

General Terms and Conditions of Messrs. Mix Foerdertechnik und Stahlbau GmbH for the delivery of goods, performance of work and related services

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1. General

1. These General Terms and Conditions shall apply exclusively to the delivery of goods, performance of work and related services provided by Messrs. Mix Foerdertechnik und Stahlbau GmbH (hereinafter referred to as the SUPPLIER).
2. These General Terms and Conditions are applied in business transactions with both consumers and entrepreneurs unless a differentiation is made in the respective clause.
3. Consumers within the meaning of these General Terms and Conditions are natural persons with whom business relations are established and to whom no commercial or independent professional activity can be attributed.
4. Entrepreneurs within the meaning of these General Terms and Conditions are natural or legal persons or partnerships with legal personality with whom business relations are established and who act in exercising their commercial or independent professional activity.
5. Customers within the meaning of these General Terms and Conditions shall mean both consumers and entrepreneurs.
6. The customer's General Terms and Conditions shall not become part of the contract.

2. Offers, documents, conclusion of contract

1. The terms for the SUPPLIER'S goods or work are without engagement and not binding unless otherwise agreed. This also applies to the depiction of goods in catalogues, in other product descriptions or documents, also in electronic form, unless otherwise agreed in writing. Such depictions do not constitute offers but are non-binding invitations to the customer to place orders.
2. By ordering the desired goods or work, the customer makes a binding offer to enter into an agreement. The SUPPLIER shall promptly acknowledge receipt of the customer's order. The acknowledgement of receipt shall not be deemed a binding acceptance of the order unless otherwise stated by the SUPPLIER. Receiving an order by telephone shall not constitute a binding acceptance on the SUPPLIER'S part.
3. The SUPPLIER shall be entitled to accept the offer of contract implied in the order within two weeks. The SUPPLIER shall be entitled to refuse the order – e.g. after having rated the customer's credit-worthiness.
4. The SUPPLIER reserves the right of ownership and copyright with respect to all depictions, drawings, calculations, and other documents handed over to the customer. The same applies to any documents designated as confidential. The customer may not pass them on to third parties without the SUPPLIER'S written consent.

3. Power of revocation

1. If the customer expressed his will as a consumer, he is entitled to revocation according to § 312d, paragraph 2, in connection with § 355 BGB (German Civil Code). Therefore, in normal case (see subparagraph 2 for exceptions) a customer who is a consumer can revoke his expression of will which was aimed at the conclusion of the contract (§§ 312d, paragraph 1, clause 1, 355 BGB). The revocation is not subject to the statement of reasons (§ 355 paragraph 1, clause 2, BGB).
2. Inter alia, according to § 312d, paragraph 4, BGB, the power of revocation does not apply to long distance sales contracts
 - for the delivery of goods which are made according to the customer's specifications, or which are tailor-made for the customer, or which are not suitable for return shipment due to their structure, or which can perish quickly, or whose expiry date has passed,
 - for the delivery of audio or video recordings or software if the consumer has unsealed the data media delivered.

Power of revocation

Revocation advice

1. You may revoke your contractual declaration within two weeks without specifying reasons, doing so in text form (e.g. letter, fax, e-mail) or – if the object has been handed over to you before expiry of the time limit – by returning the object.
2. The time limit shall commence after receipt of this advice in text form,
 - a. with long distance sales contracts (§ 312b, paragraph 1, clause 1, BGB (German Civil Code)) for the delivery of goods, however, not before arrival of the goods at the consignee (in the case of recurring delivery of similar goods not before receipt of the first partial delivery),
 - b. with the rendering of services, however, not before conclusion of the contract
 - c. nor before the fulfilment of our duty to provide information according to § 312c, paragraph 2, BGB in connection with § 1, paragraphs 1, 2 and 4 BGB-Info.

For the observance of the time limit for the revocation the timely dispatch of the notice of revocation or object shall suffice. The notice of revocation shall be addressed to:

Consequences of revocation

In the event of valid revocation, the services received by both parties shall be returned and possible profits (e.g. interests) shall be surrendered. If you cannot, either in whole or in part, return the service received or in impaired state only, you shall possibly provide compensation for the value of the service. You shall not provide compensation for the impairment of the object caused by proper use.

Objects which can be shipped in parcels shall be returned at our risk, You shall bear the costs for the return shipment if the goods delivered correspond to the goods ordered, and if the price of the object to be returned does not exceed an amount of 40 EUR or, in the event of a higher price of the object, you have neither reciprocated nor effected a contractually agreed partial payment at the time of revocation. Otherwise the return shipment shall be free of charge for you. Objects which cannot be shipped in parcels shall be collected from your premises.

Obligations to reimburse payments shall be fulfilled within 30 days. For you, this period shall begin with the dispatch of your notice of revocation or the object, for us, it shall begin with its receipt.

Special notes

In the case of a service, your power of revocation shall expire prematurely if we started rendering the service before the end of the revocation period with your express consent or if you arranged this service yourself.

End of revocation advice

4. Prices and terms of payment

1. The prices shall be based upon the SUPPLIER'S prices quoted in the depiction of goods in catalogues, other product descriptions or documents at the time of the conclusion of the contract. The prices shall be binding.
2. In business transactions with consumers, the prices shall be inclusive of the statutory value-added tax. Unless otherwise agreed with the SUPPLIER, the SUPPLIER'S prices in business transactions with consumers shall be exclusive of shipping costs.
3. In business transactions with entrepreneurs, the SUPPLIER shall quote net prices only. The statutory value-added tax is therefore not included in the prices. Unless otherwise agreed, it shall be a separate item in the invoice at the rate applicable on the day of invoicing, plus other taxes, charges and customs duties, shipping and packaging.
4. If the customer is a consumer, price changes are admissible if more than 4 months lie between the conclusion of the contract and the agreed delivery date. If, after expiry of this period of time, wages or material cost change until the delivery date, the SUPPLIER shall be entitled to make reasonable price changes in accordance with the cost increase or cost reduction. The customer shall be entitled to withdraw from the contract if the price increase considerably exceeds the increase in the general cost of living between the order and delivery date.
5. If the customer is an entrepreneur, the agreed price shall be valid. If, at the time when the goods are delivered and/or work is performed, the price has increased due to a change of the market price or the remuneration to be paid to a third party involved, the higher price shall apply. If this price is at least 20% higher than the agreed price, the entrepreneur shall be entitled to withdraw from the contract. This right shall be asserted immediately after the higher price has been announced.
6. Unless otherwise agreed, the customer shall pay the price without deducting any cash discount no later than 10 days after receipt of the goods. As for the default in payment, the legal provisions shall apply.
7. For the period of the default in payment, the consumer shall pay the money debt of 5% p.a. above the basic interest rate. For the period of the default in payment, the entrepreneur shall pay the money debt of 8% above the basic interest rate. In business transactions with the entrepreneur, the SUPPLIER reserves the right to assert a claim for further damage.
8. If the SUPPLIER'S invoices issued to the customer are not settled by the customer within the period of payment indicated in the invoice, the customer is in default. In the event of a default in payment, the SUPPLIER shall impose a dunning charge of 5 EUR (flat charge) per dunning letter. The customer shall be entitled to furnish proof of smaller or no damage.

5. Place of performance and passing of risk

1. Unless otherwise agreed, the place of performance for the delivery of goods between entrepreneurs shall be the place of the SUPPLIER'S registered office. With consumers, the place of performance is the place of residence of the consumer.
2. In business transactions with consumers, the risk of accidental loss and accidental deterioration of the goods sold shall pass to the consumer upon actual delivery of the goods, also in cases of sales to a destination according to buyer's instructions.

3. In business transactions with entrepreneurs, the risk of accidental loss and accidental deterioration of the goods shall pass to the entrepreneur upon delivery, in the case of sales to a destination according to buyer's instructions upon delivery of the goods to the forwarding agent, carrier, or other person or institution appointed to ship the goods.

4. Delivery shall also be deemed to have been effected if the customer defaults in acceptance.

6. Reservation of title

1. In business transactions with consumers, the SUPPLIER reserves the right to retain ownership of the goods until full payment of the purchase price is received.

2. In business transactions with entrepreneurs, the SUPPLIER shall retain ownership of the delivered goods until complete settlement of accounts receivable under the current business relationship. The reservation of title shall also cover the accepted account balance insofar as the SUPPLIER allocates accounts receivable from the entrepreneur to current invoices (current account reservation).

3. During the time ownership is retained, the entrepreneur shall have the right to resell the goods to resellers in the ordinary course of business, and only on condition that either delivery is concurrent with the payment effected to the reseller, or the reseller reserves the right that ownership does not pass to his buyer before the buyer has effected payment to the reseller.

4. With the conclusion of the contract, the entrepreneur shall, by way of security, assign to the SUPPLIER all accounts receivable arising from the resale. Until cancelled, the entrepreneur shall be entitled to collect the assigned debt. In the case of important reasons, especially default in payment, suspension of payment, commencement of insolvency proceeding or any other important indications suggesting an insolvency of the entrepreneur, the SUPPLIER shall be entitled to revoke the entrepreneur's collection authorization. On condition of prior warning, the SUPPLIER shall be entitled to demand the disclosure of the assignment by way of security of the entrepreneur's accounts receivable from his buyers and, within a reasonable time, turn to account the assigned debt.

5. In the case of revocation, the entrepreneur shall give the SUPPLIER without delay all information required for collecting the assigned debt.

6. If the value of the security rights exceeds the secured debt by more than 20%, the entrepreneur shall be entitled to a certain share of the security rights. The security rights shall expire with the settlement of the secured debt.

7. Any treatment and processing of the goods by the entrepreneur shall always be made on the SUPPLIER'S behalf and order. If goods are processed, the SUPPLIER shall acquire co-ownership in the new object in the proportion to the value of the goods delivered by the SUPPLIER. The same shall apply if the goods are processed or mixed with other objects not belonging to the SUPPLIER.

8. The customer undertakes to treat the goods with care during the time ownership is retained. If maintenance and inspection work is required, the customer shall perform such work at regular intervals at his own expense.

9. The conditional goods may neither be pledged nor may ownership be transferred by way of security. The customer shall inform the SUPPLIER without delay in the case of seizure and other orders on the part of third parties.

10. The customer shall reimburse the SUPPLIER for all damage and cost incurred by any violation of these obligations and by measures of intervention required to prevent access by third parties to the goods.

7. Material defects, statute of limitations

1. If the customer is a consumer, he shall be entitled to choose in the event of any subsequent performance between remedying the defect and delivery of a replacement. The SUPPLIER shall be entitled to refuse the type of subsequent performance chosen if this is possible only at disproportionate cost while another manner of subsequent performance would involve no considerable disadvantages for the consumer.

2. With entrepreneurs, the SUPPLIER, at his option, shall be entitled to choose in the event of faulty material or work between remedying the defect and delivery of a replacement.

3. If subsequent performance fails, the customer may demand, at his option, reduction of the purchase price (reduction) or cancellation of the contract (recession) and demand damages. For all damage and futile expenses arising to the customer due to faulty material or work, the limitations of liability described in section 7 shall apply.

4. The consumer shall notify the SUPPLIER in writing of any apparent defects of the goods within 2 months after receipt of the goods; otherwise claims for warranty shall be excluded.

5. The entrepreneur shall without delay check the delivered goods for deviations with respect to quality or quantity, and notify the SUPPLIER in writing of any apparent defects within 1 week after receipt of the goods; otherwise claims for warranty shall be excluded. The SUPPLIER shall be notified in writing of any hidden defects within 1 week once such defects have been detected. The time limit shall be deemed observed if the notification has been despatched on time. The entrepreneur shall have the full burden of proof for all claims, especially for the defect itself, for the time of the detection of the defect and the timely lodgement of the formal complaint.

6. All claims due to defects (including damages) on the part of the consumer shall fall under the statute of limitations in 2 years after delivery of the goods, on the part of the entrepreneur in 1 year after delivery of the goods. In the case

of second-hand objects, the warranty period for the consumer shall cover 1 year after delivery of the goods.

7. This shall not be applicable if longer periods are stipulated by law acc. to § 438 paragraph 1 no. 2 BGB (German Civil Code) (things used for buildings), § 634a BGB (structural defects) and § 479 paragraph 1 BGB (claim under a right of recourse), in the event of damage to life, body and health, in the event the SUPPLIER may be blamed for intentional or grossly negligent breach of duty, and malicious nondisclosure of a defect. The regulations about the suspension of the statute of limitations, the recommencement of time limits as well as the SUPPLIER'S liability according to the product liability law shall remain unaffected.

8. Warranty claims for faulty material or work shall not cover defects occurred as a result of improper handling by the customer or third parties after delivery of the goods, especially defects occurred after use which is not in accordance with the product information, improper storage, or defects as a result of normal wear and tear.

9. In business transactions with the customer, the SUPPLIER shall not give guarantees in the legal sense. Manufacturer's guarantees shall remain unaffected thereby.

8. Liability for damage

1. The SUPPLIER shall, on the basis of whichever legal reasons, be liable for damage which he may have caused by intent or gross negligence or negligent violation of contractual obligations, performance of which makes proper implementation of the contract possible in the first place and on fulfillment of which the customer regularly may rely. In the event of simple negligence, the SUPPLIER shall be liable only to the extent such damage is connected in a typical way with the contract and is foreseeable.

2. The said limitations and exclusions of liability shall not apply to damage arising from the violation of life, body or health the SUPPLIER is answerable for, nor to the liability resulting from guarantees or liabilities according to the product liability law.

9. Data protection

1. For fulfilling his contractual obligations, the SUPPLIER shall collect data of the customer. In doing so, the SUPPLIER shall comply with the statutory provisions pursuant to the German Federal Data Protection Act. Without the customer's consent, the SUPPLIER shall collect, process or utilize personal data, i.e. the customer's name, address, place of residence, e-mail address as well as phone and fax numbers, only to the extent necessary for fulfilling his contractual obligations. By sending his enquiry, which is equivalent to an offer of contract, the customer shall give his consent to the storage of his data.

2. With the separate **Data Protection Information** the SUPPLIER shall inform his customers about the following:

- Nature, scope, duration and purpose of the collection, processing and use of the personal data necessary for executing orders and invoicing.

- The customer's right to object to the creation and use of his user profile made anonymous for the purposes of advertising, market research and preparation of the SUPPLIER'S quotation in accordance with the customer's demands.

- Transfer of data to enterprises rating the customer's creditworthiness and shipping the customer's goods on the SUPPLIER'S behalf. These enterprises are committed to observing the statutory data protection provisions while fulfilling their relevant tasks.

- The right to obtain free information about the customer's personal data stored by the SUPPLIER

- The right to correct, delete and block the customer's personal data stored by the SUPPLIER.

10. Assignment, setoff and retention

1. The customer may assign his rights from this contract only with written approval by the SUPPLIER. The SUPPLIER shall refuse his approval for important reasons only.

2. The customer shall be entitled to the setoff and retention only with respect to counter-claims which are uncontested or declared legally binding. A retention right shall only be admissible with claims from the corresponding contractual relationship itself.

11. Place of jurisdiction, applicable law, severability

1. The contractual relationship of the parties shall be subject to the law of the Federal Republic of Germany, excluding UN sales law.

2. If the customer is a businessman, a legal person of public law or special fund under public law, place of jurisdiction for all disputes arising from this contract shall be the place of the SUPPLIER'S registered office. The SUPPLIER shall also be entitled to bring an action against the customers mentioned in this paragraph at their general place of jurisdiction.

3. If the customer has no place of jurisdiction in Germany or any other EU member state, exclusive place of jurisdiction for all disputes arising from this contract shall be the place of the SUPPLIER'S registered office. The supplier shall also be entitled to bring an action against the customers mentioned in this paragraph at their general place of jurisdiction.