

**General Terms and Conditions of MBK Maschinenbau GmbH**  
- for use in business relations towards entrepreneurs -

**1. Sphere of applicability**

The following General Terms and Conditions shall apply to all performance effected by MBK Maschinenbau GmbH (hereinafter in brief: MBK) for its customers, in particular for the delivery of goods or machines, assembly, repairs and other services (hereinafter also: object(s) of contract).

These terms and conditions shall also apply to all future business relations even if they have not been expressly agreed. Amendments and supplements shall be made only by the managing director(s) or "Prokurists"<sup>1</sup> of MBK (management) entered in the commercial register as authorised for representation. Verbal agreements and declarations of other persons, who have not been specially authorised by the management, shall only be effective if they have been confirmed by the management in writing.

The customer's general terms and conditions shall apply only inasmuch as MBK has expressly agreed to them.

**2. Quotation and conclusion of contract, quotation documents**

The presentation of MBK's products and services on its Internet presence, in brochures, catalogues or pamphlets is subject to confirmation. The same applies to cost estimates or other quotation documents. In the case of the order not being placed, all quotation documents shall be returned to MBK without delay; the Customer shall delete electronic data on all data carriers and hardware equipment in such a manner that they are irretrievable.

Legally binding contracts shall only come into being by way of confirmation of order by MBK. If the Customer does not receive any separate confirmation of order, MBK's delivery note shall be regarded as confirmation of order.

**3. Delivery periods, partial deliveries**

3.1 Confirmation of order by MBK is binding for the delivery dates and delivery periods (period between confirmation of order and delivery date).

3.2 The delivery period shall be reasonably extended if

- the Customer does not notify MBK of all technical information necessary for manufacture of the object of contract in accordance with order, without delay after receipt of the confirmation of order.
- the drafts and plans drawn up by MBK in accordance with the information provided by the Customer are not approved in writing without delay,
- MBK has not been supplied - in good time and completely - by its suppliers with all materials which are necessary for the manufacture of the object of contract, through no fault of its own.
- the Customer has delayed MBK's performance, which is the object of the contract, through violation of its co-operation duties (see below no. 5) or
- MBK cannot adhere to the delivery period due to force majeure (e.g. natural catastrophes or unrest) or similar events (e.g. industrial conflict).

3.3 The delivery period shall also be reasonably extended if the Customer does not procure or hand over to MBK the plans, public approvals or other information to be procured by him in good time or fully or if he alters his requirements for MBK's drafts or has not made the down payments or partial payments to be made in good time.

3.4 In case of delay in or impossibility of performance, MBK shall be liable for intent or gross negligence in accordance with the statutory provisions. In the case of gross negligence, MBK's liability is, however, limited to the foreseeable damage typical for the contract if none of the exceptional cases listed in sentence 5 of this provision is apparent.

Otherwise, MBK's liability, due to delay or impossibility of performance, is limited to 10% of the object of contract's value. Further-reaching claims of the Customer are - also after expiry of a period set towards MBK - ruled out. The above-mentioned limitations shall not apply in case of liability due to fatal injury, bodily harm or damage to health or in the case of breach of significant duties. Significant contractual duties are such the breach of which would endanger or rule out the purpose of the contract, i.e. delivery in accordance with agreement or repair to the object of contract; MBK's liability for damages in lieu of performance is aligned to no. 10 of these terms and conditions. The above regulations do not involve any change to the onus of proof to the disadvantage of the Customer.

3.5 Partial deliveries are permitted inasmuch as they are reasonable for the Customer.

3.6 If the Customer is in delay with acceptance of the object of contract, MBK can demand storage money of 1% of the price of the object of contract from the Customer for each month of delay in acceptance (if appropriate, proportionally). Irrespective of sentence 1, storage money of € 10.00 per day shall be payable in the case of objects of contract which have a volume of at least 10 m<sup>3</sup>.

The Customer is free to prove that no damage or significantly less damage has occurred for MBK. In the individual case, MBK is entitled to demand higher damages on verification.

3.7 MBK is entitled to dispose otherwise over the objects of contract which are ready and waiting after any previously set period for acceptance has elapsed. In this case, the Customer shall receive delivery within a reasonably extended period.

**4. Transfer of risk**

4.1 MBK always delivers ex works. If the Customer demands the object of contract to be sent (e.g. to his establishment), risk therefor shall be transferred to the Customer as soon as MBK has handed over the object of contract to the carrier ex works. This shall also apply if partial performance takes place or MBK carries out additional services for starting operation or assembly of the object of contract at the site of the Customer's establishment. Any insurance of the object of contract, e.g. against transport damage, shall take place only on written demand by the Customer which shall be received by MBK, at the latest, 14 days before the day of shipping.

4.2 If MBK has been separately engaged by the Customer for servicing, assembly or repair work, the risk for these services shall be transferred to the Customer after acceptance has taken place. The Customer is obliged to carry out acceptance within a period of 12 working days from receipt of written demand by MBK. If acceptance does not take place within the period set by MBK for reasons for which MBK is not responsible, acceptance shall be regarded as having taken place after expiry of the period. The Customer may not refuse acceptance in the case of insignificant defects.

**5. Customer's co-operation duties**

5.1 Public approvals and other test certifications or expert reports ordered by third parties (e.g. TÜV certifications or other expert reports for certification reasons) for the erection or for the operation of the object of contract, shall be provided in good time by the Customer at his own expense.

The Customer shall bear the costs for all measures and materials which are to be provided by MBK on the basis of an official order in addition to the scope of performance stated in the confirmation of order.

5.2 On demand by MBK, the Customer is obliged to issue - without delay and without remuneration - all information necessary for MBK to effect the contractual performance inasmuch as it is in the possession of the Customer or he is responsible for it in some

other manner. In particular, the Customer shall notify interface information, which is decisive for operation and the control of the object of contract, in good time.

5.3 The Customer is obliged to provide MBK on demand - in good time and without remuneration - with the necessary number of samples, preliminary and test material which define the prerequisites for and the results of MBK's contractual performance.

5.4 For the purpose of assembling the object of contract, servicing or repair services, the Customer shall provide MBK at his own expense and as far as necessary with the following:

- heating, lighting, power (including voltage supply), water, gas (including a connection for the assembly work) and compressed air supply;
- suitable rooms for the storage of the object of contract and the assembly tools, to be secured adequately against theft and damage;
- any special tools and cleaning agents which are necessary for cleaning;
- recreation rooms for MBK's workforce;
- ladders, mobile scaffolds, lifting equipment, forklifts and the tools necessary for assembly;
- information concerning the safety provisions and requirements for the items and auxiliary material provided by the Customer;
- sufficiently qualified auxiliary and operating staff (in particular metalworkers, electricians and machinists).

5.5 The Customer is obliged to secure all data, which he has received from MBK for the use of the object of contract, against loss and damage.

**6. Prices and payments**

6.1 Pricing shall be in euro. Price modifications are permitted if more than six months elapse between the conclusion of contract and the agreed date of delivery. If the wages, material costs or the market cost prices increase after confirmation and before completion of delivery, MBK is entitled to increase the price reasonably in accordance with the cost increases. The Customer is only entitled to withdrawal if the price increases exceed the increase in the consumer price index established by the German Federal Office for Statistics between order and delivery by more than 5%.

6.2 The prices are ex works, strictly net plus the turnover tax applicable on the day of delivery, customs, freight, packaging and insurance costs. The prices apply to each individual order and neither retroactively nor for future orders. Re-orders are new orders.

6.3 All payments shall be made directly to MBK. Inasmuch as down payments or partial payments are to be paid, the confirmation of order by MBK is decisive for the payment date. MBK invoices shall be paid in accordance with the dates determined in the confirmation of order. Payment dates shall also be observed if - for reasons for which MBK is not responsible - transport, delivery, assembly, operation start-up or acceptance of MBK's services is delayed or becomes impossible, or if insignificant parts are missing or reworking is necessary which does not significantly impair the use of MBK's contractual performance.

After expiry of a payment period or a payment date, the Customer is in default without any further declaration by MBK if he has not paid. Irrespective of further default claims by MBK, the Customer is obliged to pay interest on the invoice arrears for the period of default at 8 percentage points above the base interest rate in accordance with section 247 sub-section 1 BGB (German Civil Code).

6.4 Payment shall take place by bank, giro or postal transfer. Decisive for the day of payment is the day of credit to MBK's bank account. Payments shall always be used to settle the oldest debt items plus the accrued interest and costs. Submission of a cheque shall not be regarded as payment as long the cheque has not been cashed. Submission of a bill is only permitted with MBK's previous, explicit agreement.

6.5 In the case of payment default, MBK reserves the right to retain already ordered objects of contract or repair work up until settlement of all due invoices.

6.6 The right of the Customer for set-off against counterclaims is ruled out unless set-off takes place against a demand which is undisputed or has become res judicata. Due payment may only be withheld by the Customer if his retention right is undisputed or has become res judicata.

**7. MBK's security rights**

7.1 The object of contract shall remain the MBK's property up to fulfilment of all claims against the Customer due to it from the business connection.

7.2 During the existence of reservation of title, any attachment or assignment for security on the part of the Customer is not permitted. Re-sale is only permitted for sellers in the ordinary course of business and only under the condition that payment of the object of contract's value takes place to the Customer. The Customer shall also agree with his Purchaser that the Purchaser only acquires ownership on such payment being made. The Customer is obliged to insure MBK's reserved property for the period of reservation of title at his own expense against fire, theft, water and other damage. The Customer hereby assigns the claims from this material damage insurance to MBK which hereby accepts assignment.

7.3 The Customer is permitted to process the object of contract and to combine or mix it with property sites or movable property. Processing, mixing or combination (hereinafter collectively referred to as "processing" and with regard to the object of contract "processed") takes place for MBK; the objects emerging from processing shall be designated as "new goods". The Customer shall keep the new goods in custody for MBK with the diligence of a prudent businessman.

In processing with other objects, which do not belong to MBK, MBK is due ownership in the new goods at the amount of the share which results from the ratio of the value of the processed, mixed or combined object of contract to the value of the remaining processed goods at the point of time of processing. Inasmuch as the Customer acquires sole ownership of the new goods, MBK and the Customer are in agreement on the fact that the Customer grants MBK co-ownership in the new goods in the ratio of the value of the processed object of contract to the remaining processed goods at the point of time of processing.

7.4 For the case of sale of the object of contract or the new goods, the Customer hereby assigns his claims from resale against his purchaser together with all incidental rights by way of security to MBK without any further special declarations being necessary. Assignment shall, however, only apply at the amount of the sum which corresponds to the price of the object of contract invoiced by MBK. The share of the demand assigned to MBK shall be satisfied with priority.

7.5 If the Customer combines the object of contract or the new goods with property sites or movable property, then - without there being any need for further special declarations - he shall also assign to MBK the demand, which is due to him as remuneration for the combination, together with all ancillary rights by way of security at the amount of the ratio of the value of the object of contract or the new goods to the remaining combined goods at the point of time of combination.

7.6 The Customer is authorised to collect the demands assigned in this no. 7 (MBK's security rights) until further notice. The Customer is obliged to pass on all payments made for the assigned demands up to the amount of the secured demand to MBK without delay. In the case of good cause, in particular in the case of default in payment, cessation of payment, insolvency proceedings being commenced, bill protests or justified indications of overindebtedness or threatening payment inability on the part of the Customer, MBK is entitled to revoke the collection authority of the Customer. Apart from that, MBK can, after previous threat and observing a reasonable period, disclose the assignment for security, utilise assigned demands and demand disclosure of the assignment for security by the Customer to his purchaser.

<sup>1</sup> Senior executive with special powers of attorney

- 7.7 If a prima facie legitimate interest is shown by MBK, the Customer shall issue the information necessary for asserting MBK's claims against the Customer's purchaser and hand over the necessary documents.
- 7.8 In the case of garnishment, confiscation or other orders or encroachments by third parties, the Customer shall inform MBK without delay.
- 7.9 Inasmuch as the realisable value of all security rights due to MBK exceed the amount of all secured claims by more than 10%, MBK shall, at request by the Customer, release a corresponding part of the security rights; in such release, MBK shall have the option between the various security rights. In the case of breach of duty by the Customer, in particular in the case of default in payment, MBK is entitled, without setting a period, to demand surrender of the object of contract or the new goods and/or to withdraw from the agreement; the Customer is obliged to surrender. There is no declaration of withdrawal by MBK in the demand for surrender unless this is expressly declared. MBK reserves the right to agree further means of security with the Customer in individual cases.

## **8. MBK's property rights**

- 8.1 Property rights in quotation documents  
MBK reserves all ownership rights and copyright in cost estimates, drawings and all other quotation documents.  
The Customer may neither duplicate nor pass on quotation documents to third parties, also if he possesses them in electronic form, without the approval of MBK. If the contract does not come into being, the Customer may not use the technical information contained in the quotation documents.
- 8.2 Protective rights in transferred data  
With the reservation of no. 8.1, the object of contract itself and drawings, plans, samples and technical information of all kinds which are transferred to the Customer by MBK may be used by him, with no limit in time, for contractual use of the object of contract (simple right to use). Use for other purposes is not permitted. In particular, the aforementioned data may not be made accessible to third parties inasmuch as this is not necessary for the contractual use of the object of contract and the third parties have obligated themselves towards MBK to silence in respect to the data. The Customer undertakes to take appropriate measures to ensure the secrecy of these data even after employees in question have left, in particular by concluding agreements with them.
- 8.3 Sanctions  
Any culpable breach on the Customer's part of his duties as stated under no. 8.1 or 8.2 shall substantiate a claim on MBK's part to payment of a contract penalty amounting to 3% of the total net contract sum. If no contract has come into being, the contract penalty sum shall be calculated from the total net sum which is shown in MBK's quotation documents; if there is no quotation, the contract penalty shall amount to € 500.00 for each breach. Further claims on the part of MBK from violation of nos. 8.1 and 8.2 are reserved. The attention of the Customer is drawn expressly to the fact that infringement of the copyright in the documents of MBK can be criminally prosecuted.
- 8.4 Use of software  
MBK grants the Customer the simple non-exclusive right to use of software, which MBK has delivered to the Customer, on the agreed number of hardware devices and for the agreed term. The use of software within an electronic network is only permitted if this has been previously agreed with MBK. If the Customer changes his hardware equipment, he shall delete the software from the hardware used up until then. The Customer is obliged to create two backup copies of the software received and to keep them carefully; any other duplications are only permitted with MBK's previous written approval. The Customer is not permitted to sub-let the software.

## **9. Customer's claims due to defects**

- In the case of a defective product or faulty service on the part of MBK, the Customer has claim to subsequent performance in accordance with the following conclusive regulations (with the reservation of no. 10 of these terms and conditions).
- 9.1 Material defects
- a) The Customer shall check each delivery, also each partial delivery, immediately after receipt with customary commercial care for correctness and completeness; visible defects shall be complained of in writing without delay, at the latest, however, within 8 days of receipt of the delivery, latent defects shall be complained of in writing immediately after their discovery, otherwise the object of delivery shall be regarded as having been contractually approved.  
There is no claim for defects on the part of the Customer in the case of merely unappreciable deviation from the agreed composition or merely unappreciable impairment to the possibility for use.
- b) Defective parts shall be repaired by MBK or replaced with functional parts (subsequent performance) at its own option.  
The costs of subsequent performance shall be borne by MBK inasmuch as they have not arisen through the deliveries having been brought to a place other than the Customer's establishment, unless the shipping of the delivery corresponds to its contractual use.
- c) The Customer shall grant MBK a reasonable period for subsequent performance. If at least two subsequent performance attempts by MBK have failed, the Customer is entitled to withdraw from the contract or to reduce the agreed price in a reasonable ratio to the impairment of use which the defect has caused. The statutory cases of dispensability of setting a period remain unaffected.
- d) There is no right to subsequent performance if it is only possible at disproportional cost. There is no claim due to defects in case of natural wear, faulty treatment or use, faulty assembly or faulty operational start-up by the Customer or third persons, incorrect servicing, unsuitable geological prerequisites or chemical, electrochemical or electrical influences contrary to the intended purpose of the object of contract or environmental conditions contrary to the intended purpose (e.g. the influence of weather, room temperature, ambient air, ambient humidity or the effects of dust or dirt).
- 9.2 Legal defects
- a) If intended use of the object of contract by the Customer leads to infringement of industrial property rights or copyright within the territory of the Federal Republic of Germany, MBK is obliged, at its own option, to eliminate the cause of infringement by modifying the object of contract so that no property rights are affected any longer or by obtaining permission to use the property right affected.  
If elimination of the legal defect is not possible or only at disproportionate cost, MBK can withdraw from the contract. MBK shall indemnify the Customer against liability for infringements of property rights within the Federal Republic of Germany which MBK has recognised or which have become res judicata in the relationship to MBK.
- b) If the object of content is shipped or used in the territory of a state outside the Federal Republic of Germany in accordance with the agreement between the Customer and MBK, the rights of the Customer in accordance with letter a) shall apply in respect to the territory of the state concerned. The Customer is, however, not authorised to use or ship the object of contract in or into states other than those agreed with MBK. If the object of contract is shipped to a state which has not been agreed with MBK, there shall be no claims for defect of title in this respect for the Customer. Further, MBK can demand removal of the object of contract from the state concerned or that the Customer refrain from use of it in the state concerned,

- c) The finally presented rights of the Customer for protective rights and copyright infringements in accordance with no. 10.2 letters a) and b) shall only apply if
- the Customer informs MBK without delay about assertion of infringement, without being called upon to do so,
  - the Customer provides MBK with all information, also of a written nature, about the asserted infringement, without delay and at his own expense,
  - the Customer supports MBK in defence against the asserted infringement or provides it with adequate opportunity to eliminate the infringement.
  - the Customer reserves MBK all possibilities of defence and does not recognise any infringement without the previous approval of MBK and
  - the infringement has not been caused by use contrary to purpose or unauthorised modification to the object of contract by the Customer or third persons.

## **10. Damages and withdrawal from contract**

- 10.1 MBK is liable in cases of intent or gross negligence by itself or by its representatives, assistants or vicarious agents in accordance with the statutory provisions. Otherwise, MBK is liable only in accordance with the Product Liability Act, due to fatal injury, bodily harm or damage to the health of a person or due to culpable violation of significant contractual duties. Significant contractual duties are those the violation of which would endanger or defeat the purpose of the contract, i.e. contractual delivery or repair of the object of contract. The claim to damages due to the violation of significant contractual duties is, however, limited to the foreseeable damage typical for the type of contract. Liability is, also in cases of gross negligence, limited to the typical, contractual, foreseeable damage if none of the exceptional cases listed in sentence 2 of no. 10.1 is apparent.
- 10.2 Inasmuch as MBK is not liable on account of intent or gross negligence or due to culpable violation of significant contractual duties or due to fatal injury, bodily harm or damage to the health of a person or in accordance with product liability law, its liability for damage through the object of contract to other legal interests of the Customer, e.g. to other items, loss of profits, or for other financial loss, is ruled out.
- 10.3 The regulations of the aforementioned nos. 10.1 and 10.2 extend to damages alongside the performance and damages in lieu of performance, no matter for which legal reason, in particular due to defects, breach of other duties from the contractual obligation or from prohibited action. They also apply to the Customer's claim to damages in lieu of performance due to delay in delivery.
- 10.4 The above regulations do not involve any change to the onus of proof to the disadvantage of the Customer.
- 10.5 Within the framework of the statutory provisions, the Customer may only withdraw from the agreement if there is a breach of duty for which MBK is responsible.; in the case of defects, the statutory prerequisites shall prevail.

## **11. Limitation**

- 11.1 The limitation period for claims and rights of the Customer due to defects in the object of contract or the assembly or repair work of MBK - no matter for which reason - amounts to one (1) year after delivery of the object of contract or after acceptance of the assembly or repair work at the Customer's. This applies also to claims for damages on the part of the Customer irrespective of the legal basis of the claim and irrespective of whether or not the claim for damages is connected with a defect and to claims of compensation for futile expenditure or due to impossibility.  
The limitation period in accordance with this no. 11.1 sentences 1 and 2 does not apply in the case of intent, gross negligence, fraudulent concealment, a - if necessary to be expressly agreed - guarantee assumption for the composition of the object of contract and to claims for damages due to fatal injury, bodily harm or damage to the health of a person, to claims from the Product Liability Act or in the case of the violation of significant contractual duties and in the case of warranty and damages claims to defects of a building or objects, which are used on a building according to their intended purpose. The statutory limitation periods shall apply to claims in accordance with this no. 11.1 sentences 3 and 4.
- 11.2 Inasmuch as not otherwise expressly determined, the statutory provisions shall remain unaffected over and beyond the commencement of limitation, suspension of the statute of limitations, suspension or new commencement of periods.
- 11.3 The above regulations do not involve any change to the onus of proof to the disadvantage of the Customer.

## **12. Force majeure**

Neither the Customer nor MBK are required to answer for non-fulfilment of their contractual duties if non-fulfilment is due to a reason of hindrance lying outside their control or, in particular, one of the following reasons:  
natural catastrophe, war, confiscation through no fault of their own, export prohibition, embargo or other official measures, general shortage of raw materials or restrictions in energy consumption.  
The reason for hindrance and its cessation shall be notified to the other contractual partner without delay.  
The Customer and MBK may cancel the contract existing between them by way of written termination if its execution is hindered due to force majeure for more than six months.

## **13. Export regulations and taxes**

Any necessary official approvals for the transport, acquisition or use of the object of contract in the country of destination shall be obtained by the Customer on its own responsibility and at its own expense. The Customer is obliged to refund MBK any customs, taxes, levies or other official payments, which MVK incurs due to shipping to a place outside the Federal Republic of Germany.

## **14. Selection of law, performance and place of jurisdiction**

- 14.1 The place of performance for all obligations from the contractual relationship for both parties is the place of MBK's registered office. The place of jurisdiction for all disputes resulting from the contractual relationship is the place of MBK's registered office. MBK is, however, entitled to take action at the place of the Customer's registered office.
- 14.2 The business relationship between the Customer and MBK is subject exclusively to German law; application of the UN Convention on Contracts for the International Sale of Goods is mutually ruled out. In any cases of doubt, the German text version of these terms and conditions shall be decisive.