

# GENERAL TERMS AND CONDITIONS FOR DELIVERY AND PAYMENT OF MOGoil GmbH \*

## §1 General

1.1 The following conditions are valid for all of our offers, sales, deliveries and services, and will constitute part of the contract. They are not valid if our contractual partner is a private individual and does not trade professionally or commercially. They are valid for all future business relationships as well as present ones, even if this is not agreed explicitly.

1.2 We hereby expressly countermand any differing or supplementary general terms and conditions of the contractual partner. These also do not apply if the purchaser has taken them as a basis for his/her order or other declaration.

## §2 Offers and orders

2.1 Our offers are non-binding, as far as they are not designated as binding in writing. A contract only becomes effective through our order confirmation or the delivery of the goods.

2.2 All documents belonging to our binding offers remain our property and are only approximate, rather than decisive. The deliveries are determined by means of the customary methods of measurement. They can only become binding contractual content with our explicit written confirmation. No guarantees are made regarding durability and quality.

## §3 Doubtful solvency

3.1 Should circumstances become known to us after the conclusion of the contract that cast doubt on the solvency of the purchaser we can make any further deliveries dependent on an advance payment for the goods by the purchaser. We can set him/her an appropriate deadline for the advance payment and withdraw from the contract if we do not receive it by this deadline. The purchaser can provide security by means of a bank guarantee instead of an advance payment. If we have already delivered the goods, the purchase price will be due immediately without deduction, regardless of the agreed payment deadlines.

3.2 Doubts concerning the solvency of the purchaser are justified, among other things, if an application for the initiation of insolvency proceedings regarding his assets was made or he/she did not make payments to us or third parties punctually.

## §4 Prices

4.1 Our prices apply ex works as long as no differing arrangement is made with the purchaser. Packaging, loading and freight costs are not included in the price, if no differing arrangement is made with the purchaser in this regard either.

4.2 The legal value-added tax is not included in our prices and will be separately charged in the invoice in the legally valid amount on the day the invoice is issued.

## §5 Delivery time

5.1 All stated delivery appointments are non-binding and are only approximately agreed, insofar as they have not been explicitly designated as binding by us.

5.2 Should we not be able to comply with an agreed delivery deadline or default due to other reasons, the purchaser must grant us an appropriate extension. The purchaser is entitled to withdraw from the contract after the fruitless expiry of this extension.

5.3 If the service is made temporarily impossible, in whole or in part, or significantly impeded due to an Force majeure or other unusual circumstances beyond our control, the agreed delivery time shall be extended for the length of the hindrance. The same applies for the statutory or purchaser-determined deadline for the service, especially for extensions in the event of a default.

5.4 In the case of a possible default on delivery, insofar as it is not based on intent or gross negligence, claims of compensation of all kinds are precluded.

## §6 Dispatch

6.1 The delivery takes place on the account of the purchaser. The risk devolves onto him/her with the loading of the goods, even if carriage free delivery has been agreed.

6.2 Insofar as nothing else was explicitly agreed in writing, we are authorised to carry out partial deliveries in a reasonable scope, which will be individually charged for.

6.3 If acceptance of the merchandise by the purchaser is delayed, we can store deliveries either in whole or in part at his/her expense or withdraw from the contract after an unsuccessful expiry of the deadline and claim compensation for damages. At the collection of the goods by the purchaser he/she is responsible for the compliance with the relevant legal provisions and the instructions of the collection location.

6.4 The purchaser guarantees that the filling, transport and warehouse facilities operated or utilised by him/her are in faultless technical condition and are operated in agreement with all safety regulations under public and private law.

## §7 Payment

7.1 Our invoices are due within the term of payment noted in the invoice. The invoiced amount is to be transferred into our bank account noted in the invoice, without discount or other deductions.

7.2 The purchaser comes into default even without a warning on our part if he/she does not pay the purchase price within the period of time in which the invoice or equivalent list of payments becomes mature and is received.

7.3 Should the purchaser default on a payment, all his/her payment obligations from the business relationship with us will be due immediately. In this case we are entitled to demand interest in the legally established rate from the time concerned onwards. Proof of greater damages remains reserved by the vendor.

7.4 Cheques shall only be accepted after previous agreement without granting of a discount.

7.5 The purchaser is only entitled to an off-set if the counterclaims are determined in a legally binding manner, recognised by the vendor or uncontroversial, even if notices of defects or counterclaims are asserted. The purchaser is only authorised for the exercise of a right of retention if his/her counterclaim is based on the same purchase agreement.

## §8 Warranty/liability

8.1 MOGoil GmbH is not liable for damages or any non-performance or delayed performance of an obligation, if the damage, the non-performance or delayed performance was caused by force majeure. It is especially not liable for delivery delays or non-deliveries due to unpredictable events such as natural disasters, strikes, fires, floods, wars, import or export bans, customs delays, refinery outages and accidents to contracted carrier. Moreover, MOGoil GmbH is not liable for damages (consequential damages) arising from the use of the goods - whatever form it has.

8.2 The purchaser must inspect the received goods for completeness, transport damages, overt defects, quality and their characteristics. Overt defects are to be reported to us in writing by the purchaser within 14 business days of delivery of the contractual object.

8.3 The goods must still be unadmixed/differentiable and a sample of at least one litre or kilogram of the goods subject to complaint must be drawn in the presence of a representative of the vendor or an expert commissioned by them. The purchaser must, in the event of

complaints, protect the rights of the vendor against the shipping companies (e.g. forwarding companies) and to immediately introduce necessary steps for the perpetuation of evidence.

#### 8.4

We are not only obligated to the warranty if the purchaser has not submitted a written notice of an overt defect within the appropriate timeframe. Insofar as a defect attributable to us is present among the goods and was reported in writing by the purchaser within the appropriate timeframe, we are – under exclusion of the purchaser's rights to withdraw from the contract or to lower the purchase price – obligated to perform a supplementary performance, unless we are entitled to forego the supplementary performance on the basis of the legal regulations. The purchaser must grant us an appropriate deadline for the supplementary performance for each individual defect.

#### 8.5

The supplementary performance can take place according to the choice of the purchaser either through the removal of the defect or delivery of new goods. We are entitled to refuse the type of supplementary performance chosen by the purchaser if it is connected with disproportionate costs. During the supplementary performance a decrease in the purchase price or the withdrawal from the contract by the purchaser is precluded. A subsequent amendment counts as failed with the second unsuccessful attempt. If the supplementary performance fails or the vendor has completely dispensed with the supplementary performance, the purchaser can demand either a decrease in the purchase price (reduction) or declare the withdrawal from the contract according to his choice.

#### 8.6

The purchaser can only assert claims for compensation under the following conditions due to the defect, if the supplementary performance has failed or has been refused by us. The right of the purchaser to the assertion of further claims for compensation under the following conditions remains unaffected by this.

#### 8.7

We bear liability unrestrictedly for intentional or grossly negligent breaches of duty as well as for damages from an injury to life, body or health according to the legal regulations. Apart from that we only bear liability if the violated contractual duty is recognisably of considerable significance for the attainment of the purpose of the contract, and only limited to the extent of typically foreseeable damages.

#### 8.8

The liability limitation according to Section 8.6 is not just correspondingly valid for contractual claims for compensation, but also for claims arising in particular from illicit handling, with the exception of claims in accordance with the German Product Liability Act. It is further valid also for the benefit of our employees, staff, representatives and subcontractors.

#### 8.9

Insofar as we have given up a guarantee of quality and/or durability with regard to the goods or parts thereof, we bear liability within the framework of this guarantee too. For damages which are based on lack of the guaranteed quality or durability, but do not directly affect the goods, we admittedly bear liability, but only if the risk of such damage is evidently covered by the guarantee of quality and durability.

#### 8.10

We also bear liability for damages which are caused by ordinary negligence, insofar as this negligence concerns the violation of those contractual obligations, compliance with which is of particular significance for the attainment of the purpose of the contract (cardinal obligations). However, we only bear liability insofar as the damages are connected with the contract and foreseeable in a typical way. Apart from that we do not bear liability in cases of straightforwardly negligent violations of ancillary obligations that are not essential to the contract.

#### 8.11

A further liability is precluded without consideration of the legal nature of the asserted claim. Insofar as the liability of the vendor is excluded or limited, this also applies for the personal liability of his/her employees, staff, representatives and subcontractors.

### **§9 Retention of title**

#### 9.1

We reserve the rights to ownership of the goods (goods subject to retention of title), until the receipt of all payments from the purchase agreement. The delivered goods only become the property of the purchaser if he/she has fulfilled all his/her obligations from the business relationship, including ancillary demands, compensation for damages and cashing of cheques.

#### 9.2

The purchaser must notify us in writing immediately of all access by third parties, particularly of foreclosure measures as well as other detrimental effects on our property. The purchaser must compensate us for all damages and costs which arise through a violation of this obligation and through necessary measures for protection against access by third parties.

#### 9.3

If the purchaser does not fulfil his payment obligation despite a warning on our part, we claim the handing over of the goods subject to retention of title still in his property without previously setting a deadline. The purchaser will bear the transport costs incurred thereby. The seizing of the item subject to retention of title through us includes always a withdrawal from the contract. We are authorised to utilize the good subject to retention of title after the retention. The utilisation proceeds are counted up with our open claims.

### **§10 Place of fulfilment**

The place of fulfilment for payments is the business location of MOGoil GmbH\*, and the place of dispatch or the contractually agreed place of delivery for our goods deliveries.

### **§11 Data processing**

The purchaser agrees that we process the data about the purchaser received in connection with the business relationship under consideration of the German Federal Data Protection Act for the fulfilment of his/her own business purposes, in particular save it or transmit it to a credit protection agency, insofar as this takes place within the framework of the determination of purpose of the contract or is necessary for the protection of our authorised interests and no reason for the acceptance exists, that the interest of the purchaser that was worthy of protection in the suspension of the processing predominates this data, particularly the transmission.

### **§12 Severability clause**

Amendments or supplements of the contract or these general terms and conditions for delivery and payment must be in writing to be effective. Should a regulation of these general terms and conditions for delivery and payment be or become ineffective or inexecutable, this will not affect the effectiveness of the general terms and conditions for delivery and payment apart from that.

### **§13 Place of jurisdiction and applicable law**

#### 13.1

The law of the Federal Republic of Germany is exclusively applicable to the contractual relationship between the purchaser and ourselves, even if the purchaser has his/her residence and/or place of business abroad. The application of the uniform law concerning the international sale of movable objects as well as the law concerning the conclusion of international purchase agreements is excluded.

#### 13.2

The purchaser is not entitled to relinquish claims from the purchase agreement without the consent of the vendor.

#### 13.3

If the purchaser is a businessman, legal person under public law or a special fund under public law, the place of jurisdiction for both parties, and also for cheque litigation – is the location of MOGoil GmbH\* We are, however, also entitled to sue the purchaser in his/her general place of jurisdiction.

#### 13.4

Insofar as they are applicable, the INCOTERMS in the current amendment count as agreed.

**Valid as of: November 2011**

\* Translator's note: "GmbH" is an abbreviation of "Gesellschaft mit beschränkter Haftung", which can be translated as a private limited company (Ltd.).