

## **General Terms and Conditions - Delivery and Payment Conditions**

### 1. Scope

The deliveries of M&S Armaturen GmbH (hereinafter: Seller) shall take place exclusively according to the following General Terms and Conditions in the current version valid on the date of conclusion of contract. Agreements or business conditions of the customer which deviate from these Terms and Conditions shall only become effective if confirmed by the Seller in writing, insofar as they conflict with these conditions. The conditions of sale of the Seller shall become a contractual component at the latest on acceptance of the offer made by the buyer (on ordering).

### 2. Offer and Conclusion of Contract

- a) The product range of the Seller is non-binding. The customer makes a binding purchase offer upon the customer's order completion. The offer shall be deemed to be accepted explicitly when the Seller confirms acceptance of the purchase offer and an order confirmation has been delivered.
- b) The price valid on the date of conclusion of contract shall apply, plus taxes to be shown openly in the invoices, insofar as they do not conflict with separate agreements. All prices do not include the respective delivery costs.
- c) The Seller reserves its unrestricted copyright and property rights of use to cost estimates, designs and other documents (hereinafter: Documents). The Documents may only be made accessible to third parties with the prior consent of the Seller and are, if the order is not placed with the Seller, to be returned upon request without delay to the Seller.

### 3. Customer's Obligations

- a) Should the customer be in default of payment, interest is to be charged on the purchase price for the period of default in the amount of 9% over the relevant base interest rate. The Seller reserves the right to prove and assert higher default damages. If the customer is a consumer, the above interest rate is in the amount of 5% over the relevant base interest rate.
- b) Should the customer be in default of acceptance, the Seller is entitled, after the setting of an appropriate grace period, to withdraw from the contract and to demand compensation for damages in lieu of fulfilment.

### 4. Payment

4.1 The invoice amounts are to be paid according to the conditions of the Seller in the order confirmation and/or the invoice. Payment periods given in the order confirmation and/or invoice, in particular to calculate deadlines for discount deductions, begin on receipt of the invoice. Agreed discount deductions are only permissible insofar as there are no due invoices still to be settled. The customer can only set off with such claims, or assert rights of retention, which are undisputed or legally established. Any other set off and assertion of a right of retention are excluded.

4.2 Regardless of the agreed payment method, the Seller may demand a security deposit before delivery is made if justified doubt as to the ability to pay or creditworthiness of the customer arises after conclusion of contract, or if agreed payment or delivery conditions are not met in essential aspects or essential changes occur in the customer's business circumstances. Should the customer refuse to provide the security deposit within an appropriate set period, the Seller may withdraw from all contracts concluded with the customer in whole or in part. Further claims remain reserved.

4.3 Employees of the Seller are only authorised to collect debts on presentation of an existing legitimation.

### 5. Delivery

5.1 The choice of transport route is made by the Seller with due discretion, in the absence of special instruction from the customer. Carriage at the receiving location, freight charges, as well as additional freight for express goods and air freight deliveries, is made in all cases at the customer's expense.

5.2 The weight on dispatch from the supplier or warehouse determines the weight of the delivered goods.

## 6. Risk Transfer

The risk shall transfer to the customer, unless agreed otherwise, on handing over of the goods to the carrier, freight forwarder or other third party commissioned to execute the delivery. The transfer begins simultaneously with the loading process. The customer shall bear the risk for all delivered goods sent back during the return transport, as well as for packaging during the outbound and return transport.

## 7. Defect Liability

7.1 Recognisable defects are to be notified to the Seller without delay within the meaning of Sect. 377 of the German Commercial Code (HGB), at the latest within 24 hours of receipt of the delivered goods at the destination. Samples of the rejected delivered goods are to be sent in. Should a defect be established, the customer may - unless agreed otherwise - only demand rectification or redelivery (retrospective fulfilment) of the rejected delivered goods. If retrospective fulfilment fails twice, the customer is entitled to lower the purchase price or to withdraw from the contract. The agreed defect liability shall apply to all deliveries with respect to fault correction.

7.2 The Seller shall bear liability toward the customer under all contractual, contract-related and legal, including criminal, claims to compensation for damages and reimbursement of costs as follows:

The Seller shall bear unlimited liability on any legal ground

in the case of malicious intent or gross negligence

based on a guarantee promise, unless otherwise provided for in this respect due to mandatory

liability such as under the German Product Liability Act.

a) Should the Seller negligently breach an essential contractual obligation, the liability shall be limited to the foreseeable damages typical for the contract, unless the liability is unlimited according to the above point. Essential contractual obligations are the obligations which the contract imposes on the Seller, based on its content, in order to achieve the purpose of the contract, the fulfilment of which enables the proper implementation of the contract and on which the customer regularly relies, 'cardinal obligations'.

b) In any other case, the Seller is not liable.

c) The above liability regulations shall also apply to the liability of the Seller for its assistants and legal representatives.

7.3 Application consulting by the Seller is non-binding whether spoken or written and shall not release the customer from its obligation to inspect the products for suitability. This shall also apply when the delivered goods are generally recommended for a specific purpose. Should the liability of the Seller nevertheless come into question, the agreed rules of defect liability shall apply correspondingly. The customer shall bear sole responsibility for complying with any protective rights of third parties, e.g. application patents, and with statutory regulations, in processing the delivered goods.

7.4 Purchaser claims due to material defects shall lapse one year after handover/delivery of the purchased item to the customer. An exemption shall be granted for defect claims of consumers, as well as for compensation claims for gross negligence or damage intentionally caused by the Seller. The statutory limitation periods apply in this respect.

## 8. Retention of Title

8.1 The delivered goods shall remain in the property of the Seller until the full balancing of all outstanding claims resulting from the mutual business arrangement, including interest and costs and/or until the full cashing of cheques or bills of exchange administered for this purpose. The Seller is entitled to assert retention of title by a simple statement. The retention of title extends to resold delivered goods and to products resulting from processing. In the case of combination or mixture with material which does not belong to the Seller, the Seller shall always acquire

co-ownership in the newly manufactured object proportional to the value of the reserved goods to the value of the new object. The customer is considered as the custodian for the Seller in this respect.

8.2 The customer has the revocable right to sell the delivered goods within the framework of a proper business transaction. Any other disposal, in particular pledging, collateral assignment or relinquishment by means of exchange, shall be prohibited. Seizure undertaken by third parties - including after combination or processing - as well as any other impairment of rights to the delivered goods in the property of the Seller, is to be notified to the Seller without delay. The customer hereby assigns to the Seller, who accepts the assignment, independently of processing, all of its claims and ancillary rights from the resale and business relationship with its buyers in connection with the resale. In the case of the delivered goods being sold by the customer together with other goods not belonging to the Seller, the assignment of the purchase price claim only applies in the amount of the value of the delivered goods.

8.3 The customer is revocably authorised to collect the claim from the resale of the delivered goods. The collection authorisation and the right of processing shall lapse without express withdrawal, if the customer ceases its payments, in the case of point 4.2 a cheque or bill protest or effected seizure. Assigned outstanding amounts subsequently received are to be collected immediately in a special bank account with a reference to be stated separately by the Seller. Upon request of the Seller, the customer is to notify the debtors of the assigned claim without delay in writing. The Seller shall be obliged, at its discretion, to release the security provided to it upon request of the customer, insofar as the realisable value exceeds the total claim of the Seller to be secured by 20%.

8.4 If the customer is in default of its payment obligations to the Seller or if it breaches one of the obligations resulting from the agreed retention of title, the full outstanding debt immediately becomes due. In these cases, the Seller is entitled, subject to Sect. 107 para. 2 of the German Insolvency Code (InsO), to demand the return of the delivered goods and to collect them from the customer. The customer has no right of possession. The Seller is entitled to notify the customer's buyers of the assignment of the customer's claim to the Seller and to collect the claim.

## 9. Final Provisions

9.1 Should an individual provision of these delivery conditions or the delivery transaction be or become ineffective, the validity of the other provisions shall remain unaffected. The contractual partners shall be obliged to agree on a new provision which comes as near as possible to the purpose of the ineffective provision.

9.2 The place of fulfilment for all obligations resulting from the delivery transaction and the place of jurisdiction for all disputes in connection with the delivery transaction and/or with a summary procedure is the head office of the Seller in Kuernbach, unless agreed otherwise.

9.3 The relations between the Seller and customer shall be subject exclusively to the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

Kuernbach, November 2022