

General Terms and Conditions of Sale and Delivery for nordform Max Storch GmbH & Co. KG

Section 1 General / Application

1. Our General Terms and Conditions of Sale and Delivery apply exclusively. We do not recognize any terms or conditions of the ordering party contrary to or deviating from our Terms and Conditions of Sale and Delivery, unless we have agreed to them expressly in writing. Our Terms and Conditions of Sale and Delivery also apply even when we execute delivery to the ordering party without reservations being fully aware of terms and conditions of the ordering party contrary to or deviating from our Terms and Conditions of Sale and Delivery.
2. Our Terms and Conditions of Sale and Delivery apply only for companies, legal entities in public law and special public funds ("öffentlich-rechtlichen Sondervermögen").
3. Our Terms and Conditions of Sale and Delivery also apply for all future business transactions with the ordering party.

Section 2 Offers / Conclusion of Contracts / Contract Documents

1. Preliminary enquiries, requests for submission of an offer, schedules of goods and services and similar statements issued by us prior to an order are subject to change without notice and not obligatory. This applies particularly for illustrations, drawings, weight and dimension specifications.
2. A contract shall be considered to be concluded only when the ordering party receives a written order confirmation.
3. We retain all property rights to illustrations, drawings, calculations and other documents revealed or submitted to the ordering party in context with this contract. It is not permissible to allow access to such documents by third parties. The ordering party requires our express, written approval before passing such documents on to third parties. This applies particularly, however not exclusively, for written documents, which we have marked as "confidential".

Section 3 Prices / Terms of Payment

1. Unless otherwise specified in the order confirmation, our prices are valid "ex works" (EXW - Incoterms 2010) from the dispatching plant, 22844 Norderstedt. If shipment is agreed, the ordering party shall bear all costs for packaging and shipment.
2. The legal value added tax is not included in our prices. For domestic transactions it will be itemized separately in the bill in the legal amount applicable on the day the bill is issued.
3. Deduction of discounts is subject to special written agreement.
4. Unless otherwise agreed, the purchase price is due and payable immediately. The ordering party shall be considered to be in default if payment is not received within 30 days after receipt of the bill at the latest.
5. In case of goods to be delivered 6 weeks after conclusion of the contract or later, both parties shall be entitled to adjust the prices accordingly after expiration of 6 weeks after conclusion of the contract, when, following conclusion of the contract external price factors change, particularly due to increases or decreases in standard wages or material prices. Proof of such increases or decreases have to be provided to the other party on request.
6. If, after conclusion of the contract, changes are agreed on at the desire of the ordering party, the latter shall be obligated to remunerate any required adaptation measures for molds and tools and all other additional expenses separately. The scope of this remuneration shall be determined by a written agreement to be made regarding such changes.
7. The ordering party shall be entitled to offset counterclaims only when such counterclaims have been established legally or are recognized or uncontested by us.
8. The ordering party shall not be authorized to exercise any rights retention when such party's counterclaim is not based on the same contractual relationship.

Section 4 Delivery

1. The beginning of the delivery period specified by us assumes clarification of all technical questions with the ordering party.
2. Maintenance of our obligation to deliver assumes proper fulfillment of the obligations of the ordering party within due time.
3. We reserve all rights to standard commercial deviations in delivery quantities of ±10%.
4. If the ordering party defaults in acceptance, the risk of accidental destruction of the ordered goods shall be transferred to the ordering party. The ordering party shall be obligated to remunerate us for any additional expenses resulting from acceptance default. This includes particularly, but not exclusively, storage costs, insurance premiums and expenses for additional work by our employees.
5. The right of the ordering party to withdraw from the contract if the delivery deadline is exceeded shall exist only as specified in Section 7.
6. Unless otherwise agreed, delivery shall be "ex works" (EXW - Incoterms 2010) from the dispatching plant, 22844 Norderstedt. The goods will be shipped to another destination only when agreed at the cost of the ordering party. All risks shall be transferred to the ordering party upon delivery to the ordering party and, in the event the goods are shipped, upon delivery to the ordering party. If it is agreed that shipping insurance is to be concluded, this shall be accomplished at the cost of the ordering party.

Section 5 Molds and Tools

1. If production of molds and tools is required for manufacture, these shall remain our property in consideration of our design work unless otherwise agreed on expressly.
2. If the parties expressly agree that the ordering party is to become the proprietor of the molds and/or tools, we retain all rights to proprietorship until all claims against the ordering party including any amounts agreed on for molds and/or tools have been paid in full. Instead of delivering the molds or tools to the ordering party after they have been paid in full, we will keep them in our custody on behalf of the ordering party and will mark them on the outside to indicate the ordering party's ownership unless the ordering party expressly requests that we deliver them to it or to a third party. However, in no case shall we be obligated to keep such molds or tools in our custody for a period of more than four years from the date of the last order, unless a specific agreement has been concluded regarding keeping them in our custody beyond this period of time for a commensurate fee. If the parties do not conclude a custody agreement for a fee after the expiry of the period of four years from the date of the last order and if the ordering party does not pick up the molds or tools at its expense within two weeks after receiving a respective notification from us, we shall be entitled to destroy the molds or tools or use them otherwise.

Section 6 Rights of use and presentation

1. If the ordering party or third parties hold rights (design rights, copyrights, etc.) to the parts that were provided by themselves or the parts that are to be produced or were produced, the ordering party grants us a non-exclusive and non-transferable right of use to these parts for advertising purposes (in particular through the reference page, a photo presentation, etc.). In this context we will try to ensure – as far as possible – that the presentation of the work does not allow any conclusions regarding the identity of the ordering party.

Section 7 Warranty

1. Assumption of any type of guarantee is subject to specific, express, unequivocal and written agreement.
2. Warranty claims shall be considered only when the ordering party has observed the requirements for examination and complaint pursuant to Section 377 of the German Commercial Code (HGB).
3. If a defect is present in the goods delivered, we shall be entitled to subsequent fulfillment by eliminating the defect or delivery of new, defect-free goods at our option. We will only be responsible for the costs of the deinstallation of the defective item and the installation of an item that is free of defects or the reinstallation – if the installation was not owed by us and there is no consumer goods purchase – to the extent that we are liable for damages for it in accordance with Section 9 or if we have expressly agreed to the performance of the work or if we have expressly approved it subsequently or if we perform the deinstallation and the reinstallation ourselves.
4. The rights of the ordering party regarding a reduction of the price or a withdrawal from the contract due to a failure to cure shall be those prescribed by law. Damage claims due to a defect are possible only on the basis of the terms specified in Section 9. The warranty period for new goods shall be one year from the date of delivery. In the case of delivery recourse pursuant to Sections 478, 479 BGB (German Civil Code), the statutory warranty period shall remain unaffected. No warranty will be given for second-hand goods. Claims for damages based on defects or claims for compensation of expenses shall remain unaffected by the aforementioned exclusions and restrictions of warranty.

Section 8 Contract work

1. The ordering party shall bear the risk of rejects. If, during the performance of contract work, the part provided by the customer is damaged or becomes unusable before the processing or the manufacturing process is completed due to a defect for which we are responsible, we shall be liable in accordance with Section 9.
2. In this case, however, we will only be able to cure if the ordering party makes a new part available to us; if it does not do this, we shall be released from the duty to cure. In this event, the ordering party shall also be released from its duty to pay. If the ordering party has already made the payment, we will refund the amount paid to the ordering party without interest. Any further claims for damages against us due to a failure to cure, impossibility of performance or default, as well as claims for compensation of expenses, shall be excluded.

Section 9 Compensation for Damages

1. All claims for damages against us and our legal representatives and vicarious agents are excluded except in cases of intent and gross negligence or the breach of an essential contractual obligation. An essential contractual obligation within this meaning is any obligation which must be fulfilled in order to enable the proper performance of the contract in the first place and which the ordering party can usually rely on being fulfilled. Unless there is intent, liability shall be limited to the typically foreseeable damage.
2. Claims for reimbursement of expenses of the ordering party pursuant to Section 284 BGB (German Civil Code) are waived to the extent that a claim for damages in lieu of performance in accordance with the aforementioned regulations is excluded.
3. The aforesaid limitations and exclusions of liability do not apply to liability under product liability law nor in the case of death, physical injury or damage to health.

Section 10 Retention of Ownership

1. We reserve all rights to retention of ownership to the goods delivered until receipt of all payments due pursuant to the delivery contract and compensation of all claims already present at the time the contract was concluded. If the ordering party does not act in conformance with the contract, particularly in the event of default of payment, we shall be entitled to withdraw from the contract and take back the goods delivered. After taking back the goods delivered we shall be entitled to sell or otherwise utilize the goods in question, whereby the receipts from such utilization or sale shall be used to satisfy the obligations of the ordering party – less reasonable costs incurred.
2. The ordering party shall be obligated to treat the goods delivered with care up to the time ownership is transferred. In particular, the latter shall be obligated to insure such goods at his own cost against fire, water damage and theft in an amount equivalent to the new value. If maintenance and inspection work is required, the ordering party shall be obligated to perform such work within due time at his own cost.

3. In the event of liens or other claims on the part of third parties, the ordering party shall notify us immediately in writing, so that we can take third party action against execution pursuant to Section 771 of the German Code of Civil Procedure (ZPO). The ordering party shall be liable to us for any damages ensuing there from.

4. The ordering party shall be entitled to sell the goods delivered in ordinary commercial objects, however the latter hereby assigns to us as of this time all claims against his purchasers or other third parties in the amount of the final bill (including value added tax) due to the former resulting from such resale, regardless of whether the goods were sold without or following further processing. We hereby accept this assignment. The ordering party shall remain entitled to collect such claims even after assignment. This shall have no effect on our right to collect such claims ourselves. However we will not collect such claims as long as the ordering party fulfils his obligations to payment from the agreed proceeds, is not in default with payments and particularly has not applied for opening insolvency proceedings or stoppage of payments. However, in the event of the preceding, we shall be entitled to demand that the ordering party reveal the claims assigned to us as well as the debtors owing such claims, provide all information required for collection, hand over the associated documents and notifies all third-party debtors of this assignment.

5. Processing or conversion of the goods delivered by the ordering party shall always be accomplished on our behalf. We remain the proprietor until the goods delivered are fully paid. If the goods delivered are processed in combination with other goods not belonging to us, we shall become co-proprietor of the new items in the ratio of the value of the goods delivered to the other goods processed at the time of processing. In all other respects the same applies for the item resulting from processing as for the goods delivered under retention of ownership.

6. If the goods delivered are mixed inseparably with other goods not belonging to us, we shall become the co-proprietor of the new item in the ratio of the value of the goods delivered to the other mixed goods at the time of mixing. If mixing is accomplished in such a manner that the item of the ordering party is considered the primary item, the ordering party agrees to transfer co-proprietorship to us in the appropriate share. The ordering party thereby holds the resulting sole property or co-property in safe custody for us.

7. The ordering party also assigns to us all claims against third parties resulting from combining or connecting the goods delivered with real property for securing our claims against him.

8. We agree to release all securities and pledges due us on request of the ordering party, to such an extent the value of our security exceeds the claims to be secured according to the value of open bills by more than 10%. We shall have the right to select the guarantees and securities to be released.

Section 11 Jurisdiction / Applicable Law / Versions of General Terms of Business

1. The legal venue for all disputes from the business relationship shall be Hamburg, Germany. The courts of Hamburg will have exclusive jurisdiction to hear any disputes, including legal proceedings related to bills of exchange and checks, with merchants, legal entities under public law, special funds under public law, or vendors who do not have any general place of jurisdiction within Germany. However, the parties are also entitled alternatively to bring a claim before the court of arbitration of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V., DIS), instead of before the usual courts. In this case, the place of arbitration is Hamburg.

2. The laws of the Federal Republic of Germany apply with the exception of the UN Commercial Law pursuant to CISG.

Section 12 Requirement for Written Form / Saving Clause

1. All agreements regarding deviations from these General Terms and Conditions of Sale and Delivery must be made in writing to be valid.

2. If individual terms contained in these Terms and Conditions of Sale and Delivery are not effective, this shall have no effect on the effectivity of the remaining terms. The parties to this agreement agree, in the event one of the clauses is not effective, to agree upon a term coming as close as possible to the commercial and economic intent of the ineffective term.

Status: August 2012 - We reserve all rights to change without prior notification