

General Terms and Conditions of MK Naeh Technische Systeme GmbH

I. General

These General Terms and Conditions shall apply in addition to the contracts we enter into with our customers. They shall apply even if the customer uses contradicting, deviating or supplementary terms and conditions.

II. Offers

1. All purchase orders submitted to us shall be considered binding offers. As a rule, same shall be accepted as a result of our sending a pertinent order confirmation.
2. In the event that the fulfillment of the contract should be contingent upon the obtaining of any government agency issued or other permits, the provision of same shall be part of the customer's scope of responsibilities.
3. The customer shall be required to provide an adequate quantity of sample material of the material to be used in future production. The risk and costs of shipping shall be borne by the customer.
4. Retroactive amendments to the contract shall be made by way of written agreements.

III. Scope and Timing of Services Rendered

1. The scope of services shall be determined by the quotation in combination with the order confirmation. We shall strive to comply with the time frame stipulated for the rendering of services in the order confirmation. We shall notify the customer of any delays. An agreed upon delivery time shall begin only upon clarification of all technical issues and upon receipt of the payment of any agreed upon deposit to be made. In the event that we should culpably exceed the stipulated time frame by more than one month, the customer shall be required to grant us a reasonable extension. Once the extension period has expired, the customer shall have the right to rescind from the contract. We are compelled to exclude any further entitlements of the customer provided we have not committed any intentional or grossly negligent acts. The customer shall not have an option to rescind if we can prove that the delay was not caused by us. This shall be the case if the documentation, approvals or releases to be provided by the customer have not been received in a timely manner and if agreed upon advance payments have not been made in due time. This shall also apply if we have been prevented from complying with the deadlines as a result of force majeure, such as strike, lock-outs, or as a result of government agency impositions, requirements, etc.
2. In the event that the fulfillment of the contract should be prevented by circumstances the customer is responsible for, we shall have the right to rescind from the contract after having given notice to this effect once and we shall have the right to demand reimbursement for damages in lieu of fulfillment.
3. In the event that there should be a delay in acceptance, we shall have the right to demand reimbursement of any related costs for preparatory labour, delivery, warehousing, etc. incurred in vain.
4. The risk for damages or loss of a machine to be delivered shall transfer upon hand-over. If shipping has been agreed upon, the risk shall transfer upon physical shipment and if acceptance is delayed, at the agreed upon time of delivery.
5. Whenever we deliver a machine, the customer shall be required to actively participate in the loading and unloading procedures.

IV. Reservations Regarding Service, Reimbursement for Damages

1. In the event that the customer should cease to make payments or be in default of payments, or in the event that applications for insolvency or settlement proceedings are filed, and if we learn of any court imposed collections proceedings against the customer, we reserve the right to either rescind from the contract and demand reimbursement of damages in lieu of fulfillment, or to deliver only upon receiving advance payment or to deliver and render services cash upon delivery only. In the event that the customer should fail to make an agreed upon advance payment despite having been put on notice, we shall have the right to rescind from the contract and to claim compensation for damages in lieu of fulfillment.
2. In the event of our rescission from the contract, we shall have the right to demand a lump sum damage compensation payment of 20 % of the contract's total value. We and the customer shall be at liberty to submit evidence of higher or lower damage amounts, which shall supersede the lump sum damage amount if applicable.

V. Prices and Payment

1. Our prices shall be net prices for commercial customers and these prices shall be subject to applicable value added tax.
2. Unless otherwise agreed upon, remuneration owed to us shall be due for payment as follows:
within 8 days – 2% cash discount / 30 days – net
At special custom machines apply the following conditions:
50%: 14 days after receipt of the order confirmation,
40%: 14 days after receipt of our notification indicating that the machine is ready for shipment,
10%: 14 days after delivery. Shipment to the customer shall be effected only once the first two deposit payments have been received.
3. Our customer shall be rendered in default of payment 14 days after receipt of the invoice and expiration of the payment deadline stipulated in said invoice, without a further payment due notice being required. The statutory late payment interest to be charged to commercial customers shall be 8 % above the prime rate published by the European Central Bank.
4. Unless otherwise agreed upon our prices shall be understood ex factory and shall include loading at the factory. Packaging costs, if incurred, shall be charged additionally.

VI. Liability for Deficiencies in Services/Products

1. Upon receipt, the customer shall immediately inspect the delivered machine for deficiencies and completeness. Any deficiency claims shall be filed with us immediately. Failure to do so shall result in the machine being deemed accepted in perfect condition.
2. In the event that our delivery should be found deficient, we shall make complimentary remedial deliveries or repairs for the customer. Initially, the customer shall not be entitled to any further remedies. However, in the event that even a second remedial delivery or repair attempt should fail and evidence of continued deficiencies is delivered, the customer shall have the right to reduce the purchase price by a reasonable amount or to rescind from the contract. We are unable to grant any further remedies.
3. We shall assume liability for deficiencies that arise in reference to the material to be processed only if the customer has provided an adequate amount of sample material pursuant to II.3.
4. In the event that the error causing the defect in the machine is not instantly identifiable, the customer shall be required to actively participate in the error search. In particular, the customer shall allow the performance of all related measures and shall comply with our instructions.
5. In the event that a machine we have delivered is at a standstill due to an error search, the customer shall permit remote maintenance activities.

VII. Liability Obligation, Deadlines

1. The liability obligations for the elimination of deficiencies arising in machines we have delivered shall be in effect for a term of 12 months, starting upon hand-over. Incidentally, the statutory provisions shall apply. The liability obligation period for wear and tear parts, in particular needles, springs, holders, etc. shall be reduced to the standard useful life of the respective wear and tear part. The customer shall undertake to replace wear and tear parts in such a timely manner that any failure of other machine components can be ruled out. We shall not assume any liability for any such consequential failure.
2. Moreover, the acceptance of any claim for deficiency elimination entitlements shall be contingent upon the exact compliance with the operating manual provided by us. Any violations of the stipulations made in said operating manual may result in the voidance of our liability.
The above-mentioned liability obligation period shall apply to the normal utilization of any machine delivered by us; which shall be based on a 5-day work week and a total of 50 operating hours. If the machine is used more extensively, in particular in multi-shift operations, the liability period shall be reduced on par with the additional hours of operation.
3. We shall strive to clarify such special scenarios by way of individual agreements.

VIII. Retention of Title, Intellectual Property Rights, Confidentiality

1. We shall retain title to the machine to be delivered until full payment has been made. Consequently, it may not be resold or pledged as collateral until title has been attained by the customer. In the event that the machine is resold despite this prohibition, we shall have the right to collect remuneration from the third party.
2. The customer shall promptly notify us of any garnishments levied by third parties against any machine subject to title retention.
3. We reserve the copyright in all drawings, figures and the like.
4. The customer shall not be permitted to share with any third parties confidential information, business transaction information and documents the customer becomes aware of or obtains possession of in connection with this contract.
This obligation shall survive the expiration of the contract.

IX. Software

If the service to be rendered includes the provision of software, the customer shall be granted only the right to use same. The customer shall not be entitled to the disclosure of the source code. The customer shall have the right to utilize the software within the agreed upon scope or in compliance with the contractual purpose. Reproductions, translations or conversions of the object code into the source code shall be permitted only within the scope of pertinent statutory provisions.

X. Place of Jurisdiction

In the event that litigation should arise from or become necessary pertaining to the contractual relationship, the place of jurisdiction for such proceedings to take place shall be the Circuit or the State Court in Munich, Germany, if such an agreement as to the place of jurisdiction is permitted by law.

XI. Final Provision

If any of the above provisions should be ineffective, it shall be superseded by the pertinent statutory provision. This shall be without prejudice to any other provisions of our General Terms and Conditions, which shall continue to apply.