

## General Conditions

for the Supply of Products and Services by M&C TechGroup Germany GmbH (M&C)

**As of 04/2016**

### 1. General Provisions

- 1.1. The legal relations between M&C and Purchaser in connection with supplies and/or services of M&C (hereinafter collectively referred to as "Supplies") shall be exclusively governed by these General Conditions ("Terms") which shall also apply to all future offers and agreements even if they are not specifically referred to. The Purchaser's general terms and conditions shall apply only if expressly accepted by M&C in writing. The scope of Supplies shall be determined by the parties' congruent mutual written declarations. Conditions and which do not comply with what is stipulated herein shall not apply even if M&C accepts any service, supply, payment or other benefit of whatever kind from the Purchaser without objection or if he performs an order received from the Purchaser which order contains a reference to general terms of contract used by Purchaser.
- 1.2. M&C herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall be treated as strictly confidential and shall not be made accessible to third parties without M&C's prior consent and shall, upon request, be returned without undue delay to M&C and in no way be used by the Purchaser if the contract is not awarded to M&C. Sentences 1 and 2 shall apply mutatis mutandis to the Purchaser's Documents; these may, however, be made accessible to those third parties to whom M&C has rightfully subcontracted Supplies or from which he himself sources products and/or services for the purpose of performing his own obligations vis-à-vis the Purchaser.
- 1.3. The Purchaser has the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. Without express written agreement, the Purchaser may make not more than one back-up copy of standard software.
- 1.4. Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser and in particular if they do not result in an undue impediment to his business operations.
- 1.5. To the extent the Purchaser provides specifications to Seller and subject to explicit agreement to the contrary, Seller is under no obligation to review such specifications for correctness and usability. In particular, Seller shall not have to examine if the specifications are sufficient and suitable for the purpose of use known to or assumed by the Seller. If the Seller renders advice or makes recommendations, he shall be liable only if such advice or recommendation is rendered on a paid basis or if he intentionally gave wrongful advice or recommendation.
- 1.6. M&C as well as Purchaser undertake to keep in strict confidence all information and knowledge of technical as well as of non-technical nature (including in particular know-how of the other party) which have come to its attention in the course of preparing or performing the respective contract and each party shall keep such knowledge at least as confidential as it keeps confidential and protects its own sensitive information. Such information, data and know-how may not be disclosed to or made accessible for any third party without the affected party's consent.
- 1.7. All products of M&C will be delivered with a corresponding instruction manual in German or English. If there is an instruction manual required or necessary in another language, this additional manual can be ordered and is subject to charge.

### 2. Prices, Terms of Payment, and Set-Off

- 2.1. Prices are ex works and excluding packaging and transport insurance; value added tax shall, if required by applicable law, be added at the then applicable rate.
- 2.2. If M&C is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e. g. for travelling and transport of tools and similar items needed to perform the contract, as well as allowances.
- 2.3. Packaging materials will be invoiced by M&C at cost and shall remain with the Purchaser.



- 2.4. M&C shall, in its discretion, determine the preferred method of transportation, unless the Purchaser has given instructions regarding transportation finally and in writing.
- 2.5. Payments shall be made free of charge into M&C's bank account as specified in the order confirmation, the invoice or any such document.
- 2.6. Where an order received from Purchaser is of substantial value or where Purchaser's creditworthiness is low or uncertain, M&C shall be entitled to make the performance of its obligations subject to an appropriate pre-payment or supply of an adequate security (such as a bank guarantee).
- 2.7. If after the contract between M&C and Purchaser has been made and provided that the scheduled date of delivery and/or service is more than 6 months after the effective date of the contract, there is an unforeseen material price increase as regards items which are relevant for M&C's calculation of prices and which materially increases the costs of the Supplies, the parties are under an obligation to start in good faith negotiations regarding an appropriate adjustment of the prices agreed between them and reach an amicable agreement in this respect, always provided that the reason for the Supplies taking place only later than 6 months after the effective date of the contract is not within M&C's liability.
- 2.8. The Purchaser may set off only those claims which are undisputed or non-appealable.
- 2.9. Where the Purchaser's payment is at default, M&C is entitled to charge Purchaser with costs for a reminder at 5 percent of the unpaid and due amount with 50 € as a minimum and 250 € as a maximum, in addition to any other claims that M&C may have under the contract, these Terms and/or applicable law.

### 3. Retention of Title

- 3.1. All items to be supplied by M&C ("Retained Goods") shall remain M&C's property until each and every claim M&C has against the Purchaser on account of the business relationship, or in direct connection with it, has been fulfilled. If the aggregate value of M&C's security interests exceeds the value of all secured claims by more than 20 %, M&C shall release a corresponding part of the security interest if so requested by the Purchaser; the M&C shall be entitled to choose which security interest it wishes to release.
- 3.2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods, transfer title to them to any third party or use them as security, and any resale shall be admissible only if Purchaser has purchased the Retained Goods for resale in the ordinary course of its business and only on condition that the Purchaser receives payment from its customer, or makes the transfer of title to the customer dependent upon the customer fulfilling its obligation to effect all payments which are due to the Purchaser. If and when Retained Goods leave the German territory, then the retention of title rights shall continue to exist in a manner which, under the laws of the country where the Retained Goods actually are, constitute a security in favour of Seller the effects of which come as close as possible to what has been stipulated herein in this Article III and is effective on German territory.
- 3.3. Should Purchaser resell Retained Goods, it assigns to M&C, already as of the date of the contract between M&C and itself, all claims it will have against its customers resulting from the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual or identifiable price has been agreed with respect to the Retained Goods, Purchaser shall assign to M&C such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by M&C. Upon M&C's request, Purchaser will inform M&C of all names and addresses of its customers to which he has supplied the Retained Goods or which have control over them.
- 3.4. Until further notice, Purchaser may collect assigned claims relating to the resale. M&C is entitled to withdraw Purchaser's permission to collect funds for good reason, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified indications for overindebtedness or pending insolvency of Purchaser. In addition, M&C may, upon expiry of an adequate period of notice, disclose the assignment, realize the claims assigned and demand that Purchaser informs its customer of the assignment.
- 3.5. The Purchaser shall inform M&C forthwith of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, Purchaser shall, without undue delay, provide M&C with the information and/or Documents necessary to assert the claims it has against its customers and/or to protect M&C against actions and interventions of third parties.
- 3.6. Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations, M&C shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure follow-

ing expiry of a reasonable remedy period set by the M&C; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that M&C takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless the M&C so expressly declares.

#### **4. Time for Supplies; Delay**

- 4.1. Times set for Supplies shall only be binding if expressly agreed in writing and if all Documents to be furnished by the Purchaser or other information which is necessary for the performance of the contract, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser have been complied with. If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if and to the extent the M&C is responsible for the delay.
- 4.2. If non-observance of binding times for Supplies is due to:
  - 4.2.1. force majeure, such as mobilization, war, terror attacks, rebellion or similar events (e. g. strike or lockout);
  - 4.2.2. virus attacks or other attacks on M&C's IT systems occurring despite protective measures were in place that complied with the principles of proper care;
  - 4.2.3. hindrances attributable to German, or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which M&C is not responsible; or
  - 4.2.4. the fact that M&C does not receive its own supplies in due time or in due form though he can show that he properly selected his sub-M&Cs and that he submitted his order for the respective supply or services to his sub-M&C in time, such times shall be extended accordingly.
- 4.3. If M&C is responsible for the delay (hereinafter referred to as "Delay") and the Purchaser can prove to have suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5 % for each completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies which due to the Delay could not be put to the intended use. At M&C's request, the Purchaser shall declare within a reasonable period of time whether it, due to the delayed Supplies, rescinds the contract or insists on the delivery of the Supplies.
- 4.4. Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above are excluded in all cases of delayed Supplies, even upon expiry of a time set to the M&C to effect the Supplies. This shall not apply in cases of liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health and in cases where fundamental contractual duties (as defined herein) are violated. In case of negligence, M&C's liability is limited to the kind and amount of damage which is typical and foreseeable. Rescission of the contract by the Purchaser based on statute is limited to cases where the M&C is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser and they shall in no way exclude or limit compulsory (such as those of the German Product Liability Act).

#### **5. Passing of Risk**

- 5.1. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser, at the time when it is shipped or picked up by the carrier.
- 5.2. Upon the Purchaser's request, M&C shall insure the delivery against the usual risks of transport at the Purchaser's expense;
- 5.3. The risk shall pass to the Purchaser if dispatch or delivery is delayed for reasons for which the Purchaser or Purchaser's customer is responsible or if the Purchaser has otherwise failed to accept the Supplies. In such case, the risk shall pass as of the date and time it would have passed had the delay not occurred.

#### **6. Liability Defects as to Quality**

M&C shall be liable for defects as to quality ("Sachmängel", hereinafter referred to as "Defects") as follows:

- 6.1. Claims based upon defect are subject to Purchaser complying with its legal duty of examining the received goods and giving notice of lack of conformity to M&C. Notifications of Defect by the Purchaser shall be given in written form without undue delay.



- 6.2. Defective parts or defective services shall be, at M&C's discretion, repaired, replaced or provided again free of charge, provided that the reason for the Defect had already existed at the time when the risk passed.
- 6.3. Claims for repair or replacement are subject to a limitation period of 12 months calculated from the start of the statutory limitation period; the same shall apply mutatis mutandis in the case of rescission and reduction. This shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) of the German Civil Code ("Bürgerliches Gesetzbuch"), in the case of intent, fraudulent concealment of the Defect or in case of non-compliance with guaranteed characteristics („Beschaffenhheitsgarantie"). The legal provisions regarding suspension of the limitation period ("Ablaufhemmung", "Hemmung") and recommencement of limitation periods shall be unaffected.
- 6.4. In the case of notification of a Defect, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the Defect. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the Defect involved (which notification must be made in specified form, describing in details the alleged defects, after proper examination of the goods received), is justified and without reasonable doubt incontestable. The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle M&C to demand from the Purchaser reimbursement of its expenses and costs caused by the examination of the Defect notice and attempts to remedy the Defect.
- 6.5. M&C shall be given the opportunity to repair or to replace the defective good ("Nacherfüllung") within a reasonable period of time.
- 6.6. If repair or replacement is unsuccessful, the Purchaser is entitled to rescind the contract or reduce the remuneration; any claims for damages the Purchaser may have according to No. 10 of this Article 6 shall be unaffected.
- 6.7. There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works or claims based on particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties or attributable to spare parts or other items sourced from other M&Cs without M&C's approval and the consequences thereof are likewise excluded.
- 6.8. The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labor, and material, to the extent that expenses are increased because the subject-matter of the Supplies has subsequently been brought to another location than the Purchaser's branch office or the agreed location of erection and/or operation, unless doing so complies with the normal use of the Supplies.
- 6.9. The Purchaser's right of recourse against M&C pursuant to Sec. 478 BGB is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 8 of this Article VIII above shall apply mutatis mutandis to the scope of the right of recourse the Purchaser has against M&C pursuant to Sec. 478 para. 2 BGB.
- 6.10. The Purchaser shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, that guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of contract on the part of M&C and in all cases where there is compulsory liability as prescribed by applicable law (e.g. product liability law). In case of gross negligence, M&C's liability is limited to the kind and amount of damage which is typical and foreseeable. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser. Any other or additional claims of the Purchaser exceeding the claims provided for in this Article VI, based on a Defect, are excluded.

## 7. Industrial Property Rights and Copyrights; Defects in Title

- 7.1. Unless otherwise agreed, M&C shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of delivery only. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR by the Supplies made by M&C and used in conformity with the contract, M&C shall be liable to the Purchaser within the time period stipulated in Article VI No. 2 as follows:



- 7.1.1. M&C shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be impossible for M&C, the Purchaser may rescind the contract or reduce the remuneration pursuant to the applicable statutory provisions.
- 7.1.2. M&C's liability to pay damages is governed by Article X hereinafter.
- 7.1.3. The above obligations of M&C shall apply only if the Purchaser (i) immediately notifies M&C of any such claim asserted by the third party in written form, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to M&C's discretion. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgment of the alleged infringement may be inferred from the fact that the use has been discontinued.
- 7.2. Claims of the Purchaser shall be excluded if it is responsible for the infringement of an IPR.
- 7.3. Claims of the Purchaser are also excluded if the infringement of the IPR is caused by specifications made by the Purchaser, by a type of use not reasonably foreseeable by M&C or by the Supplies being modified by the Purchaser or being used together with products not provided by M&C.
- 7.4. In addition, with respect to claims by the Purchaser pursuant to No. 1 a) above, Article VI Nos. 4, 5, and 9 shall apply mutatis mutandis in the event of an infringement of an IPR.
- 7.5. Where other defects in title occur, Article VI shall apply mutatis mutandis.
- 7.6. Any other claims of the Purchaser against M&C, its legal representatives or its agents or any such claims exceeding the claims provided for in this Article VII, based on a defect in title, are excluded.

## **8. Conditional Performance**

- 8.1. The performance of the contract entered into between M&C and Purchaser is conditional upon that no hindrances attributable to German or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions exist.
- 8.2. The Purchaser shall provide any information and Documents required for export, transport and import purposes.

## **9. Impossibility of Performance; Adaptation of Contract**

- 9.1. To the extent that delivery is or becomes impossible, the Purchaser is entitled to claim damages, unless M&C is not responsible for the impossibility. The Purchaser's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of liability based on intent, gross negligence, negligent breach of fundamental contractual duties (as defined in Article 10 Sect. 2.7) herein) or loss of life, bodily injury or damage to health; this does not imply a change in the burden of proof to the detriment of the Purchaser. Purchaser's right to rescind the contract shall be unaffected.
- 9.2. Where events within the meaning of Article 4 No. 4.2.1 to 4.2.3 substantially change the economic importance or the contents of the Supplies or considerably affect M&C's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons, M&C shall have the right to rescind the contract. The same applies if required export permits are not granted or cannot be used. If M&C intends to exercise its right to rescind the contract, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with Purchaser.

## **10. Other Claims for Damages**

- 10.1. Unless otherwise provided for in the present Terms, the Purchaser has no claim for damages based on whatever legal reason. The foregoing includes in particular claims for damage resulting from the violation of precontractual and other duties and claims based upon torts.
- 10.2. This does not apply if liability is based on:
  - 10.2.1. the German Product Liability Act ("Produkthaftungsgesetz") and/or other compulsory legal provisions;
  - 10.2.2. intent;

- 10.2.3. gross negligence on the part of the owners, legal representatives or executives;
- 10.2.4. malice;
- 10.2.5. failure to comply with a guarantee granted;
- 10.2.6. negligent injury to life, limb or health; or
- 10.2.7. negligent breach of fundamental obligations of contract ("wesentliche Vertragspflichten"); fundamental obligations of contract in general are obligations the compliance with which is a precondition for the proper performance of the contract and obligations upon which performance the Purchaser may, from a neutral perspective, rely, and in fact has relied.

However, claims for damages arising from a breach of a fundamental obligation of contract as well as in case of gross negligent violation of non-fundamental obligations shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above cases of compulsory liability applies. M&C's liability for loss of production and loss of profit is always excluded, except where M&C acted (or failed to act) with intent or where compulsory legal provisions provide a claim for loss of production or a loss of profit.

- 10.3. The exclusion of liability according to Sect. 10.1. of this Article 10 also applies where the Purchaser claims compensation for frustrated expenses in addition to or in lieu of performance of the contract.
- 10.4. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.
- 10.5. To the extent M&C's liability is excluded or limited, such exclusion and/or limitation shall also apply to the personal liability of M&C's employees, workers, officers, legal representatives, agents and vicarious agents.
- 10.6. Purchaser's claims for damages shall, except where there is intentional act or failure to act or where there is compulsory liability, be limited to an amount which, with a view to the economical value of the contract and commonly existing insurance coverage, is reasonable and appropriate.

## 11. Data Protection

Purchaser agrees that personal data of Purchaser may be stored, processed and transferred to companies affiliated with M&C to the extent this is or becomes necessary for the performance of the respective contract.

## 12. Disposal of used electrical and electronic devices

- 12.1. Purchaser undertakes to properly dispose the products supplied by M&C after their term of use at his own cost and in compliance with applicable law.
- 12.2. Purchaser shall indemnify M&C from the manufacturer's/suppliers obligation of disposal under § 10 Subs. 2 of the German Electric Devices Act and all third parties claims in this contract.
- 12.3. Purchaser shall secure that all commercial customers to which he sells or otherwise passes on the supplied products shall contractually be bound to dispose of such products properly after their term of use, or, where applicable, secure themselves that any further recipient of the respective products is bound by such obligations.
- 12.4. Should Purchaser contrary to the stipulations in Art. 12 Sect. 12.3 above not by way of valid contractual stipulations transfer the duty of proper disposal to his customer (or any third person that he transfers the products to), then Purchaser shall have the obligation to take back the products after use and dispose them properly.
- 12.5. M&C's claim for indemnification from any disposal obligations shall lapse no earlier than two years after the use of the respective products has ultimately terminated. Such two-year period shall start only when Purchaser's written notice stating that the use of the products has been terminated, has been served upon M&C.

## 13. Venue and Applicable law

- 13.1. Exclusive venue for all disputes arising directly or indirectly out of the contract shall be the M&C's place of business. However, M&C may also bring an action before the courts having jurisdiction over the Purchaser's place of business.
- 13.2. This contract and its interpretation shall be governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG).



#### 14. Severability Clause

The legal invalidity or impracticability of one or more provisions of this Agreement shall in no way affect the validity of the remaining provisions. In such case, the invalid or impracticable clause shall be replaced by a legally admissible and practicable clause the legal and economical effects of which come as close as possible to what the Parties had tried to achieve. This shall not apply if in such case it would be unreasonably onerous for one of the parties to be obligated to continue the contract.

**M&C** Embracing Challenge