

General Conditions of Sale and Delivery of M+R Multitronik GmbH

§ 1 General / Scope of Application

1. These sales conditions of M+R shall apply exclusively; M+R shall not recognize Buyer's conditions which are conflicting with or in derogation of M+R's sales conditions, unless M+R has approved their validity expressly and in writing. M+R's sales conditions also shall apply if M+R effects delivery to Buyer without reservation in the knowledge of Buyer's conditions conflicting with or being in derogation of M+R's sales conditions.
2. All agreements made between M+R and Seller shall be made in writing.
3. If one of the provisions or a part of this Agreement is invalid, illegal or in violation of moral principles or is or becomes unenforceable, this, however, shall not affect the remaining provisions or parts hereof.

§ 2 Conclusion of Contract

1. A Contract comes into existence only after our written acknowledgement of order. With small orders, the acknowledgement of order may be substituted by presenting an invoice. The offers of M+R Multitronik GmbH are subject to change without notice and self-delivery.
2. The minimum order value per delivery is EUR 50.00 net for domestic orders and EUR 250.00 for orders outside Europe.

§ 3 Withdrawal from the Contract / Cancellation of orders

- M+R orders accepted by M+R cannot be cancelled unilaterally by Buyer, but only upon M+R's written authorization/approval, notwithstanding the reason for cancellation or withdrawal and without limitation of M+R's rights and/or claims to damages. Special orders of goods, which normally are not warehoused, cannot be cancelled or reversed.

§ 4 Prices and conditions of payment

1. Unless otherwise stipulated, M+R shall be bound to the prices named in the offers 30 days after the offer date.
2. Unless otherwise specified, the prices are net ex works or warehouse, without packaging. All additional costs, such as shipping, insurance, export, import and other authorizations, as well as certifications shall be borne by Buyer. Furthermore, Buyer shall bear all incurring taxes, charges, fees and duties.
3. The statutory rate of VAT is not included in the prices; it will be invoiced separately in accordance with the statutory rate applicable on the invoicing date.
4. A payment is considered to have been effected if Seller is able to dispose of the payment amount. In the case of checks, payment is considered to have been effected only after the check has been cashed.
5. In spite of Buyer's contrary provisions, M+R is authorized to offset payments from Buyer's older debts. If costs and interest have been incurred, M+R is authorized to offset the payment first from costs, then from interest and lastly from the main payment.
6. The deduction of discount requires special written agreements.
7. The total gross amount of the invoice is payable within 30 days of the invoice date without set off or discount option. If Buyer is in default, M+R is authorized to charge default interest of 8% p.a. above the respective basic interest rate of the European Central Bank. If M+R is able to prove higher damage caused by delayed performance, M+R is authorized to assert such damage. Buyer, however, is authorized to prove to M+R that the payment default caused no damage or only negligible damage to M+R.
8. Buyer is justified in effecting set-offs vis-à-vis M+R if its counterclaims have been recognized by declaratory judgment, are undisputed or have been acknowledged by M+R.
9. We reserve the right to adjust the negotiated price for foreign goods if the currency of a supplying country compared with the euro fluctuates by more than by 5% between the order placement and delivery (= invoicing).

§ 5 Period of delivery and delivery

1. M+R is obligated to deliver only after all technical questions regarding delivery have been clarified. This requires the timely and proper compliance with all agreed upon and other agreements of Buyer.
2. If Buyer is in default of acceptance or Buyer violates other duties of participation, M+R is authorized to be reimbursed for any damages incurred herefrom, including possible additional expenses. In this case, the risk of accidental loss or an accidental deterioration of the purchased item will be assumed by Buyer at the time at which Buyer is in default of taking delivery.
3. Open releases from framework agreements will be delivered at the latest 12 months after the order confirmation date, even if Buyer has not yet assigned the goods for delivery and/or assigned them at a later date.
4. M+R is not responsible for a default in delivery or performance if M+R is liable for the reasons hereof. Such reasons include unlimited force majeure, actions or omissions on the part of Buyer, civil or military authorities, fire, strike, epidemics, quarantine regulations, flooding, earthquakes, revolution, war, transportation delays, etc., or the impossibility of obtaining staff, material and fuels. M+R is authorized to deny or delay delivery unless Buyer effects due payments immediately to M+R, irrespective of whether such payments result from the same contractual relations as M+R or other relations.
5. Under the current regulations, M+R may deliver the goods within the time limit stipulated in the corresponding order at any time or in several partial consignments.
6. The risk shall be transferred to Buyer as soon as the consignment has been assigned to the person executing the shipping or has been shipped from M+R's warehouse. If the goods cannot be shipped without M+R being at fault, the risk will be assigned to Buyer upon being notified of the consignment being ready for shipment.
7. Unless Buyer submits contrary instructions, M+R may determine the carrier, type of shipping and shipping route.

§ 6 Warranty for defects

1. Buyer's warranty rights require that Buyer has met its inspection and reporting duties in accordance with sec. 377 German Commercial Code. The goods are considered to have been accepted by Buyer, unless Buyer has refused their acceptance within a reasonable time limit. This time limit is 10 days upon receipt of goods. Claims from a default in delivery shall be excluded, unless such claims are submitted prior to the receipt of goods. The acceptance of goods represents a waiver of any claim based on default in delivery. Return shipments will be accepted only if the corresponding "return material authorization" was obtained prior thereto from M+R.
2. M+R excludes any warranty of the goods purchased by Buyer as well as the assurance of their suitability for special purchases, provided legally permissible. M+R agrees to transfer to Buyer all transferred warranties M+R has received from the manufacturer of the goods sold to Buyer.
3. If the purchased item has a defect for which M+R is responsible, M+R has the option of remedying such defect or supplying a replacement. In the case of remedying the defect, M+R is obligated to bear all expenditures, especially transportation, travelling, labour and material costs for the purpose of remedying the defect in question, provided said costs do not increase due to the fact that the purchased item was moved to a different location than the place of performance.
4. Furthermore, Buyer is obligated to give us the opportunity to determine the reported defect on site and/or upon request to provide us with the reported defect or samples; the warranty becomes void in the case of wrongful refusal.
5. Unless otherwise provided in the following, additional claims of Buyer irrespective of legal grounds shall be excluded. M+R, therefore, shall not be liable for loss or damage not caused directly to the delivery item; in particular, M+R shall not be liable for lost profits or other pecuniary losses of Buyer. M+R shall in no case be liable for indirect secondary or consequential damage.
6. Buyer's compensation based on a claim, irrespective of the type of claim, is limited either based on a warranty on the contract or on the purchase price paid on the goods under the contract.
7. M+R assumes no guarantee for damages based on unsuitable or improper use, faulty installation, putting into operation, change or repair not performed by us, faulty or negligent treatment, natural wear and tear.
8. Damage claims – irrespective of legal grounds – will lapse after one year. Excluded herefrom are damage claims in the case of personal injury. These will depend on the statutory periods of limitation.

§ 7 Joint liability

1. A further liability for damages, regardless of the legal nature of the asserted claim, shall be excluded.
2. Should M+R's liability be excluded or limited, this also shall apply to the personal liability of M+R's employees, agents and vicarious agents.

§ 8 Reservation of title

1. M+R reserves the reservation of title in the goods until the purchase price has been paid in full. In the case of goods, which Buyer purchases from us within the framework of an ongoing business relationship, we reserve the title until all claims from the business relationship have been settled, including future claims – also from simultaneously or subsequently concluded contracts. This also shall apply if individual or all of our claims were transferred to a running account and the balance is drawn and has been acknowledged. If Buyer defaults in payment, we are authorized to demand back the goods following a request for payment, and Buyer is obligated to surrender the goods.
2. Buyer is obligated to treat the purchased item carefully until it is paid in full.
3. In the case of attachment or other third-party interventions, Buyer shall notify M+R immediately in writing, in order to enable M+R to file an action according to sec. 771 Code of Civil Procedure. If the third party is not in a position to reimburse M+R the judicial and extrajudicial costs of an action according to sec. 771 Code of Civil Procedure, Buyer shall be liable to M+R for the loss incurred.
4. Buyer is authorized to resell the purchased item in the ordinary course of business; Buyer already at this time shall assign to M+R all claims in the amount of the invoice amount (including VAT), which arise from the resale against its Buyers or third parties, that is, irrespective of whether the purchased item was resold without or after reprocessing. Purchaser also shall be authorized to collect this claim after the assignment. This shall not affect M+R's authorization to collect the claim independently. M+R, however, undertakes not to collect the claim so long as Seller meets its payment obligations from the agreed upon releases, is not in default in payment, and in particular, if no petition has been filed for instituting insolvency or conciliation proceedings, or there is no payment stop. If this, however, is the case, M+R may request that Buyer discloses to M+R the assigned claims and their debtors provide all information required for collection, surrenders the related supporting documents and notifies the debtor (third party) of the assignment.
5. If Buyer links the conditional commodity with other goods, M+R shall be entitled to the joint ownership in the new item, which shall be in proportion to the invoice value of the conditional commodity, the invoice value of the other goods and the processing value. If our title expires on account of the combination, Buyer shall transfer to us at the time of the conclusion of contract, the rights of ownership in the new item to which Buyer is entitled within the scope of the invoice value of the conditional commodity, which Buyer shall preserve for us free of charge.

§ 9 Patents, Infringements

1. M+R shall effect no warranty that the goods sold to Buyer are free from regular third-party claims based on a violation or infringement of a patent or trademark or similar, and in the case of an infringement, refuses any warranty in connection with the goods. Buyer agrees that in the case of a claim based on an infringement, only the manufacturer or licensor uses the goods. Furthermore, Buyer agrees to defend and hold harmless M+R against amounts, costs, expenditure and attorney fees, which M+R incurs or must pay to Seller as a consequence of a claim, reason for an action or judgment, which Buyer acquired, unless such use, change or improvement was authorized in writing by the manufacturer or licensor of the goods.

§ 10 Technical consultation and dates

1. Any technical consultation offered or given in connection with the use of goods is a free-of-charge courtesy to Buyer, and M+R has no responsibility and/or assumes no liability for the content or application of such consultation. Buyer may use, duplicate, or disclose the technical data, which M+R provided or disclosed only upon prior written approval by M+R. Excluded herefrom are the installation assembly, operation, and maintenance of the goods acquired by Buyer.
2. All technical documents shall remain intellectual property and may neither be copied nor duplicated nor brought to the attention of third parties in any way nor used for production or components of the plant. Said documents may be used for maintenance and service.

§ 11 Seller's rights

1. In the case of a default in payments on the part of Buyer, Buyer shall pay all costs incurred by M+R in the course of the collection of amounts owed by Buyer. This includes a reasonable attorney fee and collection charges.
2. If M+R waives its rights in the case of a violation of these provisions and conditions or in the case of a default in payment, this shall not be deemed to be a waiver in the case of subsequent violations or omissions.

§ 12 Agreements and conditions of Buyer

1. This Agreement represents the sole and total agreement between the parties concerning the subject matter of contract and replaces all previous or simultaneous written or verbal agreements between the parties concerning this subject matter. Previous transactions between the parties or conventional procedures are not relevant for the interpretation or amendment of a provision of this Agreement. An assumption or toleration in the case of rendering a service within the scope of this Agreement is not relevant for determining the significance of the Agreement in question, even if the accepting or tolerating party has knowledge of the type of performance and the opportunity to lodge an objection. Any subsequent change of this Agreement shall be binding to M+R only if made in writing and is signed both by Buyer and M+R. Assignments of this Agreement or rights of Buyer arising herefrom shall be valid only with M+R's written approval.

§ 13 Place of performance, jurisdictional venue, applicable law

1. The place of performance and the exclusive jurisdictional venue for deliveries and payments (including legal actions based on checks and bills of exchange) as well as all other disputes, provided Buyer is a merchant, legal entity under public law or a special fund under public law, and our company's principle place of business is 23858 Reinfeld (Holstein). However, we are authorized to take action against Buyer at its jurisdictional venue.
2. The contractual relations shall be regulated exclusively according to the laws of the Federal Republic of Germany, subject to the exclusion of the UN Sales Convention.