

MORATH GMBH  
Am Riedbach 7, D-79774 Albrück-Birndorf

## **General Conditions Of Sale**

The following text is a translation from the German language original. In case of disputes the German language original of our General Conditions Of Sale are applicable.

### **§1**

#### **General - Area of application**

1. Our conditions of sale apply exclusively: any contrary conditions or conditions of the purchaser which deviate from our conditions of sale shall not be recognised unless we specifically agree in writing. Our conditions of sale also apply if we implement the sale to our customer without limitation or restriction in the knowledge that conditions of the customer deviate from our conditions of sale.
2. All agreements which are made between ourselves and the customer with the aim of executing this contract are laid down in writing in the contract.
3. Our conditions of sale are only valid for entrepreneurs and merchants in the sense of § 310 Para. 1 BGB (German Civil Code).
4. Our conditions of sale shall also apply to future business with the customer.

### **§ 2**

#### **Offer - Offer documents**

1. Our offer is made without obligation, if the order confirmation does not include provisions to the contrary.
2. We retain title and copyright to any illustrations, drawings, calculations and other documents. This also applies to such written documents which are designated as "confidential". The customer must seek and receive our express written permission before transferring documents to third parties.

### **§ 3**

#### **Prices and conditions of payment**

1. If not stated to the contrary in the order confirmation, our prices are "ex works".
2. Our prices are invoiced in EURO. VAT is not included in our prices; it is shown separately on the invoice at the legal rate which applies on the invoice date.
3. Discount may only be deducted by express written agreement.
4. If not stated to the contrary in the contractual conditions, the purchase price is due for payment net (without deduction) within 10 days of date of invoice. We are entitled to charge interest of two percentage points above base rate for any delay in payment. The relevant legal provisions shall apply in the case of delayed payment.
5. The purchaser shall only be entitled to offset payments if his counterclaims have been legally established, or if they are undisputed or recognised by us. Neither shall the customer be entitled to withhold payment based on disputed counterclaims.

### **§ 4**

#### **Delivery period**

1. The delivery period stated by us only begins after all technical questions have been clarified. We reserve proper and timely self-delivery.
2. In addition, fulfilment of our supply obligation presupposes timely and proper fulfilment of the obligations of the purchaser. The right to object based on non-fulfilment of the contract shall remain unaffected.
3. If the purchaser delays acceptance of the goods or services supplied, or neglects to fulfil other cooperative obligations, we shall be entitled to require compensation for any resulting damages, including any additional costs incurred. We also retain the right to make subsequent or additional claims.
4. If the prerequisites stated in Para. (3) are present, the risk of accidental destruction of, accidental damage to or deterioration of the purchased item shall be transferred to the customer at the moment when the period of delayed acceptance or debtor's delay begins on the part of the customer.
5. We accept liability according to the legal regulations if the purchase agreement on which the relevant business is based is a transaction for delivery by a fixed date in the sense of § 286 Para. 2 No. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code). We also accept liability according to the legal regulations in so far as, as a result of a delay in delivery for which we are responsible, the customer is entitled to claim that his interest in further fulfilment of the contract has lapsed.

6. We also accept liability according to the legal regulations if the delay in delivery is attributable to a deliberate or grossly negligent infringement of the contract on our part; any blame on the part of our representatives or vicarious agents may be attributed to us. If the delay in delivery is not attributable to deliberate infringement of the contract for which we are responsible, our liability for damages is limited to the foreseeable damages which typically occur.
7. We also accept liability in accordance with the legal regulations if the delay in delivery attributable to us is based on tortious infringement of a fundamental contractual obligation; in this case, however, liability to provide compensation is limited to the foreseeable damages which typically occur.

## **§ 5**

### **Transfer of risks - Auxiliary costs**

1. If not stated to the contrary in the order confirmation, supply "ex works" is deemed to be agreed.
2. Our costs for travel, assembly, demonstration, instruction, commissioning and so on shall be invoiced separately in accordance with our offer prices.
3. Transport and all other packaging according to the packaging regulations will not be accepted if returned; excepted from this are pallets, which shall be accepted. The purchaser shall ensure that packaging is disposed of and shall cover the associated costs.
4. If the purchaser so wishes we shall cover the goods to be delivered by means of transport insurance; any costs which occur shall be borne by the customer.

## **§ 6**

### **Liability for defects**

1. Claims for compensation for defects on the part of the customer presuppose that the customer has fulfilled his obligations regarding inspection of the goods and complaint in accordance with § 377 HGB (German Commercial Code).
2. If the purchased item should demonstrate a defect, we are entitled to provide subsequent fulfilment of the contract either in the form of repair or replacement by a new and non-defective item at our discretion. In case of repair we are obliged to cover all the costs necessary in order to repair the damage, in particular, transport, transfer, work and material costs, provided that these are not increased by the fact that the item purchased was returned to a different location than the place of fulfilment.
3. If subsequent fulfilment of the order does not succeed, the customer may require withdrawal from the contract or a reduction in the purchase price.

4. We accept liability according to the legal regulations in so far as the customer claims compensation for damages which arise from deliberate intent or gross negligence on our part, including deliberate intent or gross negligence on the part of our representatives or vicarious agents. If no deliberate contractual infringement can be proven against us, liability for damage compensation is restricted to foreseeable damages which typically occur.
5. We accept liability according to the legal regulations in so far as we are guilty of infringing a fundamental contractual obligation; in this case, however, liability for damages is restricted to foreseeable damages which typically occur.
6. Liability for tortious injury to life, limb or health is not affected. This also applies for obligatory liability in accordance with product liability law.
7. If not otherwise specified in the aforementioned conditions, we do not accept any liability.
8. Claims with regard to defects shall lapse after 12 months, starting with the date of transfer of risk for the goods.
9. The period of limitation with regard to recourse in accordance with §§ 478, 479 German Civil Code shall remain unaffected. The period is five years, from the date when the defective goods or services were delivered.

## **§ 7**

### **Overall liability**

1. Any other liability for damages than that provided for in § 6 is - without taking the legal nature of the claim which is made into consideration - excluded. This applies particularly for claims for damages arising from negligence during conclusion of the contract, other neglect of duty or tortious claims for compensation of damage to property according to § 823 BGB.
2. In so far as compensation for damages is excluded or limited as far as we are concerned, this also applies with regard to personal liability of our staff, employees, representatives and vicarious representatives.

## **§ 8**

### **Security of retention of title**

1. We retain the title to the purchased item until all payments arising from the business relationship with the purchaser have been met. If the purchaser acts in a way which is contrary to the provisions of the contract, particularly with regard to delayed payment, we are entitled to reclaim the item which has been supplied. Reclamation of the item supplied by us does not constitute withdrawal from the contract. After reclaiming the item supplied, we are entitled to utilise it or sell it, and the profits from such utilisation or sale shall be offset against any liabilities of the purchaser after deduction of appropriate associated costs.

2. The purchaser has the obligation to treat the item supplied with due care; in particular he has the obligation to insure it, based on its original value, at his own expense against damage from fire, water and theft. If inspection and maintenance work are necessary, he shall carry these out in good time at his own expense.
3. The purchaser has the duty to inform us immediately in writing in case of seizure or other interventions by third parties so that we can immediately instigate legal action in accordance with § 771 ZPO (Laws of Civil Procedure). In so far as the third party is not in a position to reimburse us as regards the court costs and the other legal costs associated with a legal action in accordance with § 771 ZPO, the purchaser shall be liable for any losses which occur.
4. The purchaser shall be entitled to sell on the item supplied in the normal course of business; he shall, however, already now allocate to us all a sum from the amount which accrues to him from the sale of the item supplied to his customers or to third parties, to cover all claims which we have against him to the amount of the final invoiced sum (including VAT). This shall be independent of whether the item supplied was sold on before or after processing. The purchaser shall also be entitled to call in this claim after the resulting sum has been legally allocated to us. Our right to call in the claim ourselves shall remain unaffected. However, we undertake not to call in the claim as long as the purchaser fulfils his payment obligations from the results of the sale, does not enter into arrears of payment and in particular no application has been made for opening of insolvency proceedings or payments cease. However, if this should occur, we may require that the purchaser informs us of the allocated claims and the debtor, that he supplies all the information necessary for us to be able to assert the claim, that he provides us with the relevant documents and that he makes the creditor (third party) aware of the assignment of the claims.
5. On request of the purchaser we undertake to release that part of the realisable securities allocated to us which exceeds the claims to be secured by more than 10 %; the selection of the securities to be released shall lie in our hands.

## **§ 9**

### **Legal venue - Place of fulfilment - Governing law**

1. In so far as the purchaser is a merchant in the legal sense, our registered office shall be the legal venue; however, we are also entitled to take legal action against the purchaser at the court responsible for his residence.
2. If not otherwise specified in the order confirmation, our registered office shall be the place of fulfilment.
3. The law of the Federal Republic of Germany shall apply; the United Nations Convention on Contracts for the International Sale of Goods is excluded.