless otherwise agreed in writing, all deliveries shall be made "ex works" (EXW pursuant to INCOTERMS 2010), Mendener Straße 51, 53840 Troisdorf, Germany.

(2) Goods declared ready for dispatch must be taken over immediately otherwise Mannstaedt is entitled to store them at buyer's risk and expense at standard forwarding cost.

10. Warranty

(1) The buyer is obliged to examine the goods without undue delay following delivery and notify a defect to Mannstaedt without undue delay in writing. Where such defect becomes apparent at a later time notice must be made without undue delay following its detection. If the buyer fails to comply with the foregoing obligations he loses all rights related to such defects.

(2) If the delivered goods should be defective Mannstaedt may remedy the defect or effect a substitute delivery at its own discretion (subsequent performance). Should Mannstaedt fail to comply with the subsequent performance or should the subsequent performance prove unacceptable for the buyer, buyer may, at his discretion and under legal requirements, demand a price reduction, rescind the contract or demand damage compensation according to sec. 11.

(3) The buyer shall grant Mannstaedt adequate time and opportunity for the subsequent performance. On request of Mannstaedt the buyer shall make available the defected goods or samples thereof for the purpose of examination by Mannstaedt.

(4) Where an acceptance procedure/ material testing is agreed upon any enforcement of defects which could have been detected during the acceptance procedure/ material testing is excluded.

(5) The warranty period shall be 24 months from delivery.

(6) For goods sold as declassified materials, so called II a materials, the buyer shall not be entitled to any warranty claims in respect of the defects disclosed to the buyer or any defects that could have been reasonably expected.

11. Liability

(1) Subject to (i) any legal requirements under applicable law in force at the time of delivery and (ii) the regulations below, Mannstaedt shall be liable for any damages incurred by the buyer as a result of a late or defective delivery of the goods or a breach of contract unless such delay, defect or breach of contract has not been attributable to negligence or wilful conduct on the part of Mannstaedt.

(2) If and to the extent that Mannstaedt is liable for damages pursuant to subparagraph (1)

a) Mannstaedt's liability shall be limited to the typically predictable damage and to a maximum of € 500,000 (Euro five hundred thousand) in total; and

b) Mannstaedt shall not be liable for any indirect and/or consequential damages, including loss of profit, loss of production and/or recourse claims of the customers.

(3) The foregoing limitations of liability pursuant to subsec. (2) shall not apply,

a) if the damage is attributable to gross negligence or wilful misconduct on the part of Mannstaedt,

b) in case of injury to life, body or health,

- c) if liability is mandatory under the applicable law, e.g. under the German Product Liability Act, or
 - d) if Mannstaedt has granted a guarantee.
- (4) The exclusion and/ or limitation of claims for damages according to the above subparagraphs shall also apply to claims against employees, legal representatives and auxiliary persons („Erfüllungsgehilfen“) of Mannstaedt.

12. Force Majeure

Notwithstanding any rights pursuant to sec. 11 (Liability) Mannstaedt shall not be liable or responsible for any impediments to or default of the performance of any part of this contract caused by the occurrence of events beyond Mannstaedt’s control, including strikes or any other industrial disputes or official measures. Should such event last for 30 days or more, Mannstaedt and the buyer shall have the right to rescind the contract at any time by giving notice to the other party.

13. Infringement of intellectual property

- (1) Mannstaedt reserves all intellectual property rights and copyrights inherent in images, figures, brochures, calculations and other documents; all of which may not be made accessible to third parties.
- (2) If the goods have been manufactured according to drawings, designs, labels, brands or other specifications of the buyer, Mannstaedt shall have no liability for and the buyer undertakes to indemnify Mannstaedt against all liability for the infringement of industrial property rights, such as patents, registered designs or copyrights.

14. Retention of Title

- (1) Mannstaedt retains title to the delivered goods (hereinafter „the retained goods“) until full settlement of all claims - present and future - under the business relationship with the buyer.
- (2) The retained goods are always processed or transformed by the buyer on behalf of Mannstaedt as producer, but without binding Mannstaedt. In case Mannstaedt loses title to the delivered goods due to processing or transformation Mannstaedt acquires partial title to the new product proportionate to the invoice value of the delivered goods in relation to the value of the other components of the new product at the time of processing.
- (3) Where the title entirely passes to the buyer due to fixed attachment or mixture, the buyer hereby transfers to Mannstaedt a partial title proportionate to the invoice value of the delivered goods in relation to the value of the other components of the new product at the time of the fixed attachment or mixture. The buyer will diligently store the goods to which Mannstaedt has acquired the (partial) title on behalf of Mannstaedt. If the goods are situated with a third party, the buyer herewith assigns all claims for possession against the third party to Mannstaedt. Mannstaedt herewith accepts such assignment. Mannstaedt’s partial title acquired under the provisions of this clause shall pass to the buyer under the same conditions as Mannstaedt’s full title to the delivered goods.
- (4) The buyer is entitled to resell retained goods in the ordinary course of his business for as long as buyer is not in default of payment. The buyer assigns to Mannstaedt all present and future accounts receiving (including VAT) resulting

from the sale of the retained goods in the amount corresponding to the invoice value of the respective retained goods. Mannstaedt herewith accepts such assignment.

- (5) If the retained goods are sold by buyer together with other goods not delivered by Mannstaedt, the assignment of the receivables from the resale shall only apply corresponding to the invoice value of the respective goods sold. In the event of the sale of goods in which Mannstaedt has joint ownership in accordance with sub-sec. (2) and (3) the assignment of receivables shall only apply corresponding to the value of such joint ownership.

(6) The buyer remains entitled to collect said accounts receivable from the respective party which does not, however, affect Mannstaedt’s right to collect the accounts receivable itself. Mannstaedt is obliged not to collect the assigned accounts receivable, while buyer is not in default of payment and no filing for the commencement of insolvency proceedings has been made. In these cases the buyer is obliged to inform Mannstaedt of the assigned accounts receivable and the debtors, to hand out all the information and relevant documents necessary to assert Mannstaedt’s rights and to inform the debtors of the assignment.

(7) The buyer is not entitled to use the retained goods for any other purposes. In particular he is not entitled to transfer ownership by way of security or pledging. The accounts receivable assigned to Mannstaedt may be assigned for security purposes to or pledged in favour of a third party only with Mannstaedt’s prior written consent.

(8) The buyer must notify Mannstaedt in writing without undue delay of any attempts of impairment or attachment of the retained goods by third parties. The cost required to protect the right of Mannstaedt has to be borne by buyer to the extent that such costs will not actually be reimbursed by the third parties.

(9) If the buyer is in default of payment Mannstaedt is entitled to demand the return of all goods delivered on buyers costs. This does not apply where the buyer has applied for or initiated insolvency proceedings and the administrator has demanded performance of the contract (sec. 103 sub-sec. 1 German Insolvency Code). In addition thereto Mannstaedt is - after the expiry of a reasonable period of time - entitled to revoke the buyer’s right to sell the goods according to sub-sec. (4), to revoke the direct debit authorization according to sub-sec. (6), to collect accounts receivable and to use, process, ship or sell the retained goods. Mannstaedt may offset the proceeds of the sale against the outstanding amounts. The buyer is liable for any loss to the extent that the proceeds of the sale are lower than the purchase price outstanding.

(10) To the extent that the value of the securities provided exceeds the claims of Mannstaedt by more than 20 % Mannstaedt is upon buyer’s request obliged to release securities at its discretion.

(11) To the extent that Mannstaedt is entitled to take back retained goods, the buyer is obliged to offer Mannstaedt and its representatives the irrevocable right to enter its premises during normal business hours and to tolerate the removal of the retained goods.

(12) Mannstaedt has the right to assign accounts receivable for sales and services for financing purposes.

15. Proof of Export

If the buyer who is not a resident in the Federal Republic of Germany (external buyer) or his representative calls for goods and carries or dispatches them abroad the buyer shall

provide Mannstaedt with the necessary fiscal proof of export. Failing this proof the buyer shall pay for the deliveries the VAT amount owed by Mannstaedt in addition to the agreed purchase price.

16. Governing Law, Jurisdiction

(1) The contract is governed by the laws of the Federal Republic of Germany. The CISG (United Nations Convention on Contracts for the International Sale of Goods) is not applicable.

(2) Place of jurisdiction for all disputes arising out or in connection with the contract shall be Troisdorf, Germany. Nevertheless Mannstaedt is entitled to sue the buyer at the court with jurisdiction at buyer's place of business.

17. Confidentiality

(1) Both parties will use all documents (including any samples and data) and knowledge received from this business relationship only for the jointly pursued purposes and, in addition, keep them confidential with respect to third parties with the same care as used for own documents and knowledge if the contractual partner designates them as confidential or has an evident interest in maintaining their confidentiality.

(2) This obligation begins from the initial receipt of the documents or knowledge and ends 36 months after the end of the business relationship.

18. Severability

Should any particular provision of these Terms and Conditions be invalid or unenforceable, the rest of these Terms and Conditions shall not be affected and remain valid. The parties shall endeavor to replace the invalid or unenforceable provision, which is acceptable to both parties under consideration of its economic effect.

19. Clause of partnership

Any amount to be paid as compensation, particularly for damages, should be determined bona fide in consideration of the economic situation of both parties, the nature, scope and duration of the business relationship and the value of the goods involved.

Troisdorf, May 2015