

# General Sale and Delivery Conditions

## team magnetics GmbH

### I. General Regulations – Scope of Application

1. The following general business regulations shall apply to all present and future business relationships into which we enter with contractors, pursuant to Section 310, Paragraph 1 of the German Civil Code (BGB). This shall also apply where no express reference is made to the same in subsequent transactions. Divergent, contrasting or supplementary general business regulations of the Company shall not be incorporated into contracts even when known, unless we have expressly approved the application of the same in writing. The performance of a contract by ourselves shall not replace this written acknowledgement.
2. We unconditionally reserve our rights of exploitation of property and copyrights with regard to illustrations, drawings, calculations and other documents (hereafter, the "Documents"). The Documents may only be made available to third parties with our prior written consent, and if we are not awarded a contract, shall immediately be returned to us on demand. Clauses 1 and 2 shall correspondingly apply for the Company's documents. By way of exception, the documents may nevertheless be made available to such third parties, for which we have been authorised to assign deliveries.
3. Our offers are subject to confirmation and are non-binding unless stipulated otherwise in the order acknowledgement. With the order, the Company shall declare its contractual offer to be binding. We reserve the right to decline the order, for example, after checking the creditworthiness of the Contractor. Furthermore, we shall be authorised to accept the offer contained in the order within 14 days, through the delivery of an order confirmation or the dispatch of the ordered goods to the purchaser within this deadline. Our order confirmation shall be decisive for the content of the delivery contract. All agreements, in particular, the assumption of guarantees or financing risks, which are agreed between ourselves and the Company for the purpose of executing a contract, shall be set forth in this contract in writing.
4. The contract shall be concluded subject to the provision that we shall not carry out deliveries either in part or in full, in the event that supplies fail to match specifications or rules through no fault of our own. In the event that supplies are unavailable or only partially available, the Company shall immediately be informed of the same and the consideration for the order immediately reimbursed.
5. Orders that have been confirmed by ourselves may not be cancelled by the Company, unless we agree the same in writing on an exceptional basis. In such a case, we may demand an indemnity, the amount of which shall not exceed the contractual consideration of the Company.
6. We reserve the right to make changes to the construction and form until the delivery, albeit ensuring, while considering our own interests, that the interests of the Company are not affected in an unacceptable way.
7. The rights of the Company arising from the Contract shall only be transferable with our prior agreement.

### II. Delivery and Receipt

1. The Company shall release us with regard to the products manufactured according to its demands, specifications, etc. from all claims that third parties may make against us or against a company associated with ours on grounds of industrial property rights, copyrights, brands etc. In so far as we have concerns about these, we shall be obliged to draw the attention of the Company to them, but have no independent duty of scrutiny. The same shall apply, if the Company uses our products without our agreement in such a way that the rights of third parties may be infringed.
2. In so far as it does not already arise from the nature of the obligation, e.g. a subsequent delivery contract, we shall be authorised to make partial deliveries, when the receipt of the same is acceptable to the Company.
3. Due to production process delivery quantities may vary by +/- 3% from the ordered quantity..

### III. Prices and Payment Conditions

1. In so far as our offer or our written order confirmation does not specify otherwise, our prices shall be understood as being denominated in Euros and based on Incoterms 2000 ex works, excluding packaging and insurance. Special packaging requests by the Company shall be notified to us in writing as soon as possible and at latest, two weeks before the delivery or shipping deadline. Pallets and similar shipping material which are expressly stipulated in the invoice as loaned packaging materials are to be returned in an appropriate and undamaged condition with carriage paid. Loaned packaging will be invoiced and credited with 90% by return.
2. Official Value Added Tax is not included in our prices, with the legal amount of the same identified separately on the invoice on the day that it is issued.
3. Our invoices shall be payable within 30 days on a net basis and without deductions. Where these are paid within 14 days of the invoice date, the Company shall be authorised to deduct 2% from the net value of the products. For cashless payments, and notably transfers, the effective deadline for the outstanding payment in question shall not be that of the carrying out of the necessary transaction but the date on which the outstanding amount is received into our account. Means of payment other than cash or bank transfers to the accounts indicated by ourselves shall only be accepted by written agreement and as conditional payment. All payments shall be made net of expenses. In the event of default, late payment interest shall accrue at the legal rate of 8% basis points above the relevant base rate, as the minimum claim. We hereby reserve the right to enforce claims for injuries due to delayed performance.

4. The withholding of payments by the Company shall be excluded where counterclaims arise from another contractual relationship. If the counterclaims arise from the same contractual relationship, the withholding of payments shall only be permitted where these relate to counterclaims that are determined to be legally binding, unchallenged or acknowledged by ourselves.
5. Likewise, the Company shall only be entitled to make offsetting payments, when its counterclaims are determined to be legally binding, unchallenged or acknowledged by ourselves.
6. The Company declares that it agrees to our offsetting outstanding amounts due to it against outstanding amounts due to us, even when the due dates of the reciprocal outstanding amounts are different.

We reserve the right to change our prices correspondingly, when costs increase or decrease after the conclusion of the contract, in particular due to changes in raw materials prices. These shall be demonstrated to the Company on request. Changes in prices may only be made to compensate the relevant changes in costs and shall therefore be restricted to the cost-dependent portion of the overall price.

7. Pro-rata costs of tools shall, unless otherwise agreed in writing, be paid immediately without deductions, with 50% due when the invoice is issued and 50% when reference samples are submitted.
8. Partial deliveries shall be paid separately by the deadlines indicated in point 3. In the event that the Company does not pay in timely fashion, we may suspend the further completion of the order or demand the agreed price against the provision of the named quantity of product. The same shall apply for stand-by contracts, where the Company does not retrieve the products in regular fashion. For products purchased on a stand-by basis, the Company shall, in the absence of another written agreement, have collected the purchased goods in full within six months. Stand-by requests must be received by us at latest six weeks before the delivery deadline.
9. Our products contain precious metal elements, typically copper. The copper value is defined on the basis of the DEL-Notice (high) x Cu content weight applicable on the day of invoicing. Our quotations are calculated on a copper basis of 450,-€/100 kg. Any copper surcharges or credits will be shown separately on the invoice as copper additions or deductions. Copper processing surcharges which we incur with our copper suppliers are passed on to the same extent in the copper surcharge.

#### **IV. Credit basis**

1. A precondition for deliveries is the creditworthiness of the Company. In the event that we receive information following the conclusion of the contract suggesting that the granting of a credit for the amount arising from the contract will not be automatic, or if events occur which cast doubts on the same, in particular, if there is a notable deterioration in the financial situation (foreclosure, bankruptcy, insolvency, liquidation, change of ownership), we shall be authorised to demand appropriate prepayments or sureties or payment in cash, without concern for conflicting previous agreements.
2. Under the same preconditions, we shall be authorised after delivery to the Company to inspect the warehouses of the same, and to secure goods under retention of title on a provisional basis until payment is made in cash, without concern for conflicting previous agreements. The Company shall bear transport and temporary storage costs.

#### **V. Delivery Times**

1. Compliance with agreed delivery deadlines shall presuppose that the Company submits all the necessary documents, required authorisations and approvals, in particular of plans, and complies with the agreed payment conditions and other obligations. In the event that these preconditions are not met in timely fashion, the delivery deadlines shall be suitably extended, with our reserving the right to object on grounds of failure of contractual performance and to assert claims to our right of retention. The above shall not apply where we are responsible for the delay.
2. The agreed delivery deadline shall be extended, regardless of our rights, due to default, for the period for which there is a lasting or suspensive objection, and in particular, while the Company remains in default of its obligations arising from this or from another contract.
3. The delivery deadline shall be suitably extended in the event of measures in the context of lawful labour disputes, in particular strikes and lockouts within our own factory, or in third-party factories regardless of the legality of the industrial dispute measures, in so far as we are unaffected by any blame for acceptance, precautions or preventive measures, and additionally, by the occurrence of unforeseen events such as mobilisation, war, blockades, bans on exports and imports, in particular, legal or government instructions, shortages of raw materials or fuel, fire or closure to traffic, acts of God, in so far as such obstacles have a demonstrable influence on the completion or delivery of the objects of the delivery and occur to us, to a supplier or to a subcontractor and remain beyond our control.
4. The delivery deadline shall have been observed if by it, the products have left our plant in Nufringen, or we have given notice that they are ready for delivery.

We shall be liable pursuant to legal provisions, in so far as the underlying purchase contract is a fixed contract pursuant to Section 286, Para. 2, Item 4 of the German Civil Code (BGB) or Section 376 of the German Commercial Code (HGB). We shall also be liable pursuant to legal provisions, in so far as the Company is authorised as a consequence of a delayed delivery for which we are responsible, to claim that its interest in the subsequent fulfilment of the contract has ceased. We shall be further liable, pursuant to legal provisions, in so far as the delayed delivery is due to a deliberate or grossly negligent breach of contract on our part. In so far as the delayed delivery is not due to a deliberate or grossly negligent breach of contract on our part, our liability for damages shall be limited to the foreseeable, naturally arising injuries. The fault of our representative or vicarious agent shall be attributed to us.

We shall also be liable pursuant to legal provisions, in so far as the delayed delivery for which we are responsible is due to the culpable violation of a significant contractual obligation; in this case, however, our liability for damages shall be limited to the foreseeable, naturally arising injuries.

5. If the Company is in default on a debt or in acceptance or has culpably violated other obligations of cooperation, we shall be authorised to demand compensation for the injuries sustained in this respect, including any additional expenditures. The Company shall be allowed to produce evidence that we have not suffered any injuries at all, or that these are significantly lower than the loss allowance. This shall also apply to the case that the delivery of the object of the purchase is delayed on the wishes of the Company. We reserve the right to press further claims.
6. In so far as the Company is in default on a debt or in acceptance or has culpably violated other obligations of cooperation, or has postponed the delivery of the product at its own wish, the risk of the accidental decay or deterioration of the purchase shall be shifted to the Company as of the time when the same party defaults on debts or in acceptance, has failed to perform the outstanding obligation of cooperation or has postponed the delivery of the product at its own wish.

## **VI. Retention of Title**

1. We shall reserve ownership of the sale object until all payments arising from the business relationship have been received. In the event that there is a current account relationship, the provision shall refer to the recognised balance. This shall include, in addition to the complete payment of the full purchase price, including value added tax, any interest and other associated costs, such as freight costs to be borne by the Company.
2. While our retention of title is in effect, the Company shall be obliged to handle the sale object with care. It shall be further obliged to insure the same against fire, flooding and theft at replacement value. In so far as maintenance and inspection work is necessary, the Company shall undertake these in timely fashion at its own expense.
3. In the event of distraints or other third-party interventions, the Company must oppose these and report the same to us immediately by the fastest possible means, so that we may file a suit pursuant to Section 771 of the German Civil Procedure Code (ZPO) if necessary. In so far as the third party is not in a position to compensate us for the judicial and extrajudicial costs of proceedings, pursuant to Section 771 of the German Civil Procedure Code (ZPO), the Company shall be liable for the financial loss accruing to us. The Company shall not be authorised to make assignments as security, pledges and other uses of the goods to which we retain title which place our rights at risk. Where the Company's behaviour is contrary to the contract, particularly for payment delays, we shall be authorised to reclaim the sale object. Our reclaiming of the sale object shall constitute a withdrawal from the contract. After reclaiming the sale object, we shall be authorised to sell the same, with the proceeds to be offset against the obligations of the Company after the deduction of appropriate costs of realisation.
4. If the Company delays the fulfilment of its obligations in part or in full, the entire remaining balance plus late payment interest shall immediately fall due. We shall furthermore be authorised to withdraw from all contracts that have not yet been executed, or to refrain from all deliveries and other services in all contracts on account of the claims due to us. The Company may avoid this right of retention by arranging the issue of an absolute undated guarantee by a major German bank, German savings or cooperative bank for the full amount of the outstanding claims.
5. The Company shall be obliged to store and distinguish our goods under retention of title in a separate location.
6. The Company shall be justified in selling on the purchase object in a regular business transaction; it shall nevertheless immediately assign all of our claims, including accessory rights and sureties for the amount of the final amounts of the invoices (including value added tax) arising from the further assignment to its client or to a third party, and this independently of whether or not the purchase object has been sold on without or after further processing. We shall accept the transfer. An authorisation for the further disposal shall not be granted when the Company has defaulted on payments, has filed for bankruptcy or halts payment. Our claims assigned by the Company on a prior basis shall also relate, in the event that there is a current account relationship with its customer, to the acknowledged balance, as in the case of insolvency of the customer, to the "causal" balance which is then available. In so far as the Company is entitled to collect the corresponding claims, it shall remain authorised to do so even after the assignment. Our authorisation to collect the claims ourselves shall remain unaffected by the same. We shall nevertheless undertake not to collect the claims for as long as the Company meets its payment obligations from the collected proceeds, does not default on payment, and in particular, does not file for bankruptcy or halt payments. In this case, we may demand that the Company gives us notice of the assigned claims and the liable parties, provides us with all the information necessary for collection, surrenders the associated documents and informs the debtors (third parties) of the assignment.

In the case that the contracts concluded by the Company in the context of the further disposal of the retained goods are found to be ineffective or invalid, the Company shall immediately assign to us the due legal claims in the place of the assigned contractual claims, most notably claims based on unfair enrichment to the same extent. We shall accept the assignment.

7. The processing or reorganisation of the sale object by the Company shall always be carried out for us. If the Company processes our retained goods with other objects that do not belong to us, we shall acquire joint ownership of the new product in relation to the ratio of the sale object (final invoice amount, including value added tax) to the other processed objects at the time of processing.

If the processed goods are indissociably joined with objects not belonging to us, we shall acquire joint ownership of the new product in relation to the ratio of the sale object (final invoice amount, including value added tax) to the other joined, blended or mixed objects at the time of association. If the joining, blending or mixing is carried out in such a way that the product of the Company is seen to be the main item, it shall be considered as agreed that the Company shall assign us joint ownership on a proportional basis. Furthermore, the same terms shall apply to the new object arising through processing, joining, blending or mixing as to the purchase good delivered under title of retention, most notably the above item 6.

8. The Company shall safeguard the sole or joint property for us. The Company shall also assume liability for its own deliberate and negligent behaviour, as well as for that of its legal representative and for the persons who assist it in fulfilling its obligations.

9. We shall undertake to release the sureties due to us at the demand of the Company, in so far as the realisable value of the same exceed the guaranteed claims by more than 10%; the selection of the sureties to be released shall be incumbent on us.

## **VII. Transfer of Risk**

The risk of the accidental decay or deterioration of the goods shall migrate to the Company for mail-order purchases with the delivery to the carrier, the freight forwarder or other persons or entities defined for the execution of the shipping. The same consequences shall arise if the Company is in default in accepting the delivery. If the Company is in default in this way, we shall only be liable for malicious intent and gross negligence.

## **VIII. Liability for Defects, Claims for Damages**

1. A precondition for the warranty rights of the Company is that the same party has performed the obligations of investigation and objection set forth in Section 377 of the German Commercial Code (HGB) in proper fashion. Timely dispatch shall be sufficient for the timeliness of the objection. The Company shall bear the full burden of proof for conditions of entitlement, in particular for the defect itself, for the time of determination of the defect and for the timeliness of the objection. We shall not be liable for objections to defects that are not communicated in timely fashion.

2. Timely objections shall be checked by our Quality Control department.

3. In so far as there is a defect in the sale object, the Company shall be authorised, as it chooses, to demand subsequent performance in the form either of the correction of the defect or the delivery of a new defect-free product. Expenditure incurred for the purpose of subsequent performance, notably transport, tolls, work and material costs shall be borne by us, in so far as the costs do not increase due to the fact that the sale object has been taken from a place other than the place of performance. We are authorised to reject the chosen form of subsequent performance, when it is only possible at disproportionate cost and the other forms of subsequent performance are without significant disadvantages for the Company.

When we deliver a defect free product for the purpose of subsequent performance, we may demand the return of the defective product from the Company pursuant to Sections 346 and 348 of the German Civil Code (BGB).

Replaced parts shall become our property. The Company shall give us the opportunity to investigate or issue a written position before it dismantles our products. If we are not in a position to amend the product or deliver a defect-free replacement, the Company may, on excluding all further claims, withdraw from the contract or demand a suitable price reduction.

We shall not be liable for normal wear and tear. Our guarantee states that requires that goods are handled appropriately.

4. Performance claims shall be excluded as soon as the Company has demanded compensation for damages instead of the performance.

5. We shall be liable pursuant to the provisions of the law, in so far as the Company makes valid claims for compensation resting on malicious intent or gross negligence, including that of our legal representatives or assistants with execution. In so far as we are not accused of any breach of contract due to malicious intent or gross negligence, the liability for compensation shall be limited to foreseeable, naturally arising injuries.

We shall be liable pursuant to the provisions of the law, in so far as we culpably breach a significant contractual obligation. In this case, the liability for compensation shall be limited to foreseeable, naturally arising injuries. We shall not be liable for only mildly negligent breaches of insignificant contractual obligations. In so far as the Company claims compensation for injuries instead of performance, our liability shall also be limited with regard to the previous point 3 to foreseeable, naturally arising injuries.

Liability for culpable injury to life, body or health shall remain unaffected. This shall also apply to compulsory liability according to the Product Liability Law.

6. In so far there are no exceptions in the above provisions, remaining liability is excluded. In so far as our liability is excluded or restricted, this shall also apply to the personal liability of our legal representatives or vicarious agents.

7. The limitation period for claims for defective goods shall be one year from the delivery of the products. Our liability pursuant to the product liability law shall remain unaffected.

## **IX. Applicable Law, Place of Performance, Jurisdiction**

1. This contract shall be governed by the laws of the Federal Republic of Germany. The validity of UN Purchase Law is hereby excluded.
2. The Place of Performance and exclusive Jurisdiction for all disputes, regardless of the legal grounds, including currency or cheques, shall be our registered office. We shall also have the right to file claims at the registered office of the Company.

## **X. Final Provisions**

In the event that individual provisions of the contract with the Company, including these general business conditions are or become ineffective, whether in part or in whole, the same shall not affect the validity of the other provisions. The partly or wholly ineffective provision shall be replaced by another, which comes as close as possible to the commercial effect of the ineffective one.