



§ 1 Scope of Application

- (I) All deliveries, services and offers from Mewes & Partner GmbH (hereinafter also "M&P") shall occur exclusively upon the basis of these general terms and conditions. These are an integral component of all M&P contracts concluded with its contractual partners (hereinafter also called "client" or "contracting partner") on all offered deliveries or services. These also apply to all future deliveries, services or offers to the client, even if these are not agreed again separately.
- (II) The general terms and conditions of the client or a third party shall not apply, even if M&P does not contest their application in individual cases. Even if M&P refers to a letter that contains or refers to the general terms and conditions of the client or third party, this does not represent acceptance of the application of these general terms and conditions.

§ 2 Offer and Contract Conclusion

- (I) All offers from M&P are non-binding and subject to change unless they are identified as binding or include a specific acceptance term. Orders or contracts may be accepted on the part of M&P within fourteen days of receipt.
- (II) The sole determinant for the legal relationship between M&P and the contractual partner is the concluded written agreement including these general terms and conditions. It stipulates all agreements between the parties. Oral agreements issued by M&P prior to the conclusion of this contract are not legally binding and oral agreements between the contracting parties will be replaced by the written agreement unless it is expressly stipulated that they shall continue to bindingly apply. Additions and amendments to concluded agreements including these general terms and conditions are required to be in writing. With the exception of directors or authorised representatives, M&P employees do not have the right to conclude deviating oral agreements. The requirement for the written form is satisfied through communication by fax, other forms of telecommunication, particularly email are not sufficient.
- (III) Information provided by M&P to the properties of the delivery or service (e.g. weights, dimensions, consumption values, durability, tolerance and technical data) as well as illustrations of these (e.g. drawings or figures) are only approximate unless an exact precision is required for the contractual intended purpose. They do not represent guaranteed properties but are descriptions or characteristics of the delivery or service. Customary deviations and deviations on the grounds of legal regulations or technical improvements as well as the replacement of components through parts of equal value are permitted to the extent that these do not impair the usability for the contractually intended purpose.
- (IV) M&P retains ownership or copyright to all issued offers and cost estimates as well as drawings, illustrations, calculations, prospects, catalogues, models, tools and other documents and equipment issued to the client. The client may not provide these items or their contents to a third party, make them available, use these themselves or allow a third part to do so or reproduce these without the express permission of M&P. Upon the request of the seller, the client shall return these in full and destroy any copies when these are no longer required in the customary course of business or if negotiations do not lead to the conclusion of a contract.

§ 3 Prices and Payment

- (I) The prices apply to all services and deliveries stipulated in the order confirmation. Additional or special services shall be invoiced separately. All prices are in EURO ex-works excluding packaging and statutory VAT, for export deliveries duties as well as charges and other public charges.
- (II) Insofar as the agreed prices are based on M&P list prices and the delivery occurs more than four months after the conclusion of contract, the seller's list prices at the time of delivery shall apply.

- (III) Unless otherwise agreed in writing, invoiced amounts are payable in full within *fourteen days*. The payment date is deemed upon receipt by M&P. Cheques apply as payment upon redemption. If the client should not pay when due, the outstanding amounts shall be subject to 5% interest p.a. from the due date, the assertion of higher interest rates and further damage in the event of default shall hereby remain unaffected.
- (IV) The offsetting of counterclaims on the part of the client or the withholding of payment on the grounds of such claims is only permitted if the counterclaims are undisputed or legally established.
- (VI) M&P has the right to only perform outstanding deliveries or services against an advance payment or the issuing of securities if following the conclusion of contract, circumstances become known that are adequate to significantly reduce the creditworthiness of the client and through which the payment of outstanding claims of M&P from the respective contractual relationship (including those from individual orders to which the same framework agreement applies) are endangered.

§ 4 Delivery and Delivery Terms

- (I) Deliveries are ex-works.
- (II) Deadlines and dates announced by M&P for deliveries and services always apply as approximations, unless a fixed date or deadline is expressly promised or agreed. If delivery is agreed the delivery terms and dates apply from the time the goods are handed over to the haulier, freight transporter or other third party commissioned with the delivery.
- (III) Without prejudicing its rights arising through the fault of the client, M&P may request the client for an extension to the delivery and service terms or a postponement of these for the period in which the client does not fulfil its duties towards M&P.
- (IV) M&P is not liable for the impossibility of a delivery or delivery delays to the extent that these are caused through force majeure events or other events not foreseeable at the time the contract was concluded (e.g. operating disruptions of all kinds, difficulties in obtaining materials or energy, transport delays, strikes, legal lockouts, lack of manpower, energy or raw materials, difficulties in obtaining the requisite official permits, official measures or the missing, incorrect or late delivery by suppliers, for which M&P is not responsible. If such events should cause significant difficulties or prevent M&P from providing the delivery or service and the hindrance is not only of a temporary nature, M&P is entitled to withdraw from the contract. In the event of temporary hindrances, the delivery or service terms shall be extended or postponed for the period of the hindrance as well as a reasonable start-up period. To the extent that it is not reasonable for the client to accept the delivery or service as a result of the delays, it can withdraw from the contract through an immediate written declaration to M&P.
- (V) M&P is only permitted to perform part deliveries when
- the part delivery is usable for the client in the scope of the contractually intended purpose,
 - the delivery of the remaining goods is ensured and
 - the client shall not have significantly more work or incur additional costs through this (unless M&P declares that it is prepared to assume these costs).

If M&P should become delayed in performing a delivery or service or if these should become impossible, irrespective of the grounds, the liability of M&P to provide compensation is limited to § 8 of these general terms and conditions.²⁰

§ 5 Place of Performance, Delivery, Packaging, Transfer of Risk, Acceptance

- (I) Unless otherwise stipulated, place of performance for all obligations arising from this contract is the domicile of M&P in 16761 Hennigsdorf, Germany. If M&P also owes the installation, the place of performance is the location in which the installation is to be undertaken.
- (II) The form of delivery and packaging are subject to the dutiful discretion of M&P.



- (III) Risk is transferred upon the handover of the delivery item at the latest (whereby the beginning of the loading process is determining) to the haulier, freight transporter or other third party commissioned to perform the delivery to the client. This shall also apply when part deliveries are made or M&P has assumed other services (e.g. delivery or installation). If delivery or handover is delayed as a result of circumstances that are the responsibility of the client, risk shall be transferred on the date on which M&P is ready to deliver and has accordingly notified the client.
- (IV) Storage costs following the transfer of risk shall be assumed by the client. For storage by M&P, the storage costs are 0.25% of the invoice amount of the delivery items to be stored per expired week. The right to assert and prove of further or lower storage costs remain uneffected.
- (V) Deliveries shall only be insured by M&P upon the express request of the client at its expense against theft, break in, transport, fire and water damage or other insurable risks.
- (VI) To the extent that an acceptance is required, the purchased object applies as accepted when
- the delivery and – if M&P owes this – the installation are completed,
 - M&P informs the client in reference to the deemed acceptance in accordance with this § 5 (VI) and has demanded acceptance,
 - **twelve workdays** have expired since the delivery or installation or the client has begun using the purchased object (e.g. has started operating the supplied plant) and in this case **twelve workdays** have passed since delivery or installation and
 - the client has omitted the acceptance within these terms for a reason other than a defect reported to M&P that makes the use of the purchase object impossible or significantly impairs this.

§ 6 Warranty

- (I) The warranty term is one year commencing upon delivery or – to the extent that an acceptance is required – acceptance.
- (II) The supplied objects are to be diligently inspected by the client or appointed third party immediately following delivery. They apply as approved when M&P receives no notice of defects regarding obvious defects or other defects that would be noticeable upon an immediate diligent inspection, within seven workdays following the delivery of the delivered items or otherwise seven days following the discovery of the defect or the time at which the defect became noticeable to the client upon normal use of the delivered item without closer inspection, which is issued in the form stipulated in § 2 (II) s. 6. Upon the request of M&P, the contested delivery item is to be returned carriage free to M&P. For founded complaints about defects, M&P shall pay the costs for the cheapest sending method; this shall not apply to the extent that the costs are increased due to the delivered item being located in a place other than the location for its intended use.
- (III) In the event of material defects to the delivered item, M&P is obliged and entitled at its discretion to perform repairs or provide a replacement delivery within a reasonable term. In the event that this is unsuccessful, i.e. impossibility, unreasonableness, refusal or unreasonable delay in repairs or replacement delivery, the client may withdraw from the agreement or reasonably reduce the purchase price.
- (IV) If a defect is due to the fault of M&P, the client may demand compensation on the grounds of the provisions stipulated in § 8.
- (V) In the event of defective components from other manufacturers that M&P cannot rectify for licencing or factual reasons, M&P shall at its discretion assert its warranty claims against the manufacturer and supplier on behalf of the client or assign these to the client. Warranty claims against M&P in the event of such defects subject to

the other provisions and in accordance with these general terms and conditions only exist when the legal assertion of the aforementioned claims against the manufacturer and supplier were unsuccessful or for example are unpromising due to insolvency. For the duration of the legal dispute, the expiry of the client's involved warranty claims against M&P is inhibited.

- (VI) Warranty shall lapse if the client without the permission of M&P modifies the delivered items or has this modified by a third party and the removal of defects is hereby impossible or unreasonably made more difficult. In all cases the client shall assume the additional costs incurred to rectify the defects.
- (VII) The delivery of used items agreed in individual cases with the client occurs under the exclusion of any warranty.

§ 7 Protected Rights

- (I) M&P is responsible under this § 7 that the delivered item is free from third party intellectual property rights or copyrights. Each contracting party shall immediately and in writing inform the other in the event that claims are asserted against it on the grounds of the infringement of such rights.
- (II) In the event that the delivered item infringes a third party intellectual property right or copyright, M&P shall at its discretion and at its expense modify or exchange the delivered item in a way that no third party rights are infringed, but that the delivered item still fulfils the contractually agreed functions, or provide the orderer with usage rights through the conclusion of a licencing agreement. If this is not possible within a reasonable term, the client has the right to withdraw from the contract or reasonably reduce the purchase price. Any claims to damages on the part of the client are subject to the restrictions stipulated in § 8 of these general terms and conditions.
- (III) In the event of legal infringements through products supplied by M&P from other manufacturers, M&P shall at its discretion assert claims against the manufacturer and supplier on behalf of the client or assign these claims to the client. Claims against M&P in this case under the terms of this § 7 only exist when the legal assertion of the aforementioned claims against the manufacturer and suppliers were unsuccessful or unpromising, e.g. due to insolvency.

§ 8 Liability to Provide Compensation based on Fault

- (I) The liability of M&P to provide compensation, irrespective of on which legal grounds, particularly on the grounds of impossibility, default, defective or wrong delivery, breach of contract, breach of duties during contract negotiations and unauthorised actions, is – when it depends on fault – restricted in accordance with the stipulations of this § 8.
- (II) M&P shall not be liable
- a) in cases of ordinary negligence of its management bodies, legal representatives, employees or other vicarious agents;
 - b) in cases of gross negligence of non-management employees or other vicarious agents to the extent that this does not concern the breach of material contractual duties. Material contractual duties are the obligation to timely, defect-free delivery and installation as well as consulting and protective duties and duty of care that should enable the client to use the delivered item as contractually agreed or that have the purpose to protect the life and health of the client's personnel or third parties or the property of the client against significant damage.
- (III) To the extent that M&P is liable under § 8 (II) for damages on the merits, the liability for damage is limited to that which M&P upon the conclusion of contract could have foreseen as a possible consequence of a breach of contract or under consideration of the circumstance that were known to it or it should have been aware of or foreseen in the application of customary diligence. Indirect damage and consequential damage that arise due to defects to the delivered items are only subject to compensation to the extent that such damage is foreseeable upon the proper use of the delivered item.
- (IV) In the event of liability for ordinary negligence, the obligation to provide compensation by M&P for damage to property or



personal injury is limited to a sum per case of damage corresponding to the current coverage amount of product liability insurance or third party liability insurance, also if this concerns the breach of a material contractual duty.

- (V) The aforementioned exclusions and limitations of liability apply to the same scope to the management bodies, legal representatives, agents and other vicarious agents of the seller.
- (VI) To the extent that M&P issues technical information or acts as a consultant and this information or consultation is not part of the contractually agreed owed scope of services, this occurs without payment and under the exclusion of any liability.
- (VII) The limitations in this § 8 do not apply to the liability of M&P for intention, for guaranteed properties, death, personal injury or damage to health or in accordance with the product liability act.

§ 9 Retention of Title

- (I) The following agreed retention of title serves to secure all currently existent and further claims of M&P against the contractual partner arising from the delivery relationship (including balance demands from an open item account limited to this delivery relationship) existing between the contracting parties.
- (II) The goods delivered by M&P to the contractual partner remain the property of M&P until the full payment of all secured demands.
- (III) The contractual partner holds the goods subject to the retention of title on behalf of M&P without charge.

§ 10 Special Provisions for Specific Contracts

- (I) In § 10a, special provisions for individual contracts are regulated.
- (II) These special provisions apply only to the specified contracts.

§ 10a Software Maintenance Service

I. Exclusion of services

The rectification of failures and defects caused through improper treatment on the part of the contractual partner, through the intervention of a third party or through force majeure occurrences are not subject to software maintenance services. The same applies to damage and failures that are caused through environmental conditions at the installation site, through errors or non-performance of the energy supply, defective hardware or other effects that are not caused by the provider.

Commencement of the software maintenance service

Following the timely ordering within the first six months of the purchase of the licence, the Win MOD-software maintenance service starts as the continuation of the WinMOD standard service. In the event of a later ordering, including the upgrade/update to the current version, the WinMOD software maintenance service shall start upon receipt of payment. The middle of the quarter in which payment is received applies as the beginning of the contract term.

II. Invoicing

The invoice for the WinMOD software maintenance service is issued by M&P and is payable annually on the date the contract commenced (e.g. upon ordering the WinMOD software maintenance service within the first six months, invoice is issued during the 7th month and is then due every 12 months).

§ 11 Final Provisions

- (I) Legal venue for all disputes arising through the business relation between M&P and the client is in accordance to our choice either Hennigsdorf or the domicile of the client. For claims against M&P, Hennigsdorf is the sole legal venue. Mandatory statutory provisions regarding the sole legal venue shall remain unaffected by this provision.

- (II) The relationship between M&P and the client are exclusively subject to German law. The United Nations Convention on the International Sale of Goods of 11 April 1980 (CISG) does not apply.
- (III) To the extent that the contract or these general terms and conditions should contain a loophole, the legally valid provision to fill this loophole applies as agreed that the contracting parties would have agreed in accordance with the economic aims of the contract and the intention of the general terms and conditions if they had been aware of the loophole.

Note:

The client hereby acknowledges that M&P stores data arising from the contractual relationship in accordance with Sect. 28 German Data Protection Act for the purpose of data processing and reserves the right to forward this data to a third party (e.g. insurance companies) to the extent that this is required to fulfil the contract.