

The following conditions shall be deemed to be incorporated in all Contracts of Sale between MeKo, Dr.-Ing. C. Meyer-Kobbe ("the Seller") and the party to whom a quotation is given and/or by whom an order is placed and accepted by the Seller ("the Buyer") in respect of goods particulars of which appear hereunder ("the Goods") and no variation shall be binding unless agreed in writing between the Seller and the Buyer.

1. Delivery

1.1 Save in relation to Clauses 1.3 and 6 time shall not be of essence in this contract. Any time or period for delivery given by the Seller shall be an estimate only.

1.2 Unless otherwise stated the Goods shall be despatched by the Seller carriage paid by the Buyer. The Seller shall have no liability to the Buyer for delays in delivery which were due to causes beyond the Seller's reasonable control or by reason of the Buyer's fault.

1.3 Where any drawing design specification instructions or materials (The Buyer's Particulars') are to be supplied by the Buyer the same shall be supplied in such reasonable times as will enable the Seller to affect delivery within the period specified for delivery.

1.4 Where the goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat this Contract as a whole as repudiated.

1.5 If the Seller fails to deliver the Goods for any reason other than any causes beyond the Seller's reasonable control or the Buyer's default and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered.

1.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions then without prejudice to any other right or remedy available to the Seller the Seller may store the Goods and charge the Buyer for the cost of storage or without incurring any liability to the Buyer to obtain the best price sell the Goods at such price as the Seller thinks fit or scrap or sell the Goods for scrap in each case crediting the Buyer's account with the value of the Goods so released.

2. Price

2.1 Subject as hereinafter provided the price payable shall mean the Seller's price on the Seller's Acknowledgment of Order hereunder (unless any price shall be specified in a quotation when such a price shall be deemed to have effect except in the case of manifest error) plus value added tax ("the Price") and

2.2 The price may be varied by the Seller without notice if before delivery there is any increase in raw material costs; in the case of Goods exported outside the Federal Republic of Germany any fluctuation in the rate of exchange value, in the case of any product goods or future services not manufactured or performed by the Seller any increase in the price paid by the Seller or any fluctuation in any customs and excise duty and/or value added tax payable on the Goods.

3. Buyer's Particulars Description Information and Samples

3.1 All descriptions of whatever nature applied to the Goods by the Seller are merely intended to serve as a guide to the Buyer and the application of such description to the Goods shall not constitute a sale by description and shall not be or be deemed to be a representation by the Seller as to the quality of the Goods or their fitness for any particular or other purpose.

3.2 The Seller shall not be liable for any deviation from the Buyer's Particulars unless such deviation substantially deprives the Buyer from the entire benefit of this Contract.

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3.3 The Goods are sold subject to the condition that the Seller shall not be liable for any loss of whatever nature sustained by the Buyer which may in any degree be attributable to the adoption either by the Buyer or by any third party of technical information data or advice given by or on behalf of the Seller in relation to the use of the Goods.

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with the Buyer's Particulars the Buyer shall indemnify the Seller on an indemnity basis against all claims costs demands and expenses of whatever nature arising out of or in connection with or paid by or agreed to be paid by the Seller in settlement of or dealing with any Claim for infringement or alleged infringement or any patent copyright design registered design trademark or other industrial or intellectual property rights of any other person which results from the Seller's use of or the manufacture by the Seller of the Goods in accordance with the Buyer's Particulars.

3.5 The Seller reserves the right to make any changes in the Buyer's Particulars where the Goods are made to the Seller's specification provided that the changes do not materially affect their quality or performance; or, the change is required to conform to any applicable safety or other statutory requirements.

3.6 The Seller sells the Goods to the Buyer only on the basis that the Buyer warrants that it is competent in its trade or calling and is capable of satisfying and has satisfied itself that the Goods supplied by the Seller are of merchantable quality and fit for the Buyer's purposes; and that the Goods contain no patent defects.

3.7 The Buyer shall and does hereby indemnify the Seller from against all claims losses and expenses of whatever nature arising out of any breach of the Warranties set out in Clause 3.6

4. Terms of Business

4.1 The Seller's accounts are due for payment on demand but in any event no later than on the Twentieth day of the month following that during which delivery of the Goods is made. The Seller reserves the right to charge interest at the Deutsche Bundesbank base rate for the time being in force plus 2% on all overdue accounts.

5. Warranties

5.1 The Seller warrants that the Goods will be free from defects in material and workmanship in each case at the time of delivery subject to the following conditions

5.1.1 the Seller shall be under no liability in respect of any defect in the Goods arising from the Buyer's Particulars whether or not the Seller makes any changes to the Buyer's Particulars as permitted by Clause 3.5

5.1.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear wilful damage abnormal working conditions failure to follow the Seller's instructions misuse or alteration or repair of the Goods without the Seller's approval

5.1.3 the Seller shall not be under liability if the total price for the Goods has not been paid by the due date for payment

5.1.4 the above warranty does not extend to parts materials or equipment not manufactured by the Seller

5.2 Subject as expressly provided hereunder all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

5.3 Where any valid claim in respect of any of the Goods which is based on defect in the quality or condition of the Goods is notified to the Seller in accordance with these Terms and Conditions the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the Price of Goods (or a proportionate part of the Price) but the Seller shall have no further liability to the Buyer whatsoever.

5.4 The Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of this

Contract for any consequential compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer except as expressly provided in these Terms and Conditions.

5.5 The Seller shall not be liable for any loss or damage arising directly or indirectly from act of God explosion flood tempest fire or accident war or threat of war sabotage, insurrection civil disturbance or requisition acts restrictions regulations bye-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority import or export regulations or embargoes strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Seller or supplier to the Seller or any third party upon whose performance the Seller depends difficulties in obtaining raw materials labour fuel parts or machinery power failure or breakdown in machinery any other care or contingency beyond the control of the Seller whether of the same nature of the above or not.

6. Goods Damaged or Lost in Transit

6.1 Notwithstanding the provisions of Clauses 1 and 4 no claim by the Buyer for goods alleged to be damaged or lost in transit or for nondelivery of the whole or part of a consignment will be entertained unless a separate notice in writing ("the Defect Note") is given by the Buyer to the Carrier concerned upon delivery and to the Seller within 10 days of delivery and a complete claim in writing is made to the Seller within 28 days of delivery or

6.2 Claims for Defective Goods

Notwithstanding the provisions of Clauses 1 and 4 no claim by the Buyer based on any defect in or failure of the Goods shall (whether or not delivery is refused by the Buyer) be entertained except in accordance with the provisions of Clause 6.1 or (where the defect or failure was not apparent upon reasonable inspection) within a reasonable time after discovery of defect or failure.

6.3 Any goods returned pursuant to Clauses 6.1 or 6.2 will be replaced as originally ordered if required and practicable or will be credited but shall not form the subject of any claim for work done by the Buyer transport costs consequential damages expenses loss of profit on or any claim arising through resale or any other loss, damage or expense whatsoever and howsoever incurred.

7. Tests or Inspections

Unless expressly agreed otherwise the Seller shall make only such tests or inspections in the terms notified to the Buyer or deemed by the Seller to be applicable and suitable in the circumstances and the Buyer shall be deemed to accept the results where not in attendance personally.

8. Title to Goods

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

8.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection or

8.1.2 in the case of Goods to be delivered otherwise than the Seller's premises at the time of delivery or if the Buyer fails to take delivery of the Goods the time when the Seller has tendered delivery of the Goods

8.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Terms and Conditions the legal title shall not pass to the Buyer until the Seller has received in cash or cleared funds payment of the Price and the price of all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

8.3 Until such time as the legal title passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or

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property of the Buyer and third parties and in case of tangible proceeds properly stored protected and insured

8.4 Until such time as the legal title passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Sellers) forthwith become due and payable.

9. **Buyer's Bankruptcy**

9.1 If the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or the Buyer ceases or threatens to cease to carry on business; or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further delivery under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. **Buyer's Default**

Without prejudice to any other right or remedy the Seller has hereunder if the Buyer is in breach of any of the terms hereunder the Seller may without notice and at its sole discretion determine any contract with the Buyer so far as goods remain to be delivered there under or may suspend performance of its obligations hereunder until the Buyer's default has been made good.

11. **Notices**

11.1 Any notice required to be given by either party to the other hereunder shall be in writing.

11.2 No waiver by the Seller of any breach of this Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby.

11.4 Any dispute arising under or in connection with these Terms and Conditions or the sale of the Goods shall be referred to Arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either part by the President for the time being of the Law Society of the Federal Republic of Germany in accordance with the rules of the Law Society.

11.5 This Contract shall be governed by the laws of the Federal Republic of Germany. Place of jurisdiction for both parties shall be Hildesheim.