

manroland Goss web systems GmbH

General Terms and Conditions for the Delivery of Spare Parts, Wear Parts, Operating Supplies and Consumables

I. General Provisions

1. These terms and conditions shall apply unless otherwise agreed in writing by the contracting parties. Deviating purchasing terms and conditions of the Purchaser shall not become part of the agreement by acceptance of an offer, unless expressly agreed otherwise in writing by the contracting parties.

2. Definitions

- a) Delivery Items shall mean Operating Supplies and Consumables.
- b) Parts shall mean Spare Parts and Wear Parts.
- c) Spare Parts shall mean individual parts which can be replaced in the course of repair works and which are not Wear Parts.
- d) Wear Parts shall mean individual parts which due to their nature or utilisation are subject to premature exhaustion and are therefore intended to be exchanged on a regular basis.
- e) Operating Supplies and Consumables shall mean all materials which are not Parts (Spare Parts and Wear Parts).
- f) MGWS shall mean manroland Goss web systems GmbH.

II. Offer and Conclusion of the Agreement

1. All offers are subject to change.
2. Statements made in technical documents and advertising materials as well as statements pertaining to weights, performance, operating costs, features of samples and specimens etc shall only be binding if they are expressly included in an agreement on the quality of the respective Delivery Item. MGWS shall be entitled to the proprietary rights and copyrights in all cost estimates, drawings, and other documents; the latter may not be made available to third parties and shall be sent back immediately upon request or in the event that no order is placed.
3. These terms and conditions shall also be deemed accepted by the Purchaser if he accepts deliveries and services from MGWS or if he makes performances himself.
4. Without the written consent of MGWS, terms and conditions of other parties shall not become part of the agreement, even if they are asserted in opposition to these terms and conditions.
5. An order placed by the Purchaser at the e-commerce platform manrolandstore shall be deemed as an offer towards MGWS for the execution of an agreement only.
6. An agreement shall be deemed executed only when the Purchaser has received a written order confirmation from MGWS. This shall also apply if the order is placed via the manrolandstore. In case of an order placed at the manrolandstore an agreement shall be deemed executed when the ordered Delivery Items are delivered to Purchaser.

III. Scope of Delivery

1. The written order confirmation from MGWS shall be relevant for the scope of delivery. Ancillary

agreements shall require a written confirmation from MGWS. MGWS reserves the right to change the technical design to the extent that such changes can be deemed to constitute technically equivalent equipment until the time of delivery.

2. To the extent that MGWS provides advisory services, such advice will be rendered to the best of its knowledge. Statements and information provided with regard to the suitability and utilisation of the Delivery Item shall not absolve the Purchaser from conducting his own examinations and tests.
3. With regard to electrical material, the provisions issued by the *Verband Deutscher Elektrotechniker* (Association of German Electrical Technicians) shall apply.
4. The safety standard of the Delivery Items shall conform with the applicable safety regulations of the European Union.
5. Where customary commercial terms are agreed concerning the method of delivery, such terms shall be interpreted in accordance with the Incoterms issued by the International Chamber of Commerce, Paris, in the version applicable as of the date of the conclusion of the agreement.
6. In the event that in connection with the delivery any taxes or duties are levied in the jurisdiction of the Purchaser or in the destination jurisdiction, such taxes or duties shall be borne by the Purchaser.
7. MGWS grants to the Purchaser the non-exclusive right, without any limitation as to time, with such right only being transferable in the event of a selling-on of the Delivery Item and not including the right to grant sub-licences, to use software that may be stored in the Delivery Item in the course of the use of the Delivery Item in accordance with its contractual purpose. MGWS shall retain ownership of the proprietary rights to the software.
The Purchaser may neither modify nor edit or integrate the software into other systems without written consent from MGWS. Unauthorised modifications to the software programs may disable built-in safety functions. MGWS shall not be liable or responsible for any hazards or losses resulting there from. In this regard, the Purchaser shall hold MGWS harmless from any claims asserted by third parties.
The Purchaser shall be entitled to secure the software by making a copy. MGWS reserves all rights in respect of such copy.

IV. Price

1. If no prices have been agreed, MGWS shall apply the MGWS factory prices as valid on the date of delivery.
2. Unless otherwise agreed, all prices shall be deemed to be agreed for delivery ex works, including loading at the works, but exclusive of packing, freight, and installation, plus VAT as prescribed by law.
3. In the event of changes in material prices, wages, freight costs or other cost factors, the right to price adjustments shall be reserved.

V. Terms of Payment

1. Unless otherwise agreed, all payments shall be made in cash upon notification of readiness for shipment, without any deduction to the specified bank account. VAT shall be payable upon receipt of invoice, except where advance payments are subject to taxation, in which case it shall be payable pro rata on the agreed dates of payment. Any agreed acceptance of bills of exchange shall be deemed to occur on account of performance only.
2. A set-off or right of retention may only be asserted in respect of claims that have been recognized by a court of law or that are undisputed.
3. In the event that payment is not made by the due date, interest shall be paid - without prejudice to other statutory claims - in an amount of 7.0% p.a. above the applicable European Central Bank Minimum Bid Rate for main refinancing operations, plus VAT, if any, without a reminder being required.
4. If that the Purchaser is in default with his payment obligations or with his obligations resulting from the retention of title, if there is a substantial deterioration in his financial situation or if he suspends payments, the entire balance shall become due immediately, including cases of bills of exchange with a later maturity date.

VI. Retention of Title

1. The Delivery Items shall remain the property of MGWS until all claims arising in connection with the supply agreement have been fulfilled completely. This shall also apply where such claims are included in a current account.
 - a) Any modification or processing of Parts that are subject to a retention of title as well as the latter's combination with third party materials by the Purchaser or a third party shall be deemed to have been conducted on behalf of MGWS. MGWS shall be co-owner of any new things created in proportion to the value of the relevant Part.
 - b) In the event of a breach of contract on the part of the Purchaser, in particular in the case of a default of payment, MGWS shall be entitled to rescind the contract and the Purchaser shall be obliged to return the items received. The Purchaser shall be liable for losses incurred as a consequence of the taking back of the Delivery Item.
 - Where the Delivery Item is a Part and has been used, MGWS shall be entitled to claim from the Purchaser, without proof of loss, a reduction of value of 25% for the first half-year of usage and of 5% for each additional half-year, unless the reduction of value has occurred only to a lesser extent.
 - Where the Delivery Item is an Operating Supply and/or a Consumable and has already been used and is longer capable of being returned in its original state, the Purchaser shall reimburse to MGWS the full purchase price as well as any other losses.

2. In the event that the law of a jurisdiction does not permit a retention of title, but permits the retention of similar rights, MGWS shall be entitled to exercise all rights of such kind. The Purchaser shall be obliged to conduct at his own cost such measures as are required in order to bring validly into existence and to preserve such rights in respect of the Delivery Item.
3. In the event of attachments or other adverse effects on the owner's interests, the Purchaser shall notify MGWS without undue delay.

VII. Delivery Period

1. Unless otherwise agreed in writing, any statements concerning the delivery period shall not be binding.
2. The delivery period shall not commence before the receipt and clarification of the documents and approvals to be furnished by the Purchaser and not before the receipt of an advance payment, if so agreed. The delivery period shall be deemed to have been met if the notification of readiness for shipment has been sent out to the Purchaser before its expiry.
3. Delivery dates shall be reasonably extended - including cases where a default of delivery has occurred - in cases of force majeure (including epidemics, war, civil war, situations similar to war or civil war or the imminent occurrence of such events) as well as in cases of an occurrence of unforeseeable events beyond the control of MGWS; such as strike, lockout, disruptions of operation, delivery delays on the part of sub-suppliers or other delays for which MGWS is not responsible, provided that such events affect the timely performance of the agreement. In important cases, MGWS shall notify the Purchaser of the occurrence and probable duration of such events. Delivery dates shall also be reasonably extended if the Purchaser is in arrear with performance of his payment or other obligations or if the technical and business issues cannot be clarified within an appropriate period of time.
4. If proof is provided that a delay is due to reasons other than those specified in Clause 3 and the Purchaser has suffered a loss on account of such delay, he shall, to the exclusion of any other claims, be entitled to claim a compensation for default at a maximum rate of ½% for each full week of delay; however, the aggregate compensation for all cases of delay shall not exceed 5% of the value of that portion of the total delivery which by reason of such delay cannot be used in time or put to the use intended. The limitation of liability shall not apply in cases of wilful misconduct of members of corporate bodies or of vicarious agents of MGWS. Any compensation payable by MGWS under the above provisions shall be set off in the course of final settlement.
5. In the event of shipment being delayed for reasons beyond the scope of responsibility of MGWS, the costs arising from the storage of the equipment shall be charged to the Purchaser, beginning one month after notification of readiness for shipment; in the case of storage at the works of MGWS, a minimum of ½% of the invoice amount shall be charged for each month, unless the actual costs were lower.

VIII. Passing of Risk

Risk shall pass to the Purchaser when the consignment has left the supplying works. If shipment is delayed without fault at the part of MGWS, risk shall pass to the Purchaser upon notification of readiness for shipment.

IX. Performance of Contract

1. Performance of delivery shall be deemed to have occurred when the risk passes to the Purchaser pursuant to Clause VIII.
2. Partial deliveries shall be permissible.
3. From the date of the performance, the responsibility of MGWS shall be limited in

accordance with the provisions of Clause XI (Warranty Claims) of these terms and conditions.

4. Without prejudice to the rights under Clause XI, all Delivery Items delivered shall be accepted by the Purchaser, even in the case of minor defects.

X. Installation

Where it has been agreed that MGWS should be responsible for the installation of the Delivery Item, the General Terms and Conditions of MGWS for Repairs and other Commissioned Work shall apply by way of supplement.

XI. Warranty Claims

In respect of defects of quality or title, MGWS warrants as follows, excluding – subject to Clauses XII and XIV – any other claims:

A. Defects of Quality of Parts:

1. a) Provided that the legal requirements are met, in respect of Parts which have become unusable or the usability of which is significantly restricted due to defective construction, manufacture or defective material, MGWS shall, at the choice of MGWS, either remedy the respective defect free of cost or effect delivery of a respective new Part.
 - b) With regard to subsequent performance and installed replaced Parts, MGWS shall warrant to the same extent as with regard to the original Delivery Item. Replaced Parts shall become the property of MGWS.
2. For the purpose of conducting necessary subsequent performance, the Purchaser shall
 - a) grant the required time and opportunity,
 - b) provide support staff, equipment and operational facilities and conduct related ancillary works at his own cost.

The removal of defective Parts as well as the fitting of supplied new Parts shall be carried out by MGWS or by MGWS-authorized personnel at the cost and risk of MGWS. Extra costs for work conducted outside regular working hours, for airfreight or express deliveries as well as extra costs due to the shipment of the Delivery Items to a place other than the place of performance shall be borne by the Purchaser.
3. Liability for defects of quality shall not include normal wear and tear or Parts which, owing to their inherent material properties or their intended use, are subject to premature wear; further, such liability shall not include damage caused by improper storage, handling or use of unsuitable Operating Supplies, faulty construction work or foundations, unsuitable building grounds, chemical, electrochemical or electrical influences. The same shall apply with regard to any other circumstances arising after the passing of the risk through no fault of MGWS.
4. The Purchaser may only assert claims against MGWS on grounds of defects of quality if
 - a) the Delivery Items were installed by MGWS-authorized personnel,
 - b) MGWS has been promptly advised of the defect in writing,
 - c) the instructions issued by MGWS in respect of the handling and maintenance of the Delivery Items have been observed and, in particular, any prescribed examinations have been duly carried out.
 - d) no remedial work has been carried out without the approval of MGWS,
 - e) no spare parts have been installed other than those originally manufactured or approved, respectively, by MGWS,
 - f) no unauthorised modifications of the Delivery Items have been conducted.

B. Software Defects

1. In the event of software defects, the provisions in Clauses XI 1-4 shall apply accordingly with the following modifications:

Only such defects shall be regarded as software defects which occur in the contractually intended conditions of application and which affect the contractually agreed performance. In this regard, the Purchaser is aware and agrees that it is impossible with current state-of-the-art technology to completely exclude defects in data processing programs under all conceivable usage conditions.

No claims for defects shall exist in respect of defects:

- a) caused by modifications to the software that were not approved by MGWS;
- b) caused by interference with the software by persons not authorised by MGWS.

C. Defects of Quality of Operating Supplies and Consumables:

1. Defects of Operating Supplies and Consumables which are detectable upon proper inspection shall be notified to MGWS within four weeks after receipt of the goods; other defects shall be notified to MGWS four weeks after their discovery. The notice of defects shall be in writing and shall describe in detail the type and extent of any defect.

2. If the Operating Supplies and Consumables are defective and the Purchaser has duly notified MGWS of this in accordance with Clause 1 above, the Purchaser shall be entitled to the applicable remedies under law subject to the following provisions:

- a) MGWS shall first be entitled, at its election, to remedy the defect in question or to deliver to the Purchaser Operating Supplies and Consumables that are free from defects (Subsequent Performance).
- b) MGWS reserves the right to attempt Subsequent Performance twice. In the event that the Subsequent Performance fails or that the Purchaser cannot be reasonably expected to accept it, the Purchaser may either rescind the contract or demand a reduction of the purchase price.

Clause XIV shall apply to claims for damages or for reimbursement of frustrated expenses based on a defect of quality.

D. Defects of Title

1. Where the use of the Delivery Items results in an infringement of intellectual property rights or copyrights, MGWS shall at its own expense procure for the Purchaser the right to continued use or shall modify the Delivery Items in such manner acceptable for the Purchaser that the infringement of intellectual property rights no longer exists. If this is not possible on commercially reasonable terms or within a reasonable period of time, the Purchaser shall be entitled to rescind the contract. Under the same conditions, MGWS shall also be entitled to rescind the contract. In addition, MGWS shall indemnify the Purchaser with regards to claims of the concerned owners of intellectual property that are undisputed or have been recognised by a court of law in a final and binding manner.
2. Subject to Clause XIV, these obligations of MGWS shall be exhaustive in cases of infringement of intellectual property or copyrights. Such obligations shall exist only if
 - a) the Purchaser promptly notifies MGWS of claims asserted on grounds of infringement of intellectual property or copyrights,
 - b) the Purchaser reasonably supports MGWS in its defence against such asserted claims or permits MGWS to make any modifications in accordance with this section D,

- c) MGWS is granted the right to conduct all defensive measures, including out-of-court settlements,
- d) the defect of title is not the result of an instruction from the Purchaser, and
- e) the legal infringement was not caused by any unauthorised change to the Delivery Items by the Purchaser or by any use by the Purchaser which is not in compliance with the agreement.

E. Limitation Period

The limitation period shall be governed by Clause XVI. In the case of Subsequent Performance or installed replaced Parts, the limitation period shall expire at the same time as the one applicable to the original Delivery Item.

F. Used parts

MGWS does not give a warranty on used parts (pre-owned parts) and does not give any special undertakings with respect to condition or guarantee.

G. Supplemental Conditions

By way of supplement to this Clause XI, Clause XIV shall apply.

XII. Right of Rescission of the Purchaser

A. Conditions for Rescission – Parts

Provided that the preconditions under law are fulfilled, the Purchaser shall only be entitled to rescind the contract by declaration in writing:

1. if performance of the contract by MGWS has become impossible in its entirety. In the case of partial impossibility, a right of rescission shall exist only where it is proven that partial delivery is of no interest to the Purchaser. In all other cases, the Purchaser shall be obliged to accept partial delivery and shall be entitled to an appropriate reduction of the purchase price. If the impossibility occurs while there is default in acceptance of delivery or owing to fault on the part of the Purchaser, the Purchaser's performance obligations under the contract shall continue to exist. If neither of the contracting parties is responsible for the impossibility, MGWS shall be entitled to partial payment of the purchase price in proportion to the performance made.
2. if the Purchaser is entitled to claim the full amount of the compensation for default pursuant to Clause VII. no. 4, if after this point in time he has set an adequate additional period for MGWS in writing and if he proves that such additional period was exceeded for reasons other than those stated in Clause VII no. 3.
3. if the Purchaser has set an adequate additional period in writing for the remedy of a material defect for which MGWS is responsible and which MGWS has recognised, if MGWS has tried and failed to remedy such defect and if MGWS has failed to meet such additional period as a result of its own fault. Where this is justified by the complexity of the Delivery Item or the defects that may result there from, as the case may be, MGWS shall be entitled to more than two attempts at Subsequent Performance.
4. In the case of Clause XII nos. 2 and 3, the Purchaser shall only be entitled to rescind the contract if he proves that as a consequence of the delay or the defect his interest in the delivery is reduced significantly.
5. Furthermore, Clause XIV shall apply.

B. Conditions for Rescission – Operating Supplies and Consumables

In this regard, rescission shall be governed by the applicable provisions of law.

C. Supplemental Conditions

Claims for damages relating to rescission shall be governed exclusively by Clause XIV.

XIII. Right of Rescission of MGWS

Without prejudice to MGWS's other claims and remedies under law, MGWS may rescind the contract in whole or in part in accordance with the applicable provisions of law as well as in cases where the economic situation of the Purchaser have deteriorated substantially.

XIV. Extent of Purchaser's Claims

1. MGWS shall be liable
 - a) in the case of intentional or grossly negligent conduct of its members of corporate bodies and its executive employees, as well as in the case of intentional conduct of its vicarious agents,
 - b) in the event of a culpable violation of principal contractual obligations,
 - c) in the event of a culpable violation of life, body or health,
 - d) in the event of a fraudulent failure to disclose defects,
 - e) to the extent of a guarantee granted, or
 - f) in the event and to the extent that there is a liability under the Product Liability Act for personal injuries or damage to objects which are being privately used.

A certain quality/feature of the Delivery Item shall only be deemed to be guaranteed as defined by statute if the quality/feature in question has been expressly specified in the wording of the contract as a "guaranteed quality".

2. Irrespective thereof, MGWS shall be liable in all cases in which indemnity is paid, and to the extent of such payment, under the manufacturer's liability insurance maintained by MGWS. The manufacturer's liability insurance is governed by the German General Terms and Conditions for Liability Insurance (*Allgemeine Versicherungsbedingungen für Haftpflichtversicherung – AHB*).
3. To the extent that MGWS is liable for gross negligence or the culpable violation of the principal contractual obligations pursuant to Clause XIV no. 1. a) and b), compensation for pecuniary losses, such as production downtime, reduced production or lost profit, shall be limited by the general principle of good faith, for example in cases of a disproportional disparity between the price of the Delivery Items and the extent of the damage. This shall not affect the liability pursuant to Clause XIV no. 1. c) to f).
4. All further claims and rights, other than those stated in these terms and conditions or in the wording of the agreement, including those based on inadequate or insufficient advice, shall be excluded. This shall apply, in particular, to further claims for damages based on contract or law.

XV. Non-Transferability of Contractual Rights

The Purchaser shall not be entitled to assign his contractual rights to a third party without the express consent of MGWS.

XVI. Limitation Period

The rights and claims of the Purchaser arising from this agreement in respect of defects in the Delivery Items shall become subject to limitation after 12 months following the passing of risk to the Purchaser, at the latest, however, 18 months after notice of readiness for shipment has been given or the date of the freight documentation, respectively. In all other cases, in particular in the case of intentional conduct or a fraudulent failure to disclose defects in the Delivery Item, the statutory limitation periods shall apply.

XVII. Place of Venue and Arbitration

1. The place of venue for all disputes arising under the contractual relationship - including legal proceedings on bills of exchange, cheques and proceedings restricted to documentary evidence - shall be Augsburg. MGWS shall also be entitled to bring proceedings in the place of the Purchaser's primary place of business.
2. In the event that the registered office of the Purchaser is situated outside the Federal Republic of Germany, the parties agree to conduct arbitration proceedings. The Purchaser and MGWS agree that all disputes arising from this agreement or relating to its validity or the validity of the arbitration clause, shall be decided in a final and binding manner, with the jurisdiction of the ordinary courts being excluded, by an arbitration panel composed of three arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce in Paris. The place of arbitration shall be Augsburg.

XVIII. Applicable Law; Severability

1. This agreement shall be governed by German law, with the UN Convention on the International Sale of Goods being excluded.
2. In the event that part of the agreement is invalid, this shall not affect the validity of the remaining part, provided that the invalidity does not affect the fundamental stipulations of the agreement.