



General Terms of Sale and Delivery

Stand: August 1st, 2015

I. Validity and conclusion of the contract

1. This current version of our terms of delivery and assembly work conditions apply to all our deliveries and services at the time of contract signing. Additionally the current version of the charge rate apply at the time of contract signing.
2. This current version of our delivery and assembly terms as well as the charge rates also apply to future business transaction with the customer at the time of contract signing.
3. Except for additional contractual agreements, only the conditions listed in this paragraph 1 are valid. Other conditions or agreements are invalid, even if we do not contradict them.
4. Our offers are subject to change. A contract only becomes valid after we issue a written order confirmation. The scope of delivery will be confirmed conclusively through our written order confirmation and its written attachments.
5. Additional agreements and changes deviating from these terms only become valid if confirmed from us in writing. This also applies to the cancellation of any agreements and changes.
6. Our completion of the contract regarding those parts, which are subject to governmental export regulations, is depending on us receiving the necessary authorization.
7. Documents, drawings and statements, like weight- and size data, supplied from us, are only valid if expressly made part of the contract by us or if we specifically refer to it.
8. We retain the title and copyright on all supplied information and documents (for instance: sample, estimate of costs, drawings, etc.) - including the electrical versions. These may not be made accessible to third parties without our written consent.
9. The written form can be replaced through a faxed copy, but not through an electronically version according to § 126a BGB or the text form according to § 126b BGB.
10. These terms can not be used for consumers according to § 13 BGB.

II. Prices and payments

1. The prices apply from our supplier factory plus the applicable governmental sales tax, packaging and shipment.
 - a) For services within the European Union, the customer has the responsibility to provide us his sales tax identification number as proof of his waiver for the sales tax in a timely matter before the contractual agreed upon deliver date. In case the customer fails to provide this information on time, we reserve the right to include the sales tax in the invoice.
 - b) For services outside of the European Union we are authorized to charge the sales tax subsequently, if the customer does not forward us the proof of export within one month after delivery.
2. Only written versions of estimates of cost are binding.
3. If not otherwise agreed upon, the terms of payments are as follows:
30% down payment after receipt of order confirmation
60% after notice of delivery/acceptance readiness regarding the main part of the order
the remaining amount after passing of risk
4. Assembly work, repairs and other services will be charged according to the current charge rate, which can be requested from us. For work done outside the normal working time we will charge surcharges. Travel- and waiting time are considered normal working time.
5. Payments are due without any deductions onto one of our bank accounts.
6. The customer can only charge off with the reason and the height of undisputed or with legally binding counterclaims or perform a retention of goods.
7. Payments of the customer are due with receipt out our invoice. The customer is automatically in default in paying the invoice twelve days after the date of the invoice without receiving any further notice.
8. The prices of the offer are only valid when ordering the complete scope of the offered service.

III. Services, transfer of risk

1. The customer can not refuse to accept the service if it has nonessential errors or the wrong quantity, irrespective of his rights out of paragraph IX.
2. We reserve the right of reasonable partial performance/delivery.
3. The Incoterms 2010 apply. Delivery is EXW from manufacturing plant, if not otherwise agreed upon.
4. By services at the manufacturing plant the transfer of risk to the customer is at the time of the acceptance. If the customer is

responsible for the transport of the goods from the manufacturing plant to the final destination, then he also carries the risk for the duration of the transport.

5. The regulations regarding the transfer of risk also apply to partial services/performances or when additional services are still due.
6. If the delivery or acceptance is delayed through no fault of our own, then the transfer of risk to the customer is from the day of notification of delivery/acceptance readiness. At the customers request we obligate ourself to purchase an insurance at the expense of the customer.

IV. Retention of title

1. The ownership of the delivery item will be transferred onto the customer after the complete payments have been made. If the validity of the retention of title is tied to special conditions or specific regulations in the destination country, then it is the customers responsibility to fulfill these requirements and conditions.
2. The customer shall not pawn, sell or put up a lien against the delivery item. If third parties confiscated, pawned or otherwise claim ownership of the delivery item, the customer shall advised the third parties of our ownership and notify us immediately about these actions.
3. If the customer acts contrary to the contract, especially with payment delays, we reserve the right to issue warnings and take back our property. The customer shall release the delivery item. The exercise of our reserved retention of title of the delivery item shall not be considered a withdrawal of the contract.
4. An application for a opening of a insolvency proceeding over the assets of the customer gives us the right to withdraw from the contract and demand the immediate return of the delivery item.
5. If the customer is domicile within the German Republic then additionally the following applies:
 - a) Differing from paragraph IV.1 we reserve the right of retention of title of the delivery item until all outstanding demands from the current business transaction are fulfilled.
 - b) Differing from paragraph IV.2 is the customer is entitled, under the following conditions, to resell the delivery item still under retention of title. He can resell the delivery item still under retention of title, if the third party will not immediately pay the delivery item in full. The right for a resale of the delivery item does not apply if the customer is in payment delay. The customer shall transfer at contract signing all his rights to us from this resale or any other legal grounds or claims. In case of joint ownership the transfer of rights to us is only for the part belonging to us.
 - c) The customer retains the right to recover from us the to us transferred outstanding debts as long as he is current with his payments to us. We reserve the right at any time to request from the customer the to us transferred debts and the party liable. In this case the customer shall release all necessary information to us to recover these debts and inform the liable party of its surrender.
 - d) The processing of goods subject to retention of title will be done by the customer in our name. If the goods subject to retention of title is mixed, attached or any other way connected to other goods which are not our property, then we acquire the co-ownership on these goods in the ratio of the invoice value of the good subject to retention of title to the other processed goods at the time of the processing. If our goods are mixed, attached or in any other way connected with other movable goods to one unit, and the other goods is seen as the main part of the unit, then it is agreed upon that the customer transfers proportionate ownership to us, as long as the main part belongs to him. The customer retains that property or the co-owned goods for us. For the mixed, attached or in any other way connected goods the same applies as for the goods subject to retention of title.
 - e) We obligate ourself to release the to us outstanding securities, as long as they not exceeded 10% above the invoice value from the still outstanding debts.
 - f) If our delivered items are securely attached to the ground or integrated into a building, then the connection or integration is only temporarily.

V. Period of time for performance

1. The keeping of the agreed upon period of time for performance is depending on that all commercial and technical questions between us and the customer have been answered, and that the customer has fulfilled all its contractual obligations. If that is not the case then the deadline will be extended accordingly. This does not apply if the delay is our fault.
2. The keeping of the agreed upon period of time for performance is depending upon correct and punctual delivery of our own suppliers.



- About any emerging delays we will notify the customer.
3. The period of time for performance is fulfilled, if until then we informed the customer about the readiness for delivery. If an acceptance is agreed upon, then the acceptance date or the date of notification for readiness for acceptance is decisive.
 4. If the non keeping of the period of time for performance is because of force majeure, labor disputes, delays in receiving governmental authorizations or any other reasons outside of our sphere of influence, then the period of time for performance is extended accordingly. This also applies if the delay is our fault. About any emerging delays we will notify the customer.
 5. If the deliveries or the acceptance of the delivered goods is delayed because of the customer, then all arising expenses will be charged against the customer. The assertion further claims remains.
 6. We reserve the right, after placing and unsuccessful expiring of the grace period for the delivery or the acceptance of the delivered item, to otherwise use the delivered item and to deliver the customer after a suitable extended grace period.

VI. Performance feature

1. pre acceptance
The unit will be assembled completely or in component groups in our manufacturing plant and subjected to extensive quality controls according to ISO 9001, and afterwards the pre-acceptance is conducted. The operation of the unit in our plant under normal production conditions is not included in the offer.
2. start-up
The start-up will be done through our schooled engineers or through from us authorized representative. Afterwards the unit will be handed-over to the customer.
3. voltage of the electrical components
Our units or components are designed for a power supply of 230 V / 400 V – 50 Hz, 3 phases.
4. alterations
We expressly reserve the right to make alterations and technical modifications which do not impair the function of the unit.
5. delivery exclusions
excluded from the scope of delivery are:
a) any and all foundation, concrete, masonry and mortise work
b) any and all provision and laying of supply and disposal lines up to the installation site of the machine
c) any and all provision of means of transport and lifting gear, such as forklift and cranes, operating equipment, electrical supply, gas, water, sewage, auxiliary personnel, transport baskets and cleaning fluids.

VII. Impossibilities and performance delay

1. By partial impossibilities, the customer can only withdraw from the contract if the partial performance is of no use to the customer. If that is not the case, then the customer has to do partial payments respective to the partial performances. Paragraph X still applies. If the impossibilities arise during the acceptance delay or through the fault of the customer, then the customer is still obligated in return service.
2. If the impossibility is not the fault of either contract party then we are entitled to receive the respective payment for our partial performances.
3. If the customer occurs losses or additional expenses because we are behind schedule, then the customer has the right to claim a flat delay compensation. From the time we receive the written demand, this delay compensation is 0,5% for each full week of delay, but not exceeding 5% of the total from the value of the partial performance that is in delay or can not be used.
4. The customer can withdraw from the contract, in observance of the legal exception, if a grace period given to us because of our delay has expired unsuccessfully.
5. Additional demands arising out of performance delays are defined exclusively in paragraph X.

VIII. Acceptance

1. Our products and our service are presumed accepted by the customer after 2 weeks after notice of acceptance readiness, if the customer does not provide us with a written claim of existing deficiency within this time period.
2. The customer can only refuse to grant acceptance, if the deficiency considerable minimizes or completely eliminates the normal and/or contractual preconditioned use and/or its value. If the product has deficiencies, which are not grounds for acceptance refusal, the acceptance must be granted depending upon the elimination of the deficiencies.

3. Acceptance refusal or reservations against the acceptance must be made in writing immediately with indication and description of the deficiencies.
4. If the the customer uses the delivered item for his production purpose, then the delivered item is regarded accepted.

IX. Deficiency demands

1. By deficiencies in title and quality, the customer has the following entitlements:
a) Deficiency demands from the customer presume that he has complied properly with his owning investigation- and reprimand conditions according to § 377 HGB.
b) At our own discretion we deliver products free of deficiencies or removed deficiencies, if the delivered item already at the passing of the risk according to paragraph III demonstrable deficiencies had. The customer must immediately report to us in writing any deficiencies. We reserve the right to ownership on all exchanged replacement parts.
c) Invalid deficiencies claims as a result of causes for which we are not at fault are for instance: natural wear and tear, excessive strain, improper conducted interferences or repair work of the customer or third parties, incomplete or incorrect information through the customer, unsuitable or improper usage, faulty operation, assembly or start-up, faulty or negligent treatment, improper maintenance, usage of improper equipment/replacement material, bad workmanship, unsuitable foundation, harmful surrounding conditions know to us, chemical, electrical or electrochemical influences, alterations done without our prior approval.
d) The customer shall gives us sufficient time and opportunity for the supplemental performances. If this opportunity is not granted to us, then we are not liable for the resulting consequences. Only in urgent cases of danger to the plant safety or to prevent excessively large damages, about which the customer shall inform us immediately, shall the customer have the right to eliminate the error himself or through authorized third parties and request reimbursement from us.
e) In the case of the supplement performances we bear the cost of all arising expenses, especially transportation-, travel- work- and material expenses, as long as they are not have been increased because the delivered item has been moved to another place as original place of fulfillment.
f) In cases of negligent involvement through the customer, especially because of non-observance of his loss prevention- and reduction obligation, we reserve the right, after completing the supplement work, to claim compensation from the customer for the expenses occurred because of his negligent behavior.
g) If a suitable grace period given to us to complete the supplementary work because of a deficiency has expired unsuccessful, then the customer shall have the right, in observance of the legal exception, to withdraw from the contract. If there is only a irrelevant deficiency, then the customer shall only have the right to request a reduction of the contract price. The right to a reduction of the contract price is otherwise excluded.
h) For assembly work, repairs and other services then the paragraph XIV.9 applies instead of paragraph IX.1g.
i) If the usage of the delivered item leads to the within paragraph XIII named grace periods for the safety- or copyright violation, then the customer shall have the right to further usage or to modify the delivered item, so that the safety- or copyright violation is eliminated.
If that is not possible under economical appropriate conditions or under a suitable grace period, then the contract partners shall have the right to withdraw from the contract.
Within the grace period we exempt the customer from the undisputed or the legally established rights of the relevant trade mark owner.
j) The obligations named in our paragraph IX.1 are conclusive, subject to paragraph X for the case of safety- or copy right violation.
k) A right of supplemental performance because of the safety- or copy right violation exist only, if
- the customer has immediately informed us in writing with indication and description about the claimed safety- or copy right violation
- the customer appropriately supports us in the defense of the claimed demands and respectively allows us to complete the modification arraignments according to paragraph IX.1i
- we reserve the right for all defense measurements including out-of-court settlements
- the safety- or copy right violation are not due to instructions or specification of the customer
- the safety- or copy right violation are not caused because the customer has altered the delivered item on its own or not used it in



- the contractual agreed upon way
- All further claim demands (especially for the replacement of damages, which did not originate on the delivered item itself) are regulated exclusively according to the paragraphs X and XIV.9.
 - By the resale of used goods deficiency claims are excluded, if an accountability is not required by law.

X. Liability

- We are liable, also in the case of damages because of breach of duty during contract negotiations, regardless of legal grounds, (especially also for the replacement of damages which are not on the delivered item itself) only for:
 - intentional acts
 - the purposeful breach of crucial contractual obligations
 - gross negligent behavior from the leading personnel
 - purposeful injury to the human body, life or health
 - deficiencies which we maliciously concealed
 - breach of consistency- and/or durability warranties
 - personal- or property damages if according to the product liability act on privately used objects one is liable.
- By breach of crucial contract obligations we are liable also for the gross negligence of not leading personnel as well as for the slight negligence of leading personnel. In the case of the slight negligence the liability is limited to contract typical, reasonably foreseeable damages.
- Our liability for the destroying of data is limited to the expenses occurred to restore those data, if the data would have been properly stored by the customer.
- The replacement of purely asset damages will be limited through the general principles of trust and good faith, for instance in the case of disproportionality between the amount of the order value and the amount of the loss.
- Any further liability – regardless of legal grounds – especially also for replacements of damages which not occurred directly on the delivered item, is excluded.
- We are not liable for consequences of deficiencies for which according to paragraph IX.1c no deficiencies demands apply.

XI. contractual insurance claims

If as an additional insured in regards to the delivered item we are entitled to claim against the insurer of the customer, then the customer now already gives us his approval to this assertion.

XII. Software

- For the software products from other providers included in the scope of delivery the general business terms from those providers apply firstly. If those terms are not enclosed, we will forward them to the customer upon request.
- Additionally to the general business terms from those software providers our conditions also apply, the paragraphs XII.3 until XII.5 apply analog. In case of the invalidity of the general business terms of the software provider our conditions apply.
- The customer receives for our software products as well as the belonging documentations an ordinary, not exclusive usage right on a continuing basis. The awarding of sublicenses is not permitted.
- We are not obligated to relinquish the software product source code.
- The customer is only allowed to use the software product in the legal permissible scope. The customer is not allowed to remove or change without our prior written approval the manufacture data – especially the copy right remarks.

XIII. Statute of limitation

- The statute of limitation for the customer to claim any deficiencies expires 12 month after passing of the risk.
- The statute of limitation for the customer to claim deficiencies on work, whose success depends upon the provision of planning- or monitoring performances for structures, expires 5 years after passing of the risk.
- With the exception of paragraph XIII.4, the statute of limitation for the customer for all remaining demands expires 12 months after passing of the risk, regardless of legal grounds.
- For the injury to the human body, life or health; gross negligent behavior from the leading personnel; intentional or malicious behavior; the purposeful breach of crucial contractual obligations; warranties as well as any demands according to the product liability act the legal statute of limitations apply instead.
- The start of the statute of limitation is defined through legal regulations.

XIV. Assembly work, repairs and other services

For assembly work, repairs and other services the following additionally applies:

- The customer shall at his own cost inform our personnel about existing safety regulations and dangers and make all necessary arrangements to secure the safety of our personnel and our belongings.
- The customer shall at his own cost support our personnel by their work, like preparation of the work place, provision of lifting devices and tools, supply of water, electricity, etc.
- The support of the customer must guarantee that our personnel can start their work immediately upon their arrival and continue without delay until the acceptance.
- If the customer does not fulfill his obligations, then we have the right, but we are not obligated to, to perform the customers responsibilities in his place and at his costs.
- If a service can not be done by us through no fault of our own, then the customer must compensate us for the already rendered services as well as they arising cost out of the nonperformance.
- Parts exchanged from us with replacement parts become our property.
- If the delivered item is missing or was damaged before the acceptance through no fault of our own, then the customer shall pay the agreed upon price less the saved expenses.
- Only written confirmed repair periods are binding.
- For assembly work, repairs and other services the customer is entitled to a reduction within the scope of the legal regulations and under observance of the legal exceptions, if a grace period given us during our delay to complete the required performance has unsuccessful expiring. The minimizing right also applies for all other cases of failure of removal of defects. The customer shall only withdraw from the contract, if the assembly work, repairs and other services is without interest for the customer even after reduction.
- The payments for the assembly work, repairs and other services is calculated according to our «Assembly terms and charge rates for the providence of technical personnel», if no other agreements have been made.
- Assembly work, repairs and other services during the warranty period shall only be performed from MTM personnel or person authorized from MTM. Upon request and with our written authorization can the customer perform such work himself.

XV. General

- All applicable taxes, fees and tributes in connection with the services performed outside the German Republic the customer shall bear and if necessary reimburse to us.
- Individual-related data will be stored from us in consideration of the legal regulations.
- We do not reimburse the expenses occurred for the return transfer of the packaging.
- The customers shall at his own cost acquire the necessary ex- and import documents and/or authorizations for the usage of the delivered items.
- Place of fulfillment and performance for customers commitments toward us is at our headquarter.
- If individual conditions of these business terms or the contract partially or completely are or should become invalid, then the remaining conditions still remain valid.

XVI. Applicable law, court of jurisdiction

- If the customer has its domicile within the German Republic then the court of jurisdiction is the one having jurisdiction over our headquarter. We reserve the right to commence a legal action at the court having jurisdiction over the domicile of the customer.
- If the customer has its domicile outside of the German Republic, the the arbitration proceeding take place at the International Chamber of Commerce in Paris according to the ICC-arbitration code. The decision of the ICC is final. The ruling has to be rendered from three judges and has to be justified. The cooperation of our insurance carrier according to the participation possibility in the orderly legal process is possible. We reserve the right to commence a legal action at a legal court of jurisdiction.
- The law of the German Republic, under exclusion of all conflict rules, and the agreement of the United Nations Convention on Contracts for the International Sale of Goods (CISG) applies.
- This contract is subject to the laws of Federal Republic of Germany.

XVII. Binding Period

This offer is valid for 60 days after date of issue.