

Terms and Conditions of Sale and Delivery

Maehler & Kaege Automotive GmbH

I. General terms, scope of validity

1. The following Terms and Conditions of Sale and Delivery of Maehler & Kaege Automotive Systems GmbH (henceforth referred to as M&K) apply to all current and future business relationships with the order issuer (henceforth referred to as the CUSTOMER). If the CUSTOMER is already aware of these terms, the terms shall continue to apply to future business dealings without further reference. These terms shall be considered as accepted on receipt of goods or services at the latest.
2. Any agreed deviation from the terms requires written confirmation from M&K. The CUSTOMER shall not have recourse to their own terms of business.

II. Contract conclusion

1. Offers made by M&K are non-binding and subject to confirmation.
2. If the CUSTOMER should order goods and/or services without a prior offer from M&K, the order shall be binding.

M&K may accept the offer of contract in the order within two weeks of receipt by M&K. M&K shall accept the offer by way of written confirmation or delivery to the CUSTOMER.

3. The agreed specifications of the goods shall correspond to those specifications expressly agreed by M&K and referred to as such in the contract. Documentation that is part of the offer such as drawings, illustrations, technical data, reference to standards, and advertising materials shall not generally be regarded as specifications. The same applies to the use intended by the CUSTOMER. The CUSTOMER shall make sure that the goods are suitable for further processing and utilisation as intended by the CUSTOMER.
4. Agreements, especially additional verbal agreements, assurances and acceptances shall only become valid when confirmed by M&K in writing. Deviations in the object of delivery from the offer, samples, test deliveries and predeliveries, changes in shape, colour and/or weight, technical changes according to the currently valid DIN or EN standards or other relevant technical standards are permitted within reasonable limits. M&K reserves the right to implement alterations from information contained in datasheets and brochures already in circulation without prior notice.

5. Contract conclusion is conditional upon M&K receiving its own deliveries correctly and on time. This only applies in such cases where M&K cannot be held responsible for non-delivery. The CUSTOMER shall immediately be informed of the non-availability of the product or service. Any payment made shall be returned immediately.
6. M&K shall send a letter of confirmation describing the goods and/or services to be delivered and the probable delivery and/or completion date. Generally, delivery dates and periods shall be regarded as non-binding unless special agreements have been made.
7. The transfer of contractual rights and obligations of the CUSTOMER to a third party shall require written agreement from M&K.

III. Reservation of ownership

1. The goods shall remain the property of M&K as long as the CUSTOMER has not settled all accounts receivable by M&K from the current business relationship, including ancillary claims, compensation for damages, and payment from cheques and banker's drafts. The reservation of title shall also apply where all amounts receivable are booked to a running account and balanced to a single figure for invoicing purposes with the approval of the CUSTOMER.
2. The CUSTOMER shall exercise due diligence and care in maintaining goods subject to the reservation of ownership in good condition, and shall insure the goods against loss and damage at the cost of the CUSTOMER. The CUSTOMER shall assign claims from corresponding insurance policies to M&K in advance. M&K shall accept this assignment.
3. Processing and combination shall be carried out by the CUSTOMER for M&K without any obligation on the part of M&K. If the goods subject to reservation of ownership are combined or processed with products not delivered by M&K, the CUSTOMER shall immediately pass the ownership of the additional goods of the new goods to M&K in order to secure the amounts receivable by M&K in the relationship between the goods subject to reservation of ownership to the additional processed goods on the understanding that the CUSTOMER keep the new goods for M&K at no charge to M&K. III 2 applies accordingly.
4. Receivables from the resale of goods that M&K has delivered to the CUSTOMER and have not yet been passed into the ownership of a third party, shall immediately be assigned to M&K by the CUSTOMER at the contractual invoice price. M&K shall accept this assignment.
5. On request by M&K, the CUSTOMER shall submit all necessary information on the inventory of goods that have not passed into the ownership of a third party, and on the receivables of the CUSTOMER assigned to M&K, and inform the debtor of the CUSTOMER of this assignment.

6. The CUSTOMER has disposal rights in ordinary business dealings to goods delivered to the CUSTOMER under reservation of ownership, and is entitled to collect the receivables that have been assigned to M&K. These rights shall cease as soon as the CUSTOMER fails to honour their obligations towards M&K from the business relationship on schedule or as soon as conditions according to IV.10 arise. In such a case, M&K shall be entitled to demand the immediate temporary repossession of the entire goods subject to reservation of ownership to the exclusion of the retention rights, without setting a further deadline or withdrawing from the contract.

IV. Prices and payment

1. The prices offered shall be binding and are quoted in EUR unless otherwise agreed. The sales price does not include statutory VAT. Prices quoted are ex-works and exclude postage and packing. M&K shall charge an additional handling fee of EUR 50.00 per order for individual orders of less than EUR 250.00 net goods value, in each case excluding customs and excise apart from VAT and other duties to which the goods are subjected unless these are separately listed. The terms of delivery shall be interpreted according to the incoterms in their current form at the time of purchase.
2. If the goods are sold in packaging, this packaging shall be charged at cost. In accordance with the legal regulations, this charge will be withdrawn if the CUSTOMER returns the packaging carriage paid within a reasonable period.
3. M&K shall be entitled to adjust the price in cases where more than four months lie between contract conclusion and delivery date. If the material costs or market purchasing costs increase, M&K shall be entitled to adjust the price according to the increased cost, or at least to invoice for the prices attainable by M&K on the open market.
4. Our invoices are due for payment immediately, and shall be paid in full within 30 days of invoice receipt. Payment shall be made by remittance in time for M&K to have full disposal rights to the amount at the end of this period at the latest. Otherwise, the CUSTOMER shall be in default on payments. If the CUSTOMER is not a consumer, the CUSTOMER shall be in default on payments thirty days after the payment is due or after delivery of the goods at the latest.
5. M&K shall be entitled to assign its receivables from the business relationship.
6. Payments to cancel a debt may only be paid to FORTIS FINANCE GMBH, Willstädter Strasse 15, 40549 Düsseldorf, Germany, to which M&K has assigned its receivables from the business relationship.
7. If partial payments have been agreed, the whole residual debt shall be immediately due for payment if the CUSTOMER falls into arrears on a down payment by more than 14 days or if the conditions listed under IV.10 below arise.

8. While in default on payment, the payment due shall be subject to an interest rate of 8% over the base rate by the CUSTOMER. M&K reserves the right to assert higher default damages if these can be proven by M&K.
9. Rights to retention or deducting counterclaims of the CUSTOMER that are denied by M&K are excluded inasmuch as these claims have not been confirmed by a court decision. Retention rights are also conditional upon the counterclaim arising from the same contract.
10. If there are reasonable doubts as to the willingness or ability of the CUSTOMER to pay, especially if the CUSTOMER has not paid previous invoices without any legal justification, if debt collection measures against the CUSTOMER have remained without success, or cheques or drafts have been returned due to lack of cover, M&K shall be entitled to demand advance payments in part or in whole. The CUSTOMER may avoid this demand by providing a bank guarantee or similar payment promise of a bank or credit insurance institute approved to conduct business in the Federal Republic of Germany. If the CUSTOMER fails to fulfil payment obligations, M&K may partly or wholly withdraw from the contract. This will not affect the other rights of M&K.

V. Risk transfer

1. In all dealings – especially in carriage-paid and free delivery to the door of the CUSTOMER – the transport risk of accidental loss or deterioration of the sold and/or manufactured goods shall be transferred to the CUSTOMER with the transfer, shipment to a location other than the premises of the CUSTOMER, or dispatch to the carrier, haulage company or other party charged with the shipment. The obligation and costs of unloading shall be carried by the CUSTOMER.
2. M&K will additionally insure the delivery on the separate and written request and at the cost of the CUSTOMER.
3. Failure of the CUSTOMER to take delivery of the goods shall be regarded as transfer of the goods into the possession of the CUSTOMER for the purposes of risk transfer.

VI. Quantity and delivery

1. Deviations in the quantities delivered from those ordered within areas customary for the trade shall be tolerated, especially concerning yard goods, extruded and/or cut goods and similar. The CUSTOMER shall pay for the quantity delivered. Part deliveries are permitted if they do not interfere with the legitimate interest of the CUSTOMER.

2. In make-and-hold orders, M&K shall be entitled to manufacture the entire quantity ordered or have the entire quantity ordered manufactured. No alteration requests can be considered after the order has been received unless this has been expressly agreed. Dates and specifications for individual deliveries are to be given at sufficient notice to allow M&K reasonable time to manufacture and deliver the goods in the proper fashion, for example, between two agreed delivery dates, or such that the deadline given is possible according to 11.4 above. If the goods are not requested as set in the contract, M&K shall be entitled to invoice the goods as delivered after setting a reasonable subsequent deadline.
3. Goods produced according to custom specification or to the design of the CUSTOMER shall be ready for delivery when the goods have been manufactured or, if set in the contract's provisions accordingly, on the transfer of the test results to the customer, or on notice of delivery to the CUSTOMER.
4. If the CUSTOMER is to provide goods for the order to be completed, these parts are to be delivered to the production premises in the quantity agreed, or in reasonable additional quantities to cover the possibility of reject goods, carriage paid, on time, in fault-free condition and without charge to M&K. Any costs and other consequences incurred due to the failure of the CUSTOMER to fulfil this obligation shall be borne by the CUSTOMER.
5. The delivery period agreed shall be extended by a reasonable period if the CUSTOMER fails to fulfil their obligations, or if delivery to M&K is delayed due to unforeseen circumstances, force majeure or other circumstances affecting the production activity of M&K for which M&K cannot be held responsible, such as those involving a supplier of M&K, or a shipping company or carrier. The same applies to industrial action or lockout. If such hindrances should last longer than a month, or if the production activity of a supplier at any position upstream of M&K should cease, or if circumstances such as military conflict, circumstances beyond either contract party's control, traffic disturbances, or other examples of force majeure should present a hindrance, M&K and the CUSTOMER shall both be entitled to withdraw from the contract inasmuch as the delay in delivery is to last longer than a month. The other party shall be informed of the withdrawal in writing beforehand. M&K shall immediately inform the CUSTOMER of the start and end of such hindrances.
6. In cases of delivery delays, the CUSTOMER shall be entitled to withdraw from the contract in writing after a subsequent and reasonable deadline after the agreed delivery date has been exceeded if the goods have not been manufactured by M&K by the time of receipt of the written declaration of withdrawal.
7. If the goods ordered are not requested or specified on time or at all, M&K shall, after setting a reasonable period of notice and after this period has expired without action on the part of the CUSTOMER, be entitled to demand payment in advance, withdraw from the contract, and/or demand damages.

8. The CUSTOMER shall comply with all relevant legal requirements, especially those concerning health and safety at work, in the acceptance and storage of the goods, and shall present all permissions and approvals necessary.
9. The CUSTOMER shall return all pallets and containers fit to be returned in clean and fault-free condition. The same applies to the exchange of europallets.
10. The CUSTOMER shall immediately inspect the goods for defects after delivery by M&K, and immediately launch a complaint to M&K concerning any defects found. The time of receipt at M&K shall apply in questions of punctuality. If the CUSTOMER fails to launch such a complaint, the goods shall be regarded as accepted unless the defects concerned could not have been recognised at the inspection on delivery. If such a defect should subsequently be discovered, the complaint shall be launched immediately, otherwise the goods shall be assumed to be accepted despite the defect.

VII. Complaints for defects

1. Complaints for defects shall only be taken into account that are made immediately, or 14 days after goods delivery at the latest, and shall include documentary evidence, samples, packing slips along with the invoice number, invoice date, and any lettering found on the packaging.
2. In the case of concealed defects, the written complaint must reach M&K on discovery of the defect, or one year after receipt of the goods at the latest. The statutes of limitations shall remain unaffected. The CUSTOMER shall carry the burden of proof that a concealed defect exists.
3. Goods found to be defective may only be returned to M&K on the express agreement of M&K.
4. The statutory provisions according to HGB [German Commercial Code] §377 shall additionally apply inasmuch as the purchase represents a commercial transaction for both parties.

VIII. Liability and guarantee

1. All liability shall be conditional upon the punctuality and proper form of the complaint for defects.
2. Guarantee claims are limited to subsequent remediation. M&K shall not bear costs incurred through the goods being delivered to a location other than the headquarters or branch of the CUSTOMER unless this corresponds to the contractual use of the goods. If remediation should fail, the CUSTOMER may demand a discount from the remuneration due, or withdraw from the contract at the discretion of the CUSTOMER. Further claims such as costs or

compensation for damages due to the defect or consequential damages shall only exist in accordance with the provisions under IX. Replaced parts shall be returned to M&K on request; M&K shall cover the costs of postage.

3. The guarantee period shall be one year after passing of the risk to the CUSTOMER.

IX. Disclaimer

1. M&K shall only be liable inasmuch as M&K, its legal representatives, management employees or vicarious agents have acted with intent and/or in gross negligence. M&K shall also be liable for the breach of a contractual provision where the compliance with this provision is especially important in satisfying the purpose of the contract in cases of slight negligence. M&K disclaims any liability that is independent of responsibility.
2. Claims to compensation for damages launched by the CUSTOMER for whatever statutory reason shall be limited to damages that are to be anticipated within the limits of the contractual relationships inasmuch as M&K is only liable for damages due to slight negligence.
3. Claims to compensation by the CUSTOMER shall expire after five years except those claims arising from gross negligence regardless of the awareness of the circumstances justifying the claim or the person of the debtor.
4. The above disclaimers shall not apply in cases leading to physical injury, damage to health, or death.
5. The above provisions shall not affect liability according to German Product Liability law.

X. Protection rights

In delivery according to specification or information supplied by the CUSTOMER, the CUSTOMER shall indemnify M&K from any claims to damages for the breach of protection rights of a third party. In the case of breach of contract by the CUSTOMER, the protection rights of the CUSTOMER shall not prevent utilisation by M&K.

XI. Final provisions

1. The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UNCISG).

2. A contractual provision or a provision in these terms of sale and delivery that proves to be partly or wholly invalid shall not affect the remaining provisions and/or part of the provision in their validity. The parties shall replace an invalid provision by a valid provision that most closely approximates the commercial purpose of the invalid provision. The same applies to any absent provisions in the contract or agreement.
3. Court of jurisdiction and place of execution for obligations and disputes arising from the contract shall be at the headquarters of M&K. Additionally, M&K shall be entitled to file for claims at the general place of court jurisdiction of the CUSTOMER.

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