

General Delivery and Payment Terms and Conditions
of MARTOR KG, Lindgesfeld 28, 42653 Solingen, Germany
As of: 08. October 2018

I. Scope of Application

1. All deliveries and services (collectively: deliveries) by MARTOR KG (hereinafter referred to as "Supplier") shall be made consistently in accordance with the following printed terms and conditions. Contrary terms and conditions are only binding if they have been acknowledged in writing by the Supplier.
2. By accepting these general terms and conditions without objection, the purchaser agrees to their exclusive application to the respective agreed delivery. Differing agreements that are made for a particular delivery must be made in writing. The applicability of the remaining provisions shall not be affected thereby.
3. The applicability of contrary general terms and conditions of the purchaser is also hereby expressly objected to in the event such terms and conditions are transmitted to the Supplier in commercial letters of confirmation or in any other form, as well as in the event that the Supplier undertakes delivery without reservation and with knowledge of such terms and conditions.

II. Offer and Order; Offer Documentation

1. Offers from the Supplier are not binding. The purchaser's order constitutes a binding offer.
2. Offers are not considered accepted until they have been confirmed in writing by the Supplier. If delivery is made immediately ex warehouse without an order confirmation, the invoice shall also serve as the order confirmation.
3. The type and scope of deliveries are determined in accordance with the Supplier's written order confirmation. Entering into oral contracts or other oral agreements becomes binding once there is written confirmation from the Supplier. The same applies to any oral side agreements.
4. The Supplier assumes only warranties and guarantees procurement risks if these are designated as such. Otherwise descriptions of the shipment solely constitute information about the product.
5. Pictures, colors, forms, and presentations that are contained in catalogs, price lists, trade show appearances, in advertising media or other print materials, constitute approximations customary in the industry and are not binding. The Supplier reserves the right to make technical or design changes.
6. For orders for special production, indications regarding design, coloring, dimensions and modifications require, without exception, written confirmation from the Supplier. For special productions, we reserve the right to make an excess or short delivery of up to 10% of the quantity ordered.
7. Order cancellations must be made in writing. In the event of a cancellation, the Supplier may demand the agreed upon remuneration - less saved expenses - taking into account what it earned or failed to earn in bad faith by using its workers for other purposes.
8. The Supplier reserves the right to property and copyright rights in pictures, drawings, calculations and other documentation. They may only be made accessible to third parties upon the prior consent of the Supplier. Upon completion of the order, or in the event the order is not placed with the Supplier, the documentation shall immediately be returned to it upon request.

III. Prices

1. The agreed upon prices are binding.
2. Prices are ex works in EUROS (EXW Solingen Incoterms® 2010) plus applicable value added tax. Additional costs for transport packaging, postage, freight, insurance, other shipping expenses, as well as costs for any returns shall be borne by the customer and paid separately by it.
3. If fixed prices are not expressly agreed to for individual deliveries, the applicable prices according to the MARTOR price list as of the respective date of shipment shall be charged.
4. We reserve the right to set a minimum order value depending on country or region or to charge a handling fee for small orders.
5. For deliveries within Germany with a net purchase amount below 500 Euros, a freight cost portion of 4.50 Euros will be charged. Deliveries with a higher net purchase amount are free of charge.
6. The following applies to deliveries outside of Germany:
 - a. For deliveries within Europe, DAP German border Incoterms® 2010 shall apply to a net order amount starting at 500 Euros.
 - b. For deliveries outside of Europe, FCA Dusseldorf Airport Incoterms® 2010 shall apply to a net order amount starting at 1000 Euros.
7. Insofar as in the time between the order and the calling off of performance higher wage, material or distribution costs are incurred by the Supplier, the Supplier reserves the right to make a reasonable price modification. The applicable value added tax, which is not included in the prices, shall be listed separately on the invoice in the amount legally applicable on the date the invoice is issued. If the modified price is 20% or more above the agreed upon price, the purchaser shall have the right to withdraw from the contract.

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IV. Payment Terms

1. To the extent no other payment date is set forth in the order confirmation or other written agreements, invoices are due for payment on the date of receipt, without discount or other deductions, to the account indicated on the invoice.
2. If the purchaser becomes in default of payment, the Supplier shall have the right to demand interest for late payment in the amount of 8 percentage points above the base interest rate of the German Civil Code per annum. If the Supplier is able to prove higher damages due to the default, it shall have the right to assert these. The purchaser, however, shall have the right to prove that the Supplier as a consequence of the payment default incurred no damages or substantially lower damages.
3. The Supplier shall have the right to apply payments to interest and its own warning, third-party collection and attorney costs which have been incurred. Payments may be applied to the oldest claim even if the payment is otherwise designated by the purchaser. Notations indicating otherwise, e.g. to proofs of payment, are invalid.
4. The purchaser agrees to bear the costs of the Supplier's warning expenses up to 10.00 Euros per warning plus applicable value added tax, the warning costs of a creditor protection association and the costs of intervening attorneys, provided they are necessary and appropriate to purpose.
5. The Supplier is generally entitled to deliver goods only upon prepayment.
6. An offset by the purchaser against any counterclaims is only possible if these counterclaims have been acknowledged in writing by the Supplier, are undisputed or have been legally established. The same applies with respect to any right of retention of the purchaser.

V. Term of Delivery; Delay

1. Terms of delivery are only approximate, provided they have not been expressly confirmed as binding in writing. Terms apply from the place of delivery. For deliveries ex works, the delivery terms and schedules are adhered to if by the date of their expiration the goods have left the Supplier's factory. They are also considered adhered to upon notification that they are ready for shipment if the goods cannot be dispatched for no fault of the Supplier or carrier.
2. Compliance with terms of delivery presupposes the fulfillment of contractual duties by the purchaser as well as the clarification of all technical and commercial questions between the parties to the contract. If the purchaser must obtain documentation, approvals and releases or must make a down payment, the term of delivery does not begin until these obligations have been satisfied.
3. A reasonable extension of the term of delivery shall likewise occur when events occur that are not within the control of the Supplier, such as strikes, labor disputes, lockouts and the like, regardless of whether these occur directly at the Supplier or its vendor. Compliance with the terms of delivery is also subject to the Supplier receiving correct and timely delivery. The Supplier shall provide notification of delays that are becoming apparent as soon as possible.
4. To the extent not otherwise agreed, there exists the right to undertake partial performance, provided this is practicable for the purchaser. To such extent, the purchaser is required to accept.
5. If the Supplier is behind schedule, the purchaser may - provided it credibly substantiates that it has incurred damage as a result thereof - demand compensatory damages for each elapsed week of delay in the amount of 0.5%, a total, however, of 3% of the price for the portion of the delivery which due to the delay cannot be usefully put into operation. Compensatory damages shall be set at a higher or lower amount if the purchaser proves a higher, or the Supplier a lower, amount of damages. In addition, the purchaser shall be entitled to withdraw, provided it gives the Supplier a reasonable deadline, which was unsuccessful, in which to perform after the due date.
6. If dispatch or delivery is delayed by more than a month upon request by the purchaser after notification of readiness for shipment, the Supplier may charge the purchaser for each additional new month a storage fee in the amount of 0.5% of the price of the items to be delivered, but not to exceed a total of 5%. The parties may prove the existence of higher or lower storage costs.

VI. Assumption of Risk

1. Risk passes, including when delivery is freight paid, from the MARTOR warehouse loading dock edge to the purchaser if the goods have been properly dispatched or picked up. Upon request of the purchaser and at its own cost, the Supplier shall obtain transport insurance for the shipment.
2. Contrary to Section 1, the price risk passes already to the purchaser on the date the shipment is ready if performance is delayed due to circumstances attributable to the purchaser.

VII. Retention of Title

1. The items subject to delivery (retained goods) shall remain the property of the Supplier until full payment of all claims it has against the purchaser arising from the business relationship. This also applies if the price for certain deliveries of goods designated by the purchaser have been paid. In the case of a running account, the ownership retained is deemed as collateral for the Supplier's balance claim.
2. The purchaser is permitted to dispose of the goods in the ordinary course of business (not, for example, through a transfer or pledge of security, en bloc sale or bargain sales) and only as long as it is not in default with respect to its contractual obligations.
3. In the event of a disposition, the purchaser, for security purposes, now hereby irrevocably assigns to the Supplier the claims to which it is entitled arising from the disposition, or arising from other legal grounds, in the amount of the value of the retained goods, as well as a claim to surrender of the goods on the bases of the retention of title. In addition, insurance claims arising from damage, loss or theft are also assigned. The Supplier hereby accepts the assignment.
4. In the case of liens or other interventions by third parties, the purchaser shall immediately notify the Supplier in writing so that the Supplier may file a complaint pursuant to § 771 ZPO [Rules of Civil Procedure] (third-party proceedings). To the extent the third party is not able to reimburse court and out-of-court costs, the purchaser shall be liable to the Supplier for the resulting shortfall.
5. In the event of default or if the conditions for accelerated maturity exist, the Supplier shall have the right to revoke the authorization to collect receivables and disclose their assignment.
6. The Supplier agrees to release the above referenced collateral - at its discretion - if the value thereof exceeds the receivable to be secured by 10% on a sustained basis.
7. In the event of conduct by the Supplier that is in breach of the contract, in particular in the event of payment default, the Supplier shall have the right to recover the goods. The Supplier, to such extent, shall have the right to enter the respective premises. The purchaser expressly guarantees this. In the event of a recovery, the Supplier may issue credits in the amount of the value of the goods in the intervening time (obsolescence) on the entire receivables claim.
8. The purchaser agrees to provide the Supplier with the information required for the Supplier to assert its rights and to hand over the documentation necessary to do so.
9. The Supplier shall have the right to insure the retained goods at the expense of the purchaser against theft, breakage, fire, water and other damage, provided the purchaser does not show that it has taken out such insurance.

VIII. Notice of Defects and Warranty

1. Warranty claims by the purchaser require that it has duly complied with its inspection obligation and the requirement to give notice of defects in accordance with § 377 HGB [German Commercial Code].
2. The Supplier warrants that performance will be in accordance with the expressly agreed product specifications. To the extent no product specifications are agreed to, the Supplier guarantees that suitability of the performance to the contractually required and/or customary use typical for deliveries of such type and which the purchaser can expect for deliveries of such type.

3. The Supplier shall not be liable for defects that only negligibly diminish the value or usefulness of the performance. This is the case, in particular, if an error disappears itself or can be cured by the purchaser with only slight effort.
4. If the purchaser or third party undertakes modifications or repair work without the prior written approval of the Supplier, the Supplier shall not be liable for any negative consequences resulting therefrom.
5. The Supplier shall also not be liable for such defects that arise through inappropriate or improper use of the goods, or through other outside influences which are not provided for by the contract.
6. The Supplier shall be liable for defects in the goods that can be proven to have existed as of the point in time risk passed, subject to timely notice of defects and notwithstanding Section X of these provisions, in such manner that performance may be improved or substituted at its discretion. The purchaser shall grant the time and opportunity necessary for the undertaking of all substitute deliveries and improvements which appear necessary; otherwise, the Supplier shall be released from liability for the resulting consequences.
7. Of the costs that arise from improvements or substitute deliveries, the Supplier shall bear, in the event the complaint proves to be justified, the costs of replacement product including transport and additional infrastructure, work and material costs. To the extent the preceding expenses increase because the goods are subsequently brought to a place other than the place of business of the purchaser, these shall be borne by the purchaser unless the transfer complies with their indicated use.
8. An improvement is successful if the mistake was cured or if the Supplier has demonstrated practicable options to minimize the effects of the mistake and, consequently, to limit it to a level that comports with the purpose of use.
9. If an improvement ultimately fails, the purchaser, at its discretion, may reduce remuneration or withdraw from the contract. The assertion of any compensatory damages in accordance with Section X of these provisions as well as the assertion of claims for reimbursement of expenses shall not be affected thereby.
10. All claims of the purchaser due to defects shall be subject in all cases from the date of dispatch of the goods to a 12 month statute of limitations. This does not affect the statute of limitations for defects that result in injury to body, life and health or such defects that the Supplier concealed in bad faith or guaranteed would not exist.
11. Further contractual or non-contractual claims by the purchaser shall be excluded notwithstanding Section X of these provisions.

IX. Intellectual Property Rights and Copyrights; Legal Defects

1. To the extent not otherwise agreed, the Supplier agrees to make delivery that is not subject to the intellectual property rights or copyrights of third parties. If a third party raises legitimate claims due to the infringement of intellectual property rights by a delivery made by the Supplier and used according to the contract against the purchaser, the Supplier shall be liable to the purchaser within the time period set forth in Art. VIII. No. 10 as follows:
 - a. The Supplier shall obtain for the purchaser at its own cost the right generally to further use or modify the delivered item in a manner practicable for the purchaser such that the intellectual property right infringement no longer exists. If this is not possible at commercially reasonable conditions or in a reasonable period of time, the purchaser shall have the right to withdraw from the contract. Under the conditions

- set forth, the Supplier shall also have a right to withdraw from the contract.
- b. Moreover, the Supplier shall release the purchaser from undisputed and legally determined claims by the intellectual-property rights holders.
 - c. The duty of the Supplier to pay compensatory damages is governed by Art. X of these provisions.
2. The above referenced obligations of the Supplier only exist if
- a. The purchaser immediately informs the Supplier in writing regarding intellectual and copyright claims asserted by third parties,
 - b. The claim is not being made by a third party. If the purchaser ceases use of the shipment in order to minimize damage or for other important reasons, it shall be required to notify the third party that ceasing use is not an acknowledgment of an intellectual property right infringement.
 - c. All defense measures, including an out-of-court arrangement, are reserved to the Supplier,
 - d. The purchaser supports the Supplier to an appropriate extent in defending against the asserted claims and/or enables the creator to carry out modification measures pursuant to Section I.a.,
 - e. The legal defect is not based on an instruction from the purchaser,
 - f. The legal infringement is not caused by the purchaser having modified the delivered item in an unauthorized manner or manner inconsistent with the terms of the contract.
3. In the event of the existence of other legal defects, Art. VIII. shall apply accordingly.
4. Additional claims by the purchaser against the Supplier are excluded.

X. Liability and Statute of Limitations

1. Claims for compensatory damages arising from the contract, quasi-contractual relationships and from tortious acts that are based on the conduct of employees or agents of the Supplier are only available in the following scope:
 - a. the full amount in cases of intent
 - b. in the case of gross negligence or the absence of a specification for which the Supplier assumed a guarantee, only in the amount of foreseeable damage which typically occurs which should be prevented by the breached duty or warranty.
 - c. in the case of simple negligence only for the breach of a material contractual duty if, by such breach, the purpose of the contract is put endangered, furthermore only in the amount of foreseeable damage which typically occurs.
 - d. To the extent the Supplier in the cases set forth above is insured against the types of damage incurred, only within the framework of the insurance coverage and conditional upon compensation by the insurance. If, in the opinion of the purchaser, the foreseeable property damage risk exceeds the preceding amounts at the time of executing the contract, the Supplier, at the request of the purchaser, shall agree to additional insurance protection after separate agreement.
2. The limitation of liability under Section 1. does not apply to personal injury according to the Products Liability Act.
3. The Supplier reserves the right to reduce the claim for damages by the amount of contributory negligence on the part of the purchaser (§254 BGB).

4. For all claims against the Supplier for compensatory damages or reimbursement of expenses incurred in vain in cases of contractual or non-contractual liability, the statute of limitations is one year. This does not apply in cases of intentional and grossly negligent conduct or in the event of personal injury.
5. If the delivered item, due to the fault of the Supplier, cannot be used in accordance with the terms of the contract as a result of the failure to carry out or the faulty carrying out of suggestions or consultations occurring prior to or after execution of the contract as well as other contractual duties, Art. VIII. and IX. of these provisions shall apply to the exclusion of further claims by the purchaser.
6. Additional liability for compensatory damages other than those in the preceding sections 1 through 5 shall be excluded without regard to the legal nature of the asserted claim.

XI. Place of Performance, Venue and Governing Law

1. The place of performance for all duties arising from the contractual relationship is Solingen.
2. The sole venue for all duties and disputes arising from the contractual relationship is the Supplier's headquarters. The Supplier, however, shall have the right at its discretion to bring suit against the purchaser at the place where the purchaser's headquarters is located.
3. The laws of the Federal Republic of Germany shall apply exclusively to all contractual agreements and to the entirety of legal relationships between the Supplier and the purchaser. To the extent not otherwise provided, the U.N. Convention on the Sale of Goods shall not apply.

XII. Data Protection Clause

1. The Supplier saves and uses data shared in the processing of transactions in order to process the ongoing order in compliance with the contract. German and European data protection laws are thereby adhered to.
2. The Supplier does not provide the purchaser's data to third parties outside the Supplier's group companies with the exception of its distribution partners. Distribution partners are required to comply with data protection standards.

XIII. Severability Clause

1. The invalidity or non-practicability of individual provisions of these General Delivery and Payment Terms and Conditions or of the contract otherwise entered into with the purchaser does not affect the validity of the remaining provisions of the contract, provided taking into account the following provision performance of the contract does not constitute unreasonable hardship for a party. The same applies if, after entering into the contract, a gap arises that requires supplementation.
2. The parties shall replace the invalid or impracticable provision or gap that must be filled by a valid provision, which in terms of its legal and commercial content corresponds to the invalid or impracticable provision and the entire purpose of the contract.