

Standard Terms and Conditions of Sale

(2013)

Valid from: 11 November 2013

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I. Applicable terms and conditions

The legal relations between Thomas Magnete GmbH (hereinafter referred to as "Supplier") and Purchaser shall be exclusively governed by these Terms and Conditions and by Supplier's quotation. Any amendments and additions to the contractual agreements shall require the written form. If Purchaser has any standard terms and conditions of business that differ from these Terms and Conditions, the former shall not apply, even without any express objection in the individual case.

II. Order and acceptance

1. Supply agreements (order and acceptance) shall be concluded for individual deliveries and as framework agreements for serial deliveries to Purchaser. Purchaser shall send Supplier forecast delivery schedules for serial delivery.
2. Forecast delivery schedules shall not be binding if Supplier does not expressly agree to them. The uncontradicted delivery of part of the quantity ordered in the forecast delivery schedule shall not be understood as indicating an agreement to deliver the remaining quantity beyond the quantities actually delivered.

III. Payment and set-off

1. Unless otherwise stated in Supplier's quotation, payment shall be remitted with a 2% cash discount within 14 days of the invoice date or with no deductions within 30 days of the invoice date.
2. Payment shall be made by bank transfer.
3. Purchaser may only set off claims against Supplier's claims if the counterclaim is undisputed or has been recognised by a final court judgement.

IV. Notice of defects

Section 377 of the German Commercial Code (Handelsgesetzbuch, HGB) shall apply.

V. Confidentiality

1. The Contracting Parties undertake to treat as business secrets all commercial and technical information that is not in the public domain and becomes known to them as a result of their business relations.
2. Drawings, models, templates, samples and similar items as well as electronic development data may not be provided to or otherwise made available to unauthorised third parties. The duplication of such items is only permitted to the extent required by business operations in order to perform the supply contracts and within the framework of their purpose under copyright law.
3. An obligation to the same effect must be imposed on subcontractors.
4. If the Parties have formed a separate confidentiality agreement, this shall take precedence over the agreements made in this clause V. 1.3.

VI. Delivery dates and delivery periods

If Supplier has evidently not been supplied by its own suppliers or is late in being supplied, the due delivery dates for Purchaser shall be postponed accordingly. Supplier agrees to certain delivery dates only on condition that it receives the consignments that it has ordered.

VII. Late delivery

If Supplier is in default, Supplier must compensate Purchaser for the loss caused by the delay. Except in cases of intent, this shall not apply to lost profits and losses caused by disruptions to business operations.
2. In the case of slight negligence on the part of Supplier or Supplier's vicarious agents, damages shall be limited to the additional freight costs and retrofitting costs.

VIII. Force majeure

Force majeure, industrial disputes, civil unrest, official measures and other unforeseeable, unavoidable and serious incidents shall release the Supplier from its delivery obligations for the duration of the disruption and to the extent of its effect. This shall also apply if these incidents occur at a time when Supplier is in default.

IX. Type and scope of tests and testing equipment

If the type and scope of the tests, testing equipment and test methods have not been firmly agreed between Supplier and Purchaser, Purchaser, at Supplier's request, shall be willing to discuss the tests with Supplier within the framework of its knowledge, experience and possibilities in order to determine the necessary state of the art for the tests. Furthermore,

Purchaser shall inform Supplier of the relevant safety and environmental requirements.

X. Liability for defects

1. In the case of the delivery of defective goods Purchaser may demand the following if the relevant statutory preconditions and the preconditions set out below have been fulfilled and in the absence of any other agreement:

a) Before the start of production (processing or fitting) Purchaser shall initially give Supplier the opportunity to rectify the defects or supply a replacement, unless this is unreasonable for Purchaser. If Supplier cannot do this or fails to do so without delay, Purchaser may cancel the contract and return the goods at Supplier's risk. If the same goods are repeatedly delivered with defects, Purchaser, after sending a written warning upon delivery of further defective goods, shall also have the right to cancel deliveries still outstanding.

b) If the defect is not discovered until after the start of production, despite complying with the obligation in clause IV (notice of defects), Purchaser may

- demand the rectification of the defect or a replacement in accordance with section 439 paras 1, 3 and 4 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) as well as the reimbursement of the transport expenses necessary for this purpose (without towing charges), travel costs, labour costs and the cost of materials or, if the conditions set out in section 437 of the German Civil Code have been fulfilled,

- may reduce the purchase price,
- claim damages, or compensation for futile expenditure as set out in clause XII.

2. Purchaser shall immediately provide Supplier with the parts to be replaced at Supplier's expense.

3. Claims due to liability for defects shall become statute-barred 24 months after delivery to Purchaser.

4. No claims may be made due to defects if the fault has been caused by failure to observe operation, maintenance and fitting instructions, inappropriate or improper use, faulty or careless handling and natural wear and tear and any interference with the delivery item by Purchaser or third parties.

5. If defective goods are delivered to Purchaser, Purchaser's claims under the Product Liability Act, on grounds of tort and management without authorisation shall remain unaffected by this clause X.

XI. Guarantees of quality and durability

Any guarantees of quality and durability must be expressly designated as such in writing and in detail. Purchaser is informed that only the Supplier's management directors are entitled to give guarantees of quality and durability.

XII. Liability

Unless a provision more favourable to Supplier has been agreed elsewhere in these Terms and Conditions, Supplier's liability to pay damages or expenses shall be governed solely by the statutory requirements and the provisions set out below.

1. Supplier shall only be liable for damages if the loss has been caused due to a fault on its part.

2. If claims are made against Purchaser on grounds of strict liability under laws that are mandatory in respect of third parties, Supplier shall compensate Purchaser only if Supplier itself would be directly liable in such a case.

The principles of section 254 of the German Civil Code shall apply accordingly to the settlement of the claim between Purchaser and Supplier. This shall also be the case if a claim is made against Supplier directly.

3. There shall be no obligation to pay compensation if Purchaser has effectively limited its liability towards its own customer. Purchaser shall make efforts to agree on limitations of liability to the extent permitted by law, also in Supplier's favour.

4. Purchaser shall not be entitled to make any claims if the damage has been caused by failure to follow operation, maintenance and fitting instructions on Purchaser's part or by inappropriate or improper use, faulty or careless handling, natural wear and tear or deficient repair work.

5. Supplier shall be liable for measures carried out by Purchaser in order to avert any damage (e.g. recall campaigns), in as far as Supplier is liable by law.

6. Purchaser shall immediately and fully inform and consult Supplier if Purchaser intends to make a claim against Supplier in accordance with the aforementioned provisions. Purchaser shall give Supplier the opportunity

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to examine the claim. The Contracting Parties shall agree on the measures to be taken, especially negotiations for a settlement.

7. If Supplier has no insurance or insufficient insurance, Supplier shall not be liable for lost profits and losses resulting from the disruption of business operations, except in cases of intent.

8. Supplier's liability for damages shall be limited as follows, except in cases of intent or gross negligence:

- Recall campaigns due to the risk of personal injury or damage to property:
Supplier's liability for damages shall be limited to the total sum of €5 million for all claims of a similar cause and €5million for all claims occurring within the same calendar year.
- Personal injury or damage to property and the resulting financial loss:
Supplier's liability for damages shall be limited to the total sum of €5 million for all claims of a similar cause and €5 million for all claims occurring within the same calendar year.
- Supplier's statutory liability for damages due to a breach of a statutory warranty:
Supplier's liability for damages shall be limited to the total sum of €5 million for all claims of a similar cause and €5million for all claims occurring within the same calendar year.

XIII. Intellectual property rights

1. Supplier warrants that if the delivery items are used as agreed under the terms of the contract there will be no infringements of the intellectual property rights of third parties, both existing and under application, where at least one of the family of intellectual property rights has been published either in Supplier's home country, by the European Patent Office, or in either the Federal Republic of Germany, France, the UK, Austria or the USA.

2. This warranty shall not apply if Supplier has produced the delivery items according to drawings, models or equivalent descriptions or details provided by Purchaser and did not know or did not need to know that the products it developed represented an infringement of intellectual property rights.

3. If Supplier is not liable under section XIII 2. of these Terms and Conditions, Purchaser shall indemnify Supplier against all third-party claims.

4. The Contracting Parties undertake to immediately notify each other of any infringement risks and any alleged cases of infringement that come to their attention and to give each other the opportunity to jointly defend corresponding claims.

5. On Purchaser's request Supplier shall give notice of the use of its own published intellectual property rights to the delivery item, and also those of third parties, by giving Purchaser the registration number or the patent number.

6. Except in cases of intent, Supplier shall not be liable for any defects of title, lost profits and losses caused by the disruption of business operations.

XIV. Developments and other services

1. If developments or any other work and services necessary in connection with the development are offered by Supplier and ordered by Purchaser or if Purchaser pays the costs thereby incurred to Supplier or third parties, Supplier shall not be obliged to achieve a certain outcome or produce a certain result, not even if Supplier refers to a certain quality, but only to render the service. If the development target is not achieved, Purchaser shall have the right to rescind the contract. No claims for damages may be made except in the case of intent.

2. Supplier shall not grant Purchaser any kind of licence to use the intellectual property rights or know-how created during or prior to the development.

XV. Reservation of title

Supplier reserves title to all goods that Supplier supplies until full payment has been made; all deliveries shall be regarded as a single delivery. In the case of a current account, the reservation of title shall serve as security for Supplier's claim to the balance.

If Purchaser combines the goods with other objects to form a uniform item and the other item can be regarded as the main item, Purchaser must transfer a share of the item to Supplier as joint owner in as far as the main item belongs to Purchaser. In cases in which Purchaser resells the goods supplied in connection with their intended use, Purchaser hereby assigns to Supplier the claims against its own customer arising from the sale together with all ancillary rights, until Supplier's claims have been settled in full.

In justified cases Purchaser, at Supplier's request, must disclose the assignment of these claims to the third-party buyers and provide Supplier with the information and documents that Supplier needs in order to enforce its rights.

Supplier shall release the security it holds to the extent that its value exceeds the value of the secured claims by more than 20% in total.

XVI. General provisions

1. When determining the sum of the claims for damages to be settled by Supplier in accordance with clauses VII, X, XI, XII and XIII, adequate account shall be taken in Supplier's favour of Supplier's financial circumstances, the type, scope and duration of the business relationship, any contributory negligence and/or fault on the part of Purchaser pursuant to section 254 of the German Civil Code and any particularly disadvantageous installation situation of the part supplied. In particular, the damages, costs and expenses to be borne by Supplier must be reasonable in relation to the value of the part supplied.

2. If Purchaser ceases payments or if an application for insolvency or an out-of-court settlement is filed in respect of Purchaser's assets, Supplier shall have the right to cancel the part of the contract that has not yet been performed.

2. If any provision of these Terms and Conditions and any further agreements should be or become invalid, this shall not affect the validity of the contract as a whole. The Contracting Parties shall replace the invalid provision by one that comes as close as possible to its commercial purpose.

3. Only the law of the Federal Republic of Germany shall apply, excluding the law on conflict of laws, unless otherwise agreed.

The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods shall not apply.

4. The place of performance is Herdorf. A different place of performance may be agreed for delivery.

5. The place of jurisdiction for any litigation arising from the contractual relationship shall be the competent courts at Supplier's principal place of business. Supplier shall also have the right to bring an action before the competent courts at the Purchaser's principal place of business.