

## Delivery and payment terms

### I. General

1. If our customer is an entrepreneur within the meaning of Section 14 BGB [German Civil Code], a legal entity under public law or a special fund under public law, our deliveries, services and quotations shall be carried out expressly on the basis of the following conditions. Unless agreed otherwise, these conditions apply in the version valid at the time future orders are placed, even if agreement to such is not expressly repeated and the conditions are not expressly pointed out again.
2. These conditions apply exclusively. Counterconfirmations on the part of the Buyer referring to his terms of business are hereby contradicted.
3. In any case, individual agreements made in individual cases take precedence over these conditions. A written contract or our written confirmation is decisive for the content of such agreements.
4. To be effective, legal declarations and notifications towards us (e.g. stipulation of deadlines, complaints for defects, withdrawal or reduction) after conclusion of the contract require the written form.
5. Our current Technical Information and the generally recognised Rules of Technology must be observed for the storage, installation, assembly and use of our products.
6. We point out that any data concerning the Buyer and business transacted with him shall be processed by us within the meaning of the German Data Protection Act.

### II. Quotations and conclusion of contract

1. Unless otherwise expressly stated, our quotations shall be without obligation. Samples and specimens shall be for guidance only and be without any commitment. The order constitutes a binding contract offer. Sales contracts and agreements shall only become binding on the basis of our written order confirmation or through our delivery, with our invoice in the latter case substituting the order confirmation. Unless determined otherwise in the order, we are entitled to accept the contract offer within four weeks of receipt by us.
2. If an ordered article cannot be delivered because our supplier has failed to deliver to us despite a contractual obligation through no fault of our own, we are entitled to withdraw from the contract. In this case, we shall inform you without undue delay that the ordered goods are no longer available and shall reimburse any performance already provided without undue delay.
3. In placing orders the often-used expression "as previously supplied" shall in all cases refer to design only and not to price. The only relevant product description shall be the MACOMASS article name. Additional references to customer article names shall not be binding.
4. Any technical advice, verbal or written, provided by us in respect of application shall not be binding - also in relation to any property rights of third parties - and shall not release the Buyer from examining our products with regard to their suitability for the processes and purposes for which he intends to use them.

### III. Prices

1. Unless otherwise agreed, our prices shall be understood to mean ex works or warehouse and shall not include packaging, carriage, duties or other charges or value added tax at the rate applicable on the day of delivery.
2. Unless otherwise expressly stated, the prices in our price lists and offers shall be given without obligation and based on current cost factors. Should there be any changes in these cost factors before the date the contract is concluded, e.g. due to price increases for raw materials or wage increases, we shall reserve the right to adjust our prices accordingly. If the period between conclusion of the contract and anticipated delivery date is more than three months, we are entitled to adjust our prices according to cost factor changes, e.g. in the event of price increases for raw materials or wage increases. We shall contact the Buyer in the event of such a change; where the price increases by more than 5%, the Buyer is entitled to withdraw from the contract. This must be declared within one week of notification by us, otherwise the increased price is agreed and must be paid.
3. Orders for which no prices have been agreed shall be invoiced at the prices that are valid on the day of conclusion of the contract. In all other respects, the above paragraph applies.
4. Unless otherwise expressly agreed, the selling prices as well as all quotations and calculations shall be in EUR.

### IV. Terms of payment

1. Unless different terms of payment have been agreed upon by separate agreement, the following shall apply; 2 % discount on the value of goods (excluding the costs of packagings, carriage and similar costs) for payments within 10 days; net payment within 30 days of the date of invoice, unless different terms of payment are indicated in price lists for special product ranges. No discount shall be granted on tooling costs. The discount will only be granted on the condition that all payments in respect of earlier shipments have been discharged in full. Payment must be rendered irrespective of any notification of defects. The place of performance in respect of payment shall be Aschaffenburg.
2. Unless otherwise stated, it shall be admissible to retain or set off payments only if the buyer's counter claim is undisputed or found to be legally valid.
3. Cheques will only be accepted for collection with a view to payment. If payment is made by cheque, it shall only be possible to deduct cash discount if the cheque reaches us within the specified time.
4. In the event of default of payment, all current accounts shall become due immediately and enforceable. If the terms of payment are not observed or in the event of circumstances occurring that are capable of impairing the credit worthiness of the Buyer, we shall be entitled to render immediately payable our entire receivables. Furthermore, we shall be entitled to effect any outstanding shipments only against advance payment or the provision of security. If advance payments are not made or security not provided after setting an appropriate period, we shall be entitled to withdraw from the contract in respect of any services or deliveries still outstanding, with the result that all claims shall expire on the part of Buyer in relation to those shipments not yet

effected.

5. We shall be entitled to set off all receivables that are due to us from the Buyer against all receivables demanded from us by the Buyer on the grounds delivery or other causes in law.

#### **V. Retention of title and other securities**

1. We shall retain the right of title to any goods until such time as full payment is received for all accounts receivable from the Buyer, including any receivables which may arise in future from the business relationship.
2. Goods under retention of title and supplied by us shall always be processed and converted to the exclusion of any acquisition of title under Section 950 of the German Civil Code on our behalf but without incurring any commitment on our part. The goods processed shall serve as our security only in the amount of the value of the goods under retention of title. In the event of any processing by the Buyer with goods not belonging to us, we shall have the right of co-title to the new product in the ratio of the value of goods supplied by us (invoiced value) with the result that this new product is then subject to retention of title within the meaning of these conditions.
3. The Buyer shall be entitled to process and to sell the goods under retention of title in the ordinary course of business.
4. The Buyer hereby assigns to us by way of security all receivables due to him with regard to the goods that are subject to retention of title (regardless of their legal reason; including claims from resale, balances receivable from current account agreements, any treatment, processing or incorporation of those goods supplied by us, tort, insurance claims). Assignment shall in each case be restricted to the value, as indicated in our invoices, of the goods delivered. Should the Buyer's customer have effectively excluded the assignment of receivables, the Buyer and ourselves shall, within our internal relationship, act as if the afore-mentioned receivables of any type assigned to us in advance have been effectively assigned to us. We shall be authorized by the Buyer to assert the amount receivable in his name for our account as soon as the Buyer is no longer entitled, in accordance with the arrangement set out below, to collect the amount receivable in his own name.
5. We revocably authorize the Buyer to collect the receivables assigned to us for own account and in his name. As soon as the Buyer fails to meet any obligation to us or any circumstance specified in Section IV. no. 4 arises, the Buyer shall, at our request, disclose the assignment and furnish us with the necessary information and documents. We shall also be entitled to notify the Buyer's debtors of the assignment directly and to demand payment from them.
6. Once delivered, the goods must neither be pledged nor assigned by way of security without our consent. In the event of third parties' acts aimed at obtaining the goods under retention of title, the Buyer shall draw attention to our title, inform us without delay and provide us with any assistance that is necessary to safeguard our rights.
7. In the event of the Buyer acting in breach of contract - in particular default in payment - we shall be entitled to assert our retention of title and to demand the immediate surrender of the goods under retention of title and, by ourselves or through agents, obtain their direct possession or, if necessary, to demand assignment of the Buyer's claims for the return of the goods from third parties. Asserting the retention of title shall not involve withdrawing from the contract.
8. If the value of security existing in our favour exceed our receivables by total of more than 10 %, we shall, at the Buyer's request, be obliged in this respect to release security of our choice.
9. The Buyer shall adequately insure all goods under retention of title against fire and theft. Any claims for damages against the insurers shall hereby be assigned to us in the amount of the value of goods under retention of title.

#### **VI. Periods of delivery and performance**

1. Unless agreed otherwise, the periods of delivery and performance shall be met if, until such time as they expire, the item of delivery has left the plant or notice has been given that it is ready for dispatch or the service has been performed.
2. The period of delivery and performance shall be extended by a reasonable amount of time in the event of measures being taken as the result of industrial action, in particular strikes and lock-outs, as well as the occurrence of unforeseen obstacles beyond our control insofar as such obstacles verifiably yield a significant influence on the production or delivery of the item of sale or on the performance of the service requested. This shall also apply if such circumstances occur at our supplier or if we ourselves are inadequately supplied with primary material through no fault of our own or if such circumstances arise while we are in default. In the event of the time limit being exceeded for a prolonged period, we and - after first granting a period of grace - the Buyer shall be entitled to withdraw from the contract. In important cases, we shall notify the Buyer at the earliest possible moment of the time at which such obstacles commence and terminate.
3. Deliveries and services (the fulfilment of contract) shall be under the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations and embargoes or any other restrictions. The contracting parties be obliged to provide all information and documentation needed for the export/domestic shipment/import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned transgression of deadlines, any claims for damages shall be excluded.
4. The Buyer can annul the contract if it finally proves impossible for us to perform all contractual services before passage of risk. Furthermore, the Buyer can annul the contract if it proves impossible for us to fulfil part of an order and he has a justified interest in refusing partial delivery. If this is not the case, the Buyer must pay that share of the contract price which covers the partial delivery. The same applies to inability on our part. Section IX, applies. If the impossibility or inability occurs during acceptance default, or if the Buyer bears the sole responsibility or a decidedly preponderant share of it, he remains obliged to render payment.
5. Default of delivery is determined by the statutory regulations. It requires in each case however a written reminder by the Buyer. If we are in default and this results in the Buyer suffering damage, the Buyer is entitled to demand compensation for default in the form of a lump sum. For each full week of delay, this sum will amount to 0.5%, however in total no more than 5% of the value of that part of the overall consignment which, as a result of the delay, cannot be used punctually or in conformity with the contract. Other claims arising from delayed delivery are governed exclusively in accordance with Section IX of these

Conditions.

6. Goods notified as being ready for shipment shall be called off by the Buyer immediately after expiry of delivery time; otherwise we shall have the right to dispatch the goods at our option or to store the goods at our discretion on the Buyer's account and the Buyer's risk. The same shall apply if dispatch cannot be effected by us for reasons beyond our control. Upon notification that goods are ready for shipment, the goods shall be deemed to have been supplied and can be invoiced.

7. The mode of delivery, means of shipment, transport route as well as the nature and scope of necessary protective media, the choice of forwarder or carrier as well as packaging shall be left to our preference. This will be done at our discretion and with due care and attention to the exclusion of any liability whatsoever. The goods shall only be insured at the express request of the Buyer and at his expense.

8. Partial deliveries are permitted. We are entitled to make excess or short deliveries of up to 10% of the quantity ordered and up to 20% in the case of special designs. The quantity delivered is charged.

#### **VII. Passing of risk**

1. Unless nothing to the contrary is agreed, risk shall at all events pass to the Buyer when the goods are transferred to the forwarder or carrier, however at the latest when they leave the plant or warehouse.

2. All complaints in respect of incomplete delivery, defective or incorrect goods must be reported to us without undue delay and at the latest within 10 days of receiving the goods. Deliveries shall otherwise be deemed as having been approved.

#### **VIII. Claims based on defects**

In the event of materially and legally defective goods being delivered, the following warranty provision apply, while reserving Section IX and barring any further claims:

##### **Material defects**

1. Cost-free repairs or, at our option, substitute deliveries of all parts or services which prove materially defective within the expiry period, insofar as the cause pre-existed the passage of risk and providing the Buyer complied with his inspection and notification obligations. If the Buyer fails to comply with the obligation to perform an orderly inspection and/or the notification obligation, our liability for the defect that we were not notified of is precluded.

2. If a defect gives rise to a complaint, the Buyer may withhold a share of payment equivalent to the material defect. The Buyer can only withhold payment if it is impossible to doubt the veracity of the notice of defect. If the complaint proves baseless, we are entitled to reclaim our ensuing costs from the Buyer.

3. At the outset, we are given an opportunity to effect a substitute delivery or repair the defect product within a reasonable period. If this fails, the Buyer – irrespective of any damage claims under the provisions of Section IX – can cancel the contract or reduce his payment.

4. Claims for defectiveness are not admissible if the goods vary only inconsiderably from their agreed characteristics, if their usefulness is only inconsiderably impaired, or if they have suffered natural wear or damage after passage of risk due to faulty or negligent treatment, the imposition of excessive strain or the use of unsuitable operating aids. We shall be entitled to reject complaints if the Buyer fails to submit the defective part to us within 4 weeks of being requested to do so; this shall not apply if submission is prevented by the nature of the part or by the manner in which it is installed etc.

5. Claims by Buyers to recover expenses necessitated by substitute delivery, especially transport, travel, labour and material costs, are inadmissible to the extent that the expenses have been increased by a subsequent transferral of delivered goods from the Buyer's business establishment to another place, unless the transferral is connected to the intended use of the goods.

6. Claims of recourse made against us by Buyers under section 478, German Civil Code (entrepreneur's recourse), are recognised only insofar as no agreement exceeding the statutory provisions for claims concerning defects exists between the Buyer and his customer. No. 5 likewise applies correspondingly to the extent of claims of recourse against us under section 478, paragraph 2, German Civil Code.

##### **Legal defects**

7. If we are required to deliver goods based on drawings, models, samples or exemplary parts supplied by the Buyer, he bears the onus of avoiding any violation of third-party protective rights in the country for which the goods are destined. We will inform the customer of rights we positively know of. The Buyer must release us from third-party claims and pay any ensuing damage. If a third party restrains us from manufacturing or delivering goods due to protective rights claimed by him, we are entitled – without checking the legal position – to interrupt the work pending legal clarification by the Buyer and the third party. If the delay is such that we cannot reasonably be expected to keep honouring the contract, we shall be entitled to annul it.

8. Unless otherwise agreed, we are obliged to deliver only within the country containing the delivery destination, unencumbered by industrial patent rights and copyrights held by third parties. If the use of the delivered object causes industrial patent rights or copyrights to be violated, we will in principle and at our expense procure for the Buyer the right to continue using it, or ensure that the delivered object no longer violates the rights concerned by modifying it in a manner which the Buyer can reasonably be expected to accept.

9. If this cannot be done on commercially reasonable terms or within a reasonable period, the Buyer will be entitled to annul the contract. Under the above-mentioned conditions, we too are entitled to annul the contract.

10. We will furthermore release the Buyer from uncontested or legally confirmed claims by the relevant holder of protective rights.

11. The obligations on our part mentioned in No. 9 are – in reservation of Section IX, – final in the event of patent or copyright violations. They exist only if

- ♣ the Buyer has informed us without delay of registered claims concerning patent or copyright violations,
- ♣ the Buyer gives us reasonable support in countering the submitted claims or enables us to carry out the modifications as outlined in No. 7,
- ♣ all legal countermeasures, including out-of-court settlements, remain reserved to us,
- ♣ the legal defect does not arise from an instruction or special provision by the Buyer and

♣ the Buyer himself did not cause the violation of protective rights by wilfully altering the delivered object, using it in a contractually unforeseen manner or otherwise incurring responsibility for the violation.

#### **IX. Liability**

1. We are liable for compensation in the case of intent and gross negligence. In the case of simple negligence we are liable – subject to a lower statutory standard of liability (e.g. care in own matters) only in the event of
  - a) injury to life, body, health,
  - b) damages arising from the significant violation of a fundamental contractual obligation; in this case we are liable for compensation for the foreseeable, typical loss. Unless the Buyer informs us in writing before or immediately after conclusion of the contract that a loss higher than EUR 250,000 is foreseeable and typical, the above liability towards the Buyer shall be limited to EUR 250,000. If the Buyer informs us of a higher anticipated and foreseeable loss, the Buyer shall agree a suitable limitation of liability with MACOMASS; if such an agreement is not reached, we are entitled to withdraw from the contract.
2. The above limitation of liability does not apply to claims by the Buyer on the basis of product liability law and where we wilfully concealed a defect or where we guaranteed characteristics.
3. In the event of slight negligence relating to delayed delivery or service, the liability rule as set out in Section VI, No. 5, Sentences 3 and 4 shall exclusively apply.
4. The above limitations of liability also apply to our directors and fulfilment as well as other agents.
5. The above regulations do not affect the statutory regulations on the burden of proof.
6. In relation with MACOMASS's duties of information under the terms of the Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) MACOMASS shall not be liable for the completeness and accuracy of information received from its suppliers.

#### **X. Expiry**

1. Warranty claims by the customer expire within one year of handover. In deviation from this, claims for defective buildings or delivered items which, having been put to their customary use in construction, are the cause of the building's defectiveness shall expire in accordance with the statutory period.
2. Claims for compensation pursuant to Section IX, No. 1 and 2 and product liability claims expire in accordance with the statutory period. This also applies to recourse claims by the Buyer pursuant to Sections 478, 479 BGB.
3. In all other respects, all claims by the Buyer – regardless of their legal reasons – expire within 12 months, unless the regular statutory period of limitation pursuant to Sections 195, 199 BGB would lead to a shorter period of limitation in the individual case.

#### **XI. jurisdiction and other matters**

1. Agreed exclusive – even international - jurisdiction for all mutual claims and obligations, shall be the Local Court (Landgericht) in Aschaffenburg, irrespective of the amount in dispute.
2. If the contracting party suspends payment or if a petition is filed for insolvency proceedings against his assets or for out-of-court composition proceedings, then MACOMASS shall be entitled to withdraw from the contract for the part not fulfilled.
3. German law shall be applicable. Application of the United Nations Convention of 11.4.1980 regarding contracts on the international purchase of goods shall be excluded.