

# GENERAL CONDITIONS OF DELIVERY

## § 1. APPLICABILITY

- 1.1** All deliveries, services and offers of MCS shall be made exclusively on the basis of these General Conditions of Delivery. They shall form part of all contracts that MCS concludes with its contractual partners (hereinafter also referred to as "clients") for deliveries and services offered by MCS. They shall also apply to all future deliveries, services and offers to the client, even if not specifically agreed again.
- 1.2** Terms and conditions of business of the client or of third parties shall not apply, even if MCS does not specifically reject these in the case in question. Even if MCS makes reference to a letter containing or referring to the terms and conditions of business of the client or of a third party, this shall not constitute agreement to the applicability of such terms and conditions of business.

## § 2. OFFER AND CONCLUSION OF CONTRACT

- 2.1** All offers of MCS are subject to confirmation and non-binding, unless expressly labelled as binding or containing a certain acceptance period. Orders or contracts can be accepted by MCS within 14 days of receipt.
- 2.2** The contract concluded in writing, including these General Conditions of Delivery, shall be solely decisive in the legal relations between MCS and the client. This shall fully reflect all agreements between the parties to the contract regarding the subject of the contract. Verbal promises made by MCS before conclusion of this contract shall not be legally binding and verbal agreements between the parties to the contract shall be replaced by the written contract unless it is expressly stated that they shall continue to apply in a binding manner.
- 2.3** Additions and alterations to the agreements made, including these General Conditions of Delivery, must be in writing in order to be effective. With the exception of managing directors or authorised signatories, the employees of MCS shall not be entitled to conclude verbal agreements deviating therefrom. Communication by fax shall be sufficient as regards to the written form requirement; otherwise, communication by means of telecommunications, particularly e-mail, shall not suffice.
- 2.4** Information provided by MCS regarding the subject of the delivery or service (e.g. weights, dimensions, practical values, load-bearing capacity, tolerances and technical details), as well as illustrations thereof (e.g. drawings and diagrams), shall only apply in an approximate manner, unless use for the purpose foreseen by the contract requires exact conformity. These are not guaranteed quality characteristics but rather descriptions or identifications of the delivery or service. Deviations that are common to the industry and that result from legal provisions or technical improvements, as well as the replacement of components with parts of equal value, shall be permitted insofar as they do not impede use for the purpose foreseen by the contract.

- 2.5** MCS shall retain ownership and copyright to all offers and cost estimates issued by MCS as well as drawings, diagrams, calculations, brochures, catalogues, models, tools and other documents and aids provided to the client. The client must not make the content of said items accessible to third parties, disclose it, use it itself or by means of third parties or copy it without the express consent of MCS. At the request of MCS, he must return these items to MCS in full and destroy any copies made if they are no longer required for ordinary business operations or negotiations do not lead to conclusion of a contract.

## § 3. PRICES AND PAYMENT

- 3.1** Payment must be made immediately upon receipt of the invoice, net cash.
- 3.2** In the case of an order value of more than \$5000, and a delivery time of more than two months, the following payments shall be due, net cash:
- 1/3 upon conclusion of contract,
  - 1/3 mid-way through the agreed delivery time,
  - The rest a week after notification of readiness for dispatch. Turnover tax in the applicable amount shall be added to all payments.
- 3.3** The prices shall apply to the scope of delivery and service cited in the order confirmations. Additional or special services shall be calculated separately. Prices are in USD ex-works, plus costs of packaging, statutory value added tax, customs duty in the case of export deliveries, as well as fees and other public charges.
- 3.4** Insofar as the agreed prices are based on the list prices of MCS and the delivery is not to be made until more than 4 months after conclusion of contract, the list prices of MCS valid upon delivery shall apply (minus an agreed percentage-based or fixed discount).
- 3.5** Invoiced amounts must be paid immediately upon receipt of the invoice without deduction, unless otherwise agreed in writing. The point of receipt by MCS shall be decisive as regards the date of payment. Checks shall only be considered payment upon clearance. Should the client fail to pay when the amount is due, the outstanding amounts shall accrue interest at 8 % from the due date; the assertion of higher interest and further damages in the event of default shall remain unaffected.
- 3.6** Offsetting with counter-claims of the client or retention of payments on the basis of such claims shall only be permitted if the counter-claims are undisputed or legally established.
- 3.7** MCS is entitled to complete or provide outstanding deliveries or services on condition of pre-provision of a security if, after conclusion of contract, MCS becomes aware of circumstances that considerably reduce the client's creditworthiness or through which the payment of

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outstanding receivables of MCS by the client under the relevant contractual relationship (including under other individual orders subject to the same framework agreement) is jeopardised.

## § 4. DELIVERY AND DELIVERY TIME

- 4.1** Deliveries shall be made ex-works.
- 4.2** Terms and deadlines for deliveries and services suggested by MCS shall always apply in an approximate manner unless a set term or deadline is expressly promised or agreed. Insofar as shipment has been agreed, delivery terms and deadlines shall refer to the point of handover to the forwarder, haulier or other party commissioned with transport.
- 4.3** MCS may – irrespective of its rights on the grounds of default on the part of the client – demand an extension of delivery and service terms or postponement of delivery and service deadlines by the amount of time that the client fails to meet his contractual obligations to MCS.
- 4.4** MCS shall not be liable for delivery not being possible or for delivery being delayed insofar as this is caused by force majeure or other events not foreseeable at the time of concluding the contract (e.g. operational disruptions of any kind, difficulties in material or energy procurement, transport delays, strikes, legal lockouts, lack of workforce, energy or raw materials, difficulties in procuring required official authorisations, official measures or outstanding, incorrect or untimely delivery from suppliers), for which MCS is not responsible. Insofar as such events considerably impede the delivery or service for MCS or render it impossible, and this impediment is not only temporary, MCS shall be entitled to withdraw from the contract. In the event of impediments of a temporary nature, the delivery or service terms shall be extended or the delivery and service deadlines shall be postponed by the same amount of time as the impediment, plus an appropriate lead time. Insofar as it is unreasonable to expect the client to accept the delivery or service as a result of the delay, he may withdraw from the contract by means of an immediate written declaration addressed to MCS.
- 4.5** MCS shall be entitled, but not obligated, to provide partial deliveries. The point at which MCS is in default on delivery shall be defined by the statutory provisions. In each case, however, a reminder from the buyer shall be required.
- 4.6** Should MCS enter into default on a delivery or service, or should a delivery or service become impossible for it, for whatever reason, the liability of MCS shall be limited to compensation for damages in accordance with section 8 of these General Conditions of Delivery.

## § 5. PLACE OF PERFORMANCE, DELIVERY, PACKAGING, TRANSFER OF RISK, ACCEPTANCE

- 5.1** The place of performance for all obligations under the contractual relationship is Menomonee Falls, WI, unless otherwise agreed. If MCS is also responsible for installation, the place of performance shall be the place where installation is to take place.
- 5.2** The type of delivery and packaging shall be subject to MCS' discretion.
- 5.3** Risk shall be transferred to the client at the latest upon handover of the delivery item (whereby the beginning of the loading process shall be decisive) to the forwarder, haulier or other third party commissioned to complete shipment. This shall also apply if partial deliveries are made or MCS has taken on other services (e.g. delivery or installation). Should the delivery or handover be delayed due to a reason for which the client is responsible, risk shall be transferred to the client from the day on which the delivery item is ready for dispatch and MCS has informed the client of this.
- 5.4** The client shall bear storage costs following handover of risk. In the event of storage by MCS, the storage costs shall amount to 0.25 % of the invoice amount of the delivery items to be stored per week passed. The right to assert and evidence further or lower storage costs shall be retained.
- 5.5** The shipment shall be insured against theft, breakage, transport damage, fire damage and water damage or other insurable risks only upon the express wish of the client and at his cost.
- 5.6** as acceptance is to take place, the subject of the contract shall be considered accepted if:
- The delivery and, insofar as MCS is also responsible for installation or service provision, installation or service provision is complete
  - MCS has informed the client of this with reference to the acceptance process in accordance with the present section 5.6 and has requested that he provides acceptance
  - 12 working days have passed since delivery or installation/service provision or the client has begun using the subject of the contract (e.g. has commissioned the delivered system) and, in this case, 6 working days have passed since delivery or installation/service provision
  - The client has failed to issue acceptance within this period for another reason other than due to a defect highlighted by MCS which renders use of the purchase item impossible or considerably impedes it.

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## § 6. LIMITATION, DEFECTS

**6.1** Claims on the basis of material and legal defects shall be subject to a limitation period of one year from delivery. Insofar as acceptance is agreed, the limitation period shall begin upon acceptance.

The aforementioned limitation period shall also apply to contractual and extra-contractual claims for compensation for damages on the part of the buyer relating to a defect in the good, unless the application of the regular statutory limitation period would lead to a shorter limitation period in the case in question. The limitation periods shall remain unaffected in any case.

**6.2** The delivered items shall be carefully inspected immediately upon delivery to the client or the third party specified by him. They shall be considered approved if MCS does not receive a written notification of defects regarding obvious defects or other defects that were identifiable upon immediate careful inspection within seven working days of delivery of the delivery item, or otherwise within seven working days of discovery of the defect or any earlier point in time, whereby the defect was identifiable to the client during normal use of the delivery item without closer inspection, in the manner set out in section 2.2 clause 6. At the request of MCS, the delivery item that is subject to complaint shall be returned to MCS, carriage paid. In the case of a justified notification of defects, MCS shall refund the costs of the cheapest form of delivery; this shall not apply if the costs increase because the delivery item is located at another location to that of intended use.

**6.3** In the event of material defects in delivered items, MCS shall be initially obligated and entitled, at its own discretion and within a reasonable period of time, to improve the item or provide a replacement. In the event that this should fail, i.e. if improvement or replacement is impossible, unreasonable, denied or subject to an unreasonable delay, the client may withdraw from the contract or reduce the purchase price by an appropriate amount.

**6.4** Should a defect be due to fault on the part of MCS, the client may demand compensation for damages under the conditions set out in section 8.

**6.5** In the event of defects in components of other manufacturers that MCS cannot remedy due to licencing law or factual reasons, MCS shall, at its discretion, assert its warranty claims against the manufacturers and suppliers on behalf of the client or cede these to the client. Warranty claims against MCS shall only exist for such defects under the other conditions and in accordance with these General Conditions of Delivery if legal enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful, or is likely to be unsuccessful, for example due to insolvency. Limitation of the affected warranty claims of the client against MCS shall be postponed for the duration of the legal dispute.

**6.6** The warranty shall not apply if the client modifies the

delivery item, or allows it to be modified by a third party, without the consent of MCS and remedying of defects is consequently impossible, or unreasonably hindered. In any case, the client shall bear the additional costs for remedying of defects incurred as a result of the modification.

**6.7** Delivery of used items agreed on an individual basis with the client shall be carried out under exclusion of any warranty for material defects.

## § 7. PROPERTY RIGHTS

**7.1** In accordance with the present Section 7, MCS assures that the delivery item is free from commercial property rights or copyrights of third parties. Each of the contractual partners shall inform the other contractual partner immediately in writing if claims are asserted against him due to violation of such rights.

**7.2** In the event that the delivery item violates a commercial property right or copyright of a third party, MCS shall, at its discretion and at its cost, modify or replace the delivery item in such a way that third-party rights are no longer violated but that the delivery item continues to fulfil its contractually agreed function, or shall procure a right of use for the client by means of conclusion of a licence contract. If it is unable to do this within a reasonable period of time, the client shall be entitled to withdraw from the contract or reduce the purchase price by an appropriate amount. Any claims for compensation for damages on the part of the client shall be subject to the limitations of section 8 of these General Conditions of Delivery.

**7.3** In the event of legal violations through products of other manufacturers delivered by MCS, MCS shall, at its discretion, assert its claims against the manufacturers and upstream suppliers on behalf of the client, or cede these to the client. In such cases, claims against MCS shall only exist in accordance with the present section 7 if legal enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful, or is likely to be unsuccessful, for example due to insolvency.

## § 8. LIABILITY FOR COMPENSATION FOR DAMAGES DUE TO BLAME

**8.1** The liability of MCS for compensation for damages, on whatever legal basis, in particular due to impossibility, default, defective or incorrect delivery, violation of contract, violation of obligations during contractual negotiations and tort, insofar as this is a case of fault, shall be limited in accordance with the present § 8.

**8.2** MCS shall not be liable in the case of simple negligence of its organs, legal representatives, employees or other agents, insofar as this is not a case of violation of

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obligations that are essential to the contract. Obligations considered essential to the contract are the obligation to deliver and install the delivery item in a timely manner and free from considerable defects, as well as consultation, protection and care obligations that are intended to facilitate contractual use of the delivery item by the client or aim to protect the life and limb of the client's staff or protect his property from considerable damage.

- 8.3** Insofar as MCS is liable for compensation for damages in accordance with section 8.2, this liability shall be limited to damages that MCS foresaw as a possible consequence of a violation of contract upon concluding the contract or that it should have foreseen by exercising usual due diligence. Direct damage and consequential damage resulting from defects in the delivery item shall also only be subject to compensation insofar as such damage is to be typically expected during intended use of the delivery item.
- 8.4** In the event of liability for simple negligence, MCS' obligation to provide compensation for material damage and resulting further pecuniary losses shall be limited to an amount of USD \$5000 per loss event (corresponding to the current coverage of its product liability insurance or liability insurance), including in the case of violation of obligations that are essential to the contract.
- 8.5** The aforementioned exclusions and limitations of liability shall apply in the same scope in favour of the organs, legal representatives, employees and other agents of MCS.
- 8.6** Insofar as MCS provides technical information or acts as a consultant, and this information or consultation does not belong to the scope of delivery that it is obligated to provide and has been agreed under the contract, this shall take place free of charge and under exclusion of any liability.
- 8.7** The limitations of the present section 8 shall not apply to liability of MCS on the grounds of wilful conduct, for guaranteed quality characteristics, on the grounds of injury to life, limb or health or under the local US laws and regulations.

## § 9. RETENTION OF OWNERSHIP

- 9.1** Until complete payment of all present and future receivables of MCS under the purchase contract and an ongoing business relationship (secured receivable), MCS shall retain ownership of the sold goods.
- 9.2** The goods subject to retention of ownership may not be pledged to a third party or handed over as a security until complete payment of the secured receivables. The buyer shall inform MCS immediately in writing if and insofar as third parties gain access to the goods belonging to MCS.
- 9.3** In the event of conduct of the buyer that violates the contract, in particular in the event of failure to pay the purchase price due, MCS shall be entitled to withdraw from the contract in accordance with the statutory

provisions and to demand return of the good on the basis of the retention of ownership and withdrawal. Should the buyer fail to pay the purchase price due, MCS may only assert these rights if MCS has previously set the buyer a reasonable deadline for payment and been unsuccessful, or if such setting of a deadline is unnecessary in accordance with the statutory provisions.

- 9.4** The buyer is authorised to sell on and/or process the goods subject to retention of ownership as part of ordinary business operations. In this case, the following provisions shall also apply:

- a)** The retention of ownership shall also cover products resulting from processing, mixing or joining of the goods from MCS at their full value, whereby MCS is considered the manufacturer. Should third parties have retention of ownership in the case of processing, mixing or joining with goods from third parties, MCS shall obtain co-ownership in a proportionate amount of the invoice values of the processed, mixed or joined goods. In other aspects, the same shall apply to the resulting product as applies to the delivered good subject to retention of ownership.
- b)** The buyer hereby cedes receivables from third parties arising from the resale of the good or product completely or in the amount of the relevant co-ownership share of MCS in accordance with the above paragraph as a security. MCS accepts the cession. The obligations of the buyer cited in para. 2 shall also apply as regards the ceded receivable.
- c)** The buyer shall remain empowered to collect the receivable alongside MCS. MCS undertakes to not collect the receivable insofar as the buyer meets his payment obligations with MCS, does not enter default on payment, has not filed an application for opening of insolvency proceedings and no other defects in his ability to pay exist. However, if this is the case, MCS can demand that the buyer informs MCS of the ceded receivables and their debtors, provides all information necessary for collection, hands over the corresponding documents and informs the debtors (third parties) of the cession.
- d)** Should the achievable value of the securities exceed the receivables of MCS by more than 10%, MCS shall, at the request of the buyer, release securities at the discretion of MCS.

## § 10. FINAL PROVISIONS

- 10.1** The place of jurisdiction for all disputes arising from the business relationship between MCS and the client is, at the discretion of MCS or the headquarters of the client. For lawsuits against MCS, Darmstadt shall be the exclusive place of jurisdiction. Mandatory statutory provisions regarding exclusive places of jurisdiction shall remain unaffected by this provision.

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- 10.2** The relations between MCS and the client shall be exclusively subject to US laws. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
- 10.3** Should the contract or these General Conditions of Delivery contain loopholes, these loopholes shall be filled with a legally effective provision that the contractual partners would have agreed in view of the economic aims of the contract and the purpose of these General Conditions of Delivery if they had been aware of the loophole.
- 10.4** The client acknowledges and agrees that MCS shall save data from the contractual relationship in accordance with US data protection rules and regulations for the purposes of data processing and shall retain the right to transfer the data to third parties (e.g. insurers, credit agencies, service providers) for the purposes of fulfilling the contract.