

**Section 1 Applicability**

- (I) Any deliveries and offers of the Mewes & Partner GmbH, Neuendorfstr. 15, 16761 Hennigsdorf, Germany, commercial register: Neuruppin Local Court, HRB 566, represented by the Managing Director, Dipl.-Ing. Jürgen Mewes, (hereafter also referred to as "M&P") are made and services are performed exclusively on the basis of these General Terms and Conditions. These General Terms and Conditions are part of any contract concluded between M&P and its contract partners (hereafter also referred to as "principal" or "contract partner") for its offered deliveries or services. These General Terms and Conditions also apply to any future deliveries, services and offers to the principal, even if they are not separately agreed to again.
- (II) General terms and conditions of the principal or third parties do not apply, even if M&P does not separately reject their applicability in individual cases. Even if M&P refers to a written document that includes or notes the general terms and conditions of the principal or of a third party, this does not represent consent to the applicability of these general terms and conditions.
- (III) These General Terms and Conditions only apply to entrepreneurs, legal persons under public law and special funds under public law in the sense of Section 310(1) of the German Civil Code [Bürgerliches Gesetzbuch, BGB].

**Section 2 Offer and Contract Conclusion**

- (I) Any offers of M&P are non-binding, unless expressly stated as binding or unless they include a specific acceptance period. M&P may accept orders within fourteen days of receipt.
- (II) Only the written contract, including these General Terms and Conditions, applies to the legal relationship between M&P and the contract partner. The written contract includes all agreements on the contract object between the contract parties. Oral assurances by M&P prior to the conclusion of the contract are not legally binding and oral agreements between the contract parties will be replaced by the written contract, unless they expressly state that they will continue to be binding.
- (III) Additions and changes to any concluded agreements, including these General Terms and Conditions, must be issued in written form to be effective. With the exception of managing directors and authorized representatives, employees of M&P may not conclude contrary oral agreements. The written form requirement may be fulfilled through telecommunications transmissions, especially by fax or email, if a copy of the written declaration is submitted.
- (IV) Statements by M&P on the delivery or service object (e.g., weight, measurements, usage values, capacity, tolerances and technical data) and depictions thereof (e.g., drawings or images) are only approximately binding, unless their usability for the contractually intended purpose requires exact correspondence. They are not guaranteed characteristics, but descriptions or labels of the delivery or service. Customary deviations and differences due to legal requirements or that represent technical improvements and the replacement of parts by equivalent parts are permissible if they do not limit usability for the contractually intended purpose.
- (V) M&P will retain title to and copyrights for any offers and cost estimates it submits and for any drawings, depictions, calculations, brochures, catalogs, models tools and other documents and aids it provides to the principal. The principal may not make these objects available to third parties, disclose these objects, use these objects himself or have them used by third parties or reproduce these objects. On the seller's request, the principal must fully return these objects to the seller and destroy any copies if no longer required by him for his ordinary course of business or if negotiations do not lead to the conclusion of a contract. However, this does not apply to the saving of data provided electronically for regular backup purposes.

**Section 3 Prices and Payment**

- (I) Prices apply to the service and delivery scope stated in the order confirmation. Additional or special services will be

invoiced separately. All prices are in Euros ex works plus packaging, VAT and, for export deliveries, customs and other fees and public charges.

- (II) If agreed prices are based on M&P's list prices and if the delivery is to be made more than four months after contract conclusion, M&P's list prices at the time of delivery will apply.
- (III) Invoice amounts must be settled within thirty days without deductions, unless agreed otherwise in writing. The payment date is the date on which the payment is received by M&P. Checks are only considered payment when cashed. If the principal fails to make payments by the due date, interest of 5% p.a. will be charged for any outstanding amounts as of the due date. The assertion of greater interest and further damages in case of default remain unaffected.
- (IV) Using counterclaims of the principal for offsetting or exercising rights of retention for such payment claims is only permitted for counterclaims that are uncontested or have been legally established. The principal may only assert rights of retention for counterclaims from the same contractual relationship.
- (V) M&P may only perform outstanding deliveries or services in exchange for down payments or collateral if M&P learns of circumstances after contract conclusion that may significantly reduce the principal's creditworthiness or that threaten the settlement of M&P's outstanding claims from the contractual relationship (including from other individual orders under the same framework agreement) by the principal.

**Section 4 Deliveries and Delivery Periods**

- (I) Deliveries will be made ex works and require the principal/contract partner to fulfil his obligations on time. The defense of contract non-fulfillment remains reserved.
- (II) Periods and dates offered by M&P are only approximations, unless a fixed period or deadline is expressly assured or agreed. If shipping is agreed, delivery periods and deadlines refer to the time of the handover to the carrier, forwarder or other third party commissioned for the shipping.
- (III) M&P may—irrespective of the rights to which it is entitled through the principal's default—demand from the principal extensions of delivery or service periods or changes to delivery or service dates by the period for which the principal fails to fulfil his contractual obligations to M&P.
- (IV) M&P is not liable for any impossible or delayed deliveries caused by force majeure or other events unforeseeable at the time of contract conclusion (e.g., operational disruptions of any kind for material or energy procurement, transport delays, strikes, lawful lockouts, labor, energy or raw material shortages, difficulties obtaining required official permits, official measures or missing, incorrect or late deliveries by suppliers) for which M&P is not responsible. If such events make deliveries or services significantly more difficult or impossible for M&P and if the hindrance is not temporary, M&P may withdraw from the contract. In case of temporary hindrances, the delivery or service periods will be extended or the delivery or service dates will be postponed by the time of the hindrance plus an appropriate startup period. If acceptance of the delivery or service is unreasonable for the principal due to the delay, the principal may withdraw from the contract by submitting an according written declaration to M&P without delay.
- (V) M&P may only make partial deliveries if
  - Partial deliveries are usable for the principal under the contractually intended purpose
  - Deliveries of the remaining ordered goods are assured
  - The principal incurs no significant additional work or costs thereby (unless M&P agrees to assume these costs)
- (VI) If M&P defaults on a delivery or service or if a delivery or service becomes impossible for M&P for any reason, M&P's liability for damages is limited by Section 8 of these General Terms and Conditions.

**Section 5 Place of Fulfillment, Shipping, Packaging, Transfer of Risk, Acceptance**

- (I) The place of fulfillment for any obligations under the contractual relationship is the registered office of M&P, Neuendorfstr. 15, 16761 Hennigsdorf, Germany, unless stated otherwise. If M&P

- also owes installation services, the place of fulfillment is the location where the installation is to be performed.
- (II) The selection of the shipping type and packaging is subject to the dutiful discretion of M&P.
  - (III) Risk will be transferred to the principal by the carrier, forwarder or other third party commissioned for the shipping, at the latest, upon the handover of the delivery object (based on the start of the loading process). This also applies if partial deliveries are made or if M&P assumes additional services (e.g., shipping or installations). If shipping or the handover is delayed due to a circumstance for which the principal is responsible, risk will be transferred to the principal on the date on which M&P is ready to ship and reports its readiness to the principal.
  - (IV) After risk is transferred, storage costs will be borne by the principal. In case of warehousing by M&P, storage costs will consist of 0.25% of the invoice amount of the delivery objects to be stored for each full week. The assertion and proof of greater or fewer storage costs remains reserved.
  - (V) M&P will only insure deliveries against theft, breakage or transport, fire or water damage or other insurable risks on the express wish and for the account of the principal.
  - (VI) If acceptance is required, the purchase object will be considered to be accepted if
    - The delivery and, if M&P also owes installation services, the installation is complete
    - M&P states this to the principal while noting the fictitious acceptance under Section 5 (VI) of these General Terms and Conditions and requests acceptance from the principal
    - 20 business days have passed since the delivery or installation or if the principal started using the purchase object (e.g., by using the delivered software) and, in this case, 20 business days have passed since the delivery or installation
    - The principal refused acceptance during this period due to a reason other than a defect reported by M&P that makes use of the purchase object impossible or significantly limited

**Section 6 Guarantee**

- (I) The guarantee period lasts for one year as of the delivery or, if acceptance is required, acceptance. This period does not apply to damage claims of the principal resulting from injuries to life, limb or health or intentional or grossly negligent breaches of duty by the seller or his vicarious agents that expire under the legal statute of limitations. Any guarantee claims of the principal require his orderly fulfillment of the inspection and defect reporting obligations required under Section 6 (II).
- (II) Delivered objects must be inspected without delay after their delivery to the principal or to a third party designated by him. Delivered objects will be considered approved by the principal regarding obvious defects or other defects that should have been detected through immediate and diligent inspection if M&P receives no objection to these defects in the form specified in Section 2 (II) Sentence 6 within seven business days of the delivery. For other defects, the delivery objects will be considered approved by the principal if M&P receives no objections due to defects within seven business days of the appearance of the defect; if the defect was recognizable to the principal earlier during normal use, the defect reporting period will be based on this earlier date. On M&P's demand, delivery objects for which objections have been raised must be returned to M&P with shipping costs paid. In case of legitimate defects, M&P will refund the costs for the least expensive shipping method; however, this does not apply, if costs increase because the delivery object is at a location other than the location of its intended use.
- (III) In case of material defects of delivered objects, M&P must and may, at its discretion, first provide rectification or replacement deliveries within an appropriate period. Should this fail, i.e., if rectification or the replacement delivery becomes impossible, unreasonable, delayed inappropriately or is refused, the principal may withdraw from the contract or reduce the purchase price accordingly.
- (IV) If a defect is due to fault of M&P, the principal may demand compensation under the requirements for damage compensation of Section 8.

- (V) In case of defective components of other producers which M&P cannot rectify due to licensing or factual reasons, M&P will, at its discretion, assert its guarantee claims against the producers and suppliers for the principal's account or assign these claims to the principal. Guarantee claims against M&P for such defects are only granted under the other requirements and in accordance with these General Terms and Conditions if the assertion of the above-stated claims against the producer and supplier proved unsuccessful in court or is impossible, e.g., due to insolvency. The limitation period of the respective guarantee claims of the principal against M&P is suspended for the duration of such legal disputes.
- (VI) Guarantee claims are not granted if the principal alters the delivery object or has the delivery object altered by a third party without M&P's consent and defect rectification becomes impossible or unreasonably difficult thereby. In any case, the principal must bear the additional defect rectification costs caused by the changes.
- (VII) Any deliveries of used items agreed with the principal in individual cases will be performed under exclusion of any guarantees.

**Section 7 Property Rights**

- (I) In accordance with this Section 7 of these General Terms and Conditions, M&P assures that delivery objects are free from commercial property rights or copyrights of third parties. Every contract partner must notify the other contract partner in writing without delay if claims are asserted against them due to infringements on such rights.
- (II) If a delivery object infringes on commercial property rights or copyrights of a third party, M&P will, at its discretion and for its own account, alter or replace the delivery object so that third-party rights are no longer infringed, but so the delivery object continues to fulfil its contractually agreed functions or provide according usage rights to the principal through the conclusion of a licensing agreement. If M&P is unable to do so within an appropriate period, the principal may withdraw from the contract or reduce the purchase price accordingly. Any damage claims of the principal are subject to the restrictions of Section 8 of these General Terms and Conditions.
- (III) In case of rights infringements by other producers' products that were delivered by M&P, M&P will, at its discretion, assert its claims against the producers and pre-suppliers for the principal's account or assign these claims to the principal. In such cases, claims against M&P are only granted in accordance with this Section 7 if the assertion of the above-stated claims against the producer and supplier proved unsuccessful in court or is impossible, e.g., due to insolvency.

**Section 8 Liability for Damages Due to Fault**

- (I) M&P's liability for damages, for whatever legal reason, especially due to impossibility, delay, defective or incorrect deliveries, breaches of contract, violations of obligations during contract negotiations or unlawful acts, is, where based on fault, limited by this Section 8.
- (II) M&P is not liable for simple negligence of its bodies, legal representatives, employees or other vicarious agents, except for breaches of essential contractual obligations. Essential contractual obligations are the obligations to deliver and install the delivery object on time, assure the delivery object's freedom from legal defects and material defects that limit its functionality and usability more than insignificantly and consultation, protection and diligence obligations that enable the principal to use the delivery object in accordance with the contract or that are in place to protect the life and limb of the principal's employees or of third parties or to protect the principal's property from significant damage.
- (III) If M&P is liable for damages under Section 8 (II), this liability is limited to damages foreseen by M&P during contract conclusion or in consideration of the circumstances known to M&P as potential consequences of breaches of contract or that M&P should have known or should have foreseen when practicing customary due diligence. Compensation for indirect or subsequent damages due to defects of a delivery object can

- only be provided if such damages were to be typically expected when using the delivery object as intended.
- (IV) In case of liability for simple negligence, M&P's compensation obligations for material damages and resulting asset damages is limited to EUR 300,000 per damage case (depending on the current coverage amount of M&P's liability insurance), including for violations of essential contractual obligations.
  - (V) The above-stated liability exclusions and limitations apply equally to M&P's bodies, legal representatives, employees and other vicarious agents.
  - (VI) If M&P provides technical information or consultation and if this information or consultation is not part of the services owed by M&P contractually, they will be provided free of charge under exclusion of any liability.
  - (VII) The restrictions of this Section 8 do not apply to M&P's liability for intent, guaranteed characteristics, injuries to life, limb or health to M&P's liability under the German Product Liability Act [Produkthaftungsgesetz, ProdHaftG].
- (I) M&P processes the data received as part of contract conclusion or when registering for the WinMOD Customer Center in accordance with applicable legal requirements. This especially includes personal data, e.g., one's name, telephone number and email address. This data may be provided to third parties for contract fulfillment.
  - (II) In its area of applicability, M&P takes any measures required by the applicable laws for this data. For more information, please see M&P's Data Privacy policy at <https://www.winmod.de/en/index.php?page=datenschutz>.

## Section 12 Final Provisions

### Section 9 Retention of Title

- (I) The retention of title agreed hereafter serves to secure any existing and future claims of M&P against the contract partner from the delivery relationship between the contract partners (including balance claims from current account arrangements limited to this delivery relationship).
  - (II) M&P will retain title to any goods delivered by M&P to the contract partner until all claims have been fully settled.
  - (III) The contract partner must store reserved goods for M&P free of charge. In case of seizures or other intervention by third parties, the contract partner must notify M&P without delay to allow M&P to file suit in accordance with Section 771 of the German Code of Civil Procedure [Zivilprozessordnung, ZPO]. If the contract partner fails to fulfil this obligation, he will be liable for any resulting damages.
- (I) The exclusive place of jurisdiction for any disputes that may arise from the business relationship between M&P and the principal is the registered office M&P, Neuendorfstr. 15, 16761 Hennigsdorf, Germany. M&P has the right to also file suit with the competent court of the principal or any court that may be the competent court for the place of fulfillment of the obligation. Applicable legal regulations on exclusive places of jurisdiction remain unaffected by this regulation.
  - (II) The relationship between M&P and the principal is governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is excluded.
  - (III) If contracts or these General Terms and Conditions contain regulatory gaps, the legally valid regulations that the contract partners would have agreed to in accordance with the economic aims of the contract and the purpose of these General Terms and Conditions had they been aware of the regulatory gap shall be considered to be concluded.

Valid: June 2018

### Section 10 WinMOD Software Maintenance Service

M&P provides its Software Maintenance Service Standard for 6 months as of the delivery date. The WinMOD Software Maintenance Service Standard includes free technical support for the contract partner by telephone or email or via online remote support. During this period, M&P will continue to provide updates to the WinMOD system software free of charge. To continue to use the described WinMOD support services and the WinMOD update services after the WinMOD Software Maintenance Service Standard expires, a WinMOD software maintenance service agreement may be concluded for a fee. The WinMOD software maintenance service agreement will expire after 12 months without requiring termination and may be extended for 12 months if desired by the contract partner.

- (I) Service Exclusion  
Rectification of disruptions and damages caused by improper treatment by the contract partner, third-party intervention or force majeure is not part of the object of WinMOD software maintenance services. The same applies to damages and disruptions caused by environmental conditions at the place of installation, failure to supply or incompatible electricity, erroneous hardware or other intervention for which M&P is not responsible.
- (II) WinMOD Customer Center  
The WinMOD Customer Center, which can be visited on the website <https://www.winmod.de/en/>, extends the services and support for the WinMOD Software Maintenance Service (Section 10). The serial number and license number of the contract partner's dongle is used to log in. Authorized users only consist of licensed contract partners and partners of the WinMOD Software Maintenance Service. The contract partner must keep the serial number and license number required for logging in secret. Under the current state of technology, error-free and/or permanently available data communication via the Internet cannot be guaranteed. M&P is therefore not liable for assuring permanent and undisrupted availability of the WinMOD Customer Center.

### Section 11 Data Protection