

of the **company Mainpex GmbH & Co. KG** to be used in business dealings with companies. Last updated: 09.12.2008

## 1. General

### 1.1

The following requirements apply in the following order for the contractual services undertaken by us:

- the individual contractual agreements of the parties;
- these general delivery and payment terms and conditions;
- the German Civil Code [BGB].

### 1.2

Our deliveries and services are made based on the following conditions exclusively. Deviations are valid only when they have been confirmed by us in writing.

### 1.3

The buyer accepts our general delivery and payment terms and conditions at placing of the order or at acceptance of the goods at the latest. Deviating conditions of the buyer that we do not accept expressly in writing are not binding on us even if we do not protest them expressly.

### 1.4

These conditions also apply for future deliveries based on orders of the buyer in writing or by telephone.

### 1.5

All orders, commissions and agreements become binding on us only with receipt of our written order confirmation by the customer or, in case that no order confirmation will be issued, with delivery of the goods. The confirmation of receipt of the customer's order does not yet constitute an acceptance of the customer's offer. Verbal or telephonic acceptance or other agreements including possible additions, amendments and supplementary agreements for already accepted orders as well as sales made by our agents only are binding to us if and insofar they subsequently have been confirmed by us in writing. In those cases the general delivery and payment terms and conditions apply in addition.

## 2. Prices and transfer of risk

### 2.1

Our list and offer prices as well as the offers in our online shop are subject to confirmation and non-binding unless a specific period of validity has been agreed in writing. All prices are quoted in EURO ex works without packaging, loading, freight and installation, excluding applicable VAT. VAT is shown separately in the invoice at the legally applicable rate on the day of invoicing.

### 2.2

In case of orders with an order value below 50 Euros we charge a markup of 18 Euros for small-volume purchases.

### 2.3

At updating the internet sites and the list catalogues all previous prices and other information on the goods become invalid. The version in effect at the time of ordering prevails.

### 2.4

Regardless of whether shipment is made ex place of performance and regardless of who is bearing the shipping costs the buyer shall bear all risks of loss or damage of the goods as of the time the goods are placed at their disposal ex works without loading onto the collecting vehicle.

### 2.5.

If the buyer orders goods on call, the call is deemed to be made six months after ordering at the latest unless another agreement has been made in writing. We will refer the buyer to this consequence in writing at the beginning of the period.

## 3. Passing of risk, transport

### 3.1

The risk is passed on to the buyer at transfer to a forwarding agent or carrier, at the latest however when the goods leave our house or at the day of notification of readiness for dispatch.

### 3.2

The type of shipment and the transport route are at our own discretion excluding any liability unless there are specific instructions. Clause 8 of these general delivery terms and conditions applies correspondingly.

### 3.3

Loading and shipment are made uninsured at the buyer's risk. We endeavor to consider the buyer's requests and interest concerning type of shipment and transport route. The additional cost incurred by this is charged to the buyer even in case of an agreed delivery free of charge.

### 3.4

On request and at expense of the buyer we will cover the delivery with a cargo insurance. However, we do not accept responsibility for the insurance's execution.

### 3.5

Possibly necessary packaging is charged at cost. We take back all transport and other packaging through our contract partner, the company Interseroh (contract number: Austria #144.870 / Germany #128.475).

## 4. Delivery

### 4.1

All delivery dates and deadlines are not binding unless agreed to be binding expressly in writing. In that case the buyer may set us another reasonable period to perform the service. If this period is not reasonable, we shall protest it immediately and give notice of a reasonable period. In case of doubt the delivery dates given in our confirmation of order apply.

If the customer requests a delivery at a date later than the one originally agreed we may invoice the contractual performance as of the agreed delivery date and store the goods at the buyer's risk and expense. If they are stored in our works, we are entitled to demand compensation of the incurred damage and possible additional expenditure, including but not limited to storage charges of 0.5% of the delivery goods' value or price (as the case may be) for each commenced storage month, however, 5% at most. The buyer is entitled to prove that we incurred no or significantly less storage costs. We may prove that we incurred higher storage costs. In addition we are entitled to withdraw from the contract after unsuccessful expiration of a reasonable period of acceptance. The costs incurred by us for this are charged to the buyer.

### 4.2

Delivery dates are deemed put in force at our sending of the written confirmation of order at the earliest. However, the start of the period is postponed until possible duties of the buyer to cooperate have been fulfilled, including but not limited to the procurement of documents, plans, permits, clearances to be obtained by the buyer as well as the compliance with agreed payment conditions and other obligations of the buyer.

### 4.3

The delivery dates are deemed complied with if we have notified the buyer of readiness for dispatch and the goods could not be delivered and/or our services could not be performed on time without fault on our part.

### 4.4

We only are responsible for the performance of our services on time if we received the necessary supplies and other services on time or the buyer has fulfilled their obligation on time and in due form. In case that the necessary supplies from third parties do not arrive on time we only are responsible for the performance of services on time if a replacement delivery on time by other third parties would have been possible. If the materials needed by us may not be

delivered at all, a liability on our part does not apply if legally admissible.

#### **4.5**

If we culpably are not able to comply with an expressly agreed date, the buyer shall grant us a reasonable additional respite, starting as of the date of the written declaration of default or in case of a date stipulated according to calendar as of the following day. After unsuccessful expiration of the additional respite the buyer is entitled to withdraw from the contract.

#### **4.6**

In case of willful intent and gross negligence of our legal representatives and vicarious agents we are liable for delays of performance pursuant to legal provisions. However, in cases of gross negligence our liability is limited to the losses foreseeable and inherent to this type of contract if none of the exceptions given in clause 4.9 of these conditions is at hand.

For the remainder (minor negligence) our liability for default of delivery for compensation in addition to the performance is limited to 0.5% for each full week of default, however, to 5% at most, and to 10% of the contractual service's value for compensation instead of performance. Further claims of the buyer are excluded even after expiration of a respite for performance set for us. The aforesaid provisions do not apply in case of liability for injury of life, body or health. Clause 4.4 of this condition remains unaffected by this.

#### **4.7**

In case of willful intent and gross negligence of us, our legal representatives or vicarious agents we are liable for impossibility of performance pursuant to legal provisions. However, in cases of gross negligence our liability is limited to the losses foreseeable and inherent to this type of contract if none of the exceptions given in clause 4.9 of these conditions is at hand. For the remainder our liability for impossibility of performance is limited to compensation of damages and reimbursement of futile expenses on 8% of the contractual service's value altogether. Further claims of the buyer due to impossibility of performance are excluded. These limitations do not apply if we are liable in cases of willful intent, gross negligence or injury to life, body or health. The buyer's right to withdraw from the contract remains unaffected.

#### **4.8**

Further liability for default of delivery we are responsible for is excluded. The further legal claims and rights of the buyer they are entitled to in addition to the claim for damages due to a default of delivery we are responsible for comply with clause 8 of these conditions.

#### **4.9**

Partial deliveries or performances (as the case may be) are admissible if this is acceptable to the customer.

#### **4.10**

We are entitled to postpone the delivery by the length of the event impeding the performance in case of business disruptions, war, industrial actions or other events of force majeure on our part. This also applies if the circumstances arise on part of subcontractors employed and/or called in by us to fulfill the contract and it has not been possible to call in other subcontractors. We also may not be held responsible for the aforementioned circumstances if they occurred during a default already at hand. We will notify the buyer of such impediments immediately in writing, however, within one week at the latest.

In case of impediment the effect of impeding the term ends three working days after the event impeding the term is discontinued. If we are not to be held responsible for the impediment and the prevention continues for a period of two months we may withdraw in full or in part from the contract. Furthermore we may demand from the buyer to give a declaration whether they will withdraw from the contract due to the performance's delay or whether they insist on delivery. If the buyer does not give a declaration we also may withdraw from the contract. In both cases a liability for damages on our part is excluded. In case of withdrawal we will immediately reimburse the buyer with the appropriate consideration.

If our expenses increase as a result of such unforeseen circumstances, we are entitled to adjust prices accordingly, including but not limited to charging the current prices at the day of shipping. A period of notification of four weeks applies for the raise to take effect.

If the raise amounts to more than 5% of the originally agreed remuneration, the buyer is entitled to withdraw from the contract. This right of withdrawal does not apply if the buyer does not exercise it within a period of two weeks starting as of the date of notification of the price adjustment.

#### **4.11**

If the agreed delivery time exceeds the period of more than four months as of conclusion of the contract or the delivery is delayed by over four months as of conclusion of the contract for reasons the buyer alone may be held responsible for or that fall into their risk sphere only we are entitled to charge the price applicable at the date of delivery. A period of notification of four weeks applies for the raise to take effect. If the raise amounts to more than 5% of the originally agreed remuneration the buyer is entitled to withdraw from the contract. This right of withdrawal does not apply if the buyer does not exercise their right within a period of two weeks starting as of the date of notification of the price adjustment.

#### **4.12**

In case of reasonable doubts about the buyer's credit standing we are entitled to demand a security of the buyer for our deliveries in form of an absolute, irrevocable and unlimited guarantee of a German major bank or savings bank or payment in advance. The buyer will be granted an appropriate additional respite for performance of the guarantee or consideration (as the case may be) in which it shall be performed. After this respite has expired unsuccessfully we are entitled to withdraw from the contract. In those cases claims for compensation of the buyer are excluded.

#### **4.13**

If the buyer falls into arrears with accepting the goods, we are entitled to demand compensation of the arising damage and possible additional expenses. The same applies if the buyer culpably has breached their duty to cooperate. The risk of accidental loss is transferred to the buyer at occurrence of the default of acceptance.

#### **4.14**

Returns of goods and reshipment are not admissible. In case of coordinated returns a handling charge of 20% of the return value is charged. This excludes false deliveries and misdeliveries caused by us.

### **5. Payment conditions, offsetting, right of retention**

#### **5.1**

Any and all deliveries of our goods and products excluding machines and machineries and deliveries abroad are payable within ten days as of date of invoice with 2% cash discount, within 30 days as of date of invoice net cash in hand.

#### **5.2**

The buyer falls into arrears without further statement by exceeding the period given in clause 5.1 or deviating from this by exceeding a payment date given on the invoice. In case of default we may demand default interest of 8 percentage points above the basic rate as of the due date. We reserve the right to prove a higher damage and the buyer reserves the right to prove a lower damage. In case of default by the buyer we are entitled furthermore to withhold performance of further contractual services until the buyer has made payment or granted a security in form of an absolute, irrevocable and unlimited guarantee of a German major bank or savings bank at our discretion.

#### **5.3**

We are entitled to withdraw from the contract and to demand compensation of damages including lost profit in accordance with legal provisions if the buyer does not meet their payment obligations within a reasonable period. However, we have to allow setting off of what we have saved due to the contract's cancellation or gained by use of their employees elsewhere or omitted to

gain with malicious intent.

#### **5.4**

The acceptance of drafts and cheques is made on account of performance always; only encashment is deemed payment. The acceptance of drafts requires a separate agreement. Discount expenses and costs are at the expense of the customer.

#### **5.5**

Our employees, agents or sales partners are not entitled to accept payments for us. Exceptions require our express written approval.

#### **5.6**

The buyer may not set off against counterclaims protested by us or not established as final and absolute nor assess a right of retention due to such claims.

### **6. Reservation of title**

#### **6.1**

The delivered goods remain our property until the complete payment of any and all deliveries along with all incidental claims from the business relation as a whole including encashment of cheques or drafts possibly accepted as payment by us. Our demands do not perish by absorption in an open item balance and its acceptance.

#### **6.2**

The buyer shall mark the reserved goods adequately and adequately insure them at their own expense against fire, water and theft damages at replacement value. If maintenance and inspection works are required, the buyer shall perform them at their own expense on time.

#### **6.3**

The buyer executes possible handling or processing of the reserved goods for us without us incurring any obligations from it. In case of processing or compounding of the reserved goods with other goods that are not our property we are entitled to the joint ownership of the new item created by it, namely at the rate of the reserved goods' value (= final invoice amount including VAT) to the rest of the processed goods at the time of processing or compounding. If the buyer acquires the sole ownership of the new item they grant us joint ownership to the new item at the rate of the processed or compounded reserved goods' value (= final invoice amount including VAT) to the new item's total value and stores it for us free of charge.

#### **6.4**

The buyer is entitled to resell the reserved goods in the normal course of business. However, they are not entitled to pledge them, assign them as a security or lend them out. If the buyer resells reserved goods they already assign to us their future claims from the resale towards their customers with all ancillary rights, including possible balance

claims, or from another legal ground (insurance, tort) by way of security without a later special declaration being required. We accept the assignment.

#### **6.5**

If the reserved goods are joined with property by the buyer, the buyer now already assigns the claim for remuneration for the amount of the reserved goods' value (= final invoice amount including VAT) with all ancillary rights including the right to grant a trust mortgage. The assignment takes precedence of other claims the buyer possibly is entitled to towards their customer. We accept the assignment.

#### **6.6**

If the reserved goods are resold together with other goods, regardless of whether before or after processing or combining the buyer assigns their claims from the resale of the reserved goods to us as well, however only for the amount of the value (= final invoice amount including VAT) of the reserved goods that are subject to the sale with the other goods. The same applies for possible balance claims. We accept the assignment.

#### **6.7**

If the purchased item has been inextricably compounded with other items not possessed by us we gain joint ownership of the new item at the rate of the reserved goods' value (= final invoice amount including VAT) to the other compounded items at the time of compounding. If the compounding is made thus that the buyer's item shall be seen as the main item it is deemed agreed that the buyer proportionally assigns joint ownership to us. The buyer will store for us the jointly owned item thus created.

#### **6.8**

Until revocation the buyer is entitled to collect the assigned claims. We are entitled to revoke this collection authorization if the buyer does not fulfill their obligations towards us or other good causes are at hand, including but not limited to suspension of payments, institution of insolvency proceedings, protest of a draft or similar evidence suggesting an inability of the buyer to pay. In case of a revocation the buyer shall give us the details for the assigned claims necessary to collect our claims and inform the debtors of the assignment.

#### **6.9**

If the liquidable value of the securities put at our disposal according to the aforesaid clauses exceeds the claims from the business relations to be secured by more than 10% we are obliged in that respect to release securities at our own discretion on request of the buyer.

#### **6.10**

The buyer shall immediately notify us of possible loss and damage or destruction of reserved goods.

The same applies for measures of distraint on the reserved goods or the assigned claims by third parties. The buyer shall give us all information we require to assess our claims towards third parties according to § 771 German Civil Process Order [ZPO] in particular. If the third party is not able to reimburse to us the judicial and extrajudicial expenses of a suit according to § 771 German Civil Process Order, the buyer shall be liable for loss incurred by us. Executory officers or third parties (as the case may be) shall be made aware of our established ownership.

#### **6.11**

In case of behavior of the buyer contrary to contract, including but not limited to default of payment, we are entitled to take back the reserved goods after unsuccessful expiration of an appropriate respite for performance. When we are taking back the purchased item this only constitutes a withdrawal from the contract if we have declared it expressly in advance in writing. After taking back the purchased item we are entitled to liquidate it, the yield of the liquidation shall be set off against the buyer's liabilities excluding reasonable liquidation costs.

### **7. Liability for defects**

#### **7.1**

The details included in this product information or other brochures, promotional material, descriptions etc. are based on the current level of knowledge and experience. We are not able to control their application, use and processing. All details therefore shall be deemed approximate information and not be deemed information of their condition. No guarantee of condition or shelf life shall be based on them. The buyer shall examine the suitability of our products for the intended purpose.

#### **7.2**

The buyer shall immediately examine the delivered goods. Obvious defects shall be notified to us in writing within eight days after receipt of the goods at the latest, hidden defects shall be notified immediately after learning of them. Our liability for defects not notified in time is excluded. This provision also applies for a false delivery or underdelivery.

An examination and notice in time also is a prerequisite to exercise buyer's claims towards us for reimbursement of expenses they had incurred in relation to a consumer since they had to take back defect goods or the consumer has reduced the price.

Insofar we only are liable to the customer for expenses they had towards their immediate customer, however, not for expenses of which reimbursement is claimed towards the customer themselves.

### 7.3

If the buyer accepts defective goods despite knowing the defect or not knowing it due to gross negligence they only shall be entitled to claims and rights on account of these defects if they have reserved them at acceptance.

In case of a justified notice of defects we rework the defective delivery items or deliver a replacement at our own discretion. Such a supplementary performance is only deemed failed after two unsuccessful attempts. We shall bear all expenses necessary for remedy of defects, including but not limited to transport, road, work and material costs unless those have been incurred by bringing the object of contract to another place than the place of performance.

### 7.4

If there is a defect of the goods we are obliged to execute a supplementary performance excluding the buyer's rights to withdraw from the contract or to reduce the purchase price (abatement) unless we are entitled to refuse supplementary performance due to legal provisions. The buyer shall set us a reasonable term for supplementary performance.

If the supplementary performance fails or we are not ready or able to perform a supplementary performance or replacement delivery or it is delayed by more than a reasonable period for reasons we may be held responsible for the buyer is entitled to withdraw from the contract or to demand a reduction of the purchase price (abatement).

### 7.5

Claims due to defects of the item do not exist in case of insignificant deviation of the delivery item from the agreed condition, an insignificant impairment of usability, in case of natural wear and tear, damage by violence, by inappropriate handling or use, excessive wear, elemental impacts or in case of the buyer's arbitrary modifications of the goods carried out by the buyer or induced with third parties and quantity variance customary to the trade the buyer is not entitled to claims for defects.

The warranty deed also lapses if the object of the contract is changed inexpertly by the buyer or a third party or by installation of non-proprietary parts unless the defect is not causally connected with those measures. Furthermore the warranty lapses in case of inexpert installation or maintenance by the buyer or a third party as well as in case of non-compliance with operation and maintenance manuals, provisions for use, handling and installation and in case of a faulty selection of shipping and packaging if it is made due to instructions of the buyer.

### 7.6

For compensation due to defects of the item we are liable in line with the following clause 8 exclusively.

### 7.7

Claims of the buyer arising from further declarations given by us expressly and in writing in connection with deliveries remain unaffected by the aforesaid provisions.

## 8. Liability for claims for compensation

### 8.1

We are not liable for damages based on minor negligent breach of duty or action. This does not apply if the breach of duty or act results in injury to life, body or health or is a breach of significant contractual duties.

### 8.2

We are not liable for minor negligent actions of our bodies and/or executives and/or non-executive employees (=simple vicarious agent) unless significant duties risking the contractual purpose are breached and the breach of duty results in injury to life, body or health.

### 8.3

In all cases our liability is limited to the typical damages foreseeable at contract conclusion resulting from the breach of duty or action.

### 8.4

Liability for damages caused by the delivery item to legally protected interests of the buyer, e.g. for damages to other items, is excluded. This does not apply if there is willful intent or gross negligence or we are liable due to injury to life, body or health.

### 8.5

For the remainder our liability is limited, if legally admissible, to the scope our covered third party liability insurance acknowledges and reimburses.

### 8.6

The above provision is not connected to a change of the onus of proof to the buyer's detriment.

### 8.7

Claims of the buyer from other declarations we have given expressly and in writing in connection with deliveries as well as legal claims of the buyer including but not limited to claims in accordance with the German Product Liability Act remain unaffected.

## 9. Statute of limitations

### 9.1

All claims for defects of the item fall under the statute of limitations of 12 months as of delivery. However, this does not apply in the cases of § 438 clause 1 (1) German Civil Code [BGB] (defect of title in case of immovable objects), § 438 clause 1 (2) German Civil Code (buildings, items for build-

ings), § 479 clause 1 German Civil Code (claim to recourse of the contractor) or § 634 a clause 1 (2) German Civil Code (buildings or works of which the success consists of performance of planning or surveillance for them). The causes given in the previous sentence are subject to a period of limitation of three years.

### 9.2

The aforementioned periods of limitation also apply to any and all claims for compensation towards us in connection with a defect, regardless of the claim's legal basis. If there are claims for compensation of any kind towards us that in turn are not connected with a defect the period of limitation of clause 9.1 applies to them as well.

### 9.3

The periods of limitation of clause 9.1 and 9.2 apply with the following requirements:

- the periods of limitation generally do not apply in case of willful intent;
- the periods of limitation also do not apply when we have concealed the defect fraudulently or granted a warranty for the service's condition. If we concealed a defect fraudulently the legal periods of limitation apply instead of the periods given in clause 9.1;
- the periods of limitation also do not apply for claims for compensation in case of injury to life, body and health, in case of claims according to the Product Liability Act, in case of a grossly negligent breach of obligation or in case of breach of significant contractual duties.

## 10. Industrial property rights

### 10.1

We only are liable for claims arising from the breach of industrial property rights if we are responsible for the breach of industrial property rights and if the industrial property rights are not owned by the buyer or an associated company in which the buyer directly or indirectly holds a majority interest by means of a share or voting rights.

### 10.2

A liability on our part also is excluded if the buyer does not notify us immediately after learning of a risk of breach and claimed breaches and leaves the conduct as well as the type of conduct of legal disputes to our discretion.

### 10.3

Furthermore, possible claims of the buyer from the breach of industrial property rights are excluded if the breaches are caused by instructions of the buyer or are resulting from changes to the object of the contract made by the buyer or from the use in combination with another item not received from us. The same applies if the object of contract is used in a way not foreseeable for us at contract conclusion.

#### **10.4**

In case that there are breaches of industrial property rights we are entitled to purchase a licence for this object of contract in favor of the buyer or to modify the object of contract or to replace it by a similar object of contract so that the breach is removed and the purpose given in the contract is ensured.

#### **MAINPEX GmbH & Co. KG**

Silbersteinstrasse 14  
97421 Schweinfurt  
Germany  
Tel: +49 (0) 97 21/ 65 9 77-500  
Fax: +49 (0) 97 21/ 65 9 77-600

#### **10.5**

For the remainder the clauses 7 and 8 of these delivery terms and conditions apply for claims for compensation.

### **11. Place of performance and venue**

#### **11.1**

Place of performance for deliveries is Marl or Knetzgau and for payment it is Schweinfurt.

#### **11.2**

The venue is Schweinfurt for both parties if the buyer is a business man, a public legal entity or public separate estate. This also applies for cheque and draft proceedings. Furthermore we are entitled to file a suit against the buyer at their competent court of jurisdiction.

### **12. Final provisions**

#### **12.1**

German law applies for conclusion and handling of any and all contracts. Validity of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

#### **12.2**

We are entitled to process the data about the buyer disclosed to us within the business relation or in connection with it pursuant to the German Federal Data Protection Act.

#### **12.3**

In case that one of the aforementioned provisions violates binding law and therefore would be void at application it is agreed that for this clause at risk of nullity it is not the corresponding legal clause taking effect but it rather is agreed that in that case the clause at risk of nullity is replaced by an admissible provision coming as close to the former provisions' purpose as possible.

In case of gaps such a provision is deemed agreed from the start which matches that which the contract partners reasonably would have agreed if they had considered this gap.

#### **12.4**

These general delivery and payment conditions overrule and replace all general terms and conditions that used to apply.