

General

These general Terms and Conditions of mageba (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 sa, Switzerland (hereinafter referred to as "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 or services. Mageba 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 website (www.mageba.ch).

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.

1. Placing orders, conclusion of the contract

The customer can place orders in writing or verbally; however all orders must be accepted in writing by mageba. The contract is only effected with the formal written acceptance of the order by mageba. Every offer made by mageba is subject to change, even if it is in response to a customer's request for a quotation. A contract is only effected with the dispatch of an order confirmation by mageba or the delivery of a countersigned copy of an applicable contract.

2. Scope of delivery

2.1 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 extra, as will any performances that require special expenditures in order to be completed before the agreed deadline at the customer's request.

2.2 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.

3. Technical documents

3.1. 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.

3.2. 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.

3.3. Technical documents pertaining to offers that do not result in an order are to be returned immediately.

4. 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 good time and documented appropriately, the goods supplied by mageba are considered to be compliant with the contract, provided that they correspond to the valid Swiss regulations. Alternatively mageba 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 from the customer.

5. Price

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

5.2. mageba reserves the right to adjust the price, if between the time 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 formula of the VSM - Swiss Association of Machinery Manufacturers) or if the exchange rate changes in the case of offers in foreign currencies.

5.3. Terms of delivery only apply to the customer's assignment of an order if this has been expressly accepted by mageba.

6. Terms of payment

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

6.2. 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.

6.3. 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.

6.4. 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 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.

6.5. If the customer is in default with his payments, mageba 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.

6.6. 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.

7. Retention of title

mageba retains the ownership of all products supplied until receipt of full payment for the delivery. mageba 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 with any measures required for the protection of ownership by mageba.

8. Place of delivery

Unless agreed otherwise in writing, mageba 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's factory or logistics centre or other location designated by mageba.

9. Delivery period

9.1. 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 fabrication at the plant, or transport where this is mageba's responsibility, is completed before the expiry of the stipulated delivery period.

9.2. The delivery deadline will be appropriately extended:

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 phenomenon, epidemics, mobilization, war, insurrection;

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

9.3. A contractual penalty for late delivery requires a special written agreement in advance, and can only be asserted if the delay was writtily 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.

9.4. 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.

9.5. 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.

10. Examination and Acceptance of the Delivery

10.1. Insofar as this is customary, the delivery from mageba shall be examined during its manufacture. 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.

10.2. If the customer desires acceptance examinations of the completed product to be conducted, they must be arranged in writing at the latest at the time of agreement of the contract. If these examinations cannot be conducted within the stipulated period of time on account of reasons for which mageba is not responsible, the products to be supplied are deemed to have the characteristics the examination was to confirm.

10.3. 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.

10.4. 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.

10.5. 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.

11. Packing

mageba shall charge the customer separately for expenses relating to packing and will not accept returned packing materials. 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.

12. 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 is not responsible, the products concerned shall be stored at the customer's expense and risk.

13. 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 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.

14. Transport and Insurance

If mageba 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 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.

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.

15. Installation

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

16. Returned goods

16.1 Stock products (as defined by mageba) may be returned by prior arrangement and in perfect condition, and their value credited to the customer with a reduction of 25% of the invoiced price. In every case the customer shall bear all carriage and packing costs.

16.2 Custom-made products and non-stock items may not be returned under any circumstances. Custom-made products are to be accepted in every case from the moment of completion of production according to the agreed conditions, even if the products have not yet been delivered to the customer.

17. Guarantee

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.

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 for reasons beyond mageba's control, any resulting additional 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) shall be 24 months. Longer guarantee times are only valid if they have been arranged between the parties in writing.

17.5. 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.

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 term 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 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 within 30 days in writing. If he fails to do so, then any damages 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 delivery, 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.

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. If losses are incurred by a third party or by the customer in connection with mageba's delivery or performance, then mageba shall compensate for this only insofar as its liability insurance provides backing.

18.3. 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.

18.4. 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 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).

19. Data processing

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. Place of performance, jurisdiction and applicable law

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

20.2. 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).

20.3. The exclusive jurisdiction for all disputes is mageba's registered office in Switzerland (Bülach/Zürich). mageba is further entitled to take legal action against the customer in the legally intended jurisdictions.

21. Language

21.1. English version is a translation of Mageba's GTC issued in German. If there is any inconsistency or ambiguity between the English version and the German version, the German Version shall prevail.