

GENERAL TERMS AND CONDITIONS OF SALE

of MAG-EUBAMA GmbH & Co. KG

Scope of application, Differing Terms of Purchase

These General Terms and Conditions apply to services (sale, work delivery, work results and services) rendered by MAG-EUBAMA GmbH & Co. KG (hereinafter “**MAG-EUBAMA**”) to businesses, legal persons under public law and public law funds as defined in Sec. 310 para. 1 clause 1 BGB (German Civil Code) (hereinafter “**Customer**”). Any conflicting terms and conditions of Customer will not be recognized, unless approved of in writing by MAG-EUBAMA. In existing business relations, these General Terms and Conditions shall also apply to all future business.

I. Formation of contract

- (1) Offers of MAG-EUBAMA are non-binding, if not otherwise agreed in writing.
- (2) The offer including all related documents (illustrations, drawings, specifications) may not be disclosed to any third party without the consent of MAG-EUBAMA. Likewise, MAG-EUBAMA shall not disclose plans labeled confidential by Customer without prior consent of Customer.
- (3) The agreement will be considered effectively concluded only upon MAG-EUBAMA’s written confirmation of the order received; at the latest, however, at acceptance of the goods or services by Customer.
- (4) Subsidiary agreements and changes require the written consent of MAG-EUBAMA.

II. Prices and payment

- (1) If not otherwise agreed, prices are ex works (Incoterms 2000), plus VAT, as applicable.
- (2) If installation (including setting up and putting into service at Customer’s) was agreed: the expenses incurred for installation and daily allowances are to be refunded to MAG-EUBAMA for each fitter, in particular for extra hours, Sunday and holiday work; travel and waiting times are considered work time. Customer shall reimburse costs of second class round trip tickets if travelling by train, first class in case of night journeys and journeys abroad, and cost of transport of luggage and tools, and airfares, if applicable.
- (3) Unless otherwise agreed, payment shall be made without deductions to MAG-EUBAMA’s designated account, and is due upon conclusion of the contract, payment within 14 days from receipt of the invoice.
- (4) Customer may exercise a right of retention with regard to claims of MAG-EUBAMA only if based on claims from the same contractual relationship which are uncontested, ready for a decision or established by final enforceable judgment. Customer may not offset against any claims, unless the counter-claim is established by final enforceable judgment, ready for a decision or uncontested.

III. Partial performance; MAG-EUBAMA’s period of delivery and performance; duties of Customer

- (1) MAG-EUBAMA may make partial deliveries unless unacceptable to Customer.
- (2) If a period of delivery or performance was agreed, such period will start to run as of the dis-



patch of the confirmation of order, but not before Customer has provided all required documents, authorizations, and releases, and not before receipt of the agreed advance. Observance of the period will be subject to the fulfillment of Customer's duties under the contract. In case of deliveries, the period shall be considered observed if MAG-EUBAMA has shipped the goods in time, or if MAG-EUBAMA has given timely notice that goods are ready for shipment.

- (3) In the event of force majeure or other unforeseen events outside of MAG-EUBAMA's sphere of influence, e.g. measures relating to industrial action such as strike and lockout, the period of delivery or performance will be extended according to the duration of the impairment of performance caused by such circumstances; the same shall apply during an existing delay or if such circumstances occur at sub-contractors'. MAG-EUBAMA will promptly inform Customer of the beginning or end of such circumstances.
- (4) If delivery was agreed, Customer shall accept the goods delivered, even if defective, without prejudice to the rights specified in clause VII. hereof.
- (5) If Customer fails to accept the goods at the agreed time, Customer will be charged the costs incurred for storage, in case of storage at the premises of MAG-EUBAMA a minimum of 0.1 per cent of the invoice total, for every month as of the month after notice was given that goods were ready for shipment. MAG-EUBAMA will be entitled to otherwise dispose of the goods after expiry of a reasonable time and to effect delivery to Customer after reasonable extension of the period or to rescind the contract.
- (6) If installation (including setting up and putting into service at Customer's) was agreed, Customer has the following obligations to cooperate:
 - a) Customer shall bear the cost of, and timely provide: (i) the number of auxiliary teams and skilled workers as deemed appropriate by MAG-EUBAMA, (ii) devices and material required for installation, (iii) unloading and transport from the transport vehicle to the installation site.
 - b) All structural works must be completed to such an extent that installation can begin immediately after delivery, and can be carried out without interruption. The substructure must be completely dry and sealed, and rooms where installation will take place must be adequately protected against the weather and well lit and sufficiently heated.
 - c) For storage of materials, tools and similar Customer shall provide a dry room that can be lit and locked and is monitored and supervised.
- (7) If the contract provides for the manufacturing of non-fungible goods or the delivery of work results, and if performance requires cooperation of Customer, MAG-EUBAMA may demand appropriate compensation if Customer is in default of acceptance because of his failure to cooperate. The amount of compensation depends on the duration of default and on the agreed remuneration as well as on savings on the part of MAG-EUBAMA that are due to the default of Customer or income resulting from possible other use of its work force. MAG-EUBAMA is entitled to cancel the contract after reminding Customer and expiry of a reasonable period.

IV. Passing of risk; responsibility of Customer

- (1) The risk passes to Customer:
 - a) in case of delivery of goods, as soon as MAG-EUBAMA has supplied the goods to Customer at the agreed place and time of delivery – or, if no such time was agreed, at the usual time of delivery – without loading the vehicle used for collecting the goods.



b) in case of delivery of work results: upon acceptance.

- (2) If the contract provides for the manufacturing of non-fungible goods or delivery of work results, MAG-EUBAMA may demand the part of the price equivalent to the work performed as well as a refund of the expenses not included therein in the event that the goods or works are destroyed, or if they deteriorate or become infeasible before the passing of the risk due to faulty material supplied by Customer or due to instructions of Customer, without any fault on the part of MAG-EUBAMA.

V. Retention of title

- (1) In case of delivery of goods MAG-EUBAMA retains the title to the goods until receipt of all payments due under the individual contract.
- (2) Customer may neither pledge the goods nor transfer them by way of security. Customer shall immediately inform MAG-EUBAMA in the event of any pledging or seizure or other disposal by a third party.
- (3) In the event of any conduct of Customer violating the terms of the contract, in particular in case of delay in payment, MAG-EUBAMA is entitled to reclaim the goods after reminding Customer accordingly; Customer will be obliged to return the goods.
- (4) The assertion of the retention of title and the pledging of the goods by MAG-EUBAMA shall not be considered a rescission of the contract.

VI. Right of cancellation of Customer in connection with manufacturing of non-fungible goods and work results

If the contract provides for the manufacturing of non-fungible goods or delivery of work results, Customer may terminate the contract for good cause prior to completion. If Customer terminates the contract, MAG-EUBAMA will have the right to claim the agreed price; however, MAG-EUBAMA will have to deduct from the price any amounts MAG-EUBAMA saves in expenditures as a result of the termination, or obtains by otherwise deploying the labour or fails to obtain in bad faith. If Customer terminates the contract because the supply of the goods or work is impossible without substantially exceeding the non-binding cost estimate on which the contract is based, MAG-EUBAMA will be entitled only to the claim set forth in clause IV. (2) hereof.

VII. Notification of defects, liability for defects, acceptance

If the goods or work results were already defective at the time of passing of risk as determined in clause IV. (1) hereof, MAG-EUBAMA shall be liable subject to the following conditions:

- (1) For delivery of goods:
- a) The goods must be promptly inspected upon receipt; such inspection shall include at least random testing.
- b) MAG-EUBAMA shall be immediately notified in writing of any obvious defects, and no later than 7 days after receipt of the goods. Hidden defects shall be immediately notified to MAG-EUBAMA in writing within 7 days of discovery, at the latest. If no such notification is given, the goods will be considered free of defects.
- c) If Customer gives timely notice of a defect, Customer may, at the option of MAG-

EUBAMA, claim subsequent performance, that is, removal of defects free of charge or supply of an item free of defects. MAG-EUBAMA can refuse subsequent performance if such subsequent performance necessarily involves disproportionate costs. Subsequent performance will occur at the place of original delivery; MAG-EUBAMA will not bear any assembly and disassembly or return costs within the scope of subsequent performance. All parts replaced will become the property of MAG-EUBAMA.

- d) If subsequent performance fails, Customer may at its option rescind the contract or reduce the price. Subsequent performance may be deemed failed only after a minimum of three unsuccessful attempts.

(2) For delivery of work results:

- a) Customer shall accept the work result immediately after completion. At MAG-EUBAMA's request, Customer shall compile a written acceptance protocol and submit it to MAG-EUBAMA. Acceptance may not be refused because of insignificant defects. The work result will be deemed accepted if Customer fails to declare acceptance within a reasonable period fixed by MAG-EUBAMA after relevant notice was given.
- b) If Customer accepts a defective work result despite having knowledge of the defect, Customer will be entitled to claim the rights indicated in clause VII. (2) c) below only if those rights were reserved at acceptance.
- c) Customer can exercise the rights indicated in clause VII. (1) c) and d) hereof. Customer is entitled to self-remedy only after prior agreement with MAG-EUBAMA.

(3) No warranty is assumed for:

Defective installation (provided that installation instructions are correct) and/or putting into service or repair by Customer or a third party, inappropriate or improper use, normal wear and tear, inaccurate or negligent handling, inappropriate equipment, substitute materials, defective structural works, inappropriate subsoil, chemical, electro-chemical or electric influences, unless due to fault of MAG-EUBAMA, and modifications or repair works improperly carried out by Customer or a third party without prior consent of MAG-EUBAMA.

- (4) Claims based on defects will become time-barred one year from delivery or, in case of work results, from acceptance. In case of structures, this shall not apply to goods which were used for such structures in accordance with their normal use and caused its defectiveness, and in case of fraudulent concealment of a defect.
- (5) Customer shall be entitled to claim damages only where liability of MAG-EUBAMA is not excluded or limited pursuant to clause VIII. hereof.

VIII. Total liability

- (1) MAG-EUBAMA shall be liable for intent and gross negligence as well as for breach of a material duty the observance of which is vital for performance of the contract and on which Customer may reasonably rely (hereinafter "**cardinal duty**").
- (2) In case of slightly negligent breach of cardinal duty the liability of MAG-EUBAMA shall be limited to typical damages foreseeable at the time of formation of contract.
- (3) MAG-EUBAMA shall not be liable for slightly negligent breach of collateral duties other than cardinal duties.



- (4) In case of initial impossibility MAG-EUBAMA shall be liable only if MAG-EUBAMA knew of such impediment to performance, or if lack of knowledge thereof is due to negligence or if such initial impossibility means a breach of cardinal duty.
- (5) Where liability of MAG-EUBAMA is excluded or limited, the liability for fault of legal representatives and vicarious agents shall be limited or excluded as well, as the case may be.
- (6) The exclusion of liability set forth above shall not apply to fraudulent concealment of defects or to the assumption of a guarantee of quality, to liability under product liability law and bodily injury (injury to life, body or health). This shall not involve a change of the burden of proof to the disadvantage of Customer.
- (7) Damage claims of Customer for which liability is limited pursuant to this article will become time-barred one year from the commencement of the limitation period as defined in the law. This shall not apply to claims arising from tort or claims based on faulty structures or on goods which were used for a structure in accordance with their normal use and caused its defectiveness.

IX. Miscellaneous, place of jurisdiction

- (1) These General Terms and Conditions and the business relations between MAG-EUBAMA and Customer shall be governed by German law, excluding the UN Convention on Contracts for the International Sale of Goods.
- (2) Any dispute arising from this contractual relationship shall be subject to the exclusive jurisdiction of the court at the principal place of business of MAG-EUBAMA, provided that Customer is a merchant, a legal person under public law or a public law fund, or is domiciled outside Germany. However, MAG-EUBAMA is entitled to file action with any other court having legal jurisdiction. Instead of appealing an ordinary court MAG-EUBAMA – as plaintiff – may at its own discretion decide to file for settlement of a dispute in legal relations governed by these General Terms and Conditions by binding arbitration in accordance with the arbitration rules of the German Institute of Arbitration (DIS), ousting the jurisdiction of an ordinary court; the place of arbitration proceedings shall be the place of principal business of MAG-EUBAMA, the language of arbitration proceedings will be determined by MAG-EUBAMA (either German or English).
- (3) The principal place of business of MAG-EUBAMA shall be exclusive place of performance of all delivery and payment obligations, unless otherwise agreed.
- (4) If single provisions of these General Terms and Conditions become, or are held to be, invalid, in whole or in part, the validity of the remaining provisions shall not be affected thereby. The invalid provision will be replaced by a valid one which most closely corresponds to the evident scope of the provision to be replaced. The same shall apply in the event that any provision herein is found to be incomplete.
- (5) If these General Terms and Conditions are drafted and used in various language versions, the German version shall be authoritative.