

General Terms and Conditions of Sale and Delivery for Märkisches Werk GmbH, Halver

1 General remarks/Area of validity

All deliveries, services and offers of Märkisches Werk GmbH, Halver (hereinafter referred to as "MWH") are exclusively on the basis of these General Terms and Conditions of Sale and Delivery. MWH's contractual partner's (hereinafter referred to as "orderer") conditions opposing or diverging from these General Terms and Conditions of Sale and Delivery shall not be acknowledged, unless MWH expressly agreed to the validity of the same in writing. These General Terms and Conditions of Sale and Delivery also apply if MWH carries out the delivery without reservation to the orderer despite the knowledge of opposing or diverging conditions. Our Terms and Conditions of Sale also apply to all future transactions with the orderer, even if they are not separately agreed again.

2 Offer/Contents of the Agreement

- 2.1 As a rule MWH's offers are free and non-binding, unless they are expressly labelled as binding or unless they include a specific acceptance period. For the scope of MWH's delivery obligations the order confirmation or the offer are significant. Verbal and other agreements by telephone shall only take effect with their written confirmation.
- 2.2 The documents, sketches, weights and dimensions, samples etc. included in the offer are only approximate details and shall not be considered as quality features. MWH is entitled to diverge from the descriptions in the offer if these divergences are not of a fundamental or significant kind and if they do not affect the contractual purpose.
- 2.3 MWH reserves the property right and copyright to all illustrations, sketches, calculations and other documents. The orderer may only make the same available to third parties subject to MWH's prior written consent.
- 2.4 If MWH manufactures parts according to customer sketches, the sketches drafted by MWH and authorised by the orderer are significant. Divergences from the authorised sketches must be agreed separately and any additional expenses must be refunded.

3 Passing of risk/Packaging

- 3.1 The risk shall be passed to the orderer at the latest with the dispatch of the goods, even if partial deliveries have been agreed.
- 3.2 Deliveries are "ex factory". MWH shall only insure the goods against insurable risks at the orderer's expenses upon the orderer's express request.
- 3.3 According to the provisions of the Packaging Ordinance transport packaging and all other packaging materials will not be taken back; pallets shall be excluded. The orderer is obliged to ensure the disposal of the packaging materials at his own expenses.

4 Delivery/Delay

- 4.1 Delivery dates and periods are only considered binding, if they have been expressly confirmed in writing in the offer. MWH is not bound to the delivery date or delivery period, if the orderer does not timely fulfil his obligations (payments of instalments, provision of required documents etc.). The plea for non-fulfilment of the Agreement shall be reserved.
- 4.2 Delivery periods commence at the earliest on the day, on which the Agreement has been concluded in writing.
- 4.3 In the event of subsequent changes, which the orderer desires, MWH shall be released from the compliance with the delivery date or delivery period.
- 4.4 MWH is not liable for the impossibility of the delivery or for delivery delays, if these are due to force majeure or other events, which were not foreseeable at the time of the conclusion of the Agreement (e.g. breakdowns of all kinds, difficulties regarding the acquisition of materials or energy, transport delays). In these events the agreed delivery date or delivery period shall be extended according to the duration of the delivery impediments.
- 4.5 If the orderer's acceptance is delayed or if the orderer breaches other cooperation obligations, MWH is entitled to demand compensation for the damages incurred including any additional expenses. Furthermore, MWH is entitled to stipulate for the orderer an adequate period of acceptance and after its fruitless expiry to withdraw from the Agreement and to demand compensation for the damages instead of the service.

5 Warranty/Material defects

- 5.1 MWH is not liable for damages due to improper handling, wear and tear, storage or other actions on the part of the orderer or third parties.
- 5.2 The legal warranty rights shall come under the statute of limitations in one year from the delivery or, if an acceptance is required, from the acceptance. This does not constitute a guarantee of durability.
- 5.3 The orderer is obliged to fulfil his obligation to inspect and to give notice of defects according to §§ 377 ff. HGB (Commercial Code) even in the event of resale of the goods.

6 Prices/Payment conditions

- 6.1 Unless stated otherwise in the order confirmation the prices stated are always "ex factory" and exclusive of packaging; the packaging shall be invoiced separately.
- 6.2 The prices stated are net; the currently legally applicable amount of Value Added Tax shall be added on.
- 6.3 MWH may invoice the orderer for any additional expenses incurred due to the orderer's subsequently desired changes.
- 6.4 All invoices are due according to the agreed payment conditions. Early payment discounts only apply if expressly agreed in a written confirmation on the part of MWH.
- 6.5 The offsetting with the orderer's counter-claims or the retention of payments due to such claims is only permissible, if the counter-claims are undisputed or legally recognised.

7 Retention of titles

- 7.1 MWH reserves the property right to all delivered parts to the receipt of all payments from the Delivery Agreement. In the event of breaches of the Agreement, in particular in the event of payment delays, MWH is entitled to take back the purchase object.
- 7.2 The orderer is obliged to treat carefully the delivered parts and for the duration of the period subject to the retention of titles at his own expenses to insure the same against any form of losses to the reinstatement value.
- 7.3 The orderer must also bear the costs for maintenance and inspection works for the duration of the period subject to the retention of titles even if MWH carries out the same.
- 7.4 In the event of pledges or other interventions on the part of third parties the orderer must inform MWH immediately in writing so that MWH may file for third-party motions to vacate. If the third party is not able to bear the judicial and extra-judicial costs for such a claim the orderer shall be liable for the same.
- 7.5 If the delivered goods are inextricably mixed or combined with objects that do not belong to MWH, MWH shall acquire the joint property right to the new combined object according to the proportional value of the delivered goods (amount of the final invoice including Value Added Tax) related to the other object or objects at the time of the mixing or combination. The orderer shall keep safe the resulting sole or joint property right for MWH.

8 Liability for compensation of damages due to culpability

- 8.1 MWH's liability for the compensation of damages, no matter for which legal reasons, is stipulated according to Cl. 4 and for the remainder according to the legal provisions. If the liability is due to culpability, it shall be limited according to the provisions of this Clause 8. MWH's unlimited liability for compensation of damages shall be according to the legal provisions if MWH is responsible for a breach of obligations due to intention or gross negligence. If the breach of obligations on the part of MWH is due to ordinary negligence and an essential contractual obligation has been culpably breached, the liability for compensation of damages shall be limited to the foreseeable damages as is typical in comparable cases. For the remainder, the liability shall be excluded.
- 8.2 The liability according to the provisions of the Produkthaftungsgesetz (Product Liability Law) shall remain unaffected thereby. Also, the liability due to injuries to life, body and health shall remain unaffected thereby.

9 Provision of services

- 9.1 In addition to the delivery of goods MWH also offers additional services, in particular maintenance works and services (e.g. temperature measurements, calculations etc.). These Conditions apply to the provisions of these services.
- 9.2 MWH shall notify the orderer of the completion of maintenance works. The dispatch of an invoice shall be considered as such a notification. Any acceptance possibly required shall be at the latest within one week after the notification.
- 9.3 The obligation to inspect and to give notice of defects according to §§ 377 ff. HGB (Commercial Code) applies accordingly.

10 Miscellaneous/Final provisions

- 10.1 At MWH's option the place of jurisdiction for all disputes from the business relationship between MWH and the orderer shall be Halver or the orderer's registered office. For claims against MWH Halver shall be the exclusive place of jurisdiction. Compelling legal provisions regarding exclusive places of jurisdiction shall remain unaffected by this provision.
- 10.2 The place of fulfilment is Halver.
- 10.3 The relationships between MWH and the orderer are subject exclusively to the German Law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). The Agreement of the United Nations regarding the Contracts for the International Sale of Goods shall not apply.
- 10.4 Changes of this Agreement always require an instrument in written. This previous sentence also applies for the waiver of the requirement of an instrument in written.
- 10.5 If contractual provisions or these General Terms and Conditions of Sale and Delivery are or become legally invalid, the validity of the remaining provisions shall not be affected thereby. The parties shall endeavour to replace the legally invalid provision with a legally valid provision, which shall achieve or nearly achieve the economic purpose of the Agreement. The same applies in the event of regulatory gaps.