

## **1 Scope and validity of the terms and conditions of business**

The following terms and conditions are the basis of the contract governing our business relations with customers who order our products; they become contractually binding upon our acceptance of an offer of a contract (an order). These terms and conditions shall also apply to future business transactions with the customer.

We do not recognise the customer's terms and conditions of business unless we have explicitly agreed to these in writing, nor shall the customer's terms and conditions of business apply even if we make the delivery without explicitly rejecting the customer's terms and conditions. Any customer's terms and conditions which deviate from or supplement our General Terms and Conditions of Business shall be excluded.

## **2 Conclusion of contract, characteristics, confirmation of order**

Our offers are non-binding. We are only bound by our offers if they are explicitly termed as binding. Otherwise, they constitute an invitation to submit orders. In such cases, our written confirmation of the order is required before a contract can be concluded.

Characteristics of the goods which the customer may expect in consequence of our public statements, in particular in advertisements or in the labelling of the goods, or on the basis of standard commercial practice, are not agreed and guaranteed as features of the product unless they are explicitly listed in an offer or confirmation of order. We are only bound by guarantees if they are defined as such in an offer or confirmation of an order and these documents also set out in detail the obligations which the guarantee places on us.

Our written confirmation of an order shall define the scope of the delivery.

Verbal supplementary agreements and guarantees on the part of our staff and representatives are not legally valid unless confirmed by us in writing.

## **3 Payment conditions**

Our prices are given as net prices ex-factory or ex-warehouse excluding the relevant statutory VAT. Additional costs will be charged for packaging and if applicable, installation, which will be charged at the prices valid at the time the work is carried out. Should over four months pass between the confirmation of order and delivery, we shall have the right to charge the valid market price at the date of delivery of the product ordered.

Our prices must be paid within 30 days after billing; the receipt of payment by us is definitive. Payments should be made directly to us, without deduction, unless explicitly specified otherwise in writing. Payments to third parties only satisfy the debt if we have instructed the buyer to that effect in writing or we have authorised the recipient third party to collect in writing.

The buyer defaults if he receives a warning after the due date or does not pay at the time determined or to be determined. This does not affect the legal provision which stipulates that the buyer defaults 30 days at the latest after the due date and receipt of the bill or a request for payment.

If the buyer defaults, we have the right, irrespective of our other or further rights, to claim interest of 9% per annum above the applicable base interest rate.

If payment in instalments was agreed to in writing, the outstanding amount becomes due for payment immediately as soon as the buyer is partially or totally late in paying an instalment by longer than a month, or late in paying an instalment for the third time.

The right to set-off or exercise of the right of retention due to possible counterclaims on the part of the buyer which are disputed by us or which are not established in a legally binding manner is

debarred. The exercise of a right of retention is also debarred if the buyer's counterclaims are not founded in the same contractual relationship.

#### **4 Delivery and passing of risk**

Our obligations will be fulfilled at our business headquarters or the distributing warehouse, as disclosed to the buyer in the order confirmation. The buyer assumes the costs of shipping the item. The taxes and customs duties accompanying the shipment also count to these costs. The risk is passed to the buyer with delivery to the shipper or another transporter at the latest. This does not apply if we have, as an exception, assumed the costs of shipment in accordance with a separate agreement. If the buyer has not provided specific instruction, we may select an appropriate shipper.

Stated delivery dates are only roughly agreed approximate times, unless they are explicitly specified as binding in our order confirmation. Exceeding the stated delivery date by up to 30 days is considered contractual, unless the delivery date was explicitly specified as binding in our order confirmation.

We will not be responsible for failure to perform in a timely manner when the failure results from events beyond our reasonable control (an event of "Force Majeure"), including acts of God, epidemics, acts of war whether declared or undeclared, actions by any governmental agency or authority (whether valid or invalid), blockades, labor disputes (whether of our employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable us to perform. The circumstances described above do not become our responsibility if they are caused by an already existing default. We will immediately inform the buyer of the beginning and end of such obstacles.

If delivery dates are not explicitly specified as binding, we default in delivery through a written request of the buyer which may be proffered six weeks at the earliest after the delivery date. For any case where delayed delivery is caused due to negligence, but not gross negligence, the claim for damages is limited to a maximum of 5% of the total price of the products whose delivery is delayed, in accordance with § 280 Para 1 and Para 2, 286 BGB.

Partial deliveries are permitted if they are economically reasonable for the buyer.

We reserve the right to modify the accoutrements or technical details of our devices, as long as this is reasonable for the buyer, taking into account both his and our interests, or if the difference is only minor.

If the scope of delivery and services also includes control by associated software, the control is passed to the buyer along with the remaining system parts. All rights to the software, especially the copyright, usage, and exploitation rights, remain with us, unless they are explicitly granted to the buyer in these sales conditions or by another agreement. The buyer only receives the limited right to use the software, in accordance with the purpose and extent of the contract and a specially concluded software license contract.

If the buyer does not pick up an item to be collected on the contractually binding delivery date, he is in default of acceptance. In case of a roughly agreed approximate time, we have the right to notify the buyer ahead of time that an item must be picked up within a period of two weeks; if the buyer does not pick up the item at this time, he is in default of acceptance. The collection of an item is a principal obligation. In case of damages suffered by us, the claim to damages shall be a lump-sum of 10% of the order value; proof of lesser or greater damage is reserved.

## **5 Claims due to defects**

The definition of the material defect according to § 633 para. 2 BGB applies, even in case of a purchase contract.

The buyer is obligated to report, in writing, identifiable defects one week at the latest after delivery, non-identifiable defects one week at the latest after their discovery. These periods are cut-off periods.

If a defect exists in the delivery, we have the right to choose rectification or replacement (supplementary performance) at our discretion.

If the supplementary performance fails, the buyer has the right to choose to withdraw from the contract or to request an appropriate reduction of the purchase price (decrease) at his discretion. The warranty period shall be 12 months, calculated from the passing of risk. If assembly by MAGNAFLUX GmbH is agreed upon, the following applies: the warranty begins when assembly is completed. In all cases, however, it ends 16 months after preliminary acceptance on the premises of MAGNAFLUX GmbH. If the customer does not carry out preliminary acceptance and if a delay is not the fault of MAGNAFLUX GmbH, the warranty ends 16 months at the latest after notification of the completion of construction.

Replaced parts become our property and must be handed over to us.

For defects that occur because of improper or incorrect usage, incorrect assembly or operation by the buyer or third parties not ordered or authorised by us (also in regard to interference with the software), natural wear, incorrect or negligent treatment, inappropriate operating resources, alternative materials, defective construction, chemical, electromagnetic, or electric effects, no liability is assumed, if we are not to blame. Similarly, claims due to defects are debarred if they are based on changes in the item or faulty repairs carried out by the buyer or third parties commissioned by him.

The supplementary performance is rendered without recognition of a legal obligation and does not activate a new statute of limitation. This also applies if replacement parts are incorporated in the course of rectification of defects.

Further claims due to defects on the part of the buyer are debarred with the exception of possible limited claims to damage as per Number 6.

If the inspection required for alleged defects reveals that no claims due to defects exist, the buyer is obligated to assume the costs incurred by the inspection.

If used objects (incl. demonstration devices) are the subject of the contract, any liability for defects is debarred, unless we are charged with acting in bad faith.

## **6 Limitations of liability (Exclusion and limitation of liability)**

Irrespective of the legal grounds for liability, we can only be held liable in case of (a) our intentional misconduct, (b) our culpable breach of major contractual obligations, (c) the gross negligence of our corporate bodies or executive officers, (d) culpable bodily injury, death and/or damage to personal health caused by us; (e) fraud; and/or (f) personal injury and property damage to personal items caused by us, provided that liability exists under the Product Liability Act for privately used items. In the event of the breach of major contractual obligation we shall also be liable for gross negligence on the part of non-executive employees or for simple negligence on the part of corporate bodies and executive officers. In the event of simple negligence, our liability is limited to reasonably foreseeable damage typical to the given type of contract.

## **7 Retention of title**

We retain the title to the item as per § 449 BGB up until complete payment of the purchase price and all other claims from the ongoing business relationship with the buyer that are due at the time of conclusion of contract. We agree to release the security to which we are entitled to the extent that its invoiced value not only temporarily exceeds our as yet unsatisfied (residual) claims by more than 10%.

We authorize the buyer to make use of the item in the context of proper business operations. He does, however, already cede to us now all receivables from purchasers or third parties, to the amount of the final invoice (including value-added tax), that he earned from resale, regardless of whether the object delivered was resold with or after processing. The buyer remains authorized to collect these receivables even after assignment. Our authorization to collect the receivables ourselves remains unaffected. We are, however, obligated not to collect the receivables as long as the buyer discharges his payment obligations from the revenues collected, the assets of the buyer do not significantly deteriorate, the buyer is not in default of payment, and especially no application to begin insolvency proceedings has been made or inability to pay has been established. If one of the aforementioned reasons or another important reason is extant, the buyer's right to collect is void. In this case, we can request that the buyer disclose to us the ceded claims and debtors, provides all information necessary for collection, delivers the associated documents and notifies the debtors (third parties) of the assignment. This assignment in advance includes the receivables earned as well as securities ordered and any possible substitutes for receivables. Other use of the items is not granted and requires compensation.

If the buyer is in default of payment, we have the right, after unsuccessful setting of an extension, to withdraw from the contract and request the item. Additional claims to compensation on the part of MAGNAFLUX GmbH remain unaffected by a withdrawal.

The buyer is obligated to refer to our rights and immediately inform us in case of possible garnishment by third parties. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an action as per § 771 ZPO, the buyer is liable for the costs we incur. The buyer is obligated to treat the delivery item with care, and especially to insure it against damages due to fire, water, and theft at his own expense sufficiently for the replacement value. If maintenance and inspection work is necessary, the buyer must carry it out on time at his own expense.

## **8 Assembly and repair conditions**

The separate general conditions apply for services and care/maintenance contracts of MAGNAFLUX GmbH.

## **9 Worsening of the buyer's financial situation, contract termination**

If the buyer becomes unable to pay after the conclusion of contract, if initiation of insolvency proceedings is requested for his assets, or if circumstances arise after the conclusion of contracts that significantly damage the buyer's credit rating, we can refuse delivery until the return for services is effected or the buyer has provided security for it. The same applies if we only become aware of the facts supporting the significant deterioration of the customer's financial situation after the conclusion of contract through no fault of our own, even if they were already extant before the conclusion of contract.

If the buyer does not render the return for services within an appropriate period and if he also does not provide security for the return for services within an appropriate period, we have the right after an appropriate extension of time to withdraw from the contract and/or request compensation for damages. No extension is required if this is unnecessary. If we request compensation, we can request a lump-sum amounting to 15% of the order value (incl. value-added tax). Proof of lesser or greater damage remains reserved.

#### **10 Change or cancellation of order**

Cancellations, changes, and postponements of the delivery date of orders already accepted by MAGNAFLUX can only take place with the consent of MAGNAFLUX. In this case, the buyer must reimburse the costs already incurred by MAGNAFLUX. For cancellations, changes, or postponements of the delivery date of orders already accepted by MAGNAFLUX within 4 weeks to the original delivery date, a lump-sum compensation of 10% of the relevant order value is due, unless MAGNAFLUX shows that the actual expense was higher. Buyer may prove that a significantly lower expense occurred.

#### **11 Assignment**

Without prejudice to § 354a HGB, no assignment of any rights or interest or delegation of any obligation of the buyer under or in connection with the contract may be made without our prior written consent. We may transfer the contract or otherwise assign or transfer its rights and/or obligations.

#### **12 Confidential Information**

All information furnished or made available by us to the buyer in connection with the subject matter hereof shall be held in confidence by the buyer. The buyer agrees not to use (directly or indirectly), or disclose to others, such information without our prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by the buyer of any obligation herein; (b) the buyer can show by written records was in the buyer's possession prior to disclosure by us; or (c) is legally made available to the buyer by or through a third party having no direct or indirect confidentiality obligation to us with respect to such information.

#### **13 Other**

German law applies except for possible reference to a third state in accordance with German private international law. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.

The court of jurisdiction for disputes arising from our business relationship with buyers is, with the exception of dunning procedure, MAGNAFLUX' registered office. MAGNAFLUX can also take judicial and extrajudicial steps in the general court of jurisdiction of the buyer.

If individual provisions become invalid, the invalidity is limited to the corresponding clause. The contracting parties commit themselves to replacing the invalid provision with one which comes as close as possible to the invalid provision in its commercial sense and purpose; the same applies for possible contractual loopholes.

As of: 1 July 2022