



Terms and Conditions

Meier-Brakenberg GmbH & Co. KG

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Legal form: Limited partnership
Register court: Lemgo HRA 4644
Pers. Liable partner: Meier-Brakenberg Verwaltungs GmbH
Register court: Lemgo HRB 6524
Managing director: Wolfgang Meier, Marc Piechnik
Headquarters: Brakenberg 29 • 32699 Extertal, Germany

State: 01. February 2008

§ 1 Scope

(1) These Terms and Conditions apply exclusively towards entrepreneurs, corporate body of public law or public law special assets in the meaning of § 310, clause 1 BGB (German civil code). We only accept any opposing or deviating conditions or the Purchaser with prior formal and written approval.

(2) These Terms and Conditions do also apply for any future business with the Purchaser, hereinafter referred to as „the Purchaser“ to the extend that activities are about legal transaction of similar kind.

§ 2 Offer and Conclusion of Contract

Provided that an order can be esteemed as an offer acc. to § 145 BGB (German civil law), we may accept them within two weeks.

§ 3 Ceded Documents

We reserve the right of property and copy right for any documents ceded to the Purchaser in connection with placing orders, e.g. calculations, drawings, etc. These documents shall not be disclosed to any third party unless we grant our prior written approval to the Purchaser. In case we do not accept the offer of the Purchaser within the term as described in § 2 the Purchaser has to return any such documents immediately.

§ 4 Prices and Payment

(1) Unless otherwise formally agreed in writing, our prices are ex factory, excluding packing, excluding applicable VAT. Expenses for packing are charged for separately.

(2) Payment of the purchase price has to be transmitted to the stated bank accounts. Deduction of discounts is only allowed after prior written agreement.

(3) Unless agreed otherwise, the purchase price has to be paid within 7 days after delivery. Interests for delay shall be calculated at an amount of 9 % above the applicable base rate annually. The latest base rate is indicated on: www.bundesbank.de. We reserve the right of enforcing any higher damages caused by delay.

(4) Unless any other fixed price has been agreed, we reserve the right of reasonable alterations in prices due to changed costs for wages, materials or costs for deliveries carried out 3 months or more after conclusion of contract.

§ 5 Set-off and Right of Retention

The Purchaser is entitled to set-off in case of legally valid determination or indisputability of his counter claims. The Purchaser is only entitled to exert his right of retention provided that his counter claim is based on the same contractual relationship.

§ 6 Delivery Period

(1) The delivery period as stated by us implies a timely and proper fulfilment of the Purchaser's duties. We reserve the right of exception of a non-fulfilled contract.

(2) In case the Purchaser delays acceptance or culpably infringes any other obligation to co-operate, Meier-Brakenberg is entitled to claim for compensation of the damages incl. possible additional expenditures. We reserve the right to assert further claims. Provided that the above is postulated, the risk of accidental perishing or accidental impairment of the purchased goods descends to the Purchaser at the time of delaying acceptance or debtor's default.

§ 7 Passing of Risk during Shipment

Once the Purchaser asks for delivery of the goods, the risk of accidental perishing or accidental impairment of the purchased goods passes to the Purchaser at the time of dispatch, the latest when leaving the factory/warehouse, independent whether the goods are dispatched from the place of execution or who bears the cost of transportation.

§ 8 Title Retention

(1) We reserve the right of retention of the supplied goods until full payment of any accounts receivable arising from the supply contract. This applies also for any future supplies even without expressive pleading. We are entitled to redeem the goods in case of the Purchaser acting contrary to the contract.

(2) The Purchaser is obliged to treat the goods with care before the transfer of ownership. In particular the Purchaser is obliged to insure the goods at replacement value against theft, fire, and water damage at his own expense. The Purchaser has to carry out any necessary repair or maintenance work in due time. Until transfer of ownership the Purchaser is obliged to immediately announce distraint or any other third party intervention. The Purchase is liable for any possible default caused by any third party not being able to compensate for expenses in or outside court acc. to § 771 ZPO.

(3) The Purchaser is entitled to sell goods covered by proprietary rights in the course of common business. The Purchaser herewith cedes any accounts receivable of any third party arising from the sales of the goods covered by proprietary right to the total amount as agreed with us (including VAT). This cession is independent of the fact whether the goods are sold before or after manufacture. The Purchaser retains the right of collection of accounts receivable even after ceding claims. Our right to collect accounts receivable remain unaffected. However, we shall not collect accounts receivable provided that the Purchaser fulfils his obligation to pay after collection of revenues, without delays, and in particular as long as there are no pending or open insolvency proceedings or suspension of payments. Should any of the above mentioned situations occur the Purchaser is obliged to disclose the address of the third party for the purpose of collection of accounts receivable by Meier-Brakenberg.

(4) Any work, rework or changes to the goods made by the Purchaser must be on our behalf and order. In this case the expectant right of the goods of the Purchaser continues to exist for the reworked goods. In case the goods are subject to rework with goods not belonging to us joint ownership is established to an amount of the objective value of our goods at the time of rework. The same applies in case of mixing. In case the goods of the Purchaser can be considered as the main part after mixing it is agreed that the Purchaser cedes joint ownership to us and safekeeps the arising property or joint ownership for us. To ensure our accounts receivable the Purchaser cedes also any such accounts receivable in connection with goods covered by proprietary rights arising from real estate of any third party. We do hereby accept this cession.

§ 9 Notification of Defects and Regress/ Producers' Regress

(1) And rights of warranty of the Purchaser postulate his compliance with § 377 HGB, the obligation to inspect and notify defects properly.

(2) Warranty rights become time-barred after 12 months after delivery of our goods at the Purchaser. Warranty rights are excluded for used goods. Above regulations do not apply provided that the law acc. to § 438 clause 1 no. 2 BGB (Buildings and objects for buildings), § 479 clause 1 BGB (right of recourse) and § 634a clause 1 BGB (construction defects) do stipulate longer terms. Approval for possible return of goods is needed.

(3) Should delivered goods have a defect despite all care that existed at the time of risk transfer and subject to timely notice of defects, we shall repair or substitute the goods at our option. We always have to be granted the right of rectification within adequate term. Recourse claims remain unaffected from the above regulation.

(4) If supplementary performance fails, the Purchaser may reduce the payment.

(5) Warranty does not cover insignificant deviations from the agreed quality, minor impairment of usability, natural wear and tear or for damages caused after risk transfer due to faulty or negligent handling, excessive strain, unsuitable equipment, defective construction works, unsuitable building grounds or due to special external influences which are not contents of this Agreement. There are no warranty rights for any improper

repair or modifications or consequences resulting thereof carried out by the Purchaser or any third party.

(6) Claims by the Purchaser for expenditure caused by the supplementary performance, in particular transport, travel, labour and material costs, are excluded, unless the expenses increase because the goods delivered by us are transported to a place other than the Purchaser's place of business, unless the transfer is in accordance with its intended use.

(7) The Purchaser's right of recourse against us exists only in so far as the Purchaser has made no agreements exceeding the mandatory statutory warranty claims with his customers. Further, clause 6 applies for the scope of the right of recourse of the Purchaser against the supplier.

§ 10 Warranty

Unless otherwise agreed in writing, Meier-Brakenberg does not grant any warranty commitments or assurances in legal terms outside existing legal warranty regulations.

§ 11 Terms and Conditions of Purchase

(1) Any orders issued by Meier-Brakenberg with the Contractor are based on the below terms and conditions.

(2) Meier-Brakenberg does not accept any opposing or deviating terms and conditions of the Contractor unless Meier-Brakenberg expressly agreed to accept their validity in writing.

(3) With the start of order execution the Contractor fully accepts the below Terms and Conditions of Purchase.

(4) The Terms and Conditions of Purchase also apply in the event that Meier-Brakenberg refers to a document that contains or refers to any terms and conditions of business of the Contractor or any third party. Acceptance of terms and conditions of business of the Contractor or any third party is not related or connected therewith.

(5) Any agreements made between Meier-Brakenberg and the Contractor for the purpose of executing an order are set forth in writing in this contract.

(6) Orders placed by Meier-Brakenberg are based on these Terms and Conditions of Purchase and they are exclusively addressed to entrepreneurs, not to consumers.

(7) The Contractor is obliged to confirm orders placed by Meier-Brakenberg in writing within a period of two working days specifying binding lead times and terms of payment. Provided that such confirmation does not follow within this period Meier-Brakenberg shall be entitled to cancel orders at any time free of charge.

(8) A contract shall be deemed to be concluded only provided that agreement is reached on significant contractual content, in particular with respect to lead times, quality features, quantities and terms of payment.

(9) An existing contract can be cancelled until start of production at any time free of charge. There is no right to claim for compensation.

(10) Cancellation of an existing contract can also be made during production. Possible claims for compensation are limited to costs for materials and labour incurred by the time of cancellation.

§ 12 Liability Limitation

Claims for compensation, irrespective their legal reasons, in particular consequential damage as well as compensation for loss of profit, are excluded unless the damage is caused by intent or gross negligence or subject to compulsory statutory liability. This Liability Limitation shall also not apply in the event of injury to life, body or health.

§ 13 Miscellaneous

(1) This Agreement and the legal relations of the parties are subject to the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention (CISG).

(2) Place of performance is the registered office of Meier-Brakenberg (as listed above), the exclusive place of jurisdiction for all disputes arising from this Agreement is:

Amtsgericht Lemgo
Am Lindenhaus 2
32657 Lemgo
Germany

unless otherwise stated in the order confirmation.

(3) All agreements reached between the parties for the purpose of executing this contract are set forth in this Agreement

(4) If any provision of this Agreement be or become invalid or contain a gap, the other provisions shall remain unaffected. The parties are obliged to replace the invalid provision with a legally valid provision which most closely approximates the economic purpose of the invalid provision or fills this gap.

(5) This English version of Meier-Brakenberg's General Conditions of Sale (Allgemeine Geschäftsbedingungen) is purely for the sake of convenience and not authoritative. All agreements shall be determined solely on the basis of the German language version.

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