
GENERAL TERMS AND CONDITIONS OF PURCHASE | *MHZ Hachtel GmbH & Co. KG (07.2016)*

I. Scope and applicable terms and conditions

1. All orders and contracts of MHZ Hachtel GmbH & Co. KG, hereinafter referred to as MHZ, vis-à-vis entrepreneurs shall be subject only to these terms and conditions, unless expressly agreed otherwise in writing. They shall also apply to all future supplies and services to be provided by the Contractor to MHZ until these terms and conditions are replaced by new terms and conditions of purchase by MHZ. Terms and conditions of the Contractor in the general terms and conditions or in the order confirmation are hereby expressly rejected. Neither the unconditional acceptance of order confirmations or deliveries, nor the unconditional payment of the Contractor's invoices, shall be deemed to be an acknowledgement of the Contractor's general terms and conditions.
2. With the first delivery or provision of the first ordered services, the Contractor acknowledges the validity of the General Terms and Conditions of Purchase of MHZ also for all subsequent orders and contracts.
3. Orders and contracts shall be binding if they are placed or concluded in writing or have been confirmed in writing.
4. Subsidiary agreements, amendments and supplements must be made in writing for their validity.
5. Possible claims for damages for delay shall be limited to the default interest at the statutory rate in accordance with § 288 (2) German Civil Code (BGB) to the exclusion of the possibility of § 288 (3) BGB.
6. All payments shall be made subject to delivery and invoice being correct. No separate agreement shall be necessary for payment by bill of exchange. We shall also be entitled to deduct a discount in the case of payment by bill of exchange.
7. We shall be entitled to offsetting rights and rights of retention to the extent provided for by law. In the event of a notice of defects, in particular, we shall be entitled to withhold due payments to a reasonable extent. If and insofar as payments have already been made for defective deliveries, MHZ shall be entitled to withhold other due payments up to the amount of these payments made.
8. Notwithstanding § 354 German Commercial Code (HGB), the Contractor shall not be entitled to assign its claims against MHZ without the prior consent of MHZ, which may not be unreasonably withheld.

II. Order/ contract

1. If the Contractor does not accept an order within 14 days of receipt, MHZ shall be entitled to revoke it. Delivery call-offs from blanket orders shall be binding if the Contractor does not object within 36 hours (Mon - Fri) of receipt at the latest. A production release period of 4 weeks and a material release period of 8 weeks shall apply for delivery call-offs, unless otherwise agreed in the skeleton agreement.
2. MHZ shall be entitled to make reasonable changes to the contractual items in terms of design, performance and delivery date, but not later than four weeks before the delivery date. In this case, the effects with regard to additional and reduced costs and to delivery dates shall be mutually agreed upon between the parties in an appropriate manner.
3. MHZ may withdraw from the order/contract up to four weeks before the delivery date if the economic or operational circumstances of the Contractor change in a way that is unreasonable for us, unless the Contractor can convincingly prove the opposite.
4. Subcontracting of the order or a part of the order to third parties (subcontractors) shall require the prior written consent of MHZ, unless this concerns only minor ancillary work. The Contractor will be liable for third parties commissioned by it even if MHZ has given its consent to the subcontracting.

III. Prices and payment

1. The agreed prices are fixed prices 'free of charge and duty paid to the delivery address'.
2. The costs for packaging, freight and transport to the specified delivery address are included in these prices.
3. In the absence of a separate agreement, payment shall be made within two weeks of receipt of the invoice with 3% discount or within four weeks net.
4. If delivery is made after receipt of the invoice, the date of delivery shall be decisive with regard to the aforementioned payment terms.

IV. Order documents and confidentiality

1. Orders / contracts and all related details shall be treated confidentially.
2. MHZ reserves ownership and copyright to sketches, drawings, information and all intellectual and material property provided to the Contractor by MHZ or produced by the Contractor according to our specifications. They shall be treated as trade secrets and may not be used other than for the agreed purpose without the consent of MHZ, in particular, they must not be disclosed to third parties. This shall not apply insofar as the information can be proven to be in the public domain. Upon request, and upon completion of the order, all documents provided by MHZ shall be returned immediately.
3. The Contractor shall neither use details of MHZ's business operations that have become known to it for its own purposes, nor disclose the same to third parties during the period of the contractual relationship and thereafter.
4. The contractual partners may advertise the business relationship between the parties only with the prior written consent of MHZ.
5. The same obligations shall be imposed in all points on sub-suppliers and/or subcontractors.

V. Retention of title - provided parts

If MHZ provides parts to the Contractor, MHZ retains the title to such parts. Processing or transformation by the Contractor shall be carried out exclusively on our behalf.

VI. Delivery dates

1. The delivery dates and delivery periods specified in the order or the delivery call-off shall be binding. The receipt of the contractual items by MHZ shall be decisive for determining compliance with the delivery dates. If the Contractor recognises that the agreed deadlines cannot be met for any reason, MHZ shall immediately be informed in writing, stating the reasons and the duration of the delay. The Contractor shall be obliged to take all necessary countermeasures at its own expense to prevent a delay and to reduce any costs associated with the delay. This will not affect any claims for late delivery.

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- If the Contractor is late delivering due to a circumstance attributable to it, MHZ shall be entitled to claim a contractual penalty amounting to 0.2% of the delivery value for each commenced calendar day of the delay, up to a maximum of 5% of the total or pro rata purchase price of the part of the order the Contractor is late delivering. Further legal claims remain reserved. The right to claim a contractual penalty due to a delay in delivery shall be deemed to have been made in good time if MHZ deducts the claimed amount from the invoice.
- The Contractor shall be obliged to compensate MHZ for all damages caused by delay, unless it can prove that the delay was beyond its control. The acceptance of a delayed delivery or service shall not constitute a waiver of claims for compensation on the part of MHZ.
- If the agreed deadlines are not met due to a circumstance attributable to the Contractor and after expiry of a reasonable grace period set by MHZ, MHZ shall be entitled - without prejudice to further legal claims - to choose, at its discretion, either to claim damages instead of performance or to procure a replacement from a third party. This shall not affect the right of withdrawal
- If the type and scope of the tests, and the test equipment and methods, have not been expressly agreed upon between the contractual partners, the Contractor shall be responsible for defining these in accordance with the state of the art in a test plan and shall inform MHZ accordingly. All test dimensions and product characteristics from the drawing and the performance specifications must be taken into account as a minimum.
- After production-ready initial samples have been approved by MHZ, the appearance, properties, material and manufacturing methods may not be changed without the written approval of MHZ.
- The approval of initial samples shall have no influence on the liability for defects in these GTCP, as the initial sample inspection can only relate to the basic suitability of the sample, not to the defect-free condition of the series products delivered later.
- During series production, all tests shall be carried out in accordance with the test plan at appropriate intervals. The test results shall be documented with a comparison of target and actual values and deviations, stored and presented at the request of MHZ. If necessary, MHZ may demand delivery of the test results together with the goods.

VII. Packaging and transport

- Even if no separate agreement has been reached regarding packaging and transport, the Contractor must ensure that quality impairments and damage to the goods are avoided through suitable packaging and transport. If MHZ has specified packaging instructions, these shall be binding in all cases.
- The Contractor shall take back empty containers and packaging if requested to do so by MHZ.
- The risk of accidental loss and accidental deterioration shall only pass to MHZ once the recipient specified in the order has acquired actual control over the delivered items.

VIII. Spare parts obligation

The Contractor shall undertake to keep the contractual items available for delivery for the purpose of supplying spare parts for the duration of the normal use of the delivered goods and to supply MHZ on request under the agreed conditions.

IX. Quality

- The processes necessary for the manufacture of the parts and the materials used for this purpose must comply with the state of the art, the applicable statutory provisions and associated regulations, any relevant approvals procedures and the rules and regulations on occupational health and safety, environmental protection and hazardous substances legislation.
- Prior to the first delivery, and after changes to drawings, the Contractor shall supply an initial sample test report based on a corresponding number of sample parts (classified by cavities, if applicable). Series production or delivery may only commence after express written approval by MHZ. If the Contractor has reservations about the nature or characteristics of the goods to be delivered demanded by MHZ, we must be notified accordingly in writing without delay.

- MHZ shall have the right to carry out an audit of the Contractor's production, to take samples and, if necessary, to carry out additional inspections. The Contractor must ensure this right even if production takes place in whole or in part at another company.
- The Contractor shall be obliged to report actual or suspected defects in delivered products to MHZ without delay.
- The delivery of goods deviating from the MHZ order/contract and from the documents submitted is not permitted. The same shall apply if changes occur in the nature, quality or performance of the goods or services to be delivered compared with the previously delivered or agreed design. In special cases, the Contractor may request written approval to the contrary from MHZ.
- Immediately after receipt of the delivery, MHZ shall carry out an identity and quantity check and inspect the delivery for obvious signs of transport damage. If a defect is discovered during this process, MHZ shall notify the Contractor accordingly without delay. MHZ shall notify the Contractor immediately of any defects not discovered in the course of this inspection as soon as they are discovered in the ordinary course of business. In this respect, the Contractor hereby waives the objection of late notification of defects.

X. Liability for defects

- The statutory provisions on liability for material defects shall apply without restriction, unless otherwise stipulated below.
- The Contractor shall guarantee compliance with the agreed quality of its supplies and services, in particular with the parameters stated in the specifications. Any complaint about a defect shall be deemed to be a request for immediate supplementary performance. If subsequent performance is impossible for the Contractor, or if the Contractor does not provide the subsequent performance within a reasonable period of time set by MHZ, MHZ shall be entitled to remedy the defects itself, or to have them remedied by a third party, without further consultation and at the Contractor's expense. This shall only apply without advance notice, however, if the defect is causing operational disruptions or if the risk of an unusual increase in damage can only be averted by taking immediate action.

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3. The Contractor/supplier shall guarantee that all items and services delivered by it at the time of conclusion of the contract comply with the parameters stated in the MHZ specifications, the latest state of the art, the relevant legal regulations, environmental protection regulations and regulations of authorities, trade associations and professional associations.
4. If MHZ incurs costs as a result of defective deliveries, in particular transport, travel, labour, material costs or costs for sorting and testing, these costs shall be reimbursed by the Contractor.
5. The warranty period shall be 24 months, beginning with further processing by MHZ or with the delivery of the end products manufactured from them, but no longer than 36 months, except where longer periods are provided for by law. The limitation period shall be deemed to have been complied with by asserting a claim for a defect against the Contractor. This shall not apply if longer statutory warranty periods apply, in particular pursuant to § 438 (1) No. 2 BGB (buildings and objects for buildings), § 479 (1) BGB (right of recourse) and § 634a (1) No. 2 BGB (construction defects).
2. The Contractor shall be obliged to insure the production equipment belonging to MHZ at replacement value against fire and water damage and theft at its own expense. At the same time, the Contractor hereby assigns all claims for compensation arising out of this insurance to MHZ. MHZ hereby accepts this assignment.
3. The production equipment shall be stored in such a way that no damage is possible due to the Contractor's production process or other influences and shall be marked as the property of MHZ. In so doing, the Contractor shall apply the principles of due diligence of a prudent businessman.
4. MHZ shall be entitled to demand that the Contractor surrender said production equipment and necessary documentation at any time.

XI. Liability

1. Where the Contractor is responsible for product damage, it shall be obliged to indemnify MHZ against claims for damages by third parties on first demand, if the cause lies within its sphere of control and organisation and where the Contractor itself is liable in respect of third parties.
2. The Contractor shall take out appropriate insurance against the risks of product liability.
3. The Contractor will also be liable for all contractual items, or parts thereof, delivered by it, but not manufactured by it. The Contractor will be liable for its vicarious agents and representatives, in particular its subcontractors, to the same extent as for its own fault.

XII. Property rights

1. The Contractor guarantees that no rights of third parties - whether domestic or foreign - will be infringed in connection with his delivery.
2. If claims are made against us by a third party in this respect, the Contractor shall be obliged to indemnify MHZ against such claims on first written demand. We shall not be entitled to reach any agreements with the third party without the Contractor's consent, in particular to conclude a settlement.
3. The Contractor's obligation to indemnify shall relate to all expenses necessarily incurred by MHZ as a result of, or in connection with, the claim by a third party.
4. The Contractor shall also be liable for defects of title not attributable to it. In this case MHZ shall again be entitled to claim damages.

XIII. Tools and production means provided

1. Tools, devices, models, drawings, software and other means of production made available by MHZ for the production process shall remain the property of MHZ. Means of production purchased or manufactured by the Contractor and paid for by MHZ, or paid for with the price of the parts, shall become the property of MHZ upon commissioning. These may not be used for deliveries to third parties, or for purposes other than delivery to MHZ, without prior written consent.

XIV. Vendor declaration

1. Prior to the first delivery, the Contractor shall ensure that we receive a long-term vendor declaration with preferential origin for the current calendar year without being prompted to do so. The long-term vendor declaration shall be sent to us at the beginning of each year without the need for a separate request. Changes affecting the basis of the long-term vendor declaration occurring during the course of a calendar year shall be reported without delay to MHZ, Materials Management Department.
2. The Contractor undertakes to enable inspection of the certificates of origin by the customs authorities and to provide the necessary information truthfully. Any official certifications or confirmations required must be provided by the Contractor.
3. If MHZ suffers damage due to the fact that the declared origin is not recognised as a result of faulty certification or the lack of auditability by the competent authority, the Contractor shall be obliged to compensate MHZ for this damage in the event of culpable conduct.

XV. Final provisions

1. If insolvency proceedings are filed against the assets of a contractual partner, the other contractual partner shall be entitled to withdraw from the contract for the part not fulfilled.
2. The place of execution for all deliveries and services shall be the delivery location specified by MHZ or - if no such place is specified - the head offices of MHZ.
3. Place of jurisdiction shall be Stuttgart. However, MHZ shall also be entitled to bring action against the Contractor at the Contractor's registered office or principal place of business. Contract language shall be German.
4. All legal relationships between MHZ and the Contractor shall be subject to the law of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
5. MHZ collects, uses and transmits data only if and insofar as this is necessary for the establishment, implementation or termination of a legal or quasi-legal relationship with the Contractor. The Contractor is hereby informed of this in accordance with § 33 (1) German Federal Data Protection Act (BDSG).
6. Should any part of the contract or these terms and conditions of purchase be or become invalid or unenforceable, this shall not affect the validity of the remainder of the contract or these terms and conditions.