

General Terms and Conditions

I. Scope of validity and inclusion in contractual agreements

1. The General Terms and Conditions (referred to hereinafter as “AGBs”) of Matesy GmbH (referred to hereinafter as “MATESY”) shall apply
 - a. exclusively; any deviating AGBs of the customer require the written form, in order to be included if and when a contract is concluded;
 - b. to customers that are entrepreneurs in accordance with Article 14 of the German Civil Code (referred to hereinafter as “BGB”);
 - c. also to future contracts MATESY concludes with customers, so that the conclusion of a new agreement about their inclusion is not required;
 - d. in exceptional cases also to consumers who do not pursue a commercial or freelance professional activity when concluding a legal transaction with MATESY (for the definition of consumer please refer to Article 13 BGB).
2. MATESY reserves the proprietary and copyrights to all and any samples, cost estimates, drawings and similar information, whether tangible or intangible, and they must not be disclosed to any third parties. MATESY shall undertake to disclose information and documents designated by a purchaser as confidential to third parties only, if approved so by the owner of this information.
3. MATESY’s Terms of Service with the charge rates and contractual conditions listed there shall complement the AGBs in the case of purchase orders concerning any assembly, installation, commissioning, repair, maintenance, calibration and similar work.
4. If a consumer not pursuing a commercial or freelance professional activity concludes a distance selling contract with MATESY, the withdrawal and return provisions as well as further regulations pursuant to Article 312 BGB shall apply. For further details in such case please refer to the publications on the relevant websites of MATESY.
5. MATESY has published a data protection statement pursuant to the EU General Data Protection Regulation (GDPR) 2016/679 of April 27, 2016. The regulations stipulated there are an integral part of these General Terms and Conditions.

II. Offers

Offers of MATESY are non-binding, errors excepted.

III. Written form and extent of an employee’s power of representation

1. Binding agreements, additional or other agreements complementing existing contracts, assurances or modifications require the written form to take effect.
2. MATESY can demand a written confirmation from the purchaser about the extent and type of modifications required by the latter after the order has been placed, including a reasonable increase of the remuneration.
3. Employees of MATESY shall not be authorized to give verbal assurances, or to verbally agree additions or modifications to the contract with the customer, when the contract is concluded, unless the scope of their power of attorney is covered by law or determined by the management of MATESY.

IV. Price and payment

1. Unless something else has been agreed, the prices shall apply to commercial customers ex works (EXW pursuant to Incoterms 2010), including loading on the premises but excluding packaging, shipment and unloading. The sales tax (VAT) in the respective statutory amount as well as import/export duties, where applicable, shall be added to the price. A payment is deemed to have been made only, after the full amount due has been credited to MATESY's account.
2. The prices including the respective sales tax, as shown exclusively in price lists, in Internet shops, at Internet exchanges, at consumer trade exhibitions etc. as consumer prices (including VAT), shall apply to consumers only. The due dates for payments from consumers may deviate from those applicable to commercial customers. The payment dates and modes as well as the shipping costs stated on the relevant price lists or in the Internet shops etc. shall exclusively be applicable.
3. Unless something else has been agreed, or demanded by MATESY, the payment of an invoice for commercial customers shall be due without any deductions within 30 days. The date of crediting the amount due to one of MATESY's accounts shall be decisive for meeting the payment deadline.
4. Unauthorized, from MATESY not explicitly approved modifications of the amount to be paid as well as the availment of discounts not explicitly agreed with MATESY shall result in a default of payment of the amount concerned.
5. The purchaser shall have the right to retain payments or to offset payments against counterclaims to such an extent only, if these counterclaims are undisputed or legally established.
6. When a payment date is exceeded, MATESY shall be entitled, without being required to furnish proof or to issue a reminder, to charge the commercial customer interest at a rate of 10 % on the defaulted amount. This shall not affect MATESY's right to claim further delay damages.
7. Payments shall be made in Euro. Any other agreements in this respect require the written form and shall be set out in writing in MATESY's offer or order confirmation.
8. If the purchaser's financial circumstances deteriorate considerably, so that MATESY's payment claims are at risk, MATESY shall be entitled to retain the delivery until the payment has been received or sufficient securities have been made available.

V. Delivery period, delays in delivery

1. The compliance with the agreed delivery period requires that all commercial and technical issues which are to be clarified according to the contract between the contracting parties, and reasonably before the delivery, have been sorted out, that the purchaser has taken all necessary and reasonable co-operative steps required before the delivery to perform the contract (such as obtaining all certificates and approvals required from the authorities) and that the purchaser has fulfilled his contractual obligations before the delivery (such as making a down-payment). If this is not the case, the delivery period shall be extended accordingly at the purchaser's expense, unless MATESY is responsible for the delay.
2. The compliance with the delivery period is on condition that MATESY itself receives the deliveries correctly and well in time from its suppliers with which it has contracted the relevant covering transactions.
3. The delivery period is deemed to have been complied with, if either the delivery item has left MATESY's premises before the expiry of the delivery period or if the readiness for dispatch has been reported by that time. If an acceptance has to be carried out, the date of the acceptance shall be decisive – except in cases of a justified refusal of the acceptance –, alternatively also the notification that the delivery item is ready for acceptance.

4. If the delivery deadline cannot be met due to labor disputes or other events occurring after the contract has been concluded and that are beyond MATESY's control, the delivery period shall be extended by the time, during which the delivery proved to be temporarily impossible by such circumstances, unless MATESY itself has been responsible for such temporary circumstances. The same shall apply, if similar circumstances affect the sub-suppliers. MATESY shall inform the purchaser about the beginning and the end of such circumstances without any undue delay.

VI. Delays in delivery, partial deliveries

1. If MATESY delays a delivery and the commercial purchaser sets a grace period, he can only exercise his legal right of withdrawal, if the withdrawal has explicitly been threatened when setting the grace period.
2. Partial deliveries are admissible to the extent as they are acceptable to the purchaser.

VII. Transfer of risk, acceptance, insurance

1. The risk shall pass to the purchaser – even in the case of a freight-free delivery –, when the delivery item has left MATESY's premises, even if partial deliveries are made or if MATESY has accepted other services, such as the shipping costs or the transport and the assembly.
2. The acceptance must be carried out on the agreed date or, if no such date has been agreed, immediately after MATESY's notification that the delivery item is ready for acceptance, unless the purchaser is entitled to refuse the acceptance. In such case, the purchaser shall immediately notify MATESY of the refusal and state the reasons for it.
3. If the dispatch or the acceptance are delayed, or do not happen at all, for reasons for which MATESY is not responsible, the risk shall pass to the purchaser on the day when the latter has been notified that the delivery item is ready for dispatch or acceptance, unless the risk has already passed.
4. Deliveries from MATESY can be insured against the usual transport risks at the purchaser's request, provided the latter assumes the additional costs associated with such insurance. MATESY can also take out any further insurance for the delivery item requested by the purchaser. MATESY shall be entitled to insure the delivery item against theft, breakage, fire as well as water and other comparable damage, even without the purchaser's request but at the latter's expense, unless the purchaser can prove to have taken out such insurance himself.

IX. Retention of title

1. MATESY retains the title in the delivery item until full payment in accordance with the delivery contract has been received.
2. The purchaser shall not be entitled to re-sell the delivery item, unless MATESY has expressly approved of it. The purchaser must neither pledge the delivery item nor assign it as security as long as MATESY retains the title. MATESY shall be immediately notified, if a third party tries to attach, garnish or seize the delivery item or when other such orders take effect.
3. If the customer acts in a way contrary to his contractual obligations, especially when defaulting payment, MATESY shall be entitled to reclaim the delivery item, after the customer has been duly warned and a grace period has been set, and the purchaser is under the obligation to return the

goods. Asserting the retention of title and MATESY's attachment of the delivery item cannot be construed as withdrawal from contract.

X. Warranty

The following shall apply to defects in quality and title as regards the delivery:

DEFECTS IN QUALITY

1. The purchaser shall, if reasonable, inspect the delivery item immediately after having received it. If a defect in quality is established, MATESY shall be immediately notified, with the defect being described as precisely as possible. The delivery item shall be inspected in any case after receipt, so as to identify any external shipping damage. Such kind of damage shall be immediately reported both to the carrier and to MATESY.
2. Even in the event of supplementary performance pursuant to the sales law, MATESY shall be entitled – contrary to Article 439 BGB and at its own discretion – to remedy the defect or to make a replacement delivery.
3. If, after a delivery item has been returned for warranty reasons, no defect in quality can be established, MATESY shall be entitled to charge the purchaser an administrative or handling fee. In such case, the purchaser is at liberty to prove to MATESY that the actual costs of the fee are lower than invoiced. If, however, a defect in quality is identified during the warranty period, MATESY shall assume the costs required for remedying the defect or for the replacement delivery, except the purchaser's personnel costs, the costs of production losses and/or the loss of profits (see XII, 1.).
4. Wear parts shall be excluded from the warranty.

DEFECT IN TITLE

5. If the usage of the delivery item results in an infringement of industrial property rights or copyrights, MATESY shall, at its own expense, procure the right for the purchaser that the latter can continue using the delivery item, or modify the delivery item in such a way and acceptable to the purchaser that the infringement no longer exists. If this turns out to be economically unfeasible or impossible within a reasonable period of time, the purchaser shall be entitled to withdraw from the contract. MATESY shall also have the right of withdrawal from contract under these circumstances.
6. MATESY shall indemnify the purchaser from any legally established claims brought by copyright owners, or from any such claims not disputed by MATESY, if
 - the purchaser informs MATESY immediately about any claims asserted on the grounds of an infringement of industrial property rights or copyrights,
 - the purchaser supports MATESY to a reasonable extent in the latter's efforts to defend itself against the claims brought against MATESY and if the purchaser supports MATESY's possible efforts to implement the modification measures pursuant to section X. 5 hereof,
 - all defense measures, including any out-of-court settlement, are left to MATESY, and
 - the infringement of rights has not been caused by purchaser himself as a result of having modified the delivery item without due authorization or having used it in a way not contractually agreed.

XI. Warranty periods

MATESY grants a commercial customer a warranty of 12 months after the transfer of risk on any defective items. This warranty is extended to 24 months for a consumer who is a natural person and uses the product neither for commercial nor professional freelance activities, provided the customer has acquired the product in the Federal Republic of Germany and uses it there.

If deviating statutory warranty regulations exist in other countries, where MATESY sells its products, these regulations shall apply in their currently valid version.

XII. Liability

1. MATESY shall be liable towards the purchaser on the basis of statutory or contractual liability provisions only, if MATESY can be charged with willful intent or gross negligence.
2. If the liability is not based on a violation of duties on the part of organs or executives of MATESY, the liability shall be limited to the compensation for the immediate damage caused, excluding any liability for consequential losses and, especially, a loss of profit. Moreover, MATESY's liability shall be limited to typical damage that is foreseeable by MATESY; insofar, MATESY shall be liable up to the contract value. These limitations of liability shall not apply, if intent can be proved.
3. If the purchaser uses, contrary to MATESY's recommendation, accessories not approved by MATESY, the functional warranty which may have been granted, the warranty granted for the measuring accuracy as well as the warranty against possible loss and consequential damage shall be forfeited.
4. Any maintenance and calibration work must exclusively be carried out by a body appointed by MATESY. If, contrary to this agreement, maintenance and calibration work is carried out by the purchaser himself, MATESY shall be released from its liability for any defects in quality or for functional faults possibly occurring. A regular maintenance interval of 12 months is recommended for products requiring maintenance, so as to retain all functional features and to secure the measuring tolerances in accordance with the product specifications.

XIII. Use of software

If software is included in the scope of delivery, the purchaser shall be granted the non-exclusive right to use the software supplied, including its documentations. The software shall be made available for being used on the relevant delivery item, any use of the software on more than one system is forbidden, unless any other arrangement has been made in writing. The purchaser shall be entitled to duplicate, revise or translate the software only to the extent permitted by law (Articles 69a et seq. of the [German] Act on Copyright and Related Rights [UrhG]). A conversion from the object code of the software into a source code for further processing is explicitly prohibited. The purchaser shall not remove information from the manufacturer - especially copyright notes - or modify such information without MATESY's prior approval. All other rights in the software and the documentations, including any copies thereof, shall remain with MATESY or with the software supplier. Granting sub-licenses shall not be allowed.

XIV. Other provisions, governing law, place of jurisdiction

1. The legal relations between MATESY and the purchaser shall be governed by German law.
2. The spoken and written language for all and any processes and documents which may be relevant in a dispute shall be German.
3. The place of jurisdiction for any disputes arising from the contractual relationship and from any other legal relationship with the purchaser shall be the competent court at MATESY's registered office (currently in Jena, Federal Republic of Germany). However, MATESY shall also be entitled to bring legal action against the purchaser at the place of his registered office. Both contracting parties shall also retain the right, provided they are entrepreneurs pursuing commercial activities, to have possible disputes finally settled in accordance with the rules of arbitration of the *Deutsche Institution für Schiedsgerichtsbarkeit e.V.* (DIS – German Institution for Arbitration) without recourse to the courts.

XV. Assurance of incorruptibility

MATESY complies with the German and US-American laws against corruption and bribery and demands the same from the purchaser.

XVI. Separability

Should any individual provisions of these General Terms and Conditions be ineffective or unenforceable or become so after the contract has been concluded, the validity of the contract as a whole and of the remaining provisions hereof shall in no way be affected. The ineffective or unenforceable provisions shall be replaced by relative provisions coming as close as possible to the economic intentions, which the contracting parties have pursued with the ineffective or unenforceable provisions. The above provisions shall also apply, if a loophole is found in the contract.

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