

mbt Brautechnik - General Sales and Delivery Terms (as of July 2019)

§ 1 General, Scope of Application

- (1) These general sales and delivery terms (SDT) shall apply to all of our business relationships with our customers (hereinafter: "Purchaser"). The SDT shall only apply if the Purchaser is an entrepreneur (§ 14 German Civil Code), a legal entity under public law or a public-law special fund.
- (2) The SDT shall specifically apply to contracts regarding the sale and/or delivery of moving assets (hereinafter also: "Goods"), without consideration of whether we produce the Goods directly or purchase them from suppliers (§§ 433, 651 German Civil Code). The SDT shall apply as amended as a master agreement to future contracts on the sale and/or delivery of movable goods with the same Purchaser as well, without having to be referred to separately from case to case.
- (3) Our SDT shall be exclusively applicable. Any deviating, contrary or supplementary general terms of the Purchaser shall only become part of the contract if and as far as we have expressly consented to their application. This requirement of confirmation shall apply in any case, e.g. also if we perform the delivery without reservation knowing of the Purchaser's terms and conditions.
- (4) Any individual agreements entered into with the Purchaser from case to case (including any side agreements, supplements and modifications) shall in any case take precedence over these SDT. The content of such agreements shall be determined by a written contract or our written confirmation.
- (5) Legally relevant declarations and notifications that the Purchaser is to make towards us after conclusion of the contract (e.g. setting of deadlines, reports of defects, declaration of withdrawal or reduction), shall require written form to be valid.
- (6) References to the application of statutory provisions shall only have clarifying meaning. Even without any such clarification, the statutory provisions shall therefore apply where not directly modified or expressly excluded in these SDT.
- (7) The Purchaser must not transfer any rights from the concluded contract to any third parties without our written consent.

§ 2 Conclusion of the Contract

- (1) Our offers shall be subject to confirmation and non-binding. This shall also apply where we have provided any catalogs, technical documentation (e.g. drawings, plans, calculations, estimates, references to DIN-standards), other product descriptions or documents – also in electronic form – to the Purchaser, in which we reserve property and copyrights.
- (2) Ordering of the goods by the Purchaser shall be deemed a binding offer of contract. If nothing different results from the order, we shall have the right to accept this offer of contract within 2 weeks of receipt.
- (3) Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Purchaser.
- (4) The written order confirmation shall be essential for the scope of the delivery. If no written confirmation of acceptance is present, our offer shall determine the scope of the delivery. Deviating from this, we shall have the right to perform the deliveries according to the latest state of the art.

§ 3 Delivery Period and Delivery Delay

- (1) The delivery period in the form of indication of a calendar week shall be agreed on individually or specified by us when accepting the order.
- (2) The delivery period shall commence at dispatch of the order confirmation, but not before provision of the documents, permits, releases to be procured by the Purchaser, receipt of the agreed down-payment and performance of the Purchaser's additionally agreed contractual obligations.
- (3) The delivery period shall be complied with if the work has left the operating site/factory by its end or readiness for shipment has been disclosed.
- (4) If we are unable to comply with binding delivery periods for reasons that are not due to our fault, or not due to force majeure events (e.g. strike, lock-out, act of war, or similar) (non-availability of the service), we shall inform the Purchaser of this without delay and at the same time report the expected new delivery period. If the service is not available within the new delivery period either, we shall have the right to declare complete or partial withdrawal from the contract; we shall reimburse any compensation already paid by the Purchaser without delay. A case of non-availability within this meaning shall specifically be lack of timely delivery to us from our supplier if we have concluded a corresponding coverage transaction. Our statutory withdrawal and termination rights, as well as the statutory provisions on processing of the contract at exclusion of performance obligations (e.g. performance and/or subsequent performance being impossible or unreasonable) shall not be affected. The Purchaser's withdrawal and termination rights pursuant to § 8 of these SDT shall also not be affected.
- (5) We shall enter default of delivery according to the statutory provisions. In any case, however, reminder by the Purchaser shall be required.

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(6) If events specified in § 3 (4) make our delivery or service essentially more difficult or impossible and the obstruction is not only temporary in duration (i.e. at least three months), we shall have the right to withdraw from the contract. In case of temporary obstructions, the delivery and performance periods shall extend, or delivery and performance dates shall be shifted by the period of the obstruction plus an appropriate start-up period. Where acceptance of the delivery or service is not reasonable for the Purchaser due to non-temporary delay (i.e. at least three months), he may withdraw from the contract by written declaration to us without delay, i.e. within 5 days of occurrence of the circumstances of force majeure. After the end of this period, withdrawal from the contract can no longer be based on the existence of circumstances of force majeure.

§ 4 Delivery, Passing of Risk, Acceptance, Default of Acceptance

(1) Delivery shall be ex works pursuant to Incoterms 2010 ("EXW") excluding loading, which shall also be the place of performance. Upon the Purchaser's demand and expense, the Goods shall be sent to a different destination (sales shipment). Unless agreed on differently, we shall have the right to specify the type of shipment (specifically transport company, shipping route, packaging) in the scope of sales shipment.

(2) We shall have the right to make partial deliveries and performances at any time if this is reasonable for the Purchaser.

(3) If the Purchaser enters default of acceptance, does not perform any contribution action or if our delivery is delayed for other reasons due to Purchaser's fault, we shall have the right to demand reimbursement for the resulting damage, including any additional expenses (e.g. storage costs, insurance rates, costs for intralogistics).

(4) The risk of accidental destruction and accidental deterioration of the Goods shall pass to the Purchaser at handover. However, at sales shipment, the risk of accidental destruction and accidental deterioration of the Goods and the risk of delay shall pass at delivery of the Goods to the forwarder, carrier, or other person or institution intended for execution of the shipment already. Where acceptance has been agreed, this shall be relevant for passing of risk. Apart from this, any agreed acceptance shall be subject to the statutory provisions of the law on contracts for work accordingly as well. It shall be equal to handover or acceptance if the Purchaser is in default of acceptance. This shall also apply if partial deliveries are made or we have assumed any additional services in the scope of an individual agreement, such as acceptance of the shipment costs or delivery/setup. Apart from this, we shall only be at fault for willful intent and gross negligence purs. to § 300 para. 1 German Civil Code.

(5) If the contract is for sales shipment, we shall be liable for transport damage only subject to the following conditions: At handover of the purchased object, Purchaser shall inspect the packaging for outward integrity and have any damage and deformation to the packaging confirmed on the receipt confirmation by the transporting person. If this person refuses to make the confirmation, the Purchaser shall have the right to refuse acceptance free of charge. If the transport damage only becomes evident at unpacking of the purchased object, the Purchaser shall inform us of this within 48 hours in writing or by email. The Purchaser shall keep the packaging in any case. In either case, the Purchaser must draw up a situation report at once and secure evidence (e.g. photographs).

§ 5 Assembly

(1) The assembly costs shall – if not agreed on differently – not be included in the overall price.

(2) During assembly of the Goods, the installers must be given all required support by helpers, tools and material, as well as power and water, at the site of setup. This shall also apply if a flat-rate has been agreed on individually for the assembly or is included in the total. The necessary preliminary work (e.g. introduction openings, foundations, etc.) must have been performed by the Purchaser before the installers arrive.

(3) The installers' travel to and from the site shall be included in the assembly time and subject to compensation accordingly.

(4) The basis for the assembly compensation shall be the currently valid assembly price list.

(5) The times for arrival and departure, the working times, the overtime worked and the work rendered and deployment fee paid out shall be confirmed on the proof of assembly, the deployment fee shall be due after submission of the proof of assembly and shall be invoiced to the Purchaser.

§ 6 Prices and Payment Conditions

(1) If nothing different has been agreed from case to case, our respective prices at the time of conclusion of the contract shall apply, ex works purs. to Incoterms 2010 ("EXW") excluding loading, plus statutory VAT.

(2) At sales shipment (§ 4 para. 4), the Purchaser shall bear the transport costs ex works and the costs for any transport insurance that may be desired by Purchaser. Any customs fees, charges, taxes and other public charges shall be assumed by the Purchaser. We do not take back transport and any other packaging according to the proviso of the packaging regulation; this shall become the Purchaser's property; pallets shall be an exception.

(3) The purchasing price shall be due and, in the absence of special agreements, payable in cash and without any deduction within 8 days of invoicing – as follows if there is no deviating individual agreement:

- 1/3 of the purchasing price after receipt of the order confirmation;
- 1/3 of the purchasing price when reporting readiness for shipment;
- 1/3 of the purchasing price at delivery.

(4) The Purchaser shall enter default at the end of the above payment period. The purchasing price shall bear interest at the respective applicable statutory default interest rate during the time of default. We reserve assertion of any further default damage. Towards merchants, our claim to commercial interest on maturity (§ 353 German Commercial Code) shall not be affected.

- (5) The Purchaser only has any set-off or retention rights where his claim has been finally determined or is undisputed. § 8 para. 6 shall not be affected by defects of the delivery.
- (6) If it becomes evident after conclusion of the contract that our claim to the purchasing price is endangered by lack of the Purchaser's ability to perform (e.g. by application for opening of insolvency proceedings), we shall have the right to refuse performance and – if applicable upon setting a grace period – withdrawal from the contract according to the statutory provisions (§ 321 German Civil Code). In case of contracts on the production of unsellable objects (individual production), we may declare withdrawal at once; the statutory provisions on the dispensability of setting of the grace period shall not be affected.
- (7) Ordered additional deliveries are not included in the price. A separate price for these shall be agreed.
- (8) § 367 para. 1 German Civil Code shall be applied in case of partial payments.

§ 7 Reservation of Title

- (1) We reserve title in the Goods sold until complete payment of all our current and future claims from the business relationship (secured claims).
- (2) The Goods subject to reservation of title must not be pledged to any third parties, nor transferred as collateral, before payment of the secured claims. The Purchaser shall inform us in writing without delay if and as far as third parties access the Goods that belong to us.
- (3) If the Purchaser acts in violation of the contract, specifically if he does not pay the due purchasing price, we shall have the right to withdraw from the contract pursuant to the statutory provisions or/and to demand return release of the Goods based on the reservation of title. The release demand shall not include declaration of withdrawal at the same time; instead, we shall have the right to only demand release of the Goods and reserve withdrawal. If the Purchaser does not pay the due purchasing price, we must only assert these rights if we have first unsuccessfully set the Purchaser an appropriate period for payment or if setting of such a period is dispensable according to the statutory provisions.
- (4) The Purchaser shall have the right to sell on and/or process the Goods subject to reservation of title in his proper course of business. In this case, the following conditions shall apply additionally.
- (a) The reservation of title shall cover the products produced by processing, mixing or combination of our Goods at their full value; we shall be deemed the manufacturer in this. If the title of third parties is retained at processing, mixing or combination with third-party goods, we shall acquire shared title at the ratio of the values invoiced for processed, mixed or combined goods. Apart from this, the product shall be subject to the same rules as the Goods delivered subject to reservation of title.
- (b) The Purchaser hereby assigns any claims resulting against third parties from further sale of the Goods or products to us in full or at the amount of our possible share in the title as collateral pursuant to the above paragraph. We accept the assignment. The Purchaser's obligations pursuant to para 2 shall also apply in light of the assigned claims.
- (c) The Purchaser shall remain authorized to collect the claim in addition to us. We commit to not collecting the claim while the Purchaser meets his payments obligations towards us, does not enter default of payment, while no application for opening of insolvency proceedings has been filed and no other defect of his ability to perform is present. If this is the case, however, we may demand that the Purchaser disclose the assigned claims and their debtor to us, provide any information required for collection, release the associated documents and report the debtors (third parties) of the assignment.
- (d) If the value that can be realized from the collateral exceeds our claims by more than 10%, we shall release collateral at our choice upon the Purchaser's demand.

§ 8 Purchaser's Claims for Defects

- (1) The Purchaser's rights in case of defects of material and title (including wrong and underdeliveries and improper installation by us) shall be subject to the statutory provisions where nothing different is specified below. The statutory provisions shall not be affected in any case at final delivery of the Goods to a consumer (supplier recourse purs. to §§ 478, 479 German Civil Code).
- (2) Our liability for defects shall be specifically based on the agreement concluded on the characteristics of the Goods. All product descriptions that are the object of the individual contract shall be deemed agreements on the characteristics of the Goods; there shall be no difference if the product description comes from the Purchaser, the manufacturer or from us.
- (3) Where no characteristics have been agreed on, it must be evaluated based on the statutory provision whether there is a defect or not (§ 434 para 1 S 2 and 3 German Civil Code). However, we assume no liability for any public statements made by the manufacturer or other third parties (e.g. advertising statements).
- (4) The Purchaser's claims for defects shall require that he has met his statutory examination and complaint obligations (§§ 377, 381 German Commercial Code). If any defect appears during examination or at a later time, we must be informed of this in writing without delay. A report shall be deemed made without delay if it is made within two weeks, with timely dispatch of the report being sufficient to comply with the deadline. Independently of this examination and complaint obligation, the Purchaser shall report any obvious defects (including wrong and underdelivery) to us in writing within two weeks of delivery, with timely dispatch of the report being sufficient here as well to comply with the deadline. If the Purchaser does not properly examine for and/or report any defects, our liability for defects not reported shall be excluded.
- (5) If the delivered object is defective, we may first choose whether we will provide subsequent performance by removal of the defect (improvement) or by delivery of an object free of defects (replacement object). Our right to refuse the chosen type of subsequent performance subject to the statutory provisions shall not be affected.

- (6) We shall have the right to make the owed subsequent performance dependent on the Purchaser paying the due purchasing price. However, the Purchaser shall have the right to retain a share of the purchasing price that is appropriate for the defect.
- (7) The Purchaser shall give us the time and opportunity required for the owed subsequent performance, and in particular provide the Goods subject to complaint to us for inspection. In case of replacement delivery, the Purchaser shall return the defective object to us according to the statutory provisions.
- (8) The expenses required for inspection and subsequent performance, in particular transport, travelling, work and material costs, shall be assumed by us if there actually is a defect. If, however, it turns out that the Purchaser's claim to removal of defects was unfounded, we may demand reimbursement for the resulting costs from the Purchaser.
- (9) Purchaser's claims for expenses necessarily incurred for the purpose of supplementary performance are excluded where they increase costs because the goods were taken to a different location following delivery, unless said transfer complies with normal use. The same applies to claims for reimbursement of expenses according § 445a BGB, provided that the last contract in the supply chain has not been a contract for commodities.
- (10) The Purchaser has statutory rights of recourse according § 445a BGB against us only in so far as the customer has not reached any agreements with his customer which go beyond the statutory claims for defects.
- (11) In urgent cases, i.e. where there is any danger to operational safety or to defend against disproportional damage, the Purchaser shall have the right to remove the defect directly and to demand reimbursement for the expenses objectively required for this from us. We shall be informed of such direct performance without delay, and if possible in advance. There shall be no right to direct performance if we would have the right to refuse the corresponding subsequent performance under the statutory provisions.
- (12) If the subsequent performance has failed or any appropriate period to be set by the Purchaser has expired unsuccessfully or is dispensable according to the statutory provisions, the Purchaser may withdraw from the purchasing contract or reduce the purchasing price. However, there shall be no right of withdrawal in case of unessential defects.
- (13) The Purchaser's claims to damages or reimbursing for expenses made in vain shall only apply according to the proviso of § 8 and shall otherwise be excluded.
- (14) If we deliver defect-free Goods for the purpose of subsequent performance, we may demand return of the defective Goods from the Purchaser according to the proviso of §§ 346 to 348 German Civil Code.
- (15) Damage caused by improper or non-contractual measures of the Purchaser shall not found any claim against us. The impropriety and violation of the contract shall be determined specifically according to the provisions of the manufacturer of the delivered Goods.
- (16) The Goods delivered by us shall only be subject to any guarantee if this has been expressly stated in the order confirmation for the respective item.

§ 9 Other Liability

- (1) Where these SDT, including the following provisions, do not indicate anything different, we shall be liable according to the relevant statutory provisions in case of violation of contractual and out-of-contract obligations.
- (2) We shall be liable for damages – no matter the legal reason – in case of willful intent and gross negligence. In case of simple negligence, we shall only be liable
- a) for damage from violation of life, body or health,
 - b) for damage from violation of an essential contractual obligation (obligation the compliance with which is required for proper execution of the contract and compliance with which the contracting partner regularly trusts in and may trust in); in this case, our liability shall be limited to reimbursement of the foreseeable typical damage, however.
- (3) The limitations of liability resulting from para. 2 shall not apply where we have maliciously concealed a defect or assumed any guarantee for the properties of the Goods. This shall apply accordingly to any claims of the Purchaser under the Product Liability Act.
- (4) The Purchaser must only declare rescission or termination for violation of obligations that are not a defect where we are at fault for the violation of obligations. Any free termination right on the side of the Purchaser (specifically purs. to §§ 651, 649 German Civil Code) shall be excluded. Apart from this, the statutory prerequisites and legal consequences shall apply.

§ 10 Expiration

- (1) Deviating from § 438 para 1 no. 3 German Civil Code, the general period of expiration for claims from defects of material and title shall be one year of delivery. Where acceptance is agreed, expiration shall commence at acceptance.
- (2) However, if the Goods are a building or an object that has been used for a building according to its common purpose, and that has caused the building to be defective (building material), the expiration period shall be 5 years from delivery (§ 438 para 1 no. 2 German Civil Code) pursuant to the statutory provisions. This also shall not affect any statutory special provisions for material release claims of third parties (§ 438 para 1 no. 1 German Civil Code), at malicious intent on the side of the seller (§ 438 para 3 German Civil Code) and for claims from recourse against the supplier at final delivery to a consumer (§ 479 German Civil Code).
- (3) The above expiration periods from purchasing law shall also apply to contractual and out-of-contract damages claims of the Purchaser based on a defect in the Goods, unless application of the ordinary statutory expiration (§§ 195, 199 German Civil Code) would lead to a shorter expiration period from case to case. The expiration periods under the Product Liability Act shall remain unaffected in any case. Apart from this, the Purchaser's damages claims purs. to § 8 shall be subject to the statutory expiration periods exclusively.

§ 11 Choice of Law and Jurisdiction

(1) These SDT and any legal relationships between us and the Purchaser shall be subject to the law of the Federal Republic of Germany under exclusion of all international and supranational (contract) legal regulations, in particular UN sales law; the prerequisites and effects of the reservation of title purs. to § 6, in contrast, are subject to the law of the respective storage site of the object where the chosen law to the benefit of German law is inadmissible or invalid according to it.

(2) If the Purchaser is a merchant within the meaning of the commercial code, a legal entity of public law or a public-law special fund, the exclusive – also international – place of jurisdiction for any disputes directly or indirectly resulting from the contractual relationship shall be our seat in Regensburg. However, we shall also have the right to raise a claim at the general place of jurisdiction of the Purchaser.

§ 12 Notes for Data Processing

(1) The Purchaser knows that the personal data required for processing of the contractual relationship are saved on data carriers by us and may be passed on to affiliated companies in the scope of processing of the order, and he consents to this. The Purchaser expressly consents to collection, processing and use of his personal data.

(2) The personal data saved shall, of course, be treated confidentially by us. We reserve data reconciliation with credit agencies.

(3) Collection, processing and use of the personal data shall be subject to observation of the Federal Data Privacy Act (Bundesdatenschutzgesetz; BDSG).

(4) Purchaser shall be due to the right to revoke his consent at any time effective for the future. In that case, we shall be obligated to delete the Purchaser's personal data at once. If any usage relationships are ongoing, they shall be deleted after termination of the contract.

§ 13 Final Provisions

The contract shall remain binding in its remaining parts even if individual items are legally invalid. Instead of the invalid provision, such provision shall be deemed agreed between the parties that corresponds to the economic purpose of the invalid provision or that comes as close as possible to this. This shall apply accordingly if there are any gaps in the contract.