

## **Terms of sale, delivery, and payment of Maxfry GmbH**

### **A. General terms**

#### **I. Conclusion of contracts**

1. Our goods and services will be supplied solely on the basis of the following terms. Any terms of purchase issued by the buyer are hereby rejected. Any deviating conditions of Customer, which have not expressly been confirmed by Maxfry in writing, are not binding for Maxfry, even though Maxfry has not expressly objected to such conditions. These General Terms and Conditions of Trade also apply to any future business relations, even though Maxfry may not expressly refer to such conditions with any future contracts (i.e. in particular for orders placed by phone).

2. Our offers are without engagement. Statements issued by us have to be made in writing. Our invoices will be deemed to be acknowledgments of orders. In an acknowledgment of order, any collateral agreements or amendments will only be operative after they have been confirmed in writing.

#### **II. Terms of payment**

1. Payments for goods or services supplied will be due within 14 days of the invoice date without detriment to the right to issue a notice of defect. The buyer will only be able to set off claims that are either undisputed or have been established with legal effect.

Payments will always be deducted from the most longstanding debt if the latter is older than 30 days. Bills of exchange will not be accepted, cheques being accepted only with a view to payment. Payments made from foreign countries entail additional bank charges for us, so that for foreign orders of less than 150 EUROS we will charge a lump sum of 15 EUROS for expenses.

2. If the period of credit is exceeded, interest will be charged at a rate of 9 % above the Deutsche Bundesbank discount rate applicable at the time in question.

3. If our claim to payment is jeopardized as a result of circumstances that have materialized subsequently and that have led to a major deterioration in assets, we will be entitled to render it due immediately – irrespective of the due date of any bills of the buyer's that may have been accepted with a view to payment.

4. If the buyer defaults on payments, we will be entitled to recover the merchandise, if necessary entering the buyer's business premises and removing the merchandise. Said recovery will not constitute a cancellation of the contract.

5. In the cases mentioned in items 3. and 4., we will be permitted to revoke the authorization to collect (A item IV.7) and require advance payment of any deliveries not yet carried out.

6. The buyer can avert the legal consequences referred to in items 3.-5. by providing security for the amount of our pecuniary claims that are jeopardized.

7. The statutory regulations concerning defaults on payments will not be affected by the above.

#### **III. Security**

We are entitled to the customary security for our claims, as regards both the type and the amount, even if they are contingent or subject to a time limit.

#### **IV. Retention of title**

1. We reserve title to all the merchandise delivered (merchandise subject to retention of title) pending the settlement of all our claims, including, first and foremost, the net claims accruing to us on the basis of our terms of business. This also applies to any future or contingent claims.

2. Any processing operations carried out on the merchandise subject to retention of title will be performed on our behalf in our capacity as manufacturer as defined in § 950 BGB (Civil Code), without putting us under any obligations. The processed merchandise will be deemed to be merchandise subject to retention of title as defined in item 1.

3. The processing, joining, or mixing of the merchandise subject to retention of title with other merchandise by the buyer will entitle us to co-ownership of the new item according to the ratio of the invoice value of the merchandise subject to retention of title to that of the other merchandise used. To provide for the eventuality of our property ceasing to exist as a result of its being joined, mixed, or processed, the buyer instantly assigns to us the ownership rights accruing to it or him with regard to the new stocks or items for the amount of the invoice value of the merchandise subject to retention of title or, if processing is involved, according to the ratio of the invoice value of the merchandise subject to retention of title to that of the other merchandise used, and shall take these into custody, free of charge, on our behalf. Our co-ownership rights will be deemed to be merchandise subject to retention of title as defined in item 1.

4. The buyer may only resell the merchandise subject to retention of title in the normal course of business, subject to its/his normal terms of business, and on the proviso that it/he is not defaulting on payments, that it/he reserves title to the merchandise, and that the claims deriving from the resale devolve upon us in accordance with items 5. and 6. He/it is not entitled to dispose of the merchandise subject to retention of title in any other fashion. The term resale, as used in Clause A. IV., will also include the use of the merchandise subject to retention of title for performing contracts of manufacture or for the delivery of manufactured goods.

5. The buyer's claims deriving from the resale of the merchandise subject to retention of title are hereby assigned to us this instant. They will serve as security to the same extent as the merchandise subject to retention of title as defined in item 1.

6. If the merchandise subject to retention of title is resold by the buyer together with other items, the claim deriving from the resale will be assigned to us according to the ratio of the invoice value of the merchandise subject to retention of title to that of the other merchandise. If merchandise on which we have co-ownership rights as specified in item 3. is resold, the proportion of the claims that corresponds to our co-ownership share will be assigned to us.

7. The buyer will be entitled to collect claims deriving from the resale unless we revoke the authorization to collect claims with regard to the cases referred to in Clause A. II., items 3. and 4. At our request, the buyer will be obligated to immediately notify its/his customers of the assignment to us – if we do not do this ourselves – and provide us with the information and documents necessary for collection. Under no circumstances is the buyer entitled to assign the claims; this also applies to all types of factoring transactions: the buyer is not allowed to carry out these either on the basis of our authorization to collect.

8. The buyer shall notify us immediately of any seizure or any other impairment by third parties.

9. If the value of the existing security exceeds the claims thus secured by more than 10 % in aggregate, at the buyer's request we will be obligated to release items of security in this respect, the items being chosen by us.

#### **V. Place of performance and venue**

In so far as this is legally possible, with regard to both parties to the contract, the place of performance and the venue in the event of disputes will be Hagen in Westphalia. We will also be entitled to bring an action against the buyer at the court under whose overall jurisdiction the buyer falls.

**B. Execution of deliveries**

**I. Delivery periods and dates**

1. Delivery periods will commence on the date of our acknowledgment of order, but not before all the details of the order have been clarified; a similar proviso applies to delivery dates.

2. If the buyer does not discharge its/his contractual obligations punctually, including duties involving cooperation and collateral obligations, such as opening a letter of credit, presenting domestic or foreign certificates, making advance payments, or suchlike, we will be entitled to extend our delivery periods or postpone delivery dates appropriately, in accordance with the requirements of our production cycle, without any prejudice to our rights deriving from the default on the part of the buyer.

3. The criterion for compliance with delivery periods and deadlines will be the time of dispatch from our works. If the merchandise cannot be shipped in good time for reasons not within our control, the delivery periods and deadlines will be deemed to have been complied with if notification of readiness for shipment is given.

4. Every individual delivery will be regarded as being a separately-concluded contract if nothing different is specified or agreed.

5. If the production or delivery of the merchandise covered by the contract, or of a portion thereof, should be delayed or rendered impossible as a result of war, fires, strikes, or any other circumstances resulting from force majeure, the delivery period will be extended by 3 months and, if said circumstances should persist, the contract or the parts thereof that have not been performed will be viewed as being invalid.

This clause will also include the revocation or non-issuance of export or import authorizations.

6. In the event of national or international taxes, other public charges, or freight rates being introduced or increased after the date of the conclusion of the contract, the seller will be permitted to raise its prices commensurately if said taxes, charges, or rates make up more than 5 % of the purchase price.

7. Deliveries will be made to the buyer's address if no other arrangements are made in writing.

**II. Dimensions, weights, and quality**

Deviations in respect of dimensions, colour, quantities, or weights will be permissible if the quality and usability of the merchandise are not impaired as a result.

**III. Shipping, packing, and passage of the risk**

1. The forwarding agent or haulage contractor will be chosen by us.

2. Packing and transportation costs will be borne by the buyer. The packaging material will not be returned.

3. If damage occurs during transportation, the buyer shall immediately arrange for the organizations responsible to record the facts of the case.

4. The risk will pass to the buyer when the merchandise is passed on to the forwarding agent or haulage contractor, and at the latest when the merchandise leaves the works or the warehouse.

5. Furthermore, the „INCOTERMS 2010“ in their respective latest version shall be applied.

#### **IV. Warranties**

1. If notices of defects are justified and are submitted in writing no later than 8 days after receipt of the merchandise, we will accept the return of defective merchandise and make deliveries as a substitute for the same; alternatively, we will be entitled to carry out subsequent repairs. Only if we do not discharge these duties will the statutory warranty rights accrue to the buyer. In cases in which assured characteristics are missing, we will be liable to pay compensation only to the extent to which the assurance was designed to protect the buyer precisely against the losses that have occurred. The level of the compensation will be limited to the purchase price.
2. The buyer has to give us an immediate opportunity to satisfy ourselves of the defect, and in particular, if requested to do so, to make available the merchandise complained about or samples thereof.
3. After the execution of an agreed acceptance procedure, a notice of any defects susceptible to being detected during this procedure will be ruled out. Compensation for any losses caused by a breach of collateral contractual obligations will be ruled out. A right of redhibition is expressly ruled out. The customer hereby gives us an undertaking to the effect that it/he will inform its/his employees and customers of the proper use of the merchandise and of the dangers that non-compliance with these instructions entails.

#### **C. General limitation of liability**

If these terms contain no provisions to the contrary, we will only be liable to pay compensation for breaches of contractual or non-contractual obligations if malice aforethought or gross negligence is involved. However, we will only be liable for malice aforethought or gross negligence on the part of non-managerial agents if they infringe a major contractual obligation. Claims based on the "Produkthaftungsgesetz" (Product Liability Act) will not be affected by this.

#### **D. Miscellaneous**

##### **I. Export certificates**

If a buyer domiciled outside the Federal Republic of Germany or his/its representative fetches merchandise or transports or sends the same to territories outside Germany, the buyer has to submit to us the export certificate required for tax purposes. If this certificate is not presented, the buyer shall pay the value added tax on the invoice amount that applies to deliveries within the Federal Republic.

*II.* In the case of deliveries from the Federal Republic of Germany to other EU member states, before the delivery is made the buyer has to notify us of the value added tax identification number under which its/his business activity is taxed within the EU. Otherwise, in addition to the agreed purchase price of our deliveries the buyer will have to pay the amount of value added tax that we legally owe to the state.

##### *III. Body of law applicable*

The contract will be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention of 11.04.1980 relating to contracts for the international purchase of merchandise.

#### **E. Safeguarding clause**

If individual provisions of these terms of sale, delivery, and payment should be or become inoperative, the operativeness of the remaining provisions will not be affected thereby. In such an eventuality, the inoperative provision is to be construed and amended in such a fashion as to ensure that the commercial purpose for which the inoperative provision was intended will be achieved.

#### **F. The venue for all disputes will be Hagen/Westphalia.**

In the case of disputed interpretation the German original version of this translation is binding.