


Document ID MDEPT-TL002-EN-V2	Valid from 01.10.2024	Creation/Release CHA/MKL	Classification MIAS-Unclassified
General Terms and Conditions			
			

I. Offer & basis of contract; applicable law

1. The following General Terms and Conditions (GTC) shall be the basis for, and an integral part of, all our business relationships with our customers. The GTC shall only apply if the customer is a trader (Section 14 of the German Civil Code (BGB)), a legal person under public law or a special fund under public law. Unless otherwise agreed, the version of the GTC valid at the time of the customer's order or, in any case, the version of the GTC last communicated to the customer in text form, shall also apply as a framework agreement for similar contracts in future without us having to refer to them again in each case.

2. Deviating agreements and terms and conditions of our partners contracting with us shall not apply to us unless we have expressly confirmed and accepted them as binding in writing; this requirement for acceptance shall apply in all cases, e.g. even if the customer refers to their general terms and conditions with the order and we do not expressly object to those general terms and conditions.

3. Where we offer or are to provide services in the fields of steel construction, mechanical engineering and/or electrical engineering, our special terms and conditions for installation shall also apply to such specific services.

4. To process contracts that we have concluded and to make up for omissions in any contract, the following order of precedence shall apply:

- a) the contract including all associated documents;
- b) our GTC and our special terms and conditions for installation;
- c) the German Construction Contract Procedures (VOB), Parts A, B and C, in each case the version valid at the time of conclusion of the contract, where we are to provide services for building construction and/or civil engineering;
- d) the law of the Federal Republic of Germany.

The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

5. Our offers are subject to change. The documents that are part of our offers, such as illustrations, drawings, weights and dimensions, performance and other descriptions shall only be approximate, unless they are expressly indicated in writing as binding. We reserve ownership rights and copyrights in cost estimates, drawings and other documents. They must not be made accessible to third parties. We undertake to make plans and documents marked as confidential by the customer accessible to third parties only with the customer's consent.

II. Conclusion of contract and scope of contract

1. The order of the goods by the customer is considered a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept such offer of contract within a reasonable period of time after we have received it.

2. The written order confirmation shall be definitive with regard to the scope of our services.

3. We shall not be under obligation, but we shall be entitled, to provide additional services and deliveries beyond the scope described in the order. This shall apply in particular in the event of instructions that increase the order, by the customer or its personnel, and also if this is in the interest of the customer and of the technical level of the services.

4. We shall be entitled to use the drawings, calculations and other information provided to us by the customer as the basis for executing the order, without checking that they are complete or correct; the customer alone assumes warranty for such the information provided by the customer being correct and complete.

5. The customer shall arrange for and bear the costs of checking the statics we have prepared.

III. Prices

1. For delivery without installation, the prices that are valid at the time of conclusion of the contract shall apply ex works, including loading but excluding packaging.

2. Unless a fixed price has been expressly agreed in writing, installation work shall be charged at our prices that are valid at the time of execution, on a time and material costs basis.

3. For the invoicing of additional services, the operating hourly rates including the required premiums shall be charged; for additional deliveries, the usual sales prices shall be charged, unless prices have been agreed in writing in advance. The prices quoted for the original order shall only apply to amendments and additions to the order if we have expressly confirmed this in writing.

4. Unless otherwise stated, our prices are net prices, to which VAT is added at the applicable statutory rate.

5. Any customs, tariff and border crossing fees are not included in our prices. The costs for acceptances and other official inspections required by law shall be borne by the customer.

6. We or the supplier shall be entitled to insure the delivery item against fire, water and other damage at the customer's expense, unless the customer provides evidence that it has taken out the insurance itself.

7. If delivery and/or service takes place later than 3 months after order confirmation, we shall be entitled to charge new prices, if changes to list prices and/or to material, labour and other costs have occurred in the meantime.

IV. Invoicing and payment

1. Unless otherwise agreed, we shall be entitled to demand an advance payment of 30% of the order value after the order has been placed. The remaining payments shall be due as follows:

- a) 30% of the order value: 10 days after notification of readiness for dispatch or after the start of the month;
- b) 30% of the order value: 10 days after delivery or end of month;
- c) 10% of the order value plus any costs for additions: 30 days after invoicing; in each case without deduction.

2. The receipt of the amount in one of our accounts shall determine whether the payment is on time.

3. On expiry of the period for payment, the customer shall be in default without requiring a reminder. During default, interest shall be charged on the purchase price at the applicable statutory rate of default interest. We reserve the right to assert further claims for damage or loss caused by delay. Our right to standard commercial interest as of the due date of the claim (Section 353 of the German Commercial Code (HGB)) against merchants remains unaffected.

4. Deducting a discount for early payment shall only be allowed under separate agreements.

5. Offsetting and rights of retention against our claims shall be limited for the customer to legally established or undisputed counterclaims or counterclaims that we have recognised.

6. If it becomes apparent after conclusion of the contract (e.g. from an application to open insolvency proceedings) that our claim to payment is jeopardised by the customer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary, after setting a deadline – to withdraw from the contract (Section 321 of the German Civil Code (BGB)). For contracts for the manufacture of non-fungible goods (custom products), we may declare our withdrawal immediately; the statutory provisions regarding the dispensability of setting a deadline shall remain unaffected.

V. Delivery, deadlines for delivery and services

1. Delivery shall be ex warehouse, which shall also be the place of performance for the delivery and any subsequent performance. At the customer's request and expense, the goods shall be dispatched to another destination (sales shipment). Unless otherwise agreed, we shall be entitled to determine the type of shipping (in particular the transport company, shipping route and packaging) ourselves.

2. Periods for delivery and services shall be calculated from the date of our written order confirmation. They shall only be binding if we have expressly confirmed that they are binding. They shall only commence when we have received all the documents and information to be supplied by the customer and the necessary authorisations, approvals and similar.

3. If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (service unavailable), we shall inform the customer of such circumstance immediately and, at the same time, inform the customer of the expected new delivery period. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall promptly reimburse any consideration already paid by the customer. Service is unavailable, for example, in the event of late delivery by our suppliers, if we have concluded a congruent hedging transaction, in the event of other disruptions in the supply chain, such as due to force majeure, or if we are not obliged to purchase in individual cases.

4. A reasonable extension of the periods shall be granted for events and measures in the context of labour disputes, in particular strikes and lockouts, and in the event of unforeseeable obstacles beyond our control, if there is evidence that they have a substantial impact on execution of the order. This

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shall also apply if the circumstances occur at subcontractors or during an existing delay.

5. We shall only be obliged to comply with deadlines for delivery and performance if the customer fulfils its contractual obligations.

6. Whether we are in default of delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the customer shall be required. If we are in default of delivery, the customer may demand a fixed amount of compensation for the damage caused by the delay. However, the fixed amount of compensation shall not exceed a total of 5% of the delivery value of the goods that are delivered late. We reserve the right to prove that the customer has suffered no damage at all or only significantly less damage than the above fixed amount.

7. If shipping of the delivery is delayed by the customer, the customer may be charged storage fees and other costs of 1% of the order value for each month or partial month, starting 1 month after notification of readiness for dispatch, unless higher costs are proven. The customer reserves the right to provide evidence of lesser damage.

8. The rights of the customer pursuant to Section IX of these GTC and our statutory rights, in particular in the event that the obligation to perform is excluded (e.g. because of impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

VI. Retention of title

1. All our deliveries are subject to retention of title. The delivered goods shall remain our property as goods subject to retention of title until all the customer's liabilities arising from our entire business relationship have been settled in full.

2. If the customer acts in breach of contract, in particular if it fails to pay the purchase price that is due, we shall be entitled to withdraw from the contract under the statutory provisions and/or to demand the return of the goods subject to our retention of title. The demand for the goods to be returned shall not also amount to a declaration of withdrawal; rather, we shall be entitled to demand only the return of the goods, while reserving the right to withdraw from the contract. If the customer does not pay the purchase price that is due, we may only assert such rights if we have previously set the customer a reasonable deadline for payment that has passed without success or if setting such a deadline is unnecessary under the statutory provisions.

3. If goods subject to retention of title are processed by the customer into a new movable item, such processing shall be carried out on our behalf as the manufacturer without any obligation on our part; the new item shall become our property. If processed with goods that do not belong to us, we shall acquire co-ownership in the new item at the ratio of the value of the goods subject to retention of title to the value of the other goods at the time of processing.

4. The provisions of Sections 947 and 948 of the German Civil Code (BGB) shall apply to the combining, mixing and blending of goods subject to retention of title with goods that do not belong to us with the additional condition that, in the event sole ownership is acquired, the customer hereby transfers co-ownership to us at the ratio of the value of the goods subject to retention of title to the other goods at the time of combining, mixing or blending.

5. If goods subject to retention of title are sold alone or together with goods that do not belong to us, the customer hereby assigns to us the claims arising from such resale equal to the value of the goods subject to retention of title with all ancillary rights and priority over the remainder; we hereby accept such assignment. The value of the goods subject to retention of title shall be the sum invoiced by us for them.

6. If goods subject to retention of title, alone or with goods that do not belong to us, are connected to the land of a third party by the customer or by us on behalf of the customer as an essential part, the customer hereby assigns to us the claims arising against the third party equal to the value of the goods subject to retention of title, to be determined in accordance with paragraph 5 sentence 2, with all ancillary rights, including the right to grant a debt-securing mortgage, with priority over the remainder; we hereby accept the assignment.

7. If goods subject to retention of title alone or with goods that do not belong to us are connected to the customer's property as an essential part, the customer hereby assigns to us any claims arising from the sale of the property or property rights equal to the value of the goods subject to retention of title, to be determined in accordance with paragraph 5 sentence 2, with all ancillary rights and with priority over the remainder; we hereby accept the assignment.

8. The customer shall only be entitled and have the right to resell, use or install the goods subject to retention of title in the ordinary course of business and only on condition that the resulting claims within the meaning of Section VI „Retention of title“ pass to us. The customer shall not have the right to dispose of the goods subject to retention of title in any other way, in particular to pledge them or assign them as security.

9. Subject to withdrawal, the customer shall have the right to collect the claims assigned in accordance with Section VI. We shall not make use of our own power to collect, as long as the customer meets its payment obligations.

10. If we so request, the customer must name the debtors of the assigned claims and inform them of the assignment; we shall also be entitled to notify the debtors of the assignment ourselves.

11. If we collect the assigned claims ourselves on default of payment by the customer, the customer must cooperate fully with the collection by us, in particular by preparing the necessary accounts, providing information and handing over documents, insofar as this is necessary for collection.

12. The customer must inform us promptly of any compulsory enforcement measures taken by third parties against the goods subject to retention of title or the assigned claims; this shall include in particular handing over the documents required to oppose them.

13. The right to resell, use or install the goods subject to retention of title and the power to collect the assigned claims shall lapse in the event of the suspension of payments, an application for or the opening of insolvency or in the event of court or out-of-court settlement procedures. The power to collect shall also expire if the customer's cheques or bills of exchange are protested.

14. Title in the goods subject to retention of title and the assigned claims shall pass to the customer on settlement of all the claims arising from our business relationship with the customer.

15. If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the customer's request.

VII. Handover, acceptance & bearing risk


1. The risk of accidental loss and accidental deterioration of the goods shall transfer to the customer at the latest on handover. For sales shipment, however, the risk of accidental loss and accidental deterioration of the goods and the risk of delay shall transfer already on delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out shipping. If acceptance has been agreed, the transfer of risk shall be determined by acceptance. In all other respects, the statutory provisions of the law on contracts to produce a work shall also apply accordingly to an agreed acceptance. If the customer is in default of acceptance, this shall be deemed equivalent to handover or formal acceptance.

VIII. Notice of defects & manufacturer's warranty

1. The customer's claims for defects are conditional on the customer having fulfilled its statutory obligations of inspection and notice (Sections 377 and 381 of the German Commercial Code (HGB)). In the case of building materials and other goods intended for installation or other, further processing, an inspection must always be carried out immediately before processing. If a defect is discovered on delivery, from inspection or at any later time, we must be notified promptly in writing. In any case, notice of obvious defects must be made in writing within 10 working days of delivery and notice of defects that cannot be identified on inspection must be given within the same time from discovery. If the customer fails to inspect the goods properly and/or to give notice of defects, our liability for the defect - notice of which has not been given, has been given late, or has not been given properly -, shall be excluded in accordance with the statutory provisions. For goods intended for assembly, mounting or installation, this shall also apply if the defect only became apparent after the relevant processing as a result of the breach of one of these obligations; in this case in particular, the customer shall have no claims for reimbursement of the relevant costs („removal and installation costs“).

2. If we are liable, we shall, at our discretion, either repair or replace the goods. If the subsequent performance selected by us is unreasonable for the customer in the specific case, the customer may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.

3. We shall be entitled to make the subsequent performance that is owed dependent on the customer paying the purchase price that is due. The customer shall, however, be entitled to retain a reasonable part of the purchase

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price in proportion to the defect.

4. The customer must give us the time and opportunity that are required for subsequent performance that is owed, in particular the customer must hand over the goods subject to complaint for inspection purposes. In the event of replacement delivery, the customer must return the defective item to us at our request in accordance with the statutory provisions; however, the customer shall have no right of return. Subsequent performance shall not include the dismantling, removal or de-installation of the defective item and shall not include the integration, fitting or installation of a defect-free item, if we were not originally under obligation to provide such services; the customer's claims for reimbursement of the corresponding costs („removal and installation costs“) remain unaffected.

5. We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular the transport, travel, labour and material costs and, if applicable, the removal and installation costs, in accordance with the statutory provisions and these GTC, if there is in fact a defect. Otherwise, we may demand compensation from the customer for the costs incurred from the unjustified request to remedy the defect, if the customer knew or could have discovered that there was in fact no defect.

6. If a reasonable deadline to be set by the customer for subsequent performance has expired without success or is unnecessary under the statutory provisions, the customer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. However, there is no right of withdrawal for an insignificant defect.

7. Claims of the customer for reimbursement of expenses pursuant to Section 445a(1) of the German Civil Code (BGB) are excluded; claims of the customer for damages or reimbursement of futile expenses (Section 284 BGB) shall only arise in accordance with Section IX, including for defects in the goods.

8. Warranty claims may only be assigned effectively with our prior written consent.

9. A notice of defect given within the relevant period shall not release the customer from its obligation to pay the agreed price on time. However, the customer shall be entitled to deposit amounts that are in a reasonable proportion to the costs of the repair or replacement delivery with a bank in our favour, until the defect has been remedied.

IX. Other liability

1. Unless otherwise stated in these GTC (including the provisions below), we shall be liable for breach of contractual and non-contractual obligations in accordance with the statutory provisions.

2. We shall be liable for damages – irrespective of the legal grounds – under fault-based liability for intent and gross negligence. For simple negligence, we shall only be liable subject to statutory limitations of liability (e.g. standard of care in own affairs; insignificant breach of obligation), for damages for the following:

a) injury to life, limb or health;

b) breach of an essential contractual obligation (obligation, the fulfilment of which is essential for the proper execution of the contract and on compliance with which the contracting party ordinarily relies and on which it is entitled to rely); in this case, however, our liability shall be limited to compensation for typically foreseeable damage.

3. The limitations of liability under paragraph 2 shall also apply to third parties and to breaches of obligations by persons (including in their favour) for whose fault we are responsible under statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee has been given for the quality of the goods and shall not apply to claims by the customer under the German Product Liability Act (ProdhaftG).

4. The customer may only withdraw from or terminate the contract for a breach of obligation that is not based on a defect if we are responsible for the breach of obligation. The customer's unconditional right of termination (in particular pursuant to Sections 650 and 648 of the German Civil Code (BGB)) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

X. Limitation

1. Notwithstanding Section 438(1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence on acceptance.

If the goods are a building or an item that has been used for a building in

accordance with the normal way it is used and has resulted in the defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provision (Section 438(1) No. 2 BGB). Other special statutory provisions on limitation (in particular Section 438(1) No. 1 and (3) and Sections 444 and 445b BGB) also remain unaffected.

2. The above limitation periods under sales law shall also apply to contractual and non-contractual claims for damages by the customer based on a defect in the goods, unless applying the standard statutory limitation period (Sections 195 and 199 BGB) would result in a shorter limitation period in the specific case. Claims for damages by the customer in accordance with Section IX para. 2 sentence 1 and sentence 2a) and under the German Product Liability Act (ProdhaftG) shall expire by limitation exclusively in accordance with the statutory limitation periods.

XI. Final provisions

1. Legally relevant declarations and notices by the customer relating to the contract (e.g. setting deadlines, notice of defects, withdrawal or reduction) must be made in writing. Written form within the meaning of these GTC shall include written and text form (e.g. letter, email and fax). Statutory requirements for form and further evidence, in particular in case of doubts regarding the identification of the person making the declaration, remain unaffected.

2. The exclusive (and also international) place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Munich, Germany. This also applies if the customer is a trader within the meaning of Section 14 of the German Civil Code (BGB). In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery obligation under these GTC or an overriding individual agreement or at the customer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive responsibilities, remain unaffected.

3. If individual provisions of the contract are legally invalid or void, this shall not affect the validity of the remaining provisions. In such case, the legally invalid or void provision shall be replaced by a provision that is permitted and comes closest to the intended economic success.

4. We store data relating to the customer in accordance with the data protection provisions. Our declarations under the EU General Data Protection Regulation are available on our website.