



## **General Terms and Conditions of Sale and Delivery of Mendritzki Holding GmbH & Co. KG and affiliated companies**

(02.10.2020)

### **1. General provisions**

1.1 These General Terms and Conditions of Sale and Delivery (hereinafter called "Conditions") shall apply to the present Agreement as well as any subsequent agreements with customers of Mendritzki Holding GmbH & Co. KG and its affiliated companies (a list of all affiliated companies is available at [www.mendritzki.de](http://www.mendritzki.de)) (Mendritzki Holding GmbH & Co. KG and its affiliated companies shall hereinafter be called "we" or "us"). Our deliveries and performances shall be provided exclusively on the basis of the following Conditions. We will not recognize conflicting or deviating terms and conditions of the Purchaser, unless we expressly agreed to the application thereof in writing. We are hereby objecting to potential terms and conditions of the Purchaser in the event that we receive such conditions in a confirmation letter or in other ways, or we perform deliveries or services vis-a-vis the Purchaser without reservations, or we accept services by the Purchaser without reservations without objecting to the Purchaser's terms and conditions again.

1.2 Our offers are non-binding. Contracts and other agreements shall become binding only upon our written confirmation. The actual delivery of the ordered goods, other behaviors on our end, or silence do not substantiate the Purchaser relying on the conclusion of an agreement. The written form shall also be deemed adhered to when sending a fax or email.

1.3 Unless stipulated otherwise in writing, in case of on-call delivery agreements, we shall be notified in good time of binding quantities, taking into account our production periods. Additional costs caused by a late call-off or subsequent changes regarding time or quantity by the Purchaser shall be borne by the Purchaser.

If, between the conclusion of the contract and the delivery date, there is a significant change in certain price-relevant cost factors, such as, in particular, costs for wages, raw materials, energy or freight, we reserve the right to adjust the agreed price at our reasonable discretion in accordance with the relevant cost factors, unless that less than four months have passed between the conclusion of the contract and the delivery date

### **2. Prices and terms of payment**

2.1 Unless stipulated otherwise, our prices shall apply ex works Incoterms® 2010 for domestic deliveries, plus statutory value-added tax. In case of substantial changes of certain price-relevant cost factors between conclusion of the Agreement and the delivery date, e.g. in particular wage costs, primary material, energy or freight, we reserve the right to adjust, in our reasonable discretion, adjust the stipulated price as is appropriate with regard to the relevant cost factors, unless less than four months have elapsed between conclusion of the Agreement and the delivery date.

2.2

Furthermore we reserve the right to, in our reasonable discretion, change our prices appropriately if price-relevant cost reductions or cost increases occur after conclusion of the Agreement, in particular with regard to costs for wages, primary material, energy or freight, and if more than four months have elapsed since conclusion of the Agreement. We shall announce this in writing to the Purchaser in due time prior to entry into effect of the changed prices. The purchaser may terminate the agreement in writing in the event of such a subsequent price increase, but only within two weeks from the date on which it receives the price increase announcement.

2.3 Where we have assumed subcontracted processing or refining, our pricing shall be based on the assumption that the basic material is of standard quality and presupposes customary manufacturing ring weights and ring layouts. If these assumptions are found to be incorrect and if we could not have detected this with reasonable care at the time of conclusion of the Agreement, we shall be entitled to subsequently make a reasonable price adjustment.

2.4 Payments shall be made net within 14 days of the invoice date, unless deviating terms of payment have been agreed in writing. Subcontracted work performed by us shall be due and payable immediately upon invoice receipt.

2.5 The payment is to be made in such a manner that the invoiced amount is at our disposal on the due date at the latest. The Purchaser shall be deemed in default at the latest 10 days after the due date of our receivables without a warning being necessary.

2.6 In the event of overdue payments, we shall be entitled to charge default interest at the rate charged by the bank for current account credit, but at least 9 percentage points above the respective European Central Bank base rate. We shall retain the right to assert additional damage caused by default. If the Purchaser is in default

with any payment obligations vis-a-vis us, all open receivables shall fall due immediately.

2.7 The Purchaser may only be allowed to offset undisputed or legally established receivables. Furthermore, the Purchaser shall not be entitled to retain payments or suspend other obligations affecting it, unless we fundamentally violated due obligations from the same contractual relationship despite a written warning, and have not offered adequate safeguarding. Section 215 BGB (German Civil Code) shall not apply. In the event of defects of the delivery, the Purchaser's counter rights shall remain unaffected.

2.8 Insofar as our payment claim appears to be jeopardized as a result of circumstances occurring after the conclusion of the Agreement, due to which a substantial deterioration of the financial situation of the Purchaser is feared from our perspective, we shall be entitled to immediately demand payment. If the Purchaser is in arrears with payments, which indicate an endangerment of our receivables, we shall be entitled to take back the goods, to potentially enter the Purchaser's operations and secure the goods. In addition, we may cancel any further processing of the delivered good. This shall not apply if the Purchaser is not at fault for the arrears in payments. The retrieval is not a withdrawal from the Agreement. The Purchaser can avert all of these legal consequences by providing collateral security in the amount of our jeopardized claim for payment. We have a claim for collateral in accordance with a regular scope for our receivables, also insofar as they are conditional or restricted. The statutory provisions regarding payment default will remain unaffected.

### **3. Dimensions, weights, grades**

3.1. Deviations of dimensions, weights, quality and other specifications shall be permissible according to DIN, EN or if this is a valid practice. Other deviations shall require a written agreement.

3.2. The weights shall be determined using our calibrated scales and shall be decisive for invoicing. Packaging shall also be weighed. Any deviating regulations shall require a written agreement. Weights are verified by submitting the weighting record.

### **4. Acceptance**

The stipulated acceptance may take place only at our supply plant. It has to take place immediately after the notification of readiness for shipment. If agreed acceptance does not take place at all or not without delay after notification of readiness for shipment, we shall be entitled to ship the goods without acceptance or to store them with third parties at the Purchaser's expense and risk. In this case, the goods shall be deemed to have been delivered in accordance with the Agreement from dispatch or storage. The costs of acceptance shall be borne by the Purchaser.

### **5. Shipment and passage of risks**

5.1. We shall determine the route and means of transport as well as the forwarding agent or carrier, unless the Purchaser has given us special instructions in writing in due time.

5.2 If loading or transport of the goods are delayed for a reason for which Purchaser is responsible, we shall be entitled to store the goods at our reasonable discretion at the expense and risk of Purchaser, to take any measures we consider appropriate to maintain the goods, and to invoice the goods as delivered. The same shall apply if goods that are ready for dispatch are not requested within an agreed period. The statutory provisions regarding default of acceptance shall remain unaffected.

5.3 In case of transport damages the Purchaser shall immediately cause the facts to be established with the competent parties.

5.4. The risk shall pass to the Purchaser upon handover of the goods to the forwarding agent or carrier, but in any event no later than upon the goods leaving the plant or warehouse.

5.5. The Incoterms®2010, as amended, shall apply to the interpretation of the trade terms.

5.6 Partial deliveries shall be permitted if they are reasonable to the Purchaser. Production-related excess and short deliveries of up to 10% of the agreed amount shall be admissible.

5.7. Unless standard or stipulated otherwise, the goods shall be delivered unpacked and with the standard rust protection.

## **6. Delivery time and deadlines; default**

6.1 Delivery times and deadlines shall only be approximate, unless we have expressly specified them as binding in writing. Binding terms of delivery shall be deemed to begin after the receipt of all documents required for the execution of the order, potential timely material sourcing, and agreed down payments. Incidentally, the agreed terms will begin with the date of our written order confirmation.

6.2 If the Purchaser fails to fulfill its contractual obligations - including cooperation or secondary obligations - in due time, such as, for example, opening of a letter of credit, provision of domestic or foreign confirmations, furnishing prepayment or the like, we shall be entitled to adequately adjust our delivery times - notwithstanding our rights due to the Purchaser's default - in line with the requirements of our production process.

6.3. The time of delivery ex works shall be decisive for compliance with the delivery times and deadlines. If the goods cannot be dispatched on time without our being at fault or if they are not requested by the Purchaser on time, the delivery times and deadlines terms shall be deemed adhered to upon notification on readiness for shipment.

6.4 If we are hindered in fulfillment due to the occurrence of unforeseen events that impact us or our subcontractor which we could not avoid even with reasonable care due, e.g. war, acts of God, unrest, natural disasters, accidents, other operational disturbances and delays in the delivery of essential operating or primary materials, including strikes and lock-outs, the delivery period will be extended by the duration of the hindrance and an appropriate start-up time. If delivery becomes impossible or unreasonable for us due to such hindrance, we may withdraw from the Agreement. The Purchaser shall have the same right if acceptance is unreasonable due to the delay.

6.5 Our delivery obligation shall be subject to correct and punctual delivery by our suppliers, unless we are at fault for incorrect or late delivery.

6.6. A withdrawal right due to the Purchaser or us under section 6.4 shall in principle extend only to the part of the Agreement that has yet to be fulfilled. However, if partial deliveries cannot be used by the Purchaser, it shall be entitled to withdraw from the Agreement as a whole.

6.7 In the event that we are in default, the amount of compensation for damage for default shall be limited to 0.5 % for each week of delay, at the most to 5 % of the value of the delayed proportion of the service. The Purchaser shall retain the right to provide evidence of damage in excess of such amount. We retain the right to prove that no damage or only significantly smaller damage was incurred.

6.8 At the end of an adequate grace period determined by the Purchaser in writing, which shall be 4 weeks at least, it may insofar terminate the Agreement if the goods have not been sent out or reported ready for shipment by the end of the grace period. The same shall apply if the delivery of the goods becomes impossible for reasons which are our responsibility. We will promptly notify the Purchaser of the occurrence of such an event and communicate a period of time for supplementary performance.

6.9 The Purchaser shall not have any additional rights due to default. A recourse to other bases of claims, in particular of non-contractual nature as well, shall be excluded.

## **7. Defects of the goods; warranty**

7.1 The goods shall be deemed deficient if the Purchaser can prove that they noticeably deviate from the type, amount, and quality agreed in our written order confirmation at the time of the passing of the risk. If there is no such agreement, the deficiency of the goods shall be assessed in accordance with the DIN and EN standards effective at the time of the conclusion of the Agreement, and if such standards are not available, according to customary business practice. References to standards and similar guidelines as well as specifications on quality, types, dimensions, weight, and usability of the goods, specifications in drawings and illustrations, as well as statements in advertising material shall not constitute assurances or guarantees if they are not expressly designated as such in writing.

7.2 Whether a deficiency in title is at hand shall be determined pursuant to Sec. 435 BGB (German Civil Code).

7.3 Suitability and usage risks fall to the Purchaser alone.

7.4 The Purchaser's warranty rights require that it properly fulfilled its statutory duties to examine and notify defects, which are effective according to the present conditions. Defects must be reported to us in writing without delay - and in any event not later than 14 days after receipt of the goods at the place of destination. They shall not justify entitlement to withhold the due invoice amounts. Defects that the Purchaser could not even detect upon careful incoming inspection, shall be reported to us without delay in writing - in any case no later than 5 days - after detection. If defects occur, the handling or processing of the goods must be stopped immediately.

7.5 We shall neither be responsible for deficiencies caused by unsuitable or improper use or by faulty or negligent handling by the Purchaser or third parties, nor for the consequences of improper changes made to the goods. The same shall apply to deficiencies which only insignificantly lower the value or the suitability of the goods.

7.6 We can warrant rust protection only for a maximum period of three months from completion of the goods. No warranty against rusting during transport and storage with the Purchaser can be assumed, even if special greasing or packaging has been prescribed, since condensation water in particular cannot be prevented with certainty.

7.7 The Purchaser is to give us time and opportunity to determine the notified deficiency and to examine the rejected good. The rejected goods or a sample thereof is to be immediately returned to us upon our request; we shall assume the transportation costs if the notice of defect is justified. If the Purchaser does not give us time and opportunity to examine the rejected goods or samples thereof despite our request, it shall not be able to invoke deficiency of the good. An unjustified demand for remediation of deficiencies shall entitle us to claim compensation for damage if the Purchaser could have discovered upon thorough examination that no deficiency was present.

7.8 If we do not fulfill our warranty obligations at all or not within a reasonable time, the Purchaser may set a reasonable final deadline in writing within which we must fulfill our obligations. Upon unsuccessful expiry of such period, the Purchaser may demand a price reduction, withdraw from the Agreement or carry out the necessary repair works itself or procure a third party to do so at our expense and risk. Reimbursement of costs shall be excluded if expenses increase because the goods have been moved to a different location after delivery, unless this is in line with the intended use of the goods.

7.9 In the event of a justified, timely notice of defect, we shall repair the rejected goods. If subsequent improvement is not possible, we shall deliver a faultless replacement. In the case of removal of defects, we shall be obligated to bear all expenses that are reasonably required for the purpose of defect removal and that have been demonstrated by the Purchaser, in particular transportation, labor, and material costs, insofar as they do not increase due to the goods being delivered to a different destination than the original place of delivery.

7.10 Advisory suggestions for material selection and properties on the basis of submitted sample drawings, descriptions or information on intended uses shall be made by us to the best of our knowledge, but without binding effect and shall not bestow any warranty claims in the event of unsuitability.

7.11 Any statutory rights of recourse on the part of the Purchaser against us shall exist only if the Purchaser has not made any agreements with its customer beyond the statutory warranty claims. In addition, section 7.5, last sentence, shall apply accordingly to the scope of the rights of recourse.

7.12 If acceptance of the goods or an initial sample inspection has been agreed, any notice of defects shall be excluded if the partner could have detected such defects upon careful acceptance or initial sample inspection.

7.13. In case of goods which have been sold as downgraded material - e.g. so-called II-A material - the Purchaser shall not have any warranty claims because of the specified defects or because of such defects that can normally be expected with downgraded goods.

7.14 The Purchaser shall be fully responsible for the contractual condition of the provided subcontracted goods and for their suitability for the subcontracted processing or finishing. We shall not be responsible for defects in the subcontracted processing or finishing provided if these are based on the non-compliant condition of the subcontracted goods or in accordance with the contract or their lack of suitability. The Purchaser's rights due to defects in performance shall otherwise be limited to the right to demand subsequent performance. The Purchaser shall retain the right at its own option to reduce remuneration or withdraw from the Agreement instead, if subsequent performance fails twice.

7.15 There shall be no additional claims due to deficiencies of the good. Any recourse to competing bases of claims, in particular of non-contractual nature as well, shall be excluded.

7.16 Any claims of the Purchasers due to delivery of defective goods shall lapse one year after the beginning of the statutory limitation period. Claims based on grossly negligent and deliberate violation of the Agreement shall remain unaffected. Replacement delivery or subsequent improvement shall not result in a new beginning of the statutory limitation period.

## 8. Retention of title

8.1 All delivered goods shall remain our property (reserved goods) until all claims have been satisfied, regardless of the legal basis, in particular also any claim for payment of account balance due to us in the context of the business relationship. This shall also apply to future and contingent receivables, e.g. under bills of exchange.

8.2 Treatment and processing of the reserved goods shall occur for us as manufacturer in terms of Section 950 BGB without obligating us. The products treated and processed shall be considered reserved goods as defined in section 8.1.

8.3 In case of processing, compounding and mixing of the reserved goods with other goods by the Purchaser, we shall become a co-owner of the new goods relative to the invoice amount of the reserved goods compared to the other goods. Should our ownership lapse through compounding or processing, then the Purchaser hereby transfers the ownership and expectant rights in the new inventory or the new item to the extent of the invoice amount of the reserved goods, in case of processing relative to the invoice amount of the reserved goods compared to the invoice amount of the other goods used, to which it is entitled, free of charge to us, and shall store them for us in a fiduciary capacity and free of charge. Our co-ownership rights shall be deemed reserved goods pursuant to section 8.1.

8.4 The Purchaser may resell the reserved goods only in the normal course of business subject to its normal terms and conditions and so long as Purchaser is not in default, provided that it has agreed a retention of title with its buyer and that the accounts receivable from the resale pursuant to sections 8.5 and 8.6 pass to us. The Purchaser shall not be entitled to dispose of the reserved goods in any other way. Any use of the reserved goods for the fulfillment of contracts for work and services and contracts for work and materials shall also be deemed a resale.

8.5 The Purchaser's receivables from the resale of the reserved goods are hereby assigned to us in the amount of the invoice amount of the reserved goods. They shall serve as security to the same extent as the reserved goods as defined in section 8.1. We hereby accept the assignments.

8.6 If the reserved goods are resold by the Purchaser together with other goods, the Purchaser hereby assigns the receivable from the resale to us relative to the invoice amount of the reserved goods to the invoice amount of the other goods. In case of resale of goods, in which we hold co-ownership rights pursuant to section 8.3, the Purchaser shall assign to us a share in the receivables corresponding to our co-ownership share. We hereby accept the assignments.

8.7 As long as the Purchaser meets its contractual obligations towards us in due time, it shall be authorized to collect the assigned claims in a fiduciary capacity. At our request, it shall be obligated to immediately notify its buyers of the assignment to us – unless we do so ourselves – and to give us the information and documents required for collection.

8.8 The Purchaser shall not be entitled to assign the claims in any case. This shall also apply to factoring transactions which are not permitted to the Purchaser under our direct debit authorization.

8.9 In the event of an occurred or impending pledging or other impairment of our reserved goods by third parties, the Purchaser must notify us without delay in writing and identify our reserved goods as such.

8.10 If the value of existing securities exceeds the secured receivables in total by more than ten percent, we shall upon written request of the Purchaser insofar be obligated to release securities at our own choice.

8.11 In the event of breaches of duty by the Purchaser, in particular in case of payment default, we shall be entitled to withdraw from the Agreement and take the reserved goods back after the unsuccessful expiry of a reasonable extension period granted to the Purchaser. The statutory provisions on the expendability of setting a deadline shall remain unaffected. The Purchaser shall insofar be obliged to surrender the goods.

8.12 If the aforementioned rights to retention of title are not valid or enforceable under the law of the territory where the goods are located, the security corresponding to the retention of title in this territory shall be deemed as agreed. The Purchaser undertakes to take and to collaborate at its expense in all required measures which are necessary to substantiate and retain comparable rights or securities.

## 9. Limitation of liability

9.1 Except for liability under the Product Liability Act (ProdHaftG), for malicious nondisclosure of a defect, due to a guarantee we assumed for the quality of an item or for damage arising from culpable injury to life, limb, or health, we shall be liable to pay damages to the Purchaser only in the case of a breach of duties arising from the Agreement concluded with the Purchaser in accordance with the following provisions without waiving the statutory requirement for such a liability.

9.2 We shall be liable only for the culpable breach of significant contractual obligations and the breach of other contractual duties to Purchaser caused by intent or gross negligence. Significant contractual obligations shall mean such obligations which render, only if fulfilled, the proper execution of the Agreement possible in the first place and the fulfillment of which the Purchaser trusts and may trust regularly.

9.3 In the event of a simple negligent breach of significant obligations, our liability shall be limited to the replacement of the foreseeable, typically occurring damage.

9.4 In the event of a simple negligent breach of other, i.e. not significant contractual obligations existing vis-a-vis the Purchaser, our liability shall be excluded.

9.5 Above limitations of liability shall also apply to breaches of duty by and/or for the benefit of persons for whose negligence we are responsible under statutory regulations.

9.6 The above limitations do not mean a shifting of the burden of proof to the detriment of the Purchaser.

## 10. Intellectual property rights

10.1 With regard to cost estimates, drafts, drawings, and other documents, we reserve the right of ownership and the intellectual property rights; third parties may only be granted access thereto upon our prior written consent. Drawings associated with offers and other documents shall be returned upon request.

10.2 Insofar as we delivered objects in accordance with drawings, models, prototypes, or other documents provided by the Purchaser, it shall assume the warranty that third-party property rights are not violated. If third parties prohibit us from manufacturing and delivering such objects in particular, invoking property rights, we shall be entitled to – without the obligation to verify the legal situation – insofar suspend all activities and demand payment of damages if the Purchaser is at fault. Moreover, the Purchaser shall be obligated to indemnify us immediately from all claims by third parties in connection therewith.

## 11. Place of performance; jurisdiction; applicable law

11.1 Place of performance for all obligations under the contractual relationship with the Purchaser and place of jurisdiction shall be Plettenberg. However, we may choose to file an action against the Purchaser at its place of jurisdiction as well.

11.2 German law shall apply to all legal relationships between us and the Purchaser, excluding the conflict of law provisions. The UN Convention on Contracts for the International Sale of Goods (CISG) shall expressly not apply.

## 12. Final provisions

12.1 The Purchaser shall maintain strict secrecy regarding any business and trade secrets of which it has or will become aware as well as information deemed confidential or clearly to be treated confidentially based on other circumstances, including beyond the business relationship until such information becomes public, however, at least for a period of 5 years after the end of the business relationship, and shall not disclose such information to third parties.

12. Amendments and supplements to these Conditions by individual agreements as defined in Section 305b BGB shall not require any particular form. In all other cases, amendments or addenda require text form.

12.2 Should a provision of these Conditions be or become partially or fully invalid, this shall not affect the validity of the remaining provisions of these Conditions. The parties hereby already agree at this point in time to replace any invalid provisions with effective provisions which come as close as possible to achieving the economic purpose intended by the parties. This same shall also apply in the case of an unintentional loophole in the Agreement.