

**MAVEKO**  
**General Terms and Conditions of Sale**

**1 Scope of Application**

1.1 These General Terms and Conditions of Sale ("GTC") form an integral part of all our offers and contracts for the delivery of goods to our business partners ("Customers"). They shall be part of current and future business relationship.

1.2 We hereby object to any counter confirmation, counter-offer or other reference by the Customer to its general terms and conditions. Any dissenting terms and conditions of the Customer shall only apply if we have expressly confirmed their validity in writing. This requirement of consent shall apply in any case, for example even if the Customer refers to its GTC within the scope of the order and we do not expressly object to this.

1.3 Our General Terms and Conditions shall apply in accordance with the most recent version and to all subsequent transactions without any need of express reference thereto or agreement thereon at the conclusion of such transaction. They shall only apply towards entrepreneurs (*Unternehmer*) as defined in Section 14 of the German Civil Code (BGB).

1.4 Individual agreements (e.g. framework supply agreements, quality assurance agreements) and specifications in our order confirmation shall take precedence over the GTC. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.

1.5 References to applicable statutory provisions shall only be of a clarifying nature. Therefore, even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GTC.

1.6 Legally relevant declarations and notifications of the Parties with regard to the contractual relationship (e.g. setting of deadlines, notification of defects, withdrawal or reduction) shall be made in writing. Written form in the sense of these GTC includes written and text form (e.g. letter, e-mail, fax). Legal formal requirements and further evidence, in particular in case of doubts about the legitimacy of the declarant, shall remain unaffected.

**2 Offers, Orders**

2.1 Our offers shall not be binding with reference to quantities, price and delivery time. The order of goods by the Customer shall be considered as a binding offer of contract.

2.2 Any order issued by the Customer shall not be binding on us until it has been agreed upon and confirmed by us in writing or by executing the order. We are entitled to confirm the offer within two weeks.

**3 Prices, Payment**

3.1 Unless otherwise agreed in writing, our current prices at the time of the conclusion of the contract are ex works (EXW) in accordance with Incoterms 2020 and do not include any costs for packaging and other costs (e.g. insurance).

3.2 In case we agree in writing to a delivery to the Customer, the prices and costs of delivery shall be in accordance with "Free on Board" (FOB Incoterms 2020) deliveries.

3.3 All our prices are exclusive of the respective statutory VAT, even if this has not been separately indicated.

3.4 The purchase price is due and payable net within 30 days from the date of the invoice. From the due date default interest in the amount of 9 percentage points above the respective base interest rate p. a. shall accrue. We reserve all rights to claim further damages for delay.

3.5 If the Customer's business shall be operated beyond the ordinary course of business which shall include, without limitation, acts of seizure, delayed payments or insolvency proceedings that have been petitioned in accordance with the German Insolvency Act, then we shall have the right to declare all our claims arising from the business relationship as immediately due and payable.

3.6 The Customer shall be entitled to offset only insofar as the Customer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The Customer is entitled to claim rights to retain only to the extent such rights are based on the same transaction.

**4 Delivery**

4.1 Unless otherwise agreed in writing, we deliver the goods ex works (EXW Incoterms 2020). The Customer is responsible for the transport of the goods from our warehouse.

4.2 In the event that we agree in text form to a delivery to the Customer, the delivery shall be "Free on Board" (FOB Incoterms 2020) to the ship at a port specified in the order conformation.

4.3 Delivery is conditioned upon timely and proper performance of all cooperation duties of the Customer. In case of default in acceptance or other breach of obligations to cooperate by the

Customer we are entitled to claim any resulting damages including but not limited to additional expenses, if any. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the Customer at the time of such default in acceptance or breach of obligations to cooperate.

4.4 Our delivery obligation shall always be subject to timely and orderly receipt of the goods from our own suppliers unless we are responsible for the incorrect or delayed delivery from our suppliers.

4.5 We shall have the right to reasonable delivery in instalments if these are in the Customer's interest in accordance with the purpose of the contract and the Customer does not incur any significant additional expense.

4.6 Any inability to deliver as a result of circumstances beyond our control or other unforeseen incidents outside our responsibility (force majeure) including, without limitation, strike, pandemic, lock out, acts of public authorities, export restrictions, subsequent cease of export or import opportunities and our reservation of timely supply from our own supplies in accordance with Section 4.4 above shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed time for delivery and unloading. If our performance of the agreement has become permanently impossible as a result of such incidents, we and the Customer shall also be entitled to withdraw from the contract which shall not result in any compensation claims of the Customer.

4.7 Unless otherwise expressly agreed in writing, any indicated time of delivery or unloading shall be non-binding. If an agreed time of delivery is exceeded and there is no incident referred to in Section 4.6 above, then the Customer must specify to us a reasonable cure period. If we shall fail to meet such deadline also, then the Customer shall have the right to withdraw from the contract.

**5 Warranty; Duty to Inspection and Objection**

5.1 Precondition for any warranty claim of the Customer is the Customer's full compliance with all requirements regarding inspection and objection established by Section 377 of the German Commercial Code (HGB). Upon delivery the Customer shall especially immediately

- (i) check quantities, weight and packaging,
- (ii) conduct a quality check representatively on a spot check basis and, for such

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purpose, open the packaging (cartons, bags, tins, foils etc.) and check the shape of the goods and

(iii) record any objections thereto.

5.2 In the event of an objection to a hidden defect which, despite a first inspection in accordance with Section 5.1 above, has remained undiscovered, the objection must be raised immediately after the defect has been discovered.

5.3 In case of a notice of a defect the Customer shall inform us immediately. The notice must clearly specify the defect and shall be delivered to us in writing or by email.

5.4 In the event of a legitimate and timely notice of defect in accordance with the provisions above, Customer must provide us the opportunity to rectify the defect within reasonable time, which, at our choice, may be through elimination of the defect, delivery of goods that are free from defects or production of new work.

5.5 If rectification in the end fails, or if such rectification cannot be reasonably expected from us to be done or from Customer to be accepted, or if rectification is associated with disproportionate costs, Customer may rescind the contract or reduce the agreed price without prejudice to claims for damages that Customer may otherwise have.

5.6 Warranty claims shall be time-barred after 12 months of the transfer of risk.

5.7 Above provisions shall not imply a reversal of the burden of proof to the disadvantage of Customer.

## **6 Liability**

6.1 Notwithstanding applicable provisions of law, our liability is subject to the following disclaimers and qualifications:

6.1.1 We shall be liable for willful misconduct or gross negligence. For simple negligence we shall be liable only in case of violation of an obligation which is an essential prerequisite for orderly performance of the contract and on the due performance of which the counterpart can reasonably rely (so-called „key obligations“). Apart therefrom, we do not assume any liability for losses of any kind, irrespective of the legal basis, including any pre-contractual liability.

6.1.2 If we shall be liable for simple negligence according to Section 6.1.1 above, our liability shall be limited to losses which we could have reasonably foreseen based on the situation known to us upon conclusion of the agreement.

6.1.3 The above liability provisions do not apply if we have issued a guarantee for the characteristics of a product or for

damages that are to be compensated pursuant to the Product Liability Act or for losses/damages regarding life, physical integrity or health or for remedies based on applicable laws.

6.1.4 The above disclaimers apply also to the benefit of our employees, agents and other third parties we have retained for the execution of the agreement.

## **7 Retention of title**

7.1 We retain title to the goods until receipt of all payments in full. In case of breach of contract by the Customer including, without limitation, default in payment, we are entitled to take possession of the goods.

7.2 The Customer shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.

7.3 As long as the purchase price has not been completely paid, the Customer shall immediately inform us in writing if the goods become subject to rights of third parties or to other encumbrances.

7.4 The Customer may resell goods subject to the above retention of title only in the course of his regular business. The authority granted hereunder shall cease in the cases referred to in Section 3.5 above. Customer hereby assigns all claims arising out of resales, whether the goods have been processed or not, to us. Notwithstanding our right to claim direct payment, the Customer shall be entitled to receive the payment on the assigned claims. To this end, we agree to not demand payment on the assigned claims to the extent the Customer complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.

7.5 The Customer's right to process the goods delivered shall also be subject to the limitations set out in Section 7.4 above. The Customer shall not acquire title to the fully or partly processed goods; the processing shall be free of charge for our benefit as manufacturer in the sense of Section 950 of the German Civil Code (BGB). If we lose, for whatever reason, our rights under the retention of title, then it is hereby agreed between us and the Customer that we shall acquire title upon processing of the goods and the Customer shall remain custodian of the goods which shall be free of charge.

7.6 If the goods in which we have retained title shall be inseparably assembled or mixed with goods that are third party property, then we shall acquire co-title in the new goods or the mixed stock.

The proportion of title shall follow from the proportion of the invoice value of the goods delivered by us under retention of title and the invoice value of the other goods.

7.7 Insofar as the above securities exceed the secured claim by more than 10 %, we are obliged, upon our choice, to release such securities upon the Customer's written request.

## **8 Dispute Resolution**

8.1 Any dispute arising under or in connection with the present contract or with respect to its validity shall finally be settled by the Court of Arbitration of the Hamburg Chamber of Commerce in accordance with its rules of arbitration in force at the time of arbitration of the to the exclusion of the ordinary courts of law.

8.2 The number of arbitrators is three. The language of the arbitration proceedings shall be English. Documents introduced as evidence may be in the English and German language.

## **9 Final Provisions**

9.1 The Customer may not assign any claims arising from transactions with us without our written approval.

9.2 This GTC and all contractual relationships between us and the Customer shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods - CISG).

9.3 Place of performance in connection with this contract shall be Hamburg (Germany).

9.4 The invalidity of any provision of these General Terms and Conditions of Sale shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.

General Terms and Conditions of Sale - November 2022

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