

mageba SA - General Terms and Conditions



1. Acceptance

These general Terms and Conditions (hereinafter referred to as "T&C") of mageba SA – Solistrasse 68, 8180 Bülach, CHE-495.422.100 MWST (hereinafter referred to as "mageba") apply, in their most current version on the day of confirmation of order, to all deliveries of goods and services by mageba. The T&C form an integral component of every contract concluded between a customer of mageba (hereinafter referred to as "customer") and mageba as a supplier of goods and/or services. mageba is entitled to alter these T&C at its own discretion. The current valid version of the T&C may be downloaded at any time from mageba's website (<https://www.mageba-group.com>). If any provision of the T&C contradicted with the provision of any written agreement between the parties, the latter provision shall apply. General terms and conditions and any provision the like of customer or any other party are not applicable.

2. Placing Orders, Conclusion of the Contract

The customer may place orders in writing or verbally. However, the contract shall only be concluded when the formal written Order Confirmation from mageba has been signed and returned by the customer. Each Order Confirmation of mageba is only binding as long as it is stated in the offer. A contract shall only be concluded with the countersigned and returned Order Confirmation or the delivery of a countersigned copy of a corresponding contract.

3. Scope of Delivery

3.1 The order confirmation is the decisive reference for the scope and execution of the delivery. Any performances not included in the order confirmation will be invoiced as extra, as will any performances that require special expenditures in order to be completed before the agreed deadline at the customer's request. Any requested performances not included in the original order/contract are considered as an amendment of existing contract by the customer. In such a case, an additional order confirmation will be issued by mageba to cover the additional scope.

3.2 If the customer requires the use of special materials, this must be stated in the order. Otherwise mageba is entitled to use the materials usually applied.

4. Delay or Failure to Perform / Force Majeure

mageba shall be excused from any delay or failure in performance due to an act of God, war, riot, embargo, an act of any civil or military authority, fire, flood, accident, pandemic, quarantine restriction, strike, difference with workers, delay in transportation, shortage of trucks, ships, fuel, labour, material or equipment, delay by customer in the approval of any redesign or shop drawing of mageba (when such is part of mageba's obligation) or any other cause beyond the reasonable control of mageba. mageba shall be excused from any delay or failure caused by a Force Majeure event, in particular also in the event of any unforeseen circumstances in the production or distribution.

5. Technical Documents

5.1 Technical data, construction drawings, plans, illustrations etc., which are included with a quotation, shall be considered as the technical basis of the pricing.

5.2 All technical documents remain the intellectual property of mageba and may not be copied or duplicated, or made available to third parties in any way, or used for the manufacture of products or components. They may be used for inspection and maintenance works, provided they have been appropriately marked by mageba.

5.3 Technical documents pertaining to offers that do not result in an order are to be returned immediately. Any electronic data and copies made electronically shall be irrevocably deleted.

5.4 mageba shall not have any liability whatsoever for the design or details of others, and customer shall defend, indemnify, and hold mageba free and harmless of any such liability.

6. Intellectual Property

All confidential information exchanged under the order/contract and all rights thereto shall remain the property of the giving party or the respective rights holder. Unless otherwise agreed in writing, the parties shall not grant each other any licences.

7. Regulations and Standards

The customer must inform mageba in writing about locally governing regulations and standards and provide these in a legible format no later than the submission of his request for an offer. This applies particularly to regulations and standards that necessitate an adaptation or change to the goods to be supplied by mageba. If such regulations and standards are not mentioned in the order and documented appropriately, the goods supplied by mageba are considered to be compliant with the contract. Alternatively, mageba is entitled to subsequently take into account the standards that have not been mentioned or documented in the order, and to demand any corresponding price increases and/or time extension from the customer. It would be considered as a separate order.

8. Price

8.1 The prices quoted are net ex-works (EXW (Incoterms 2020) mageba factory or subcontractor factory), excluding standard packaging, in the currency mentioned in the quotation and without any deductions or discounts. All additional costs such as in particular costs for freight, insurance, export, transit, import, other permits, certifications, taxes, any and kind of duties, fees and customs or other charges not included in the net-ex-works shall be borne by the customer.

8.2 mageba reserves the right to adjust the price, if its material, personnel or operating costs change between the periods of the offer and the contractual delivery.

9. Terms of Payment

9.1 All customer's payments are to be made in the currency and within the time period stated in the order confirmation/contract, without any deduction (e.g. discounts, expenses, taxes or fees of any kind) in the case of partial deliveries payments must be made according to the scope of the individual delivery. The duty of payment is fulfilled when the full payment has been credited to the account specified by mageba.

9.2 The dates of payment shall also be observed even if transport, delivery, installation, taking into service or acceptance of supplied products are delayed or prevented due to reasons for which mageba is not responsible.

9.3 The customer shall not reduce, withhold, or offset payments on account of complaints, claims for defects or counterclaims raised by the customer and not recognised by mageba. Payments must still be made in full if parts are missing provided that this does not render it impossible to use the delivered product. The payments are furthermore to be made in full even if it proves to be necessary to rework the delivered product.

9.4 After expiry of the agreed payment period, the buyer shall be in default and shall be liable for all resulting costs as well as default interest at the rate prevailing at the customer's domicile, but not less than 5% (five per cent) per year. Payment of default interest shall not, however, release the customer from his contractual obligations to pay. The customer is also liable for any possible currency depreciation at home or abroad between the time when the payment is first due and the time of actual payment. Likewise the customer is liable for increases in import or export charges in the same period.

9.5 If the customer is in default with his payments, mageba is entitled to withhold all further deliveries of the goods or services ordered by the customer until all amounts owed by the customer are paid in full and without deductions.

9.6 In cases of delayed payments or justified concerns about the customer's ability to pay, mageba is entitled to demand immediate payment of all claims arising from the business arrangement including any which may not otherwise be already due for payment, and make the delivery of goods which have still not been fully paid dependent on corresponding advance payments or the issuance of an irrevocable and confirmed letter of credit.

10. Retention of Title and Lien

mageba retains the ownership of all products supplied until receipt of full payment of the purchase price and all accessory claims. mageba is entitled to unilaterally make entries in the corresponding registers (in particular that relating to retention of title). If retention of title is not possible in the purchaser's country, mageba is authorised to assert all other possible rights to its deliveries and services, such as rights of lien. The customer is obliged to assist mageba with any measures required for the protection of ownership by mageba.

Until the time of full payment of the purchase price, the products may not be pledged, transferred by way of security or otherwise encumbered with the rights of third parties, but may only be sold in the ordinary course of business.

As long as the ownership of the products has not been transferred from mageba, the customer shall maintain the products delivered to him at his own expense and insure them sufficiently against loss by theft, fire, water, etc. and provide mageba with evidence of such insurance upon request. The customer shall assign its claims against the insurer to mageba. All statutory liens, such as building liens or any other, shall be expressly preserved.

11. Delivery

mageba shall deliver the products exclusively ex-works (EXW), i.e. for collection from mageba's factory or logistics centre or other location designated by mageba.

mageba has thus fulfilled its delivery obligation in full, and benefit and risk pass to the customer. If the customer does not collect the goods as stipulated or if delivery is delayed or rendered impossible for reasons for which mageba is not responsible, the goods are stored uninsured at the expense and risk of the customer. mageba is entitled and authorised to store these goods on behalf of and at the expense of the customer on the premises of a third party at customary market prices and conditions.

12. Delivery Period

12.1 The agreed delivery period shall start on conclusion of the countersigned contract, provided all administrative formalities such as import permits and permits to transfer funds have been completed, and payments and any required securities or guarantees have been effected, and all necessary information has been supplied by the customer, and all technical points are settled and mageba's drawings have been approved by the customer. The delivery period shall be deemed to have been observed if mageba has sent notice for collection from mageba's factory or designated location, or transport where this is mageba's responsibility, is completed before the expiry of the stipulated delivery period.

12.2 mageba is not obliged to meet the delivery dates:

a) if mageba does not receive the information required for the execution of the order in time or if the customer amends previously provided information and thereby causes a delay in the delivery;

b) if obstacles appear which are not within mageba's control, irrespective of whether they develop at mageba, the customer or a third party. Such obstacles are, for example, substantial operational disturbances, accidents, working conflicts, late or incorrect supply of the necessary raw materials, semi-finished or finished articles, important work pieces that are unfit for use, official measures, natural phenomena, epidemics, mobilization, war, insurrection;

c) if the customer falls behind with the work to be carried out by him or defaults on the fulfilment of his contractual obligations, in particular if he fails to comply with terms of payment.

12.3 In case of a default by mageba, no penalty shall be due. A contractual penalty for default requires a special written agreement in advance, and can only be asserted if the default was verifiably caused by mageba and the customer can substantiate a loss. If the customer is assisted with a replacement delivery, they cannot claim payment of the contractual penalty.

12.4 The customer shall not be entitled to raise any claims for damages nor have the right to terminate the contract due to default.

13. Examination and Acceptance of the Delivery

13.1 The customer shall examine the delivered products immediately after receipt and shall notify mageba in writing of any defects within 7 (seven) days of receipt. If the customer fails to do so, the products supplied are deemed to have been accepted and no warranty can subsequently be claimed for the accepted products.

13.2 If during the acceptance procedure, the delivery is found not to conform to the contractual specifications, the customer must immediately give mageba the opportunity to rectify any faults.

13.3 The customer shall not be entitled to raise any further claims based on faulty delivery; he has in particular neither the right to claim for consequential damages, nor the right to terminate the contract.

14. Packing

mageba shall charge the customer separately for expenses relating to packing and will not accept returned packing materials not identified as being the property of mageba. Special marking/labelling instruction, if any, shall be itemized in advance and mageba reserves the right to charge additional costs towards such marking/labelling. If, however, packing materials have been identified as being the property of mageba, the customer must return such packing materials, at his own expense, postage/freight paid to the place of dispatch of the products supplied.

15. Transport and Insurance

15.1 If mageba arranges the transportation, mageba shall undertake the shipment of the products on behalf of and at the risk of the customer. In this case, the carrier shall be instructed by mageba either to charge the customer for the freight costs and all the other charges involved (e.g. import duties) or if necessary to only invoice mageba for the carriage; in this case the latter invoices the carriage and associated costs and submits them to the customer. If the transportation is arranged in such a way by mageba this does not in turn change the terms of delivery. The customer is exclusively responsible for arranging any required transport insurance. The Incoterm 2020 chosen mode, will determine the responsibilities of each party.

15.2 Customer agrees, at customer's option, to insure against loss from fire and extended coverage perils, customer's interest, including mageba's interest, in the entire structure on which the work of this contract is to be done, including all property, material and supplies. If the customer does not maintain such insurance in an adequate amount, the customer shall reimburse mageba for any loss which would have been recoverable therefrom. mageba is protected by Worker's Compensation Insurance (and/or Employers' Liability Insurance); Public Liability Insurance for Bodily Injury with limits of One Million Dollars/Three Million Dollars (\$1,000,000/3,000,000); Public Property Damage Insurance with limits of Five Hundred Thousand Dollars (\$500,000); and Automobile Casualty Insurance and Property Damage Insurance, and will furnish certificates evidencing such coverage upon request. If the customer's contract or purchase order places greater responsibility upon mageba or requires further insurance coverage, mageba, if specifically directing in writing by the customer, shall obtain additional insurance (if procurable) to protect mageba at the customer's expense, but mageba shall not be responsible for property damage from any cause, including fire and explosion, beyond the amounts and coverages of mageba's insurance, and the customer agrees to hold mageba harmless from the cost of any such damage, including all expenses related thereto.

16. Returned Goods

Unless otherwise agreed, products cannot be returned to mageba. If the return of goods is agreed, this does not apply to custom-made products and/or non-stock items.

17. Warranty

17.1. mageba undertakes to either repair or replace at its own choice, as soon as possible, at the customer's written request, all parts which prove to be defective or unfit for use on account of faulty materials, incorrect detailing or defective workmanship. The replaced products or parts shall become the property of mageba.

17.2. mageba only bears the costs that are incurred by repairing or replacing defective parts in its workshop. If the defective parts cannot be repaired or replaced in its workshop, any resulting additional costs (e.g. travel costs, expenses, insurance costs and transport costs) shall be borne by the customer.

17.3. The customer is not entitled to raise any further claims on account of faulty delivery, in particular compensation claims for losses incurred. A cancellation of the contract is likewise excluded.

17.4. The warranty period for building products shall be 6 months. For civil engineering products (bearings, expansion joints and general steel constructions) the warranty shall be 24 months. Longer guarantee times are only valid if they have been arranged between the parties in writing.

17.5. No warranty is assumed for components that are subject to premature wear as a result of their material composition or the way in which they are used.

17.6. The warranty period shall start with the dispatch of the delivery from the factory or, in the event that mageba is also responsible for the installation, when the installation work is completed. If the dispatch or installation are delayed on account of reasons for which mageba is not responsible, the warranty period ends for building products no later than 12 months after the notification of readiness for dispatch, and in all other cases no later than 30 months after the notification of readiness for dispatch.

17.7. The warranty period commences again for replacement parts; for building products it shall have a duration of 3 months, and in all other cases 12 months, from the date of dispatch from the factory.

17.8. The warranty does not include losses that result from natural wear, incorrect maintenance, inappropriate application or use, disregard of operating instructions, overloading, unsuitable operating materials, chemical or electrolytic influences, faulty construction, installation or improvement works not carried out by mageba or authorised third parties by mageba, or any other reasons for which mageba is not responsible.

17.9. The customer is obliged to inspect the products on a regular basis in accordance with mageba's respective inspection and maintenance manual. The customer must inform mageba of any damages immediately and in any case no later than within 30 days in writing. If he fails to do so, then any defects about which mageba was not informed are excluded from the warranty.

17.10. The customer shall provide mageba with unhindered access to the product free of charge for any repair work. This can include setting up of scaffolding, road closures, etc. mageba shall not be liable for such expenses.

17.11. The warranty expires if the customer or a third party decide to make changes or repairs to the products, without mageba's consent; furthermore, if the customer does not immediately undertake suitable measures to limit the extent of any damage and allow mageba to rectify the fault.

17.12. With regard to deliveries by third parties, mageba's guarantee is limited only to the obligations assumed by the subcontractors and mageba shall advise the customer of this.

17.13. In the case of products or parts manufactured in accordance with the customer's specifications, mageba shall not assume any warranty obligation for the specified design solutions, design plans or choice of materials. For parts provided by the customer and integrated into the products, mageba also assumes no warranty obligation.

18. Liability

18.1. mageba undertakes to fulfil its guarantee obligations in accordance with the preceding terms. Every other liability towards the customer is excluded, as far as legally permissible.

18.2. mageba is only liable for any claim in connection with incorrect advice, design or engineering activity up to a maximum of the fees invoiced for the consultation, design or engineering activity. If these activities were performed free of charge, mageba shall bear no liability.

18.3. No further guarantees or liabilities shall apply, particularly claims for a discount or for damages on account of non-fulfilment or incomplete fulfilment as well as all other claims for damages and legal remedies. Under no circumstances is mageba liable for indirect or consequential damages, including loss of profit and other financial losses of the customer. Likewise is excluded any liability for losses in connection with restrictions on use of any kind (e.g. late opening of streets).

18.4 The max liability value in aggregate is 5% of the contractual amount.

19. Data Processing

19.1. mageba is entitled to process and to store data obtained within the framework of its business relations with the customer in accordance with Swiss data protection law.

20. Any Other Grant of Right

All Confidential Information (including but not limited to drawings and designs) exchanged under the Contract and all rights thereto shall remain the property of mageba or the relevant rights holder. Unless otherwise agreed in writing, the parties shall not grant each other any licences.

21. Severability clause

If any provision of this T&C shall for any reason be held to be invalid, illegal or unenforceable in any aspect, such invalidity, illegality and/or unenforceability shall not affect any other provisions of this T&C.

22. Cancellation and Forfeiture

22.1. An order accepted by mageba cannot be cancelled without mageba's prior written consent (in its sole discretion). No application for cancellation or delay in delivery will be considered unless made by the customer in writing to mageba. Since custom-made products and non-stock items cannot be used for any other customer, in the event of a cancellation of the order the following charges would be applicable towards compensation for the loss of business opportunity and loss of profit thereof: 22.2. Calculation of cancellation charges shall be based upon intervening time period and activities completed between the date of acceptance of the order and the date of cancellation of the order. The amount would be solely finalised and decided by mageba based on activity completed subject to the limit as below. mageba shall be entitled to offset advance payments or part payments against the cancellation charges.

a) If the customer cancels an order within 30 days of date of acceptance of the order, the customer shall pay maximum fifty percent (50%) of the purchase price as cancellation charges;

b) If the customer cancels an order within 60 days of, but more than 30 days from the date of acceptance of the order, the customer shall pay maximum ninety percent (90%) of the purchase price as cancellation charges;

Provided that in case mageba completes manufacturing of the products before the scheduled time for delivery of materials at the request of the customer, in that event the customer will be liable to pay the entire purchase price irrespective of cancellation of the order.

23. Notifications

Legally relevant declarations and notifications of the customer with regard to the contract (e.g. setting of a deadline, reminder, withdrawal) shall be made in writing, i.e. in written or text form (e.g. letter, email, fax). Legal formal requirements and further proof, in particular in the event of doubts about the legitimacy of the declarant, shall remain unaffected.

All notifications shall be addressed to the contact person(s) named in the order/contract or to the persons from whom a notification originated.

24. Indemnity

The customer will indemnify mageba against all losses, damages and/or injuries arising out of any breach of contract on the part of the customer and shall keep mageba harmless and/or indemnified against any such loss whatsoever.

The customer agrees to indemnify and hold mageba harmless for any fines, penalties, damages, attorneys' fees, or any other expense incurred as a result of the customer's failure to comply with any federal or state regulation or any other governmental or industrial safety requirement or standard.

The Client agrees to intervene in and conduct any legal proceedings against mageba on behalf of mageba.

25. Anti-Bribery and Anti-Corruption Provision

The Parties represent and warrant that neither they nor any of their officers, employees, agents or representatives will give or offer, directly or indirectly, any payment, gift or other benefit in connection with any matter covered by this Agreement if (i) it would violate any anti-bribery or anti-corruption laws, (ii) the gratuity or offer is intended to or will cause any person to breach his or her fiduciary duty or to lose his or her impartiality, or if the acceptance of the gratuity or offer by the beneficiary would otherwise be unlawful; or (iii) the gratuity or offer is intended for a Public Official to influence and gain or retain an advantage.

If either party has reason to believe that any of the foregoing anti-bribery and anti-corruption provisions are being violated, it shall promptly notify the other party. Furthermore, the parties are obliged for the duration of the contract to properly record all business transactions related to the performance of the contract and to disclose these records upon request of the other party. A material breach of the foregoing anti-bribery and anti-corruption provisions, which renders the further performance of the contract unreasonable for the other party, shall justify the early termination of the contract.

26. Place of Performance, Jurisdiction and Applicable Law

26.1. Unless otherwise agreed, the place of performance for all services covered by this contract is mageba's registered office in Switzerland.

26.2. The legal relations of the parties are exclusively governed by Swiss substantive law under exclusion of the rules of private international law and the United Nations Convention on Contracts for the International Sale of Goods of 1980 (Vienna Convention).

26.3. The exclusive jurisdiction for all disputes is the county court of Bülach, Switzerland. mageba is further entitled to take legal action against the customer in the legally intended jurisdictions.

27. Language

English version is a standard medium of communication accepted by mageba. All correspondences must be conducted in English only.

Read and accepted

Date, Place: _____

Name: _____

Signature: _____