

General terms and conditions of sale

I. Validity/Offers

1. These General Terms and Conditions of Sale apply to all - also future - contracts with entrepreneurs, jur. Persons under public law and special funds under public law for deliveries and other services. The buyer's terms and conditions of purchase do not oblige us even if we do not expressly object to them again after receipt by us or if such reference is made in forms or other documents of the customer.
2. Our offers are subject to change and are always valid for a maximum of 30 days from the date of the offer, unless expressly stated otherwise on the offer. Agreements, in particular verbal ancillary agreements, promises, guarantees and other assurances of our sales employees before or at the conclusion of the contract shall only become binding upon our confirmation in text form.
3. Decisive for the interpretation of commercial terms such as e.B. "EXW", "FOB" and "CIF" are the INCOTERMS in their latest version.

II. Prices

1. Unless otherwise agreed, our prices are exclusive of packaging from our company, plus statutory value added tax.
2. If the goods are delivered packaged, we charge the packaging at cost price; within the framework of the statutory provisions, we will take back packaging delivered by us if it is returned to us by the buyer carriage paid within a reasonable period of time.
3. If there is a significant change in wage, material or energy costs, each contractual partner is entitled to demand an appropriate adjustment of the price taking these factors into account.

III. Payment and offsetting

1. Payment must be made – without discount deduction – in such a way that we can dispose of the amount on the due date. Unless otherwise agreed, our invoices are due net 30 days after the invoice date. Payment must be made in such a way that the amount required for the settlement of the invoice is available to us at the latest on the due date. The buyer shall be in default no later than 10 days after the due date of our claim, without the need for a reminder.
2. Counterclaims disputed by us or not legally established entitle the buyer neither to retention nor to set-off. This does not apply if the buyer's counterclaims result from the same contractual relationship and/or if they would entitle the buyer to refuse performance in accordance with § 320 BGB (German Civil Code).
3. If the term of payment is exceeded, at the latest from default, we are entitled to charge interest in the amount of the respective bank rates for overdrafts, but at least the statutory default interest. In addition, we charge a default fee of € 40.00. We reserve the right to assert further damage caused by default.
4. If, after conclusion of the contract, it becomes apparent that our claim for payment is endangered by the buyer's inability to pay or if other circumstances occur that indicate a significant deterioration in the buyer's ability to pay, we may refuse agreed advance services and exercise the rights under § 321 BGB (German Civil Code). This also applies if our obligation to perform is not yet due. In such cases, we may also make all claims arising from the current business relationship with the buyer due. A lack of performance on the part of the buyer shall also be deemed to be a lack of performance if the buyer is in default of payment for at least three weeks with a significant amount (claims due from 10%), as well as a significant downgrade of the limit existing for him in our trade credit insurance.

IV. Delivery

1. Delivery periods and dates shall be considered met if the item has left our premises by the time they expire.
2. Our delivery obligation is subject to correct and timely self-delivery, unless we are responsible for the incorrect or delayed self-delivery.
3. Events of force majeure entitle us to postpone the deliveries for the duration of the hindrance and a reasonable start-up time. This also applies if such events occur during an existing delay. Markes International GmbH is not liable for the non-fulfilment of contractual obligations due to events of force majeure. Force majeure is equivalent to monetary, commercial policy and other sovereign measures, strikes, lockouts, operational disruptions for which we are not responsible, obstruction of traffic routes, delay in import/customs clearance, as well as all other circumstances which, without being the fault of us, make deliveries and services significantly more difficult or impossible. It is irrelevant whether the circumstances occur with us, the supplier or another uplieferant. If, as a result of the aforementioned events, the execution becomes unreasonable for one of the contracting parties, it may withdraw from the contract by immediate declaration in text form.

V. Ownership

1. All delivered goods remain our property (reserved goods) until all claims arising from the business relationship have been fulfilled, regardless of the legal grounds, including future or conditional claims (balance reservation). However, the balance reservation does

not apply to prepayment or cash transactions that are processed step by step. In this case, the delivered goods remain our property until the purchase price for these goods has been paid in full.

2. Processing of the goods subject to retention of title shall be carried out for us as the manufacturer within the meaning of § 950 BGB (German Civil Code) without any commitment on our part. The processed goods shall be deemed to be goods subject to retention of title within the meaning of para. VI/1. In the event of processing, combination and mixing of the reserved goods with other goods by the buyer, we shall be entitled to co-ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. If our ownership expires due to combination or mixing, the buyer hereby transfers to us the ownership rights to which he is entitled to the new stock or the item to the extent of the invoice value of the reserved goods and stores them for us free of charge. The co-ownership rights arising hereafter shall be deemed to be goods subject to retention of title within the meaning of para. VI/1.
3. The buyer may only sell the reserved goods in the ordinary course of business under his normal terms and conditions and as long as he is not in default, provided that the claims from the resale in accordance with para. V/4 to V/6 to us. He is not entitled to other dispositions of the reserved goods.
4. The claims of the buyer from the resale of the reserved goods are already assigned to us now. They serve as security to the same extent as the reserved goods. If the reserved goods are sold by the buyer together with other goods not sold by us, the assignment of the claim from the resale shall only apply in the amount of the resale value of the respectively sold reserved goods. In the case of the sale of goods in which we have co-ownership shares in accordance with para. VI/2, the assignment of the claim in the amount of these co-ownership shares applies.
5. The buyer is entitled to collect claims from the resale until our revocation, which is permissible at any time. In the event of default of payment by the buyer, we are also entitled to demand the return of the goods after expiry of a reasonable grace period and to prohibit the resale and further processing of delivered goods. The return is not a withdrawal from the contract. At our request, the buyer is obliged to inform his customers immediately of the assignment to us - if we do not do this ourselves - and to provide us with the information and documents necessary for collection.
6. The buyer must notify us immediately of any seizure or other impairment by third parties.
7. If the value of existing securities exceeds the secured claims by more than 50 % in total, we shall be obliged to release securities of our choice at the request of the buyer.

VI. Execution of deliveries

1. With the handover of the goods to a forwarder or carrier, but at the latest when leaving the warehouse or - in the case of drop shipments - the delivery plant, the risk passes to the buyer in all transactions, even in the case of carriage paid and free-domicile deliveries. The obligation and costs of unloading shall be borne by the buyer. We only provide insurance at the instructions and expense of the buyer.
2. We are entitled to make partial deliveries to a reasonable extent. In the case of manufactured goods, excess and short deliveries of up to 10% of the completed quantity are permissible.
3. In the case of call-off orders, we are entitled to manufacture the entire order quantity in a closed manner or to have it manufactured. Any change requests can no longer be taken into account after the order has been issued, unless this has been expressly agreed. Insofar as no fixed agreements have been made, call-off dates and quantities can only be adhered to within the scope of our delivery or production possibilities. If the goods are not called off in accordance with the contract, we are entitled to charge them as delivered after expiry of a reasonable grace period.
4. In the case of contracts with continuous deliveries, call-offs and grade classifications for approximately the same monthly quantities must be assigned to us. If no call is made or classified in time, we are entitled, after setting a acceptable period of time, to divide ourselves and deliver the goods or to withdraw from the still arrears of the contract and to demand damages instead of performance. At the end of the contract, our stock must be accepted.

VII. Liability for defects

1. The properties of the goods, in particular their quality, variety and dimensions, are determined according to the agreed, in the absence of agreement according to the DIN and EN standards applicable at the time of conclusion of the contract, in the absence of such according to practice and commercial usage. References to standards and similar regulations as well as information on qualities, grades, dimensions, weights and usability of the goods, information in drawings and illustrations as well as statements in advertising material are not assurances or guarantees, unless they are expressly designated as such in text form. The same applies to declarations of conformity and corresponding markings such as CE and GS. Suitability and usage risks are incumbent on the buyer.
2. For the inspection of the goods and the notification of defects, the provisions of the German Commercial Code (HGB) apply with the following proviso:
 - a. The buyer has the obligation to examine the characteristics of the goods relevant for the respective use immediately after delivery and to notify us immediately in text form of defects in the goods. In the case of an intended installation or attachment of the goods, the characteristics relevant for the installation or attachment also include the internal properties of the goods. The obligation to inspect also exists if a test certificate or other material certificate has been supplied. Defects that cannot be discovered immediately after delivery, even with the most careful examination, must be reported in text form immediately after discovery.

- b. Insofar as the buyer fails in the case of installation or attachment of the goods to examine the properties of the goods relevant for the intended purpose at least randomly before installation or before attachment (e.B. by functional tests or a test installation), this represents a particularly serious disregard of the care required in traffic (gross negligence) in relation to us. In this case, the buyer's warranty rights with regard to these properties shall only be considered if the defect in question has been fraudulently concealed or a guarantee for the quality of the item has been assumed.
3. If the buyer finds defects during or subsequent inspection of the goods, he is obliged to provide us with the goods complained of or samples thereof for the purpose of examining the complaint and to allow an inspection of the goods complained of within a reasonable period of time. Otherwise, the buyer cannot invoke defects in the goods.
4. If the goods are defective, the buyer is entitled to the warranty rights in accordance with the statutory provisions of the German Civil Code (BGB) - with the restrictions that we are entitled to the choice between rectification and subsequent performance and that minor (insignificant) defects only entitle the buyer to reduce the purchase price (reduction).
5. If the Buyer has installed the defective goods in another item in accordance with their nature and intended use or attached them to another item, he may only demand compensation for the necessary expenses for the removal of the defective goods and the installation or attachment of the repaired or delivered defect-free goods ("removal and installation costs") in accordance with the following provisions.
 - a. Only those dismantling and installation costs are required that directly concern the removal or dismantling of the defective goods and the installation or attachment of identical goods, have arisen on the basis of customary market conditions and are proven to us by the buyer by presenting suitable documents at least in text form, but Markes International is liable for a maximum of 5% of the value of the affected individual delivery.
 - b. Any additional costs incurred by the Buyer for consequential damages caused by a defect, such as loss of profit, business interruption costs or additional costs for replacement purchases, are not direct excavation and installation costs and therefore cannot be reimbursed as reimbursement of expenses in accordance with § 439 (3) BGB. The same applies to sorting costs and additional expenses arising from the fact that the goods sold and delivered are located at a place of performance other than the agreed place of performance.
 - c. The buyer is not entitled to demand advance payment for excavation and installation costs and other costs of supplementary performance.
6. Insofar as the expenses claimed by the buyer for the subsequent performance are disproportionate in individual cases, in particular in relation to the purchase price of the goods in a defect-free condition and taking into account the significance of the lack of conformity, we are entitled to refuse reimbursement of these expenses. A disproportionality exists in particular if the claimed expenses, in particular for removal and installation costs, exceed 150% of the invoiced value of the goods or 200% of the defect-related reduced value of the goods.
7. Further claims are in accordance with para. IX excluded. This applies in particular to claims for compensation of
 - a. Damage that has not occurred to the goods themselves (consequential damages),
 - b. Costs for the self-elimination of a defect, without the legal requirements for this being met and
 - c. Excavation and installation costs, insofar as the goods delivered by us were no longer available in their original in-goods at the time of installation or attachment or a new product was produced from the delivered goods before installation.
8. An unjustified request to remedy the defect entitles us to compensation if the buyer could have recognized after careful examination that there was no material defect.

VIII. General limitation of liability and statute of limitations

1. Due to violation of contractual and non-contractual obligations, in particular due to impossibility, delay, fault in consulting, fault in the initiation of the contract and tort, we are liable - also for our executive employees and other vicarious agents - only in cases of intent and gross negligence, in the latter case limited to the contract-typical damage foreseeable at the time of conclusion of the contract.
2. The restrictions in VIII.1 do not apply in the event of culpable violation of essential contractual obligations. Essential to the contract are the obligation to deliver on time as well as the freedom of the goods from defects that impair their functionality or usability more than insignificantly and furthermore consulting, protection and care obligations that aim to protect the buyer or his staff from significant damage. Furthermore, the restrictions do not apply in cases of mandatory liability under the Product Liability Act, in the event of injury to life, limb or health and also not if and to the extent that we have fraudulently concealed defects in the item or guaranteed their absence. The rules on the burden of proof remain unaffected by this.
3. Markes International GmbH does not guarantee that software will work in hardware or with software combinations selected by the customer or meet requirements specified by the customer.
4. Unless otherwise agreed, contractual claims arising from the buyer against us on the occasion of or in connection with the delivery of the goods shall become statute-barred one year after delivery of the goods, this shall not apply if § 438 (1) no. 2 BGB, §§ 478, 479 BGB or § 634 a (1) no. 2 BGB prescribe longer periods and in cases of injury to life, of body or health, in the event of an intentional or grossly negligent breach of duty by us or in the event of fraudulent concealment of a defect. In cases of defective supplementary performance, the limitation period shall not begin again.

IX. Copyrights

1. We reserve the right of ownership and copyright to cost estimates, drafts, drawings and other documents; they may only be made accessible to third parties in agreement with us. Drawings and other documents belonging to offers must be returned on request.
2. If we have delivered items according to drawings, models, samples or other documents handed over by the buyer, the buyer assumes the guarantee that the property rights of third parties are not infringed. If third parties prohibit us in particular from manufacturing and delivering such items on the basis of property rights, we are entitled - without being obliged to examine the legal situation - to cease any further activity in this respect and to demand damages in the event of fault on the part of the buyer. The buyer also undertakes to indemnify us immediately from all related claims of third parties.

X. Test parts, moulds, tools

1. If the buyer has to provide parts for the execution of the order, they are to be delivered free of charge to the production site with the agreed, otherwise with a reasonable additional quantity for any rejects, on time, free of charge and free of defects. If this does not happen, the costs and other consequences caused by this shall be borne by him.
2. The production of test parts, including the costs for moulds and tools, shall be borne by the buyer.
3. For tools, moulds and other manufacturing devices provided by the buyer, our liability is limited to the care as in our own cause. Costs for maintenance and care shall be borne by the buyer. Our retention obligation expires - regardless of the buyer's property rights - at the latest two years after the last production from the mold or the tool.

XI. Place of performance, place of jurisdiction and applicable law

1. The place of performance for our deliveries, for subsequent performance and for payments by the buyer is our company. The place of jurisdiction is the registered office of our head office. We can also sue the buyer at his place of jurisdiction.
2. All legal relationships between us and the buyer shall be governed by German law to the exclusion of the provisions of the United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods (CISG).

XII. Authoritative version

1. In case of doubt, the German version of these General Terms and Conditions of Sale shall prevail.

XIII. Definitions

1. "Delivery Date" means the date on which Markes makes the Goods(s) available to the Customer or the Customer's representative at the place specified in the Offer or Order Confirmation.
2. "Product(s) may be any sold hardware item or software licensed under this term." Custom-made products" are products that have been manufactured or configured according to the customer's specifications.
3. "Software" may be one or more computer programs in object code format that exist either as a stand-alone product or in combination with other products. This also includes manuals that are delivered to the customer under this term.
4. "Specifications" means specific technical information provided by Markes about Products that is valid from the time the Customer Order is sent by Markes.
5. "Support" includes any standard service such as hardware maintenance and repair as well as software updates and maintenance or training.

END OF THE GENERAL TERMS AND CONDITIONS OF SALE