

General Terms and Conditions of MAGE Alu Systems GmbH, Haimburg/Austria

Our terms and conditions below shall apply to all offers, contracts, deliveries or other services. Conditions of the customer, which deviate from this, even mere supplemental conditions, which are not explicitly acknowledged by us in writing, are excluded, even if we have not objected to them, in the individual case.

1. Offer, order acceptance

Our offers are subject to confirmation. Orders and any order changes that are notified to us, whether directly or through our sales force employees, shall be binding for the buyer, in any case. The orders or changes submitted to us shall only become binding through our written order confirmation.

2. Prices

All prices are stated ex-factory and are, if nothing different is agreed, in € without VAT, which will be invoiced at the respective applicable rate. All prices are daily prices. For orders without an explicit price agreement, the prices on the date of delivery shall apply. We shall be entitled to carry out an appropriate price increase, if changes should take place to raw material or indirect material prices, wages, salaries, shipping costs or other public fees after submitting the offer.

3. Delivery, transfer of risk, shipping, packaging

The delivery shall take place from our warehouse. To the extent that nothing different is agreed in writing, shipping shall take place at the expense and risk of the ordering party. Our delivery shall be regarded as having taken place with handover to the buyer, the shipper or freight forwarder/after notification of readiness for shipping. Our deliveries are subject to timely and correct deliveries by our upstream suppliers. The shipping costs and the costs of possible insurance on the shipment at the request of the buyer shall be for the account of the buyer. The implementation of specific loading and shipping instructions required by the buyer, shall take place at the risk of and for the account of the buyer. We shall be entitled to carry out partial deliveries, to a reasonable extent. If packaging should be necessary in our opinion, it shall take place in the conventional manner, as the expense of the buyer.

Depending on the type of product, +/- 10% deviations shall be permitted in weight, number of units, running quantities, etc., with regard to the total contract amount, as well as arranged partial deliveries, to the extent that nothing different is defined in the respective valid delivery conditions. For the calculation of the invoice amount, quantity units calculated by us shall be definitive.

4. Delivery periods and dates

The delivery dates provided are only to be regarded as approximate. The arrangement of fixed dates shall require our explicit confirmation. If a fixed date has been arranged, the delivery period shall begin with the date of acceptance of the order by us, however not prior to full clarification of all execution details. If the buyer needs to provide documents, details, approval, releases or a deposit payment, the delivery period shall not begin prior to the fulfilment of these obligations.

If we should not be in a position of being able to deliver within the contractually agreed period, the ordering party shall be entitled to withdraw from the contract, if he has set a grace period of at least 14 days for us in writing, under threat of rejection, subject to the regulation in paragraph 3. The customer shall only be entitled to claims for compensation of delay/non-fulfilment losses, if the delivery has been delayed due to gross negligence by the contractor, a body or one of our management staff.

Unforeseeable circumstances for which we are not responsible, such as force majeure, war, civil commotion, import and export embargoes, material acquisition difficulties, tool breakage, operational disruptions, energy scarcity, lack of transport and similar circumstances – even if they occur with upstream suppliers – the delivery period will extend appropriately, at least by the duration of the hindrance, if we are prevented from timely fulfilment of our liabilities due to this. If it should be anticipated that the delivery delay will last for longer than 2 months, both parties shall be entitled to withdrawal. The buyer shall not be entitled to derive any compensation claims from the extension of the delivery period. We shall also not be responsible for the above mentioned circumstances, if they arise during an already-existing delay. We shall notify the ordering party of the beginning and end of such hindrances as soon as possible.

5. Payment

Our invoices shall be payable within 30 days from the invoice date, strictly net, without any deductions. In exceptional cases, an advance payment can also be required.

From the point in time of falling due onwards, maturity interest of 1% per initiated month shall be charged; if this clause should be invalid, maturity interest of 10% p.a. shall be agreed, as long as the customer does not prove that our loss is lower than this flat rate. The assertion of an actually higher default loss shall not be excluded.

If the customer should enter into default with the payment, all outstanding invoices shall immediately fall due.

In the case of non-compliance with payment obligations within the context of the business relationship or in the case of proven asset deterioration of the customer, we shall be entitled to make the further processing of the order and the delivery dependent upon provision of adequate security or advance payment; if our products have already been delivered, without regard to the agreed payment, we shall be entitled to demand immediate payment of the entire remaining amount.

This shall also apply, if it should subsequently emerge that the asset situation at the time of concluding the contract was significantly worse than assumed by us. If the provision of security or advance payment should not take place within a period to be set by us, we shall be entitled to withdrawal.

The assertion of liens or rights of retention and offsetting with counterclaims are inadmissible, if the counterclaims have not been legally established or acknowledged by us.

Payments will always be applied to the oldest outstanding invoice/claim. Fees that are incurred in connection with remittances or on the basis of documentary collections or documentary letters of credit for our deliveries in the buyer's country or destination country shall be for the account of the buyer.

6. Reservation of ownership

All goods and products delivered by us shall exclusively be delivered subject to reservation of ownership. The good shall remain our property until payment – with payment by cheques, until their redemption – of all claims arising from the business relationship, including ancillary claims and compensation claims. This shall also apply if all or individual claims by us are included in a running account and the balance is struck and acknowledged.

The customer shall not be entitled to mortgage or pledge as security, goods that are subject to retention of title (i.e. also goods owned by us after connection, combining or processing, as per the following conditions).

In the event of infringement of material contractual obligations, particularly for payment default, after issuing a warning, we shall be entitled to retrieve the goods, the buyer shall be obligated to surrender the goods. In the case of retrieval or pledging of the goods by us, a withdrawal from the contract shall only exist, if we should explicitly declare this in writing, as long as the Instalment Act should not apply.

If we should exercise our right of retrieval under reservation of ownership, in the case of payment default, a credit will only take place for this in the amount of 50% of the purchase price charged. The difference shall serve as cover for our costs, such as shipping costs, new sales costs, packaging costs, etc.

The customer shall reserve the right to prove that a lower loss has been incurred.

The customer must immediately notify us of liens and any other threatened impairment of our rights by third parties, providing the detailed circumstances that facilitate an intervention.

The buyer shall be entitled to process the goods that are subject to retention of title or sell them on in the proper course of business.

The claims of the customer from an onward sale of the goods that are subject to retention of title are already now assigned to us for securing all of our claims from the business relationship. Upon sale of the goods that are subject to retention of title with other goods, in a processed or unprocessed condition, the claims shall only be regarded as assigned to us in the amount of the invoice value of the for the goods that are subject to retention of title that have been delivered by us.

The customer shall be authorised to collect the assigned claims for us, on a trustee basis.

The collection authorisation can be revoked, if the buyer does not properly fulfil his payment obligations arising from the underlying contract. Upon discontinuation of payments, application for initiation of bankruptcy, judicial or extra-judicial settlement proceedings or another case affecting the assets of the customer, we shall furthermore be entitled to demand that the customer discloses the claims assigned to us and their debtors, provides all necessary details for collection of the claims, supplies the associated documents and notifies the assignment to the debtors. Furthermore, the customer shall now already authorise us to notify the buyers about the advance assignment, for this case.

We shall be obligated to release the security provided to us, at our option, upon request by the buyer, if their value against the customer exceed still-existing claims by more than 20%.

7. Retrieval of goods

In the case of retrieval of goods, which are subject to a special agreement, no entitlement shall exist to repayment of the purchase price, but rather, only to delivery of replacement goods.

8. Notification of defects, warranty

The goods delivered by us shall be immediately inspected after receipt for proper quality, contractual fulfilment and completeness. Complaints must be carried out in writing. With identifiable defects, the complaints must be received by us within 8 days after receipt of the goods. Defects, which cannot be determined upon proper commercial inspection, are to be asserted in writing within a period of 3 months since receipt of the goods by the ordering party, with loss of the right to notification of defects. Complaints that are due to defective transport shall be immediately noted on the shipping documents.

In the case of material defects, only rectification of defects/replacement can be demanded. If rectification of defects/replacement should fail, the customer shall be entitled to demand lowering of the purchase price (reduction) or reversal of the purchase contract (rescission).

9. Liability

Regardless of the legal grounds, we shall only be held liable for grossly negligent conduct of the principal himself, our bodies and our management staff. The liability for slight negligence and for any fault by legal agents shall be excluded.

However, if liability should exist on the basis of our terms and conditions, the compensation shall not exceed the loss incurred and the foregone profit, which the party that has infringed the contract was aware of or should have been aware of upon conclusion of the contract, under consideration of the circumstances. However, compensation claims due to non-fulfilment of the delivery contract are excluded.

If deliveries should take place according to drawings or other details provided by the buyer and if third party rights, particularly property rights should be infringed, the buyer shall fully indemnify us and hold us harmless. Other claims are excluded, unless we are held liable in cases of premeditation or gross negligence.

If deliveries should take place on the basis of assembly schedules prepared by us (assembly guidelines, drawings, technical information), these must be adhered to. The assembly schedules prepared by us are prepared on the basis of details supplied by the customer (e.g. ground condition, prevailing wind forces, weight and extent of the wall covering to be laid, etc.). These details are not examined by us. Therefore, we do not assume any liability for the details supplied by the customer. In this context, warranty and compensation claims by the customer are excluded at the outset. We shall not be held liable for quality defects and incorrect technical details from material suppliers. We shall not assume any liability for errors due to non-adherence to our assembly schedules and the general trade practices.

We shall guarantee the quality of the products within the context of the values and testing standards specified in the delivery programme. Suitability for specific uses are not generally ensured. We shall explicitly not be held liable for defects in processing/workmanship, the sub-structure or assembly, as well as for losses incurred due to incorrect handling (laying) of the goods.

10. Partial invalidity

If individual clauses of these terms and conditions should be or become invalid, the remaining agreements shall nevertheless remain valid.

11. Place of performance and legal jurisdiction

For all current and future claims arising from the business relationship with full merchants, including promissory note and cheque claims, the court of law for Haimburg/Austria shall be exclusively responsible.

The same legal jurisdiction shall apply if the customer should not have a general legal jurisdiction domestically, relocates his place of residence or usual domicile from the domestic location or his place of residence or usual domicile is not known at the time of legal action being filed.