

## General terms and conditions

- A. Validity of the Terms and Conditions of **Meissen Keramik GmbH (hereinafter referred to as MK)**
- B. Terms of Purchase and Contracts
- C. General Terms of Service

### **Special clause re. BDSG:**

Our contractual partners authorize us to save and process, subject to waiver of a separate notification, personal data in the scope of the BDSG (German Federal Data Protection Act) to the extent necessary for execution of the contract and the contractual relationship.

### **Business partners**

We conclude contracts exclusively with legal entities, not with consumers.

#### **A. Validity of the Terms and Conditions of MK**

These Terms and Conditions shall apply constantly and exclusively for the contractual relationship between MK and its business partners, even if they are not explicitly referred to in individual transactions. Any terms and conditions of our business partners shall only become an integral part of the contract to the extent that we have explicitly agreed to the validity thereof. This requirement of approval shall apply in all cases even if we - knowing the general terms and conditions of the contractual partner - have performed the service to that partner without reservation.

#### **B. TERMS OF PURCHASE AND CONTRACTS**

##### **B.1**

Our written purchase order shall be decisive regarding the contents of the contract, if applicable, together with our written confirmation of the contract.

##### **B.2**

The requirement of written form within the meaning of these Terms and Conditions shall also include fax or e-mail.

##### **B.3.01**

The price shown in the purchase order shall be binding.

##### **B.3.02**

Unless there is any deviating agreement regarding Incoterms 2010 of the International Chamber of Commerce (ICC), the prices shall be understood franco destination.

##### **B.3.03**

The prices shall be understood excluding the applicable legal VAT.

##### **B.3.04**

The prices include the costs of packaging and of transport insurance.

##### **B.3.05**

The prices also include any other costs of the supplier's.

##### **B.3.06**

Ancillary services shall not be remunerated separately.

##### **B.3.07**

MK shall be authorised to return packaging that is in good condition to the supplier at the supplier's costs. Shipping instructions for packaging shall be highlighted on the delivery note.

##### **B.4.01**

Unless otherwise agreed, payment shall be effected within 15 days less 3% discount or within 30 days net via means of payment to be determined by MK.

##### **B.4.02**

The date of receipt of the invoice shall be decisive for calculation of the payment and discount deadline. Any delivery performed before the agreed date shall not affect the beginning of the period of payment determined by receipt of the invoice.

##### **B.5.01**

The supplier shall neither assign their contractual delivery obligations in whole nor partially to third parties without the written consent of MK.

##### **B.5.02**

The supplier agrees that MK shall be entitled to offset all of its own claims, and those of all its affiliated companies, against the existing claims of the supplier or its subsidiaries or associated companies. Offsetting shall also be admissible if one party has agreed to cash payment and the other party has agreed to payments via bills of exchange or another service on account of performance. The supplier shall have a right of offsetting or of retention only regarding counterclaims that have become final or are undisputed.

##### **B.6.01**

Agreed delivery deadlines are fixed dates and must be complied with.

##### **B.6.02**

If the supplier recognizes that agreed delivery periods and deadlines cannot be complied with, it shall communicate that circumstance immediately in writing.

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#### **B.6.03**

The place of performance for all deliveries and services shall be the destination specified by MK.

#### **B.6.04**

In case of default in delivery, MK shall be entitled, upon expiry of a reasonable period without effect, to the legal claims - rescission and compensation for damages - in lieu of the performance.

#### **B.7.01**

If and to the extent that MK is obligated to examine the goods upon delivery, the period granted for examination of the goods and for notification of an obvious defect shall amount to 14 working days after receipt of the delivery.

#### **B.7.02**

The period for notification for hidden defects amounts to 40 days after discovery of the defect. Defects shall be considered as hidden defects *inter alia* if, in case of heat-sealed goods, they cannot be determined before the packaging has been opened. For deliveries of goods to a destination that does not correspond to the address of one of our registered offices, the period for notification of defects shall always be 40 days upon discovery of the defect.

#### **B.7.03**

MK shall be fully entitled to the legal claims for defects. The claims for defects shall also cover deliveries from the supplier's subcontractors.

#### **B.7.04**

MK shall be entitled to request at its own choice, in terms of subsequent performance, elimination of the defect or the provision of goods that are free from defects and/or the creation of a new deliverable, the principle of proportionality considered.

#### **B.7.05**

The execution of the subsequent performance shall be effected as quickly as possible subject to agreement with MK and in consideration of MK's operational issues.

#### **B.7.06**

In case subsequent performance is not executed within a reasonable period of time or if it fails

twice, MK shall have the rights of rescission, reduction in price, damages and / or refunding of expenses.

#### **B.7.07**

The claims for defects shall be time-barred pursuant to the legal provisions.

#### **B.7.08**

All costs related to subsequent performance shall be borne by the supplier, including the costs e. g. for taking-back, dismantling, transport, travel, labour, material, planning, documentation resulting from the subsequent performance.

#### **B.7.09**

To the extent that costs incur for MK related to the subsequent performance, we shall be authorised to invoice them at locally customary prices.

#### **B.8**

Should individual provisions of these Terms and Conditions be completely or partially ineffective, all the remaining provisions shall remain nevertheless effective. For the settlement of the matter in question, the invalid provisions shall be replaced for the purpose of closing the gap in consideration of the supplementary interpretation of the contract based on the provisions of §§ 133, 157, 242 BGB <German Civil Code>.

#### **B.9**

The supplier shall maintain confidentiality towards third parties regarding all operating processes, equipment, facilities, documents etc. of MK and their customers that come to the supplier's knowledge, even after submission of the relevant offers and / or performance of the contract. The supplier shall impose appropriate obligations on its vicarious agents or assistants.

#### **B.10**

MK explicitly points out, pursuant to § 33 of the Federal German Data Protection Act (BDSG), that it will store the supplier's data in the scope of the BDSG. The supplier agrees to that.

#### **B.11.01**

In the case of goods arriving too early, the invoice shall be valued at the delivery date specified by

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MK in the contract. The valuation date shall be considered as date of receipt of invoice.

#### **B.11.02**

In case of faulty goods or services or of partial delivery contrary to the contract, the invoice shall be valued at the date when the delivery is free from defects or the date of complete delivery. The valuation date shall be considered as date of receipt of invoice.

#### **B.12.01**

German Law shall apply exclusively to contracts between MK and its business partners, with the UN Convention on the International Sale and Purchase of Goods (CISG) being excluded.

#### **B.12.02**

Meissen shall be the exclusive legal venue. However, MK shall be entitled to sue the business partner at the location of the latter's registered offices.

### **C. General terms of service**

#### **C.1. Order confirmation / contents of the contract / minimum order values / communication / etc.**

##### **C.1.01**

MK's written order confirmation shall be decisive for the contents of the relevant contract. Oral arrangements related to the conclusion of contracts involving MK staff who are not authorised to represent the company also require the written confirmation of MK to become effective.

##### **C.1.02**

Specifications of qualities regarding products and services of MK shall only be imputed to MK if such specifications come from MK or have been performed by explicit instruction of MK or have been explicitly authorised by MK or if MK has known these specifications or should have known them for four weeks, and has not rejected them. Assistants of MK within the meaning of § 434 para. 1 BGB do not include authorised dealers and customers of MK acting as resellers. A sufficient correction of the specifications of

qualities within the meaning of § 434 para. 1 BGB may be effected in any case on MK's homepage under the address: [www.meissenkeramik.de](http://www.meissenkeramik.de).

##### **C.1.03**

The specifications of the contractual merchandise are based on DIN EN 14411 in its relevant sections, especially Annex G, B I a. Moreover, specifications of qualities imputable to MK that include measurable values shall be understood to include a tolerance of  $\pm 10\%$ .

##### **C.1.04**

The customer shall send orders and execution re-quests in text form exclusively to the fax numbers or e-mail addresses communicated to it to this effect.

##### **C.1.05**

In case the customer opts for deviating channels of communication, it shall bear the risk of timely processing.

##### **C.1.06**

Ceramic tiles are produced in a wide variety of for-mats. Thus, different numbers of these are required per square meter of area covered. The calculation of the prices per square meter includes the relevant joint widths determined in the laying specifications.

##### **C.1.07**

The goods are packed in cardboard boxes and shrink-wrapped on pallets. Pursuant to the requirements of the Packaging Ordinance (German Verpackungsverordnung, VerpackV), the companies INTERSEROH, contract no. 25454, and DSD, contract no. 4135302, have been commissioned to recycle the packaging we have put in circulation. All special packaging exceeding this scope shall be charged to the customer.

##### **C.1.08**

To the extent that packaging is necessary, MK shall carry out packaging pursuant to the existing re-quirements and proceed according to § 4 VerpackV.

##### **C.1.09**

Products labelled 1st grade meet the require-

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ments of the relevant standard DIN EN 144 11. Products labelled 2nd grade do not meet the requirements of the above-mentioned standard and have technical and / or optical defects that exclude qualification for 1st grade.

#### **C.1.10**

Due to the specificities of ceramic production, the goods delivered tend to differ in colour and polish and thus in most cases fail to correspond with the presented hand samples. Especially in the case of mosaics, a play of colours is usually part of the normal appearance. Moreover, there are customary tolerances regarding size and thickness.

#### **C.1.11**

Any floor covering is subject to wear depending on the field of application, the period and frequency of utilization, type and degree of soiling as well as the hardness and wear resistance of the covering material. The classification according to stress groups refers to the wear resistance of the glazes and not to their load-bearing capacity regarding pressure and heavy weights. Glazed earthenware tiles have a point load capacity limited to 2,500 N.

#### **C.1.12**

Only such products are suitable for processing (especially laying) in commercial and public buildings that have been explicitly admitted by MK for such purpose. Thus, the customer should consider the relevant recommendations for use pertaining to the products.

#### **C.1.13**

Glaze cracking (Craquelé) developing in some artistic and decorative glazes - sometimes only after laying - are typical for these products. Craquelé does not impair the practical use of the tiles.

#### **C.1.14**

Drawings, execution plans, project proposals, laying plans, material summaries, drafts of performance specifications and the like prepared by MK are on a courtesy basis only, they are not binding and must in all cases be checked for correctness by the customer. MK does not accept any liability for the correctness thereof.

#### **C.1.15**

MK shall be authorised to sell and assign claims against its customers. Any other contractual assignment prohibitions shall not apply.

### **C.2. Trademarks and proprietary rights**

#### **C.2.01**

MK shall be authorised to apply its own company logos and trademarks. The customer shall not be allowed to remove such labels applied by MK.

#### **C.2.02**

Subsequent surface changes due to subsequent firing of the articles, especially the application of decors, require the prior written consent of MK.

#### **C.2.03**

MK's contractual partner is obligated also to agree upon the provisions C.2.01 and C.2.02 when reselling the products.

### **C.3. Logistics concept, transfer of risk and freight costs**

#### **C.3.01**

ATTENTION! The clauses of this item 3 regulate a specific logistic procedure applicable between MK and the customer.

#### **C.3.02**

In order to ensure an efficient flow of merchandise and to enable economically efficient work based on productive logistics, the transfer of goods must be organised so precisely that e. g. overloading of the loading platforms is avoided. This is ensured, among other things, by separating the delivery modes on principle. To this effect, a differentiation is made between EXW deliveries and deliveries involving freight carriers.

#### **C.3.03**

On principle:  
EXW deliveries shall be made unless C.3.04 applies. This means that all deliveries shall be made ex works subject to the following requirement:  
· Pick-up requires pre-announcement with a period of three working days via fax or e-mail and

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- requires compliance with a precise time slot of  $\pm 60$  minutes provided by MK.
- In case these conditions are not met, the merchandise can only be collected after a new time slot has been coordinated with MK.

In such case, MK reserves the right to charge the customer with an administration charge of net EUR 100 for the re-scheduling.

#### **C.3.04**

For the German mainland (i. e. excluding the German isles) and for foreign regions specified in the appropriate current freight rate table (will be communicated upon request), the provision of delivery involving freight carriers shall apply: meaning that delivery will be made exclusively by a forwarding agent appointed by MK in the scope of a complex logistics system.

#### **C.3.05**

For the transports, the customer shall pay a lump-sum price resulting from the relevant applicable freight rate table to be provided to the customer upon request.

#### **C.3.06**

All purchase contracts shall be considered as contract of sale involving the carriage of goods in terms of § 447 BGB (German Civil Code). § 447 para. 2 BGB shall not apply.

#### **C.3.07**

The risk shall be passed on to the customer upon transfer of the merchandise to the forwarding agent.

#### **C.3.08**

The Customer shall bear the costs of shipment.

#### **C.3.09**

The customer shall not be authorised to give instructions to the forwarding agent regarding the shipments.  
This shall also apply to partial shipments (please refer to item C.5.02).

#### **C.3.10**

Even if the principle of delivery involving freight carriers applies pursuant to item C.3.04, the following exception shall be possible:  
Provided that the customers can prove on a

case-by-case basis that a transport organised by themselves would be more advantageous for them, they shall be authorised to collect the goods themselves or to have them collected pursuant to the following provisions:

- Pick-up by the customer requires pre-announcement with a period of three working days via fax or e-mail and
- requires compliance with a precise time slot of  $\pm 60$  minutes provided by MK.
- Due to the appropriate administrative work, we reserve the right to charge a lump-sum of net EUR 100 in case of pick-up by the customer.

#### **C.3.11**

Only one destination shall be possible per purchase. This means e. g. that in case of a purchase order concerning a volume of goods to be forwarded to two different destinations, MK shall generate two order confirmations with separately calculated freight costs based on the freight rate table.

#### **C.3.12**

The combination of several consignments for one destination is only possible if the customer requests that explicitly by fax or email and if MK has corresponding scheduling scope. In such case, delivery periods will be extended and / or delivery deadlines will be postponed pursuant to item C.4.

#### **C.3.13**

The customer shall not be entitled to change the destination after conclusion of the contract.

#### **C.3.14**

Freight costs shall be specified separately and are excluded from any rebate or discount.

#### **C.3.15**

Insurance for the shipment will only be provided upon the customer's written request and at the latter's charge.

#### **C.3.16**

For other types of consignment, any risk shall also be transferred to the customer when the goods leave the works / warehouse of MK.

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### **C.3.17**

In case shipment is delayed due to circumstances for which the customer is responsible, the risk shall be transferred to the customer at the time of readiness for shipment - in case of agreed pick-up by the customer, at the time of provision on the agreed delivery date.

### **C.3.18**

For euro-pallet shipments, MK shall take back the same number of exchangeable pallets of the same type and quality. Only such pallets shall be exchangeable as are not in need of repair. For each pallet for which no exchangeable counterpart is transferred to MK, MK shall charge the customer with a net sum of EUR 7.50.

### **C.3.19**

If MK takes back goods on a goodwill basis - i. e. if there is no obligation to do so - the customer shall bear the freight charges.

### **C.3.20**

The freight charges for the forwarding of product samples that MK provides upon the customer's request shall be borne by the customer.

## **C.4. Delivery period**

### **C.4.01**

Any delivery periods agreed shall apply ex works unless otherwise specified explicitly. Such delivery periods begin on the date specified in the order, at the earliest, however, if the documents, authorisations, delivery call-offs and delivery addresses to be provided by the customer are available, all details of the order have been clarified (please also refer to C.3.12) and the customer has effected any agreed advance payments and / or provided collateral. In case a delivery period has been agreed, it shall be extended appropriately if the customer fails to provide documents, authorisations, notifications of the delivery address, advance payments or collateral to be provided by it on time. In case a delivery period has been agreed, it shall be extended appropriately if the customer fails to provide documents, authorisations, notifications of the delivery address, advance payments or collateral to be provided by it on time. Delivery

dates shall be postponed or delivery periods extended accordingly if the prerequisites for the services to be performed by MK, which must be fulfilled directly by the customer or by third parties, are not satisfied in due time or if changes have been made upon request of the customer within the meaning of C.3.12.

### **C.4.02**

If the customer requests changes to the order after the order confirmation has been issued, the delivery period shall only begin after confirmation of the change by MK. The delivery date shall be postponed accordingly.

### **C.4.03**

The performance period shall be duly extended in the event of occurrence of unforeseen impediments that MK cannot avert despite exercising the due diligence that can reasonably be expected considering the circumstances of the case, e. g. total or partial unavailability of subcontractors, for which MK is not responsible. In such case, MK may rescind the contract.

### **C.4.04**

A claim for damages instead of performance or for compensation due to default shall be exempted in the cases of item C.4.03 if MK has informed the customer immediately about the impediments to performance.

### **C.4.05**

The same shall apply to fixed-date transactions if the delays specified above do not cease to exist in time.

### **C.4.06**

Any damages to be provided by MK on account of default shall be limited to the negative interest.

## **C.5. Partial deliveries / excess quantities and shortfall in quantities**

### **C.5.01**

In the case the goods are a special production, MK shall be entitled to deliver up to 10 % excess quantities without this being considered as a breach of obligations. The purchase price shall be amended accordingly.

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#### **C.5.02**

Partial deliveries shall also be admissible to an extent that the customer can reasonably be expected to accept.

#### **C.5.03**

If MK makes use of the right of partial delivery or excess delivery, payments for goods already delivered cannot be withheld for this reason.

### **C.6. PRICES**

#### **C.6.01**

Unless otherwise agreed, the prices shall be quoted ex works / warehouse, exclusive of packaging.

#### **C.6.02**

The prices - the same applies to costs and interest - shall be subject to the applicable value-added tax.

#### **C.6.03**

In case the cost factors change after conclusion of contract, especially the prices for raw or auxiliary materials, wages and transport costs, MK may adapt the prices accordingly if the period between order confirmation and delivery exceeds 4 months.

#### **C.6.04**

The price lists in force on the order date shall apply. The price lists shall be communicated upon request.

#### **C.6.05**

On principle, the price lists shall be valid for one calendar year. However, MK reserves the right to make changes during the year. Such changes shall always become valid with six weeks' prior notice as at the end of the quarter, upon publication via internet or by notification.

#### **C.6.06**

Neither rebates nor discounts shall be granted regarding separately charged freight and packaging costs; these shall also be excluded from the calculation of any bonuses agreed.

### **C.7. Terms of payment**

#### **C.7.01**

Advance payments shall be subject to the provisions of the German Value-Added Tax Act (UStG).

#### **C.7.02**

The date of crediting to the account of MK shall be decisive for the timeliness of payment.

#### **C.7.03**

Unless otherwise agreed, payments to be made to MK shall be due at the latest 14 days after the date of invoice. Should this date be exceeded, the debtor will be in default of payment.

#### **C.7.04**

On account of default in payment on the part of the customer, MK shall be entitled to request interest to the amount of 12 % above the base rate. The proof and the assertion of even higher damage shall be reserved.

#### **C.7.05**

Place of performance for payments shall be the registered office of MK.

#### **C.7.06**

The customer shall only be allowed to offset against uncontested or lawfully established claims.

#### **C.7.07**

The customer does not have any right of retention. The rights pursuant to § 320 of the German Civil Code (BGB) shall remain unaffected if and to the extent that MK has not complied with its warranty obligations.

#### **C.7.08**

MK accepts cheques for payment solely as performance on account.

#### **C.7.09**

Payment by bills of exchange shall be excluded; MK does not accept bills of exchange as payment. In case MK accepts bills of exchange due to specific agreements to the contrary, this shall be solely in terms of performance on account.

#### **C.7.10**

Bills of exchange accepted in exceptional cases must be discountable. Discount charges and other costs shall be borne by the customer / purchaser and shall be due immediately upon invoicing without any deduction.

#### **C.7.11**

In case of exceptionally agreed payments by bills of exchange MK may - without any specific agreement being required - demand immediate payment of all unpaid and even non-due, otherwise undisputed trade receivables if the discount charges invoiced are not paid within 8 days, received bills of exchange have not been discounted by the bank of MK or discounted bills of exchange have been recharged or rejected. The same applies if a customer's cheque has been rejected.

#### **C.7.12**

Should the customer's financial situation deteriorate significantly after conclusion of the contract or - if the customer's declaration of intent is required for conclusion of the contract - after the last declaration of intent of MK with a view to conclusion of the contract, e. g. in case of protested bills of exchange or cheques, MK may, at its discretion, demand advance payment or collateral for all deliveries and services still to be performed under the same legal relationship (§ 273 of the German Civil Code (BGB)). If the customer does not comply with this demand, MK may rescind said contracts or, after determining a specific period, claim damages instead of the performance to the amount of 25 % of the total amount of the order not executed, provided that the customer does not furnish proof of less damage. MK may also demand compensation for damage exceeding the lump sum.

#### **C.7.13**

The repayment of multiple claims and of principal claims, interest and costs shall be performed according to § 366 para. 2, § 367 para 1. BGB. However, to that extent, the defence of non-fulfilment of the contract pursuant to § 320 BGB shall remain with the debtor.

#### **C.7.14**

As of 1 February, 2014, the current national

payment scheme (direct debit) is replaced by the new European SEPA - payment scheme.

### **C.8. Inspection and defect notification obligation**

#### **C.8.01**

Upon delivery, the customer shall immediately examine the consignments of MK for their serviceability and correctness.

#### **C.8.02**

Initially, the customer shall check the shipment for damage to packaging or anomalies of the packaging. Wherever such exist, the customer shall remove the packaging and examine the goods. If the customer detects isolated defects, it shall intensify the examination.

#### **C.8.03**

In any case, the customer shall take random samples of the goods delivered. The more defects are discovered, the more intensive shall be the examination performed by the customer.

#### **C.8.04**

MK shall be notified in writing of obvious defects without delay, at the latest within 6 days of arrival at the destination, specifying the exact complaints in detail.

#### **C.8.05**

The customer shall also notify MK of concealed defects in this form without delay upon discovery thereof.

#### **C.8.06**

In case of violations of the provisions C.8.04 or C.8.05, any possible warranty claims shall be excluded.

#### **C.8.07**

MK must also be notified in writing of defects that become visible only after opening the packages, within the specified period, at least, however, six months after delivery, in any case before the processing of the goods delivered. In case of violation of this provision, any possible warranty claims shall be excluded.

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#### **C.8.08**

Before processing (i. e. especially: laying), the goods shall also be checked for colour deviations by cleaning the tiles. If the goods are nevertheless processed, the processed goods are considered as accepted.

#### **C.8.09**

Obviously defective goods shall not be processed. If the goods are nevertheless processed, the processed goods are considered as accepted.

#### **C.8.10**

In case the defects become obvious during processing, the processing shall be stopped. If the goods are nevertheless processed, the processed goods are considered as accepted.

#### **C.8.11**

In case of orders of goods with specific features that cannot be verified without any specific experimental investigation, such as surface coatings, the packaging of the goods shall be checked to ascertain whether it includes a note pointing out such specific features. If this is not the case, the missing note shall be specified in writing within seven days upon receipt of the goods. In case the goods are processed despite the missing note, any warranty and liability regarding the absence of said features shall be excluded. In case the obligation regarding notification is violated and in case of processing, the processed goods are considered as accepted.

#### **C.8.12**

Goods that are subject to complaint shall be kept for inspection by MK in the condition in which they were at the time of detection of the defect. In case of violation of this provision, the customer has to prove that the condition of the goods has not deteriorated due to its actions and that subsequent performance has not become more expensive.

#### **C.8.13**

The customer has to appropriately store the goods subject to complaint until the complaint is clarified. Any deterioration of the goods followed by the loss of the goods due to the violation of this provision shall be borne by the customer.

#### **C.8.14**

In case a defect only becomes obvious after processing, dismantling (removal of the tiles) shall only be permitted after MK has been given the opportunity to inspect the defect within an appropriate period of time or if MK has agreed to the dismantling in writing. In case of violation of this provision, any possible warranty claims shall be excluded.

#### **C.8.15**

For MK distributors with written Distributor Agreements, the MK Distributor Conditions shall apply additionally to the procedures of notification of defects.

### **C.9. Warranty**

#### **C.9.01**

The statutory warranty period shall apply.

#### **C.9.02**

In deviation from C.9.01, the warranty period for goods sold by the customer to resellers shall be 5 years upon delivery to the customer. In case the customer is authorised within such period to raise the defence of limitation towards its client, the shorter warranty period of the customer vis-à-vis its client shall also apply within the relationship with MK if the customer fails to do so in time.

#### **C.9.03**

Any liability or warranty for minor breaches of obligation or slight defects shall be excluded. In case the customer is entitled to subsequent performance, MK shall decide whether the subsequent performance is to be made by remedying the defect or delivering a defect-free part.

#### **C.9.04**

Only then shall work on goods delivered by MK or on other services performed by MK be considered as defect elimination or rectification work

- if the defectiveness has been expressly acknowledged by MK
- or if defect notifications can be proved to have been submitted
- and if these proven defect notifications are justified.

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If these conditions are not met, such work shall be considered as extra performance subject to costs.

#### **C.9.05**

Apart from this, rectification work or substitute deliveries by MK will be rendered as extra performance subject to costs, unless they are expressly effected in recognition of a legal obligation.

#### **C.9.06**

If the warranty period is inhibited or interrupted by activities or substitute deliveries performed by MK, such inhibition or interruption shall only apply to the volume affected by the substitute delivery or rectification.

#### **C.9.07**

The customer shall give MK the time and opportunity required to perform the rectification and substitute deliveries owed under the warranty. The customer may only eliminate the defect directly or through third parties and demand reimbursement of the incurred costs from MK in urgent cases to avert disproportionately high damage or if MK is in default of elimination of a defect; in this case, MK shall be informed immediately.

#### **C.9.08**

The customer may rescind the contract if the subsequent performance to be performed optionally has not resulted in the rectification of the defect after an acceptable number of attempts whose frequency must be judged considering a reasonable number of attempts. At least three attempts of subsequent performance are considered as reasonable.

#### **C.9.09**

If MK has rejected subsequent performance despite the customer's corresponding entitlement to subsequent performance, the customer shall be entitled to rescind the contract immediately.

#### **C.9.10**

The same applies if MK has not performed a subsequent performance to which MK is entitled within an acceptable period of time to be determined by the customer.

#### **C.9.11**

The customer shall only have a right to reduction of the price if MK agrees to that.

#### **C.9.12**

All further claims on the part of the customer shall be excluded.

#### **C.9.13**

MK will not provide warranties for damage beyond the responsibility of MK. This includes e. g. damage resulting from the following reasons: inappropriate or incorrect utilisation, faulty assembly by the purchaser or by third parties, natural wear and tear, faulty or negligent treatment.

#### **C.9.14**

MK shall not provide any warranty related to components provided by the customer. The customer alone shall be responsible for the suitability and condition of such components, unless expressly agreed to the contrary.

#### **C.9.15**

In the scope of subsequent performance, MK shall have no obligation to refund the costs resulting from the fact that the customer had already processed the goods.

### **C.10. Transfer**

#### **C.10.01**

The contractual partner shall not transfer the rights and obligations resulting from the contract to third parties without the written consent of MK. This shall not apply to the advance assignment of the purchase price claim in the scope of an extended reservation of title.

### **C.11. Damages**

#### **C.11.01**

The limitations of liability according to these Terms and Conditions shall not apply to damage due to injury to life, body or health of a person. In all the other respects, the following provisions shall apply.

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#### **C.11.02**

MK shall only be held liable for damage which MK, a legal representative or a vicarious agent have caused intentionally or due to gross negligence. In all the other respects, liability shall be excluded.

The above regulations in C.11.01 and C.11.02 notwithstanding, MK shall be only be liable, as provided by the following stipulations, for the immediate damage, i. e. not for damage which has not been caused to the item delivered as such.

#### **C.11.03**

Liability for consequential damage due to a breach of obligation, also within the scope of an obligation of supplementary performance, is excluded.

#### **C.11.04**

This shall also apply in case of damage due to tort.

#### **C.11.05**

In extension of the above-mentioned stipulations, MK shall be liable for damage which exceed the damage caused to the item delivered as such only in case of intent or gross negligence, in the scope of the product liability law and in the case of lack of properties which are expressly warranted, provided that this warranty was specifically intended to protect the purchaser against damage which has not been caused to the item delivered as such.

#### **C.11.06**

In case of damage resulting from infringement on an essential contractual obligation, MK shall only be liable for the foreseeable damage which will typically occur.

#### **C.11.07**

Within an ongoing business relationship, MK shall be entitled to settle pecuniary claims on the part of the customer, unless these are due to tort, by credit notes. On termination of the business relationship, any existing credit note amounts shall be paid off by MK.

### **C.12. Call-off orders**

#### **C.12.01**

If call-off orders are not called off within 4 weeks after expiry of the call-off period, MK shall be entitled to demand payment.

#### **C.12.02**

This also applies to call-off orders without agreed call-off period if more than 4 months without call-off have expired since MK's notification of readiness for shipment has been received.

### **C.13. Storage / default of acceptance**

#### **C.13.01**

Should storage of finished goods at MK's for a limited period of time be expressly agreed in exceptional cases or should storage become necessary due to default in acceptance of delivery, MK shall not be liable for damage which might occur in spite of reasonable precautions having been taken.

#### **C.13.02**

Nor shall MK be obliged to insure any stored goods.

#### **C.13.03**

In case of default in acceptance of delivery, MK shall be entitled to store the goods at the customer's risk and for the customer's account in a commercial warehouse.

#### **C.13.04**

In case of storage at MK, MK shall be entitled to invoice 0.5% of the invoice amount per month, at least however € 30 and another € 25 as of each second completed cubic metre of goods per month.

#### **C.13.05**

The two above-mentioned figures shall also apply in case shipment should be delayed for over two weeks beyond the notified date of readiness for shipment at the Customer's request.

#### **C.13.06**

If the customer does not accept the ordered goods, despite a deadline being fixed, MK shall

be entitled independently of the proof of the damage actually occurred to demand 25% of the agreed price as lump sum settlement, unless the customer furnishes proof of a lower damage.

#### **C.14. RETENTION OF TITLE**

##### **C.14.01**

All shipments shall be made subject to the retention of title.

##### **C.14.02**

This retention plus the extension specified below shall apply pending payment of all claims from the business relationship with the customer and pending complete exoneration regarding contingent liabilities MK has undertaken in the customer's interest.

##### **C.14.03**

The items delivered must neither be pledged nor transferred by way of collateral.  
The customer shall inform MK immediately in writing if and to the extent that third parties have accessed goods belonging to MK.

##### **C.14.04**

MK shall be entitled to request surrender of its reserved goods for important reasons, especially in case of default in payment, against offsetting the proceeds of sale. This request for surrender shall not constitute a rescission from the contract.

##### **C.14.05**

If and to the extent that the goods returned can be sold otherwise as new by MK in the usual course of business, the Customer shall be liable to pay 10% of the invoice amount of the goods as costs for return shipping without any further proof. If sale as new is not possible within the usual course of business, the Customer shall be liable to pay another 30% of the invoice amount of the goods without any further proof for loss of value. The customer reserves the right to furnish proof of a lower percentage.

##### **C.14.06**

MK shall retain the right to assert higher damage.

##### **C.14.07**

Processing, handling, mixing or combining of the goods delivered by MK shall always be effected on behalf of MK, so that the goods remain MK's property in any state of processing, handling, and as finished goods, with the consequences of § 950 BGB (German Civil Code) being excluded. If the reserved goods are processed, mixed or combined together with other items delivered which are also subject to the exclusion of the legal consequences of § 950 BGB, MK acquires the co-ownership in the new object in the proportion of the invoice value of the goods of MK to the invoice value of the other processed, mixed or combined items. In all other respects, the product being generated shall be subject to the same provisions as the goods supplied subject to the reservation of title.

##### **C.14.08**

The customer hereby assigns all claims resulting from resale, processing, installation and other exploitation of our goods to MK. To the extent that the products sold, processed or installed by the customer include items which are not the customer's property and for which other suppliers have also stipulated a reservation of title with a clause regarding sale and advance assignment, assignment shall be effected to the extent of the share of co-ownership of MK which corresponds to the fraction of the claim; otherwise, to the full amount.

##### **C.14.09**

The authorization to collect retained by the customer despite assignment, shall expire due to revocation which shall be admissible at any time.

##### **C.14.10**

If the value of the collateral due to MK exceeds the claims of MK against the customer by over 20%, MK shall be obliged at the customer's request to release collateral to the corresponding extent at MK's choice.

#### **C.15. PLACE OF PERFORMANCE**

##### **C.15.01**

The place of performance for the services to be provided by MK shall always be the registered offices of MK.

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#### **C.15.02**

The place of performance for deliveries shall also be the registered offices of MK, especially if MK effects transport on their own behalf.

#### **C.16. PLACE OF JURISDICTION AND SUBS-TANTIVE LAW**

##### **C.16.01**

Meissen shall be agreed as place of jurisdiction for all disputes resulting from transactions based on these Terms and Conditions, with merchants, legal entities of public law and special funds under public law. Notwithstanding the above, MK shall be entitled in any case to sue the business partner at the latter's registered offices.

##### **C.16.02**

The law of the Federal Republic of Germany shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods and other uniform laws shall be ruled out.