

TERMS AND CONDITIONS FOR THE DELIVERY OF MACHINERY FOR MOOG GMBH UNDER-BRIDGE ACCESS SOLUTIONS

For use towards (hereinafter referred to as Customer):

1. a person who, at the time of conclusion of the contract, is exercising their commercial or independent professional activity (Entrepreneur);
2. legal persons under public law or a special fund under public law.

I. GENERAL

1. These terms and conditions apply to all current and future business relationships between MOOG GmbH Under-bridge Access Solutions (hereinafter referred to as MOOG) and the Customer.
2. All deliveries and services are based on these conditions as well as any separate contractual agreements. Deviating, conflicting or supplementary purchasing conditions of the Customer shall not become part of the contract, even if MOOG is aware of them, unless MOOG expressly agrees to their validity in writing. Unless otherwise agreed, a contract is only concluded by the signature of both parties (MOOG and Customer) on the Contract.
3. MOOG reserves the right to offers, cost estimates, constructions, drawings, and similar information of a physical and immaterial nature - also in electronic form - property rights and copyrights; they must not be made available to third parties. MOOG undertakes to make information and documents designated as confidential by the Customer available to third parties only with the Customer's consent.
4. Unless otherwise stated, MOOG's offers and cost estimates are non-binding until the contract is concluded. We reserve the right to make technical changes due to statutory provisions within the scope of what is reasonable even after the contract has been concluded.
5. Should individual provisions of the contract between MOOG and the Customer, including these "Terms and conditions for the delivery of machines from MOOG GMBH Under-bridge Access Solutions" are or become wholly or partially ineffective, this shall not affect the validity of the remaining provisions. The wholly or partially ineffective provision shall be replaced by a provision whose content corresponds most closely to the ineffective provision. The same applies if during the execution of the contract should highlight gaps that need to be supplemented.

II. PRICE AND PAYMENT

1. Unless otherwise agreed, MOOG's prices are net without any deductions plus the statutory value added tax applicable on the day of delivery and ex works (Im Gewerbegebiet 8, 88693 Deggenhausaertal/Germany). Packaging, loading, freight and the corresponding insurance for this are expressly not included.
2. If the cost factors relevant for pricing (such as costs for production material, supplier parts, wages / salaries, etc.) change significantly in the period from the conclusion of the contract to the contractually stipulated delivery date, MOOG may demand the agreement of a new, adjusted price. If an agreement cannot be reached, MOOG is entitled to withdraw from the contract.
3. Payments are to be made in accordance with a separate contractual agreement without any deductions.
4. Payments by check are not accepted.
5. Unless otherwise agreed, the bank charges are borne by the Customer.
6. In the event of default in payment, MOOG will charge Interest on arrears in the amount of 4 percentage points above the base interest rate. MOOG reserves the right to prove and assert a higher damage caused by default.

7. The Customer is only entitled to withhold payments to the extent that his counterclaims are undisputed or have been legally established.
8. The Customer's right to counterclaims to offset from other legal relationships, it is only entitled to the extent that it is undisputed or have been legally established.

III. DELIVERY TIME, DELAY IN DELIVERY

1. The delivery time results from the agreements between the contracting parties. MOOG's compliance with it presupposes that all commercial and technical questions between the contracting parties have been clarified and that the Customer has fulfilled all obligations incumbent on him (such as providing the chassis, obtaining the necessary official certificates or permits, or making a down payment). If this is not the case, the delivery time will be extended accordingly. This does not apply if MOOG is responsible for the delay.
2. Compliance with the delivery time is subject to correct and timely delivery from MOOG. MOOG will notify the Customer of any impending delays as soon as possible.
3. The delivery time is extended appropriately in cases of force majeure, labor disputes or other events that are beyond MOOG's control. MOOG will inform the Customer of the beginning and the end of such circumstances as soon as possible.
4. The delivery period shall be deemed to have been complied with if the Customer has been notified that the delivery item is ready for dispatch or has left MOOG's works by the time the delivery period expires. Insofar as acceptance is to be carried out by the Customer, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - alternatively the notification of readiness for acceptance.
5. If the dispatch or acceptance of the delivery item is delayed for reasons for which the Customer is responsible, the Customer will be charged for any default or storage costs incurred that are a result of the delay.
6. Goods reported as ready for dispatch must be picked up or retrieved by the Customer immediately, but no later than after an expiry period of 4 weeks (20 working days), calculated from the date of receipt of the notification of readiness for dispatch by MOOG. If no call or collection is made within the aforementioned period, MOOG is entitled to store the goods at its own discretion, at the expense and risk of Customer, and to invoice them in full as "delivered ex works".

IV. TRANSFER OF RISK, ACCEPTANCE

1. The risk shall pass to the Customer when the delivery item has left the factory or when it is handed over to the Customer or carrier in accordance with the valid Incoterms. This also applies if partial deliveries are made or MOOG has assumed other services, e.g., shipping costs or delivery and unloading/installation.
2. If dispatch/collection or acceptance is delayed or does not take place as a result of circumstances for which MOOG is not responsible, the risk shall pass to the Customer from the date of notification of readiness for dispatch or acceptance. MOOG undertakes to take out, at the Customer's expense, such insurance as the Customer may require.
3. Partial deliveries are permissible, as far as reasonable for the Customer.

V. RESERVATION OF OWNERSHIP

1. MOOG retains ownership of the delivery item until all payments have been received - including any additional ancillary services owed under the delivery contract.

2. MOOG is entitled to insure the delivery item at the Customer's expense against theft, breakage, fire, water and other damage, provided that storage of the goods by MOOG, which have been reported ready for dispatch or acceptance, is necessary (e.g., due to delay in collection/acceptance or default in payment by the Customer). This is void if Customer proves to MOOG that a corresponding insurance policy already exists or has been taken out by Customer. Customer must inform MOOG of this without being requested to do so.
3. The Customer may neither sell, pledge nor assign as security the delivery item until all payments have been received by MOOG. In the event of seizure, confiscation or other dispositions by third parties, he must inform MOOG immediately.
4. In the event of breach of contract by the Customer, in particular in the event of default in payment, MOOG is entitled to take back the delivery item after a reminder and the Customer is obliged to surrender the delivery item.
5. Due to the retention of title, MOOG may only demand the return of the delivery item if MOOG has previously withdrawn from the contract.
6. If insolvency proceedings are opened against the Customer's assets and MOOG has not yet received all payments under the contract, MOOG shall be entitled to withdraw from the contract and to take back the delivery item.

VI. ASSEMBLY / ACCEPTANCE / TRAINING AT THE CUSTOMER'S SITE

1. If assembly / acceptance / training at the Customer's site is part of the contract, the following shall be organized by the Customer and the costs thereof shall be borne by the Customer themselves, unless otherwise stipulated in the contract:
 - Provision of scaffolding, lifting and crane vehicles as well as other possibly necessary devices
 - Provision of installation tools, electricity, heating, sanitary facilities and lighting
 - Provision of work safety clothing for MOOG's fitters / experts / trainers or other persons commissioned by MOOG.
 - Obtaining permits for the use of bridges
 - Concrete description and overview of invisible lines/cables as well as all other information required for installation and assembly
 - if necessary, commissioning a translator on site
 - If necessary, organization of additional helpers on site The Customer ensures that the place of performance is prepared accordingly, that all required parts are available and that all preparatory work has been completed and performed at the beginning of the agreed service
2. The Customer shall bear the costs for any waiting times incurred, insofar as the aforementioned obligations of the Customer have not been fulfilled on time or have not been completely fulfilled.
3. The Customer is responsible for the transport of the delivery item from the place of unloading to the place of installation and is liable for any damage that may occur in the process.

VII. CLAIMS FOR DEFECTS, WARRANTY

MOOG shall be liable for material defects and defects of title in the delivery to the exclusion of further claims - subject to Section VIII - as follows:

Material defects

1. All parts which prove to be defective as a result of a circumstance prior to the transfer of risk shall be repaired or replaced free of defects at the discretion of MOOG. MOOG must be notified immediately in writing of the discovery of such defects. Replaced parts become the property of MOOG.

2. After consultation with MOOG, Customer shall grant MOOG the necessary time and opportunity to carry out all repairs and replacement deliveries deemed necessary by MOOG; otherwise MOOG shall be released from liability for the resulting consequences. Only in urgent cases where operational safety is endangered or in order to prevent disproportionately large damage shall Customer have the right to remedy the defect himself or have it remedied by third parties and to demand reimbursement of the necessary expenses from MOOG. Should such a case occur, MOOG must be informed immediately so that telephone support can be provided by MOOG to avoid any consequential damage.
3. MOOG shall bear - insofar as the complaint proves to be justified - the expenses necessary for the purpose of subsequent performance, insofar as this does not result in a disproportionate burden for MOOG. Insofar as the expenses increase due to the fact that the Customer has taken the delivery item to a location other than the place of performance after delivery, any additional costs incurred as a result shall be borne by the Customer. In the event of the sale of a newly manufactured item, MOOG shall also reimburse, to the extent of its legal obligation, the expenses incurred by the Customer within the scope of recourse claims in the supply chain.
4. The Customer has the right to withdraw from the contract within the framework of the statutory provisions if MOOG - taking into account the statutory exceptional - allows a reasonable deadline set for the repair or replacement delivery due to a material defect to expire without result. If there is only an insignificant defect, the Customer is only entitled to a proportionate reduction in the contract price. The right to reduce the contract price shall otherwise remain excluded.
5. Further claims shall be determined exclusively according to Section VIII. 2 of these Terms and Conditions.
6. In particular, no liability is assumed in the following cases: Unsuitable, improper or inappropriate use of the delivery item, faulty assembly or commissioning by the Customer or a third party, natural wear and tear, faulty or negligent handling and storage, improper maintenance, non-compliance with the annual required inspections, use of unsuitable operating materials, defective construction work, unsuitable subsoil, chemical, electrochemical or electrical influences as well as environmental influences (e.g. corrosion due to extreme weather conditions) - insofar as MOOG is not responsible for them. The instructions for use, operation and maintenance as well as the corresponding manuals must always be observed. The delivery item may only be operated, serviced or repaired by trained personnel.
7. If the Customer or a third party makes any improper repairs, MOOG shall not be liable for the resulting consequences. The same applies to modifications of the delivery item of any kind made without the prior written consent of MOOG (e.g. the attachment of additional structural and / or electrical parts).
8. In the event of any transport damage, the contractually agreed Incoterms shall regulate the responsibilities with regard to the damage.

Legal defect

1. If the use of the delivery item leads to the infringement of commercial property rights or copyrights in Germany, MOOG will, at its own expense, generally procure the right for the Customer to continue using the delivery item or modify the delivery item in a manner reasonable for the Customer in such a way that the infringement of commercial property rights no longer exists.

If this is not possible under economically reasonable conditions or within a reasonable period of time, the Customer shall be entitled to withdraw from the contract. Under the aforementioned conditions, MOOG shall also be entitled to withdraw from the contract. In addition, MOOG will indemnify the Customer from undisputed or legally established claims of the relevant property right holders.

2. Subject to Section VIII.2, MOOG's obligations set forth in Section VII. 9 shall be final in the event of any infringement of property rights or copyrights.

They only exist when:

- The Customer notifies MOOG immediately of any asserted infringements of commercial property rights or copyrights,
- The Customer supports MOOG to a reasonable extent in defending the asserted claims or enables MOOG to carry out the modification measures in accordance with Section VII. 9,
- MOOG reserves the right to take all defensive measures including out-of-court settlements,
- the legal defect is not based on an instruction of Customer and
- the infringement of rights was not caused by Customer's unauthorized modification of the delivery item or use of the delivery item in a manner not in accordance with the contract.

VIII. MOOG'S LIABILITY DISCLAIMER

1. If the delivery item cannot be used by the Customer in accordance with the contract as a result of MOOG culpably neglecting or culpably faulty suggestions or advice that took place before or after the conclusion of the contract, or due to the culpable breach of other contractual secondary obligations - in particular instructions for operation and maintenance of the delivery item - the provisions of Sections VII and VIII.2 shall apply to the exclusion of further claims by the Customer.
2. MOOG shall only be liable - on whatever legal grounds - for damage that has not occurred to the delivery item itself if:
 - a. in the event of willful intent and gross negligence on the part of management or senior executives,
 - b. in case of culpable injury to life, body, health,
 - c. in the case of defects which he has fraudulently concealed,
 - d. within the scope of a guarantee promise,
 - e. in the case of defects in the delivery item, insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used items.

In the event of a culpable breach of essential contractual obligations, MOOG is also liable in the event of simple negligence, but limited to the typical, reasonably foreseeable damage.

Further claims are excluded.

IX. SPECIAL RIGHTS IN THE EVENT OF ORDER CANCELLATION

MOOG manufactures and supplies customer-specific bridge access solutions; all services, errands and manufacturing processes are processed exclusively on an order basis. In the case of an order cancellation by the customer - regardless of the assertion of further damage by MOOG - in particular the following compensation and compensation payments are to be made by the customer:

In particular, all order-related costs incurred at MOOG for the procurement of work materials, chassis and installation parts, remuneration for all working hours for planning and production incurred by MOOG up to the time of cancellation, reimbursement of the costs for the order-related inspection and engineering services by third parties (e.g. Test statics, TÜV / DEKRA, etc.).

Furthermore, costs for rescheduling and reorganization of the production sequence and any downtime or idle times in production at MOOG, which are caused by the cancellation are to be reimbursed.

MOOG shall be reimbursed for any cancellation fees incurred for necessary cancellations of contracts already concluded by MOOG with third parties (e.g. forwarding companies, airline tickets or similar). Any profit lost by MOOG due to premature termination of an order by the Customer shall be additionally reimbursed by the Customer.

In the event of cancellation by the Customer, the Customer shall owe a contractual penalty of 15% of the order value regardless of this; any further claims for damages by MOOG are not affected by this; MOOG reserves the right to demonstrate higher damages.

MOOG shall be entitled to offset any claims against partial or advance payments.

X. JURISDICTION

All claims by the Customer - for whatever legal reasons - become statute-barred 12 months after the transfer of risk. If the collection is delayed or does not take place, all claims of the Customer shall become statute-barred at the latest after the expiry of 18 months from the notification of readiness for collection.

The limitation periods also apply to the limitation of recourse claims in the supply chain in accordance with Section 445b (1) of the German Civil Code (BGB), provided that the last contract in this supply chain is not a purchase of consumer goods. suspension of the statute of limitations according to Section 445b (2) of the German Civil Code (BGB) remains unaffected. The statutory deadlines apply to claims for damages according to Section VIII. 2 a-c and e. They shall also apply to defects in a building or to delivery items that have been used for a building in accordance with their normal use and have caused its defectiveness.

XI. SOFTWARE USE

Insofar as software is included in the scope of delivery, the Customer is granted a non-exclusive right to use the software supplied including its documentation It shall be provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

The Customer may only reproduce, revise, translate or convert the software from the object code to the source code to the extent permitted by law (§§ 69 a ff. UrhG). The Customer undertakes not to remove manufacturer information - in particular copyright notices - or to change them without MOOG's prior express consent.

All other rights to the software and the documentation including copies remain with MOOG or the software supplier. Sublicensing is not permitted.

XII. DATA PROTECTION, APPLICABLE LAW, JURISDICTION

1. MOOG is entitled to store all transmitted data, including contractual provisions, personal data and other data, in the course of processing business relationships. In doing so, MOOG observes the provisions of the European Data Protection Regulation (DSGVO), the regulations of the Federal Data Protection Act (BDSG) and other protective provisions.
2. All legal relationships between MOOG and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany applicable to legal relationships between domestic parties. The provisions of the UN Convention on Contracts for the International Sale of Goods shall expressly not apply.
3. The place of jurisdiction shall be the court having jurisdiction over the registered office of MOOG. However, MOOG shall be entitled to bring an action at the Customer's principal place of business.

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