

• Acceptance

These general Terms and Conditions of *mageba India* (hereinafter referred to as "T&C") apply, in their most current version on the day of confirmation of order, to all deliveries of goods and services by *mageba Bridge Products Private Limited* (hereinafter referred to as "*mageba India*"). The T&C form an integral component of every contract concluded between a customer of *mageba India* (hereinafter referred to as "customer") and *mageba India* as a supplier of goods or services. *mageba India* is entitled to change these T&C at its own discretion, with any changes not applying retrospectively. The current valid version of the T&C can be downloaded at any time from the *mageba India* website (<http://www.mageba.in/>). Deviations from these T&C may be agreed in writing. If the T&C contradict any written agreements between the parties, the latter shall apply. The applicability of any other general terms and conditions of the customer is strictly excluded. If individual clauses in these T&C are or become invalid, in whole or in part, the validity of the remaining clauses or the remaining parts of such clauses shall remain unaffected.

• Placing orders, conclusion of contract

The customer can place orders in writing either in soft or hard copy. The contract is only executed with the formal written acceptance of the order by *mageba India*. Every offer made by *mageba India* is subject to change, even if it is in response to a customer's request for a quotation. A contract is only executed with the dispatch of an order confirmation by *mageba India* or the delivery of a countersigned copy of an applicable contract.

• Scope of Delivery

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 extra, as will any performances that require special expenditures in order to be completed before the agreed deadline at the customer's request. If the customer requires the use of special materials, this must be stated in the order. Otherwise *mageba India* is entitled to use the materials usually applied. Further any deviation/changes in the orders would be billed separately.

• Technical documents

Provided that technical data, construction drawings, plans, illustrations etc. which are included with a quotation are not expressly described as binding and definitive, they are to be considered only approximately representative.

All technical documents remain the intellectual property of *mageba India* 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 India*.

Technical documents pertaining to offers that do not result in an order are not to be used elsewhere and must be immediately disposed of.

• Regulations and standards

The customer must inform *mageba India* 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 India*. If such regulations and standards are not mentioned in good time and documented appropriately, the goods supplied by *mageba India* are considered to be compliant with the contract. Alternatively *mageba India* is entitled to subsequently take into account the standards that have not been mentioned or documented in time, and to demand any corresponding price increases and/or time extension from the customer. It would be considered as a separate order.

• Price

Provided that nothing else has been agreed between the parties, the prices quoted are ex-works (EXW), with standard packaging, in Indian Rupees and without any deductions or discounts. All additional costs such as freight, insurance, export certification, transit certification etc., as well as any other necessary certifications shall be borne by the customer. The customer is also responsible for the payment of all taxes, duties, Octroi, fees and customs charges etc.

mageba India reserves the right to adjust the price, if between the periods of the offer and the contractual delivery either wage rates or the price of materials change (this price adjustment is effected according to the price variation in the material price from the supplier. The increase in material/labour price component can be linked with the current price to arrive at the revised price.

• Terms of Payments

Unless otherwise agreed, all customer's payments are to be made within the agreed time period to *mageba India*'s registered office in Kolkata, India, without the deduction of, 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 if the payment has reached *mageba India*'s sphere of influence.

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 India* is not responsible.

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 India*. 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.

If the customer is in default with respect to the agreed terms of payment he shall be liable, without reminder, to pay the default interest, from the agreed date of maturity, at the rate as per the MSME Act. 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.

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

In cases of delayed payments or justified concerns about the customer's ability to pay, *mageba India* 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.

• Retention of Title

Unless otherwise agreed in writing *mageba India* retains the ownership of all products supplied until receipt of full payment for the delivery. *mageba India* is entitled to unilaterally make entries in the corresponding registers (in particular that relating to retention of title). The customer is obliged to assist *mageba India* with any measures required for the protection of ownership by *mageba India*.

• Place of Delivery

Unless agreed otherwise in writing, *mageba India* shall make deliveries to the customer, or to a third party designated by the latter, exclusively Ex-Works (EXW), i.e. for collection from *mageba India*'s factory or logistics centre or other location designated by *mageba India*.

• Delivery Period

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 India*'s drawings have been approved by the customer. The delivery period shall be deemed to have been observed if fabrication at the plant, or transport where this is *mageba India*'s responsibility, is completed before the expiry of the stipulated delivery period.

The delivery deadline will be appropriately extended:

- mageba India* 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;
- if obstacles appear which are not within *mageba India*'s control, irrespective of whether they develop at *mageba India*, 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 phenomenon, epidemics, mobilization, war, insurrection;
- 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.

A contractual penalty for late delivery requires a special written agreement in advance, and can only be asserted if the delay was verifiably caused by *mageba India* and the customer can substantiate a loss. If the customer is assisted with a replacement delivery, they cannot claim payment of the contractual penalty.

Any penalty which may arise can amount to maximum 1/4 % (a quarter of one per cent) for every full week of delay, however, overall no more than 5% (five per cent), charged on the contract price of the delayed part of the delivery. In the case of delivery periods of over five months, no claims can be made for a contractual penalty for the two first weeks of any delay.

The customer shall not be entitled to raise any claims for damages, liquidated or otherwise, nor have the right to terminate the contract on account of a late delivery.

• Examination and Acceptance of the Delivery

Insofar as this is customary, the delivery from *mageba India* shall be examined prior to delivery. If the customer requires further tests or inspections, they are to be agreed in writing and any related costs shall be at the customer's expense. If these examinations cannot be conducted within the stipulated period of time on account of reasons for which *mageba India* is not responsible, the products to be supplied are deemed to have the characteristics the examination was to confirm.

If the customer desires acceptance examinations by third party to be conducted, they must be arranged in writing at the latest at the time of agreement of the contract and any related costs shall be at the customer's expense.

The customer shall examine the products delivered within 14 (fourteen) days after having received them and notify *mageba India* immediately within 7 (seven) days in writing of any defects. If he fails to do so, the products supplied are deemed to have been accepted.

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

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

- **Packing**

mageba India shall charge the customer separately for expenses relating to special packing requirement. Special marking/labelling instruction, if any, shall be intimated in advance and *mageba India* reserves the right to charge additional cost towards such marking/labelling.

- **Transfer of Benefit and Risk**

Benefit and risk shall pass to the customer not later than the dispatch of the delivery ex works, even if the delivery is made CIF, FOB or including installation. If delivery is delayed or rendered impossible for reasons for which *mageba India* is not responsible, the products concerned shall be stored at the customer's expense and risk.

- **Late Collection by the customer**

If the customer does not collect the goods as stipulated, the goods are stored uninsured at the expense and risk of the customer. *mageba India* 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.

- **Transport and Insurance**

If *mageba India* arranges the transportation, it shall be done exclusively in the name and on the account of the customer. In this case, the carrier shall be instructed by *mageba India* 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 India* 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 India* this does not in turn change the terms of delivery. The customer is exclusively responsible for arranging any required transport insurance.

For building products, the special terms of delivery specified in the appropriate price list for the respective region shall apply in addition to these T&C.

- **Installation**

If *mageba India* is also responsible for the installation or for supervision of installation of the supplied products, *mageba India's* general conditions of installation shall apply and build an integrated part of these T&C.

- **Warranty**

mageba India 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.

mageba India 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 for reasons beyond *mageba India's* control, any resulting additional costs shall be borne by the customer.

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.

The warranty period for building products shall be 6 months. For civil engineering products (bearings, expansion joints and general steel constructions) shall be as per the stipulation of local governing body (e.g. MORT&H). Longer guarantee terms are only valid if they have been arranged between the parties in writing. The warranty would be provided in *mageba India's* standard format without any deviation.

No liability 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.

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 India*, or any other reasons for which *mageba India* is not responsible.

The customer is obliged to inspect the products on a regular basis in accordance with *mageba India's* respective inspection and maintenance manual. The customer must inform *mageba India* of any damages immediately and within 30 days in writing. If he fails to do so, then any damages about which *mageba India* was not informed are excluded from the warranty.

The customer shall provide *mageba India* with unhindered access to the product free of charge for any repair work. This can include setting up of scaffolding, road closures, etc. *mageba India* shall not be liable for such expenses. The warranty expires if the customer or a third party decide to make changes or repairs to the delivery, without *mageba India's* consent; furthermore, if the customer does not immediately undertake suitable measures to limit the extent of any damage and allow *mageba India* to rectify the fault.

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

- **Liability**

mageba India 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.

mageba India 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 India* shall bear no liability.

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 India* liable for consequential damages or loss of profit. Likewise is excluded any liability for losses in connection with restrictions on use of any kind (e.g. late opening of streets).

- **Lien**

Till the full payment of the purchase price by the customer, *mageba India* will have a general lien upon the materials/product and as such in the event of failure or default or unfeasible delay to make payment of entire purchase price by the customer, *mageba India* at its sole discretion upon notice to the customer may sell and/or dispose of the said materials to any other customer, however the advance made by the customer shall stand forfeited.

- **Any Other Grant of Right**

Nothing in this General Terms and Conditions intended to grant any right under the patent, copyright or other intellectual property right of the *mageba India*, nor shall this General Terms And Conditions be construed to grant any right to deal with any confidential information in connection with drawing, design and any other intellectual property right of the *mageba India*.

- **Severability**

If any provision of this General Terms and Conditions 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 general Terms and Condition.

- **Cancellation and Forfeiture**

An order accepted by *mageba India* cannot be cancelled without its 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 the *mageba India*. *mageba India* will consider an application for cancellation or delay in delivery in its sole discretion. The product of *mageba India* herein being a customised product manufactured only as per specification or design of the customer, in the event of cancellation of the order by the customer, the said materials cannot be normally used by any other customer. As such In event of cancellation of the order the following charges would be applicable towards compensation for the loss of business opportunity and loss of profit thereof and the advance and/or part payment whatsoever made by the customer will be forfeited and /or adjusted by the *mageba India* unilaterally without any notice to the customer towards cancellation charges subject to the following:

CANCELLATION CHARGES:

Calculation of cancellation charges shall be based upon intervening time period and activities completed between date of cancellation of Order and the date of acceptance of Order. The amount would be solely finalised and decided by *mageba India* based on activity completed subject to the limit as below.

- If Customer cancels order within 30 days of date of acceptance of Order, Customer shall pay maximum fifty percent (50%) of the Purchase price as cancellation charges;
- If Customer cancels order within 60 days of, but more than 30 days from, date of acceptance of Order, Customer shall pay maximum ninety percent (90%) of the Purchase price as cancellation charges; Provided that in case the *mageba India* completes manufacturing of the products before the scheduled time for delivery of materials at the request of the customer, in that event customer will be liable to pay the entire purchase price irrespective of cancellation of the order.

- **Indemnity**

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

- **Place of Performance, Jurisdiction and applicable law**

Unless otherwise agreed, the place of performance for all services covered by this contract is *mageba India's* registered office in Kolkata, India

The legal relation between the parties would be as per the statutory laws of India vide Indian Contract Act 1872 or any other such act applicable at time of execution of contract

- **Language**

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