

General terms and conditions of purchase and payment of mtm plastics GmbH (as of 01/2017)

§ 1 General - area of applicability

(1) These terms and conditions of purchase of mtm plastics GmbH (hereinafter referred to as "mtm") apply exclusively to all sales agreements between mtm and the supplier. Conflicting terms and conditions of the Supplier or terms and conditions of the Supplier which deviate from these terms and conditions of purchase of mtm are not recognised by mtm, unless it has expressly agreed to their applicability in writing. Employees without power of representation are not authorised to enter into agreements which conflict with these terms and conditions. The terms and conditions of purchase shall also apply if mtm accepts the delivery of the Supplier without reservation or makes payment to the Supplier without reservation in the knowledge of conflicting terms and conditions of the Supplier or terms and conditions of the Supplier which deviate from these terms and conditions of purchase.

(2) All agreements which are concluded between mtm and the Supplier for the purpose of performance of the order must be set out in the order and order confirmation. No other agreements exist.

(3) The written correspondence shall take place with the purchasing department. Should agreements be concluded which amend points set out in the contract, undertakings with other departments shall require the written confirmation of the purchasing department in the form of a contractual supplement.

(4) The order shall only be issued by mtm under the condition that its performance complies with the accident prevention and safety in the workplace regulations, as well as the generally recognised rules concerning safety and occupational health.

§ 2 Offers

The Supplier shall be obliged to accept orders within a deadline of two weeks.

§ 3 Prices - payment terms

(1) The price stated in the order shall be binding. The price includes delivery "free to the destination", plus packaging. A return of the packaging shall require a separate agreement.

(2) The statutory value added tax is included in the price and must be stated separately.

(3) Invoices must be issued as two copies and must state the order number and commission number which are stated in the order. Should these requirements not be met, the claim of the Supplier shall not become due.

(4) mtm pays the purchase price within 10 days, calculated from the time of delivery of the goods including proper dispatch papers in accordance with § 6 (hereinafter referred to as "delivery") and the receipt of a proper invoice in accordance with § 3 Paragraph 3 of these terms and conditions (hereinafter referred to as "invoice receipt") with a 3% discount, within 14 days calculated from the time of delivery and invoice receipt with a 2% discount or net within 45 days of delivery and invoice receipt.

(5) Rights of set off and rights of retention shall be possessed to the extent prescribed by law. In particular, in case of a defect complaint mtm shall be entitled to withhold payments to a reasonable extent.

§ 4 Delivery time

(1) The delivery time stated in the order and the performance time stated therein is binding.

(2) The Supplier shall be obliged to immediately inform mtm if circumstances arise or become recognisable to it which mean that the binding delivery time cannot be complied with and the Supplier must also explain the reason for the delay and its expected duration. The claims arising in favour of mtm shall not be affected by the notification.

(3) Should the Supplier enter default, mtm shall be entitled to assert a contractual penalty to the amount of 0.5% of the delivery value per commenced week of delivery. However the contractual penalty shall be limited to 5%. Further statutory claims shall remain reserved. The Supplier shall have the right to provide proof to mtm that no loss or a lower loss was incurred as a result of the delay.

(4) Should mtm set the Supplier a period of grace with a rejection threat once it has entered default which is reasonable in the circumstances, mtm shall be entitled to rescind the contract following the expiry of the period of grace or to assert damages due to non-performance.

(5) Should the order at hand be a fixed transaction as defined in § 323 Paragraph 2 Number 2 of the German Civil Code (BGB) or § 376 of the German Commercial Code (HGB), mtm shall be entitled to the statutory claims.

§ 5 Shipping - packaging

(1) The shipping shall take place at the risk of the Supplier, who must ensure flawless and proper packaging. All damage caused to this extent must be compensated for by the Supplier, unless it proves that it is not responsible for such.

(2) Shipping notices with precise information concerning quantity, weight etc must be sent to mtm on the day of dispatch. Should the parties have agreed that partial deliveries are permitted, the remaining quantity to be delivered must be stated during each partial delivery.

§ 6 Transfer of risk - documents

(1) The delivery shall take place "free to destination" or "free to warehouse" at the place of receipt (place of performance) which is stated by mtm in the order.

(2) The Supplier shall be obliged to state the precise order number on all shipping papers and delivery notes. Should the Supplier fail to do so, processing delays for which mtm is not responsible are unavoidable.

§ 7 Commissioned work and services

(1) The Supplier shall be obliged to subject the workers deployed by it to the operating premises of mtm in order to carry out work to the workplace rules. Commissioned work and other services shall only be remunerated by means of proof of a receipt signed by mtm.

(2) Should the Supplier provide its contractually obliged service at the premises of mtm in case of work, work delivery or service contracts, it shall make its own enquiries concerning the availability of the necessary protective equipment and shall, if necessary, provide such equipment in order to protect its employees. The Supplier shall ensure compliance with special safety regulations on the part of its employees. In case of breaches of these safety regulations, mtm shall be entitled to refuse access to the employees of the Supplier concerned to the assembly location. Liability of mtm for claims which go beyond the insurance coverage is excluded. All damage and disruptions which are caused by the Suppliers or its representative shall be paid for by the Supplier.

(3) The assembly of the goods which are owed shall be undertaken by the Supplier at its own expense, unless otherwise agreed under an individual contract. mtm shall only be obliged to provide technical assistance under separate contractual agreements.

§ 8 Goods in control

(1) mtm shall be obliged to check the goods within a reasonable deadline for any quality or quantity deviations and to raise a complaint in case of any deviations. The complaint shall be deemed to have been made on time if this is received by the Supplier within a deadline of 10 working days following the ascertainment of the deviation or following the time where mtm ought to have become aware of the deviation by means of an inspection in the proper course of business. Separately agreed long term services shall remain unaffected by this provision.

(2) Should the delivered goods not be able to be fully checked due to their qualities, the defect inspection shall be undertaken by means of a reasonable and sufficient number of random samples. Should mtm become aware of an exceeding of the permitted marginal quality values within the framework of the random sampling, mtm shall be entitled to fully reject the goods or to check each individual part at the expense and risk of the Supplier. The Supplier shall bear all material and personnel costs in this respect. In such a case, the Supplier must provide the substance proof of the previous materials.

§ 9 Warranty

(1) The Supplier shall incur liability for negligent and intentional breaches of obligations. The Supplier can also not claim a limitation of liability in relation to its employees.

(2) The Supplier hereby provides a guarantee for usual deliveries and deliveries in accordance with the agreement in respect of the proper materials, correct construction, defect free assembly, strength, performance and degree of effectiveness. The Supplier hereby provides an undertaking that the goods correspond to the specifications, as well as the

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generally recognised rules of technology, the safety in the workplace and accident prevention regulations, as set out in DIN norms and other recognised technical regulations in particular.

(3) mtm shall be entitled to the statutory warranty claims without restriction. In particular, mtm shall be entitled to demand defect correction or a replacement delivery, depending on the choice of mtm. In such a case, the Supplier shall be obliged to bear all expenses necessary in order to correct the defect or carry out a replacement delivery. The right to damages, in particular the right to damages due to non-performance, as well as the right to rescind the contract or reduce the price hereby remains expressly reserved. The Supplier shall be bound by stated quality and durability guarantees.

(4) The warranty period shall be in accordance with the statutory regulations.

(5) The Supplier shall be obliged to deliver replacement parts on reasonable terms for the expected period of technical use, however at least for 10 years following delivery. Should the Supplier cease manufacturing the replacement parts, it shall be obliged to offer mtm the opportunity of placing a final order. Instead of the order, mtm can demand that the Supplier hands over all necessary facilities and documents for the manufacture of the replacement parts and grants free of charge use to mtm.

§ 10 Product liability - release - liability insurance coverage

(1) Should the Supplier be responsible for damage caused by its product, it shall be obliged to release mtm from third party damages claims on first request to the extent that the damage is located in its area of management and organisation and it incurs liability itself in relation to third parties.

(2) Within this framework, the Supplier shall also be obliged to reimburse any expenses in accordance with §§ 683, 670 of the German Civil Code (BGB), which are incurred under or in connection with a recall measure carried out by mtm. To the extent that is possible and reasonable, mtm shall inform the Supplier of the content and scope of the recall measures to be carried out and shall provide it with the opportunity to make a statement.

(3) The Supplier shall be obliged to maintain product liability insurance with a fixed sum insured of at least 2,000,000 EUR per incidence of personal injury / property damage. Should mtm be entitled to further damages claims, these shall remain unaffected.

§ 11 Property rights

(1) The Supplier hereby provides a guarantee that no third party rights are being infringed in connection with its delivery.

(2) However, should a claim be brought against mtm, the Supplier shall be obliged to release mtm from such claims on first written request. mtm shall not be permitted to conclude any type of agreement with third parties, in particular a settlement, without the agreement of the Supplier.

(3) The release obligation of the Supplier extends to all expenses which are necessarily incurred by mtm under or in connection with the claim brought by the third party.

(4) mtm reserves the right to register commercial property rights for its own know how which has been acquired in the course of the order and the manufacturing under the engagement on the part of the Supplier. This also applies to subsequent changes or improvements to drafts, images and requirements which are brought about by mtm.

(5) mtm reserves the ownership rights and copyright in respect of images, drawings, calculations, special requests and deviations from the standards of the Supplier, as well as other documents provided by mtm. These may not be made accessible to third parties without the express permission of mtm (for example in the form of a licence agreement to be concluded with the Supplier). These may only be used for manufacturing on the basis of the order of mtm. Once the order has been completed, these must be returned to mtm without the need for a request to be issued and any copies made must be destroyed or surrendered to mtm. These must be kept confidential in relation to third parties. To this extent, § 13 of these terms and conditions shall apply. The same shall apply should mtm provide the Supplier with work tools in order to manufacture the object of delivery.

§ 12 Reservation of ownership

(1) Should mtm provide the Supplier with parts, these shall remain the property of mtm. Processing or alterations by the Supplier shall be carried out for mtm. Should the property of mtm be processed or mixed with objects which do not belong to it, mtm shall acquire co-ownership in the new item based on the value of its item (purchase price plus value added tax) to the other processed or mixed objects at the time of processing or mixing. Should the mixing take place in such a way that the object of the Supplier is to be considered as the principal item, it is hereby agreed that the Supplier will assign co-ownership to mtm. The Supplier shall retain the co-ownership or sole ownership for mtm.

(2) mtm shall also acquire the ownership or an exclusive, unlimited, unrestricted right of use and exploitation in relation to any manufacturing techniques and procedures developed for mtm and also reserves the right to register commercial property rights in respect of these.

(3) The work tools provided to the Supplier shall remain the property of mtm. The Supplier shall be obliged to only use the tools in order to manufacture goods ordered by mtm. The Supplier shall be obliged to insure the work tools which belong to mtm to their replacement value against fire, water and theft at the expense of the Supplier. At the same time, the Supplier hereby now assigns all compensation claims under the insurance policy to mtm. mtm hereby accepts the assignment.

(4) The Supplier shall be obliged to carry out any necessary and inspection work in connection with mtm work tools in good time, as well as all maintenance and repair work at its own expense. Any breakdowns must be notified to mtm immediately. Should the Supplier culpably fail to provide such a notification, it shall be obliged to pay damages to mtm. Other damages claims shall remain unaffected thereby.

§ 13 Confidentiality

(1) "Confidential information" as defined in these terms and conditions relates to all information and data, including business secrets, commercial and technical information and data which mtm discloses to the Supplier in connection with this contract or in connection with the respective order. "Confidential information" also includes copies, summaries and parts of information in physical form, including electronic form.

(2) All confidential information which is disclosed within the framework of the co-operation:

a. May only be used for the purpose of the co-operation between mtm and the Supplier. The Supplier must treat the said information confidentially and take the necessary measures to prevent unauthorised disclosure of the information.

b. May not be disclosed, published or distributed by the Supplier in any shape or form, except to its own employees or those of associated companies who require access to the confidential information in order to fulfil the contract concluded with mtm and who are obliged to maintain confidentiality under their employment contracts or in other ways. Associated companies are companies defined in §§ 15 ff of the German Stock Corporation Act (AktG) which exist as associated companies at the time of conclusion of the contract.

c. Shall remain the property of mtm. Regardless of use within the framework of the purpose of this contract, the Supplier shall not be permitted to use the confidential information for its own purposes or for those of a third party. Furthermore, the Supplier shall not be permitted to register commercial property rights in respect of the information or parts thereof.

(3) The obligations under the paragraph above do not concern such information which was already in the possession of the Supplier at the time of the disclosure to it, is developed by the Supplier independently, is provided to the Supplier by a third party without any breach of a confidentiality agreement, is already generally known or where the information must be disclosed due to a legal obligation or an order of the authorities. The Supplier shall bear the burden of proof concerning the presence of the exceptions referred to above and shall immediately inform mtm if there is reason to suspect that confidential information has been acquired by third parties or must be disclosed due to a legal regulation.

(4) For each individual case of a breach of this obligation and to the exclusion of the plea of continuation of offence for intentional breaches, the Supplier shall be obliged to pay mtm

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a contractual penalty to the amount of 50,000 € (fifty thousand euros), should the breach concern business or operating secrets or 5,000 € (five thousand euros), should the breach concern other confidential information. mtm shall reasonably reduce the contractual penalty if and to the extent the extent of the breach, in particular the amount of the loss incurred, justifies such a reduction. The assertion of further losses shall remain reserved.

(5) On termination of the contract or once the order has been fulfilled by the Supplier, the Supplier shall be obliged to return the disclosed documents to mtm, without the need for a request to be issued. Should confidential information, in particular such which is presented by mtm in visual or oral form be used by the Supplier in order to draw up its own documents, the said documents must be destroyed at the time of termination of the contract. The Supplier must provide proof of the destruction to mtm.

(6) The obligations to maintain secrecy which are imposed on the Supplier under this contract shall also continue to apply after its termination, unless the information has become generally known, unless such public knowledge is due to a breach of contract on the part of the Supplier.

§ 14 Place of jurisdiction - place of performance

(1) The place of jurisdiction shall be the competent court of the place of business of mtm. mtm shall however be entitled to bring a lawsuit against the Supplier at its principal place of business.

(2) Unless otherwise stated in the order confirmation, the place of performance shall be such a location where the service is to be delivered in accordance with the order or where the service is to be provided.

(3) The relationship with mtm shall be subject to the law of the Federal Republic of Germany. The United Nations Convention governing the International Sale of Goods shall apply.