

MGV Stromversorgungen GmbH (MGV)

Terms and Conditions of Contract

I) Nature and scope of goods and services

- 1) In case of doubt, the quotation or order confirmation issued by MGV shall prevail with regard to the nature and scope of goods and services.
- 2) Safety devices shall not be supplied unless required by law in the Federal Republic of Germany or expressly agreed between the parties.
- 3) Unless provision is made for more specific requirements under these Terms and Conditions of Contract or by way of individual agreement, all goods and services shall be subject to the rules and regulations issued by the Association of German Electrical Engineers (Verband deutscher Elektro-techniker), insofar as such rules and regulations are of relevance for the safety of the goods or services. Deviations shall be permitted, provided that an equivalent level of safety is thereby guaranteed. Statements made pursuant to Sec. 434 para. 1, third sentence of the German Civil Code (BGB), as amended, shall not be deemed definitive specification of the ordered product unless such specification is expressly agreed. Reference to national or international standards shall serve for purposes of description only and shall not constitute a liability pursuant to Sec. 443 BGB, as amended.
- 4) Information contained in data sheets or product overviews shall serve solely to describe the products and shall not constitute guaranteed quality in the legal sense. All errors and modifications shall therefore be accepted. Any and all claims against MGV for damages on the grounds of printing errors or inconsistent or inadequate performance data shall be excluded, save in the event of intent or gross negligence. Products shall be subject to technical modification and change without notice.
- 5) MGV shall reserve the unrestricted proprietary rights and copyrights to quotations, drawings and other technical documentation. Such documentation may not be made accessible to third parties without the prior written consent of MGV. In the event that an MGV quotation is not accepted, the relevant drawings and other technical documentation shall, upon request, be returned without delay.
- 6) Products may on no account be supplied to consumers. The customer shall ensure that its customers are placed under a similar obligation.

II) Retention of title

- 1) MGV shall retain the title to any and all goods supplied pending full payment of all present and future claims accruing to MGV under the present contract and from ongoing business relations (secured claims).
- 2) Prior to full payment of secured claims, goods subject to retention of title may be neither pledged to third parties, nor assigned as security. The buyer shall immediately notify MGV in writing in the event and to the extent that goods belonging to MGV are seized by third parties.
- 3) Should the buyer be in breach of contract, which shall include, but not be limited to non-payment of amounts due, MGV shall be entitled to rescind the contract in accordance with the statutory provisions and reclaim the goods on the grounds of retained title and rescission. If the buyer fails to pay any amounts outstanding, MGV may not exercise such rights unless a reasonable time limit for payment has previously been set without effect, or such time limit is superfluous under the statutory provisions.
- 4) The buyer shall be entitled to resell goods which are subject to retention of title in the ordinary course of business and/or process the same. In such event, the following supplementary provisions shall apply.
 - a) Retention of title shall pertain to the full value of any and all merchandise produced as a result of processing, mixing or combining the goods supplied by MGV, whereby MGV shall be deemed manufacturer thereof. If the goods are processed, mixed or combined with third-party goods to which title is retained by such third parties, MGV shall acquire joint ownership based on the proportional invoice values of the processed, mixed or combined goods. Furthermore, the provisions applying to goods supplied subject to retention of title shall likewise apply to any merchandise produced.
 - b) The buyer hereby assigns to MGV by way of security any and all claims against third parties arising from resale of the goods or merchandise, either in full or, if appropriate, in the amount of any joint share owned by MGV pursuant to the preceding subclause. MGV hereby accepts such assignment. The obligations of the buyer as stipulated under subclause II.2 shall likewise apply with regard to any claims assigned.
 - c) The buyer shall retain the right to collect claims in addition to MGV. MGV hereby undertakes not to collect any claim, provided that the buyer meets its payment obligations vis-à-vis MGV, does not default, that no petition for insolvency is filed and the buyer does not otherwise lack the ability to perform. Should such events occur, MGV may however request the buyer to disclose the assigned claims and their debtors, provide all information required for collection, surrender the relevant documents and notify the debtors (third parties) of the assignment.
 - d) If the value of the securities realised by MGV exceeds its claims by more than ten percent, MGV shall, at the request of the buyer, release securities at its own discretion.

III) Conditions of payment

Amounts invoiced for goods shall be due and payable within 30 days net, calculated from the date of dispatch or collection; invoices for repairs shall be due and payable immediately, without any deduction.

IV) Delivery and performance periods, limitation of liability, delivery by own suppliers

- 1) The following conditions shall be subject to the proviso that any and all documentation, approvals, clearances etc. to be supplied by the customer are submitted on schedule.
- 2) Delivery dates shall be met if dispatch is completed within the agreed period or if collection is possible as agreed.
- 3) Delivery date commitments shall be met as far as possible, shall however not be binding. If the scheduled delivery date is not met, each party to the contract shall be entitled to rescind the same, provided that the customer has granted an extension to the original date of no less than six weeks and such extension expires without success. In the case of orders for the development of new appliances, the supplier (MGV) shall be entitled to terminate the contract three months after the scheduled delivery date. In such case, MGV shall be entitled to remuneration on a pro-rata basis to the extent that any partial performance made available to the customer is of value to the latter.

Claims for damages against MGV shall be excluded, save in the event of intent or gross negligence.

- 4) In particular, MGV's obligation to deliver shall not apply in the event of either non-delivery or delayed delivery on the grounds of force majeure, strikes, natural disasters or other unavoidable circumstances. The same shall apply if MGV fails to receive delivery or timely delivery from its own suppliers. If the latter are no longer able to supply MGV in accordance with fair and reasonable commercial conditions, this shall likewise be deemed non-delivery by its own suppliers.

In such cases, the contract may be rescinded pursuant to subclause IV. 3 of these Terms and Conditions of Contract. No set time limits shall however be required if MGV declares with binding effect that delivery is not possible in the foreseeable future.

- 5) Save in cases of intent or gross negligence on the part of MGV or parties commissioned by MGV to fulfil its contractual obligations, MGV's liability shall be restricted to efficient functioning and faultless condition of the appliances supplied or developed; liability for any and all consequential damage, whether material damage or financial loss, and for damage caused by default shall be excluded.
- 6) Partial deliveries shall be permitted.

V) Transfer of risk

The risk of accidental loss or deterioration of the goods supplied shall transfer to the customer upon collection or in the case of dispatch, upon transfer to the carrier.

VI) Liability for defects

- 1a) In the event that appliances supplied by MGV are defective, which shall include failure to meet the agreed specifications, MGV shall, at its own discretion, be obliged to remedy the defect, replace the goods or repeat performance free of charge during the agreed guarantee period. Such guarantee period shall begin on the date of dispatch, unless it is proved that the consignment was not received by the customer until a later date. The aforesaid obligation shall not apply unless MGV is immediately notified in writing of any defects ascertained, however not later than seven days after discovery. Should MGV fail to comply with the aforementioned obligations within a reasonable set period (no less than four weeks), the customer may either rescind the contract or request a reduction in the purchase price. All additional claims for damages shall be excluded.
- 1b) The same shall apply for a period of three years in the case of items which, pursuant to the relevant data sheet, are subject to a three-year guarantee. Such three-year guarantee shall not apply unless the specifications stated in the data sheet are complied with during use and no tests or checks are carried out on the appliances without the prior consent of MGV, provided that such occurrences are the cause of the relevant defects. The buyer shall be required to furnish evidence that the specifications stated in the relevant data sheet have been complied with during use and that no tests or checks have been carried out on the appliances without the prior consent of MGV.
- 1c) If the buyer files claims under the guarantee and it is established that no pertinent defects exist to justify such guarantee claims, the buyer shall reimburse MGV for all costs incurred including, but not limited to freight, forwarding and other transportation costs.
- 2) The guarantee shall not apply to normal wear and tear or damages incurred subsequent to transfer of risk as a result of incorrect or negligent handling, excessive strain or physical influences that are neither assumed nor normally to be expected under the contract.
- 3) The customer's guarantee claims shall expire, should it attempt to remedy any defect without the prior written consent of MGV.
- 4) Save in cases of intent or gross negligence on the part of MGV or parties commissioned by MGV to fulfil its contractual obligations, any and all liability beyond the aforementioned guarantee obligations shall be excluded, including, but not limited to claims for damages not incurred by the delivered item itself and compensation for damages caused by default.
- 5) In the event of recourse pursuant to Sec. 478 BGB, as amended, MGV shall assign to the customer its right of recourse against any and all suppliers. MGV shall be liable for the obligations of such suppliers in the event that a claim cannot be enforced against the latter. MGV may at its own discretion exercise its right of recourse against a supplier instead of assigning the same.
- 6) Unless otherwise confirmed or agreed, guarantee claims on the part of the customer shall expire one year following delivery of the product.

VII) Supplementary provision

Supplementary hereto, in the case of dissent between the parties regarding the conditions of contract and the scope of their reciprocal rights and obligations, the "General Terms and Conditions of Sale and Delivery of Goods and Services in the Electrical Engineering Industry" ("Allgemeine Lieferbedingungen für Erzeugnisse und Leistungen der Elektroindustrie") prevailing in Germany shall apply, unless provision is made for more specific requirements under these Terms and Conditions of Contract or by way of individual agreement.

VIII) Extent of non-liability

To the extent that, pursuant to the preceding clauses, the liability of the parties is limited to intent or gross negligence, such limitation shall apply neither in cases of negligence leading to loss of life, bodily injury or damage to health, nor in the event that obligations are breached, the fulfilment of which is necessary for due performance of the contract and compliance with which may be duly relied on by each contracting party (so-called material obligations, such as obligations to deliver, manufacture or effect payment).

IX) Place of jurisdiction and governing law

- 1) The place of jurisdiction for all present and future claims arising between the parties to this contract shall be Munich.
- 2) Disputes between the parties shall be subject exclusively to German substantive law, in particular the provisions of the German Civil Code (BGB).

(Revised: June 2010)