

## **MBW Calibration AG – General Terms and Conditions (GT&C)**

### **1. General Information and Scope**

- 1.1 The following general terms and conditions apply to the ordinary course of business between MBW and the Customer, provided that the Customer does not object in writing and immediately upon receipt of these general terms and conditions. These terms and conditions take precedence over any other terms and conditions which the Customer might apply unless MBW accepts them explicitly and in writing. They apply in all points that have not been otherwise agreed upon in writing.
- 1.2 Until otherwise explicitly agreed upon, these terms and conditions shall apply to all current and future business transactions, even if they are no longer expressly referred to for individual orders.
- 1.3 All agreements and legally relevant declarations by the contracting parties shall be valid in written form only.

### **2. Quotations**

- 2.1 Quotations submitted by MBW are non-binding. Prices and deadlines are binding only after MBW has confirmed the order in writing. MBW reserves the right of ownership and copyright to all documents submitted to the Customer. These documents may not be made accessible to third parties, either in whole or in part.
- 2.2 The price calculations worked out by MBW are based on the documents submitted by the Customer. Without clear specifications by the Customer, MBW is free to select equivalent parts.
- 2.3 Starting with the quotation, the Customer shall inform MBW of any legal, regulatory or other requirements that must be adhered to in order to fulfil the contract.

### **3. Conclusion of a Contract**

- 3.1 Orders are accepted either verbally or in writing.
- 3.2 The contract is considered effective after an order has been received and MBW has confirmed its receipt in writing. Verbal agreements are only valid if they have been confirmed in writing.

### **4. Changes**

- 4.1 MBW reserves the right to make any changes necessary to fulfil the contract.
- 4.2 If documents or manufacturing specifications are provided by the Customer, the Customer shall inform MBW about any changes in a timely manner. The Customer shall compensate MBW for any additional costs generated by untimely changes, directives or specifications.

### **5. Prices**

- 5.1 Unless otherwise agreed, all prices are understood to be net (excl. value added tax), ex-factory, without packaging and without deductions.
- 5.2 All incidental costs, e.g. freight, insurance, export, transit, import and other permits as well as certifications and notarizations shall be borne by the Customer. The Customer shall also bear all costs for taxes, dues, fees, customs duties, etc. which are levied in connection with the contract. If MBW has incurred any such costs, the customer shall reimburse MBW against proof of payment.
- 5.3 Appropriate price adjustment shall be made if the delivery time is extended post hoc for any of the reasons listed in CL. 7.4, or if the scope of the agreed goods or services changes or if the material or the design is changed for reasons outside of MBW's responsibility.

### **6. Terms of Payment**

- 6.1 Unless otherwise agreed, invoices from MBW are due for payment immediately and must be paid at the latest on the 30th day after the invoice date with no discount or any other deduction.
- 6.2 The payment obligation shall be fulfilled when the amount due has been credited to the account listed on the invoice and when the money is freely available to MBW.
- 6.3 Withholding, offsetting or reducing payments on the basis of complaints, claims or counterclaims which have not been acknowledged by MBW is inadmissible.

- 6.4 Due dates for payment must be met even if transportation, delivery, installation, commissioning or acceptance of the supplies or services is delayed or rendered impossible for reasons outside of MBW's responsibility, or if non-essential parts are missing or subsequent improvements prove necessary without, however, diminishing the use of the delivered goods.
- 6.5 Should the Customer be in default of payment and should MBW have reasonable grounds to assume that payments from the Customer will not be received in full or on time, MBW has the right to:
- (1) withhold its services and to deliver goods to the Customer only upon simultaneous payment and also to deposit goods at the expense of the Customer; the contractually agreed payment for the stored goods becomes due immediately upon the deposit.
- (2) demand down-payments for all stocked raw materials and semi-finished products required to fulfil the contract which correspond to the value of all such raw materials (based on purchase prices) and semi-finished products (based on manufacturing prices). Such down-payments are due immediately.
- (3) with regards to the unfulfilled contracts or sections thereof, set a delivery period of 10 days to provide a security (unconditional bank guarantee from a recognized banking institution) equivalent in value to the yet unfulfilled contracts or sections thereof, respectively. As regards the contracts not yet fulfilled by MBW or parts thereof, if the security is not provided within the set deadline, MBW has the right to: (i) adhere to the contract and to decide whether MBW wishes to fulfill the contract or to forego an actual fulfillment and to claim damages (positive contractual interest) or (ii) to withdraw from the contract and claim damages (negative contractual interest).
- 6.6 If the Customer does not meet the agreed deadlines for payment, he must pay the legal default interest as of the 30th day after the date of invoice without notice.
- 6.7 The goods remain property of MBW until they have been paid for in full. MBW has the right to independently have the retention of ownership recorded.

## **7. Term of Delivery**

- 7.1 The term of delivery begins as soon as the contract has been concluded, all official formalities such as import, export, transit, and payment permits have been obtained, any due down-payments have been made and any agreed securities have been provided and the main technical points have been agreed upon. The date of delivery is deemed to have been met if a shipment alert is sent to the Customer on or before that date.
- 7.2 If a specific deadline has been agreed instead of a term of delivery, this deadline shall be equivalent to the last day of such term of delivery.
- 7.3 The obligation to adhere to the term of delivery presupposes that the Customer has met his contractual obligations.
- 7.4 The term of delivery may be extended: (1) if MBW does not receive the necessary information to fulfill the contract or if the Customer makes subsequent changes to such information thereby causing the goods or services to be delayed; (2) if obstacles arise that MBW cannot avoid despite having taken appropriate precautions, regardless of whether they occur at MBW, at the Customer's premises or whether they occur for other reasons (e.g. epidemics, mobilization, war, riots, serious operational breakdowns, accidents, work conflicts, delayed or missing delivery of the required raw materials, semi-finished or finished goods, rejection of important components, official measures, natural phenomena); (3) if the Customer or a third party is delayed in the work which they are supposed to complete, or if they are in default of their contractual obligations, particularly if the Customer does not adhere to the terms of payment; (4) if the Customer requires changes of products or services which influence the work in progress to such an extent that MBW will have to suspend current work in order to avoid incurring additional costs.
- 7.5 A contractual penalty for delayed delivery requires a separate written agreement and is considered a lump sum compensation. It can only be enforced if the delay has been proven to have been caused by MBW and if the Customer can substantiate the damage caused. If the Customer is offered adequate replacement, any contractual penalty clause is null and void.
- 7.6 For the Customer no right to damages or annulment of the contract arises in case of delayed delivery.

7.7 For framework agreements and other contracts with successive deliveries, the call-off orders must be placed within 12 months from the conclusion of the contract; the parties reserve the right to enter differing agreements in writing.

## **8. Transfer of Risks and Benefits**

8.1 Risk and benefits are transferred to the Customer at the moment of departure of the goods ex works. This also applies if the delivery is made free of charge, CIF, FOB, or under similar clauses or if delivery includes installation or if transportation has been organized and managed by MBW. The transfer of risks and benefits occurs regardless of the time at which ownership is transferred.

8.2 If the shipment is delayed upon request of the Customer or for other reasons which MBW cannot take responsibility for, the risk is transferred to the Customer at the time originally agreed for the delivery ex works. As of that point in time, the goods are stored and insured at the Customer's cost and risk.

## **9. Shipping, Transportation and Insurance**

9.1 MBW must be informed of any special wishes regarding shipping, transportation and insurance in a timely manner. The client bears the costs and risk of the transportation.

9.2 The Customer must direct any complaints involving shipment or transportation to the last carrier immediately upon receipt of the goods or the freight documents.

9.3 The Customer is responsible for insurance against damage of any kind.

## **10. Inspection and Acceptance of Goods and Services**

10.1 The Customer must inspect goods and services within 10 days of receipt and inform MBW immediately and in writing of any defects. If the Customer fails to do so, the goods and services will be deemed accepted.

10.2 If the goods and services do not comply with the contract during the inspections mentioned above, the Customer must immediately give MBW the opportunity to rectify the situation in accordance with clause 11.5 below.

10.3 A specific agreement is required for conducting an acceptance test and for determining the conditions thereof.

10.4 Acceptance is deemed effective: (1) if an acceptance test agreed to cannot be conducted on the intended date for reasons for which MBW bears no responsibility; (2) if the Customer fails or refuses acceptance without the right to do so; (3) as soon as the Customer has used the goods or services provided by MBW.

10.5 The Customer has no rights resulting from deficiencies of any kind in the goods or services other than those explicitly stated in CL. 11.

## **11. Warranty, Liability for Defects**

11.1 During the term of the warranty and upon written request of the Customer, MBW commits to rectifying or replacing any damaged or unusable goods as quickly as possible at MBW's discretion; the Customer is responsible for delivering the goods to MBW. If the defect has not been rectified within two consecutive grace periods of 30 days each, the Customer has the right to rescind the contract regarding the defective goods and to demand repayment of the purchase price of the goods. No such right to rescind the contract applies in case of incidental defects; instead, the Customer has the right to an appropriate decrease of the purchase price (reduction).

11.2 The warranty period is 24 months. The warranty takes effect upon dispatch of the goods and services ex works or upon a previously agreed time of acceptance.

11.3 For any replaced or repaired part, the warranty period is 6 months from replacement, completion of the repairs or acceptance, in the event that the warranty period as described in CL. 11.3 mentioned above expires earlier.

11.4 MBW bears the cost of any expenses incurred by repairs. If the repairs cannot be executed on MBW premises for reasons for which MBW is not responsible, the resulting additional costs shall be borne by the Customer.

11.5 Guaranteed features are only those explicitly mentioned in the confirmation of order or in the specifications.

11.6 MBW will only warrant the supplies and services provided by sub-suppliers to the extent of the warranty obligations of the respective sub-suppliers.

- 11.7 Excluded from the warranty are: damage resulting from normal wear and tear, inadequate maintenance, failure to comply with the operating instructions, incorrect operation, overloading, the use of unsuitable materials, chemical or electrolytic interference, construction or installation work not carried out by MBW or for other reasons for which MBW is not responsible.
- 11.8 The warranty expires prematurely if the Customer or a third party undertakes changes or repairs without written consent from MBW, or if the Customer does not immediately take all appropriate steps to mitigate the damage and give MBW the opportunity to remedy the defect.
- 11.9 The Customer has no rights and claims as regards defects of delivered goods, except those listed in CL. 11.
- 11.10 MBW is liable for claims made by the Customer for inadequate consultation and the like and for breaching any ancillary obligations only if such claims or breaching are due to unlawful intent or gross negligence.

**12. Non-Fulfillment, Delayed Fulfillment and the Consequences thereof**

- 12.1 In all cases of non-fulfillment or unsatisfactory fulfillment not expressly regulated under these terms and conditions, and in particular if MBW, without due cause, begins fulfillment so late that timely completion is no longer likely, or if a breach of contractual performance caused by MBW is definitely foreseeable, the Customer is entitled to set a reasonable grace period for the goods and services in question under threat of withdrawal from the contract. If this grace period expires without remedy and for fault of MBW, the Customer has the right to terminate the contract and to claim a refund of payments already made for such goods or services.
- 12.2 In such a case, CL. 13 shall apply as regards claims for damages on the part of the Customer and as regards the exclusion of any further liability.

**13. Exclusion of Further Liability of MBW**

- 13.1 All instances of breaches of contract and their legal consequences as well as all claims made by the Customer, regardless of the legal basis on which they are made, shall be subject to these terms and conditions. In particular, all claims made by the Customer for compensation, abatement, cancellation of the contract or withdrawal from the contract that have not been expressly named are excluded.
- 13.2 Under no circumstances shall the Customer be entitled to claim compensation for damages not made to the delivered item itself, namely production downtime, loss of use, loss of orders, loss of earnings or other direct or indirect damage.
- 13.3 This exclusion of liability does not apply to unlawful intent or gross negligence on the part of MBW; however, it does apply to unlawful intent or gross negligence on the part of support staff.

**14. Right of Recourse**

If any persons are injured or items belonging to third parties are damaged due to the actions or omissions of third parties and if claims are made against MBW for this reason, MBW has the right to seek recourse from the Customer.

**15. Data protection**

MBW processes certain personal data of its clients within the contractual relationship or when initiating the contract. MBW processes these data in compliance with the relevant provisions of the Swiss Data Protection Act (DSG) and the EU General Data Protection Regulation (GDPR). All relevant information in connection with data processing is laid down in the document "Data Protection Guideline to the General Terms and Conditions of MBW Calibration AG", which is available on the MBW website at [www.mbw.ch](http://www.mbw.ch) and will also be sent to clients upon request.

**16. Venue and Applicable Law**

- 16.1 The venue for the Customer and MBW is the registered office of MBW. Furthermore, MBW has the right to sue the Customer at the Customer's registered office and at the venues stipulated by law.
- 16.2 The legal relationship is subject to Swiss substantive laws. Application of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods, CISG) is expressly excluded.

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MBW Calibration AG