

Mahlo GmbH & Co. KG

General Terms and Conditions for the Supply of Machines and Services as of 01/12/2009

For use with respect to

1. any person who concludes the contract in the course of his professional activity as a tradesperson or self-employed person (businessman);
2. legal entities of public law, or special assets under public law.

I. General Provisions

1. All deliveries and services of Mahlo GmbH & Co. KG, hereinafter referred to as "Supplier", shall be based on these Terms and Conditions, subject to any separate contractual provisions. Any deviating terms and conditions of purchase of the Orderer shall not even become part of the contract by the acceptance of the order. Unless otherwise agreed specifically, a contract shall be concluded by the Supplier's written order confirmation.
2. All offers shall not be binding in any case. Unless otherwise agreed specifically, the Supplier's order confirmation shall be decisive for the scope of deliveries or services (hereinafter referred to as "Deliveries").
3. For quotations, drawings, models, plans and other documents and information in corporeal or incorporeal, particularly electronic, form (hereinafter referred to as "Documents"), the Supplier reserves his title and his rights of utilization under copyrights without restriction. Documents designated as confidential may only be made accessible to third parties with the Supplier's prior written consent. If the order is not placed with the Supplier, they shall be returned immediately upon request. Information in incorporeal – particularly electronic – form shall be deleted, and the deletion shall be confirmed in writing.
4. No later than the placement of the order, the Orderer shall, if necessary, inform the Supplier of the intended use of the delivery item, especially if the products to be delivered are to be used under special operating or ambient conditions or if specific operating conditions or risks exist otherwise.

II. Pricing and Payment

1. Unless otherwise agreed specifically, prices shall be ex works, including loading but excluding packing and unloading; the prices shall be exclusive of turnover tax at the statutory amount.
2. Unless otherwise agreed specifically, payments shall be made to the Supplier's account without any discount as follows:
1/3 down payment upon receipt of the order confirmation,
1/3 as soon as the Orderer has been given notice that the main parts are ready for dispatch, the remaining amount within one month after the passing of risk.

The Orderer shall be entitled to withhold payments or set them against counter-claims only insofar as his counterclaims are undisputed or have been established as final and absolute.

III. Delivery Period, Delays in Delivery

1. The delivery period shall be defined by the agreement between the contracting parties. A prerequisite for its observance by the Supplier is that all commercial and technical matters have been settled between the Parties and that the Orderer has fulfilled all of his obligations, e.g. the provision of the necessary certificates or approvals of public authorities or the effecting of a down payment. If this is not the case, the delivery period shall be extended adequately. This shall not apply insofar as the Supplier is responsible for the delay.
2. The compliance with the delivery period shall be subject to the Supplier himself receiving correct and timely deliveries. The Supplier shall give notice of any expected delays as soon as possible.
3. The delivery period is considered complied with if the delivery item has left the Supplier's works by the time of its expiry or if readiness to dispatch has been reported. If an acceptance is to be performed, the decisive date shall be the acceptance date – except in the case of any justified refusal to accept – or, alternatively, the date at which readiness to accept is reported.
4. If the dispatch and/or the acceptance is delayed for reasons for which the Orderer is responsible, he shall be invoiced the costs incurred as a result of the delay, starting one month after the readiness to dispatch and/or accept is reported.
5. If the non-compliance with the delivery period is due to force majeure, industrial action or other events beyond the Supplier's control, the delivery period shall be extended adequately. The Supplier shall inform the Orderer of the beginning and the end of such circumstances as soon as possible.
6. The Orderer may withdraw from the contract without notice if prior to the passing of risk, it becomes definitely impossible for the Supplier to perform the entire service. Furthermore, the Orderer may withdraw from the contract if for a particular order, it becomes impossible to perform part of the delivery and the Orderer has a justified interest in rejecting the partial delivery. If this is not the case, the Orderer shall pay the portion of the contract price that is related to the partial delivery. Apart from that, Section VII.2 shall apply.

If the impossibility or incapacity occurs during any delay in acceptance or if the Orderer is solely or clearly predominantly responsible for the circumstances, it shall still be obliged to provide consideration.

7. If the Supplier is in delay and the Orderer suffers from damage as a result, the Orderer may require a lump-sum compensation for the delay. It shall amount to 0.5 % for each week of the delay, but no more than a total of 5 %, of that part of the entire delivery which cannot be used on a timely basis or in compliance with the contract as a result of the delay.

If the Orderer – in consideration of the statutory exceptions – fixes an adequate deadline for the Supplier's performance and if said deadline is not complied with, the Orderer may withdraw from the contract as provided by law.

Further claims arising from any delay in delivery shall be governed solely by Section VII.2 of these Terms and Conditions.

IV. Passing of Risk, Acceptance

1. The risk shall pass to the Orderer when the delivery item has left the works, even if partial deliveries are performed or the Supplier has also taken over other services, e.g. the shipping costs or delivery and erection. If a delivery is to be performed, it shall be decisive for the passing of risk. It shall be performed without delay by the due date for acceptance or, alternatively, after the Supplier has reported his readiness to accept. The Orderer may not refuse acceptance in the case of any minor defect.
2. If the dispatch and/or acceptance is delayed or not performed due to circumstances which cannot be attributed to the Supplier, the risk shall pass to the Orderer on the day on which readiness to dispatch and/or accept is reported. The Supplier undertakes to obtain, at the Orderer's expense and against advance payment, such insurance as the Orderer requires.
3. Partial deliveries are permitted if they are reasonable for the Orderer.

V. Retention of Title

1. All delivery items shall remain the Supplier's property (goods subject to retention of title) until the satisfaction of any and all claims, regardless of the legal cause, including any future or conditional claims, also those arising from contracts concluded simultaneously or at a later date. This shall also apply if payments are made for specially designated claims.
2. Any processing of the delivery items shall be done for the Supplier as the manufacturer within the meaning of Art. 950 of the German Civil Code (BGB) without imposing any obligation on him. The processed delivery items shall be considered as goods subject to retention of title within the meaning of Section V.1. In the case of any processing, combination or mixture of the goods subject to retention of title together with other goods, the Supplier shall be entitled to a co-ownership of the new item(s) in the ratio of the invoicing value of the processed items to the invoicing value of the other goods used. If the Supplier's ownership expires as a result of a combination or mixture, the Orderer hereby assigns him the property rights to the new inventory or the item to which the Orderer is entitled, to the extent of the invoicing value of the goods subject to retention of title, and he shall keep said goods for the Supplier free of charge. The goods under the resulting co-ownership shall be considered as goods subject to retention of title within the meaning of Section V.1.
3. The Orderer may sell the delivery items only as part of his normal business transactions, at his normal terms and conditions and as long as he is not in delay, provided that the claims arising from the resale are transferred to the Supplier in accordance with Sections V.4 to V.6. The Orderer may not make any other disposals of the goods subject to retention of title.
4. The Orderer's claims arising from any resale of the goods subject to retention of title are hereby assigned to the Supplier. They will serve him as security to the same extent as the goods subject to retention of title. If the goods subject to retention of title are sold by the Orderer together with other goods not sold by the Supplier, the assignment of the claims arising from the resale shall apply only to the amount of the resale value of the sold delivery items. For the sale of delivery items to which the Supplier has co-ownership shares under Section V.2, the assignment of the claims shall apply to the amount of the co-ownership shares.
5. If the Orderer includes the claims arising from the resale of goods subject to retention of title into a current account relationship existing with his customer, the current account claim shall be considered assigned to the Supplier at its full amount. After the balancing has been done, it shall be superseded by the recognized balance, which shall be considered assigned up to the amount of the original current account claim.
6. The Orderer may collect claims arising from the resale until the Supplier's cancellation, which shall be possible at any time. The Orderer may perform an assignment of the claims – which shall include any sale of claims – only with the Supplier's prior written consent. On the Supplier's request, the Orderer shall be obliged to inform his customers of the assignment himself – insofar as the Supplier does not do so himself – and to provide the Supplier with the information and documents necessary for the collection.
7. In the case of payment by cheque, the ownership of the cheque shall pass to the Supplier as soon as the Orderer acquires it. If payment is made by bill of exchange, the Orderer hereby assigns his rights arising from it to the Supplier in advance. Instead of the handover of said documents, the Orderer shall keep them in custody for the Supplier or, if he does not acquire their direct possession, hereby assigns his claims for surrender against third parties to the Supplier in advance. The Orderer shall surrender said documents, which shall carry his endorsement, to the Supplier immediately.

8. Prior to any seizure or interference by third parties, the Orderer shall inform the Supplier immediately and provide him with the information and documents necessary for claiming his rights.
9. An application for the opening of insolvency proceedings concerning the Orderer's assets will entitle the Supplier to withdraw from the contract and require the immediate return of the delivery item.
10. If the overall value of the existing collaterals exceeds the secured claims by more than 20 %, the Supplier shall, in this respect, be obliged to release collaterals of the Supplier's choice on the Orderer's request.
11. The Orderer shall be obliged to insure the goods subject to retention of title against fire, water and theft. The Supplier shall be entitled to insure the delivery item against theft, breakage, damage by fire or water and other damage at the Orderer's expense unless the Orderer himself has provably obtained such insurance himself.
12. If in the Orderer's country, special prerequisites or formal requirements exist for the conveyance of the delivered items or the collaterals, the Orderer shall ensure the compliance with them at his own expense.
13. In case the Orderer breaches the Contract, particularly in the case of any delay in payment, the Supplier shall be entitled to take back the goods subject to retention of title after a reminder, and the Orderer shall be obliged to surrender them.
14. On the basis of the retention of title, the Supplier may only require the surrender of the delivery item if he has withdrawn from the contract.
15. An application for the opening of insolvency proceedings concerning the Orderer's assets will entitle the Supplier to withdraw from the contract and require the immediate return of the delivery item unless the Orderer proves that either the Supplier is secured sufficiently as regards the (remaining) claims to which he is entitled or the possibility to satisfy other creditors' claims will be more favourable economically without the withdrawal or the immediate return of the delivery item.

VI. Claims for Defects

For any material defects and defects of title which the Supplier may have, the Supplier shall provide guarantee as follows, subject to Section VII:

Material defects

1. All parts which are found to be defective due to a circumstance existing before the passing of risk shall be repaired or replaced by a flawless part at the Supplier's choice free of charge. The discovery of such defects shall be reported by the Supplier in writing immediately. Replaced parts shall become property of the Supplier.
2. For the performance of all repairs and replacements which seem necessary to the Supplier, the Orderer shall give the necessary time and opportunity after agreement with the Supplier; otherwise, the Supplier shall be relieved of his liability and its consequences. Only in urgent cases where industrial safety is at risk and/or disproportionately severe damage must be prevented – in which the Supplier shall be informed immediately – the Orderer shall be entitled to repair the defect himself or have it repaired by third parties and to require the Supplier to reimburse the necessary expenses.
3. Of the direct costs resulting from the repair or replacement, the Supplier shall – insofar as the complaint is found to be justified – bear the costs of the replacement part including its dispatch. Furthermore, he shall bear the costs of the removal and installation and the costs of any necessary provision of the mechanics and assistants needed, including travel costs, if this does not result in any disproportional burden for the Supplier.
4. To the extent provided by law, the Orderer shall be entitled to withdraw from the contract if the Supplier lets an adequate period which has been fixed for a repair or replacement due to a material defect expire fruitlessly, in consideration of the statutory exceptions. If only a minor defect exists, the Orderer shall only have the right to reduce the contract price. The right to reduce the contract price shall be excluded in all other cases.

Further claims shall be governed by Section VII.2 of these Terms and Conditions.

5. In particular, no guarantee will be provided in the following cases:

Inappropriate or improper use, incorrect assembly and/or start-up by the Orderer or third parties, natural wear and tear, incorrect or negligent handling, improper maintenance, unsuitable supplies, faulty construction work, unsuitable ground, chemical, electrochemical or electrical impact – unless the Supplier is responsible for them.

6. If the Orderer or any third party performs repair work improperly, no liability of the Supplier for the consequences shall exist. The same shall apply to any changes to the delivery item made without the Supplier's prior consent.

Defects of Title

7. If the use of the delivery item leads to an infringement of industrial property rights or copyrights in Germany, the Supplier shall, in general and at his expense, obtain the right of further use for the Orderer or modify the delivery item in a way acceptable to the Orderer so that the infringement of the property right no longer exists.

If this is not possible at economically adequate conditions or within an adequate period, the Orderer shall be entitled to withdraw from the contract. On the aforesaid conditions, the Supplier shall also be entitled to withdraw from the contract.

8. The Supplier's obligations mentioned in Section VI.7 shall be definite in the case of any infringement of industrial property rights or copyrights, subject to Section VII.2.

They shall only exist if

- the Orderer immediately informs the Supplier of any claimed infringement of industrial property rights or copyrights,
- the Orderer supports the Supplier in the defence against the claims to an adequate extent and/or gives the Supplier the possibility to perform the modification activities under Section VI.7,
- the Supplier continues to be entitled to take all defensive action, including out-of-court settlements,
- the defect of title is not based on an instruction of the Orderer, and
- the infringement was not caused by the fact that the Orderer has modified the delivery item without authorization or used it in a manner contrary to the contract.

VII. Liability

1. If through the fault of the Supplier, the delivery item cannot be used by the Orderer in compliance with the Contract as a result of the non-implementation or faulty implementation of suggestions or consultations made/held before or after the conclusion of the contract or as a result of the breach of other secondary obligations under the contract – particularly any instructions for the operation or maintenance of the delivery items – the provisions of Sections VI and VII.2 shall apply accordingly.
2. For damage not occurring to the delivery item itself, the Supplier shall – regardless of the legal cause – only be liable in the case of
 - a. wrongful intent,
 - b. gross negligence of the body or of executives,
 - c. culpable injury to life, body or health,
 - d. defects which he has concealed maliciously or whose absence he has guaranteed,
 - e. defects of the delivery item insofar as under the German Product Liability Act, liability exists for personal injury or for property damage to privately used items.

In the case of any culpable violation of major contractual obligations, the Supplier shall also be liable for gross negligence of non-executive employees and for slight negligence. In the latter case, the liability shall be limited to damage which is typical of such contracts and reasonably foreseeable.

VIII. Lapse of Time

All claims of the Orderer – regardless of the legal cause – shall lapse after 12 months. To damage claims under Sections VII. 2 a to e, the statutory periods shall apply. They shall also apply to any defects of a building or to delivery items which, according to their normal use, have been used for a building and have caused its defectiveness.

IX. Use of Software

1. Insofar as software is included in the scope of delivery, the Orderer is hereby granted a non-exclusive right to use the supplied software including its documentation. The software will be provided for use on the delivery item intended for this purpose. Any use of the software on more than one system shall be prohibited.
2. Only to the extent permitted by law, the Orderer may use, reproduce, revise or translate the software or convert it from the object code to the source code. The Orderer undertakes not to change any manufacturer's data – particularly copyright notes – and not to change them without the Supplier's express prior consent.
3. All other rights to the software and the documentation, including their copies, shall remain with the Supplier or software supplier, respectively. No sublicensing shall be permitted.

X. Applicable Law, Place of Performance and Place of Jurisdiction

1. Only the law of the Federal Republic of Germany shall apply to all legal relationships between the Supplier and the Orderer.
2. The place of jurisdiction shall be the Supplier's place of business. The Supplier shall also be entitled to sue at the Orderer's place of business or any other statutory place of jurisdiction.
3. The place of performance for the performance of work outside the Supplier's works shall be the place agreed for the work to be performed. For any other deliveries and services and for payments of the Orderer, also for claims arising from cheques or bills of exchange, the place of performance shall be the Supplier's place of business.

Code of Conduct for Business Partners of MAHLO GmbH & Co. KG and its Associated Companies

This Code of Conduct defines the principles and requirements concerning the responsibility towards man, the society and the environment, which MAHLO GmbH & Co. KG and their associated companies impose on their own conduct and on partners with whom they have business contact. MAHLO GmbH & Co. KG and its associated companies reserve the right to make adequate amendments to this Code of Conduct. In such case, MAHLO GmbH & Co. KG and its associated companies expect their business partners to accept such adequate amendments as well.

MAHLO GmbH & Co. KG, their associated companies and the Supplier hereby declare that they will:

- **Compliance with the laws**
 - comply with the laws of the applicable legal system(s).
- **Prohibition of corruption and bribery**
 - not tolerate any form of corruption or bribery nor get involved with it in whatever form, including any and all influencing of the decisions of bodies, office holders or employees of public or private corporations.
- **Respecting employees' fundamental rights**
 - respect the personal dignity, privacy and personality rights of their employees;
 - support equal opportunities and equal rights of all employees regardless of their colour, race, nationality, social background, possible disability, sexual orientation, political or religious conviction, and gender or age;
 - not permit nor support any forced labour;
 - not tolerate any unacceptable treatment of employees such as psychological severity, sexual or personal harassment, or discrimination;
 - ensure fair and adequate remunerations, and guarantee the statutory national minimum wages in particular;
 - comply with each country's working hours legislation;
 - recognize the employees' freedom of association as provided for in applicable law, and neither privilege members of workers' organizations or trade unions nor discriminate against them.
- **Prohibition of child labour**
 - not employ any persons who are not at least 15 years of age. In countries that fall under the exception for developing countries pursuant to the ILO Convention 138, the minimum age may be reduced to 14 years.
- **Health and safety of the employees**
 - take responsibility for health and safety in relation to their employees;
 - reduce risks and take preventive measures against accidents and occupational diseases;
 - offer training and ensure that all employees have the necessary knowledge related to occupational health and safety;
 - introduce and use an occupational health and safety management system according to OHSAS 18001 or an equivalent system.
- **Environmental protection**
 - consider environmental protection in compliance with the legal standards and international standards;
 - minimize environmental pollution and improve environmental protection continuously;
 - introduce and use an environmental management system according to ISO 14001 or an equivalent system.
- **Supply chain**
 - ensure and support their suppliers' compliance with the contents of this Code of Conduct in the best possible way;
 - comply with the principles of non-discrimination when choosing suppliers and dealing with their own suppliers.