

General Terms and Conditions of Sale and Supply of Magnescale Europe GmbH

I. General

Our supplies and services are subject solely to the following terms and conditions of sales and supply. Terms and conditions used by the customer shall not apply even if we have not expressly stated this. Any amendments and additions desired by the customer are subject to our written confirmation. Such amendments and additions apply only to the transaction for which they were agreed.

II. Conclusion of Agreement

1. Information which is disclosed in the framework of preliminary work before the order is placed, in particular information on performance, consumption or other individual data, are only binding if confirmed as such by us in writing. The same also applies to the data provided in brochures and advertisements.
2. Our offers shall be non-binding. Agreements on the sale of products, spare parts or repair work come into existence when we send our written order confirmation.

III. Prices and Payment

1. In the absence of any special agreement, prices are ex our works but exclude packaging, postage and insurance. VAT at the currently applicable statutory rate shall be added to the prices.
2. Unless otherwise agreed our invoices are due for payment within 30 days after receipt of delivery without deductions.
3. If the customer falls into default with payment we are entitled to charge default interest or assert additional claims for default damage.
4. Even if there are complaints on the grounds of defects or counterclaims the customer is only entitled to set-off and retention if the counterclaims are undisputed or res judicata.

IV. Delivery Period, Delay

1. Deadlines and dates stated by us are non-binding, unless otherwise expressly agreed in writing. The delivery period cannot be observed unless all commercial and technical questions have been resolved between the parties and the customer has fulfilled all its obligations. If this is not the case the delivery period shall be extended accordingly.

2. The delivery date shall be deemed to have been met if, by this date, the merchandise has left our premises or is ready for dispatch and the customer has been notified accordingly.
3. If failure to meet the delivery date was due to force majeure, industrial action or other occurrences outside our sphere of influence the delivery period shall be extended appropriately.
4. Should it become apparent that delays are likely we will notify the customer as soon as possible.
5. If the customer incurs a loss due to a delay in delivery for which we are responsible, it shall be entitled, excluding all other claims, to demand compensation. This shall be 0.1 % for each complete working day of delay, however no more than 5 % of the purchase price of such portion of the total delivery which cannot be used for the purpose designated in the agreement as a result of the delay.

V. Passage of Risk, Acceptance

1. The risk passes to the customer when the merchandise leaves the works, even if supply is made in part shipments or if we have agreed to render other services, e.g. dispatch costs or shipment and assembly.
2. Part deliveries are permissible provided this is reasonable for the customer.

VI. Claims owing to Defects, Liability

1. The customer shall inspect the merchandise received without undue delay on arrival for defects and agreed quality. Any obvious defects in the delivery shall be reported in writing without undue delay no later than seven days after receipt, latent defects shall be reported in writing no later than seven days after discovery. Otherwise the delivery shall be deemed to have been accepted.
2. The customer shall provide us with an opportunity to investigate the complaint; in particular, it shall make the damaged merchandise and packaging available to us for inspection. If it refuses to comply with this requirement we shall be released from any liability for defective merchandise.
3. We are obliged to repair or replace defective merchandise at our own expense. Merchandise which has been replaced is our own property and shall be returned to us. If repair or replacement are not possible or do not take place or fail for other reasons within our sphere of responsibility before expiry of the reasonable deadline set by the customer, the customer may at its own discretion rescind the agreement or demand a reduction in the purchase price.
4. To the extent that the complaint is justified, we shall bear the direct costs incurred by repair or replacement of the part including dispatch. Any costs incurred by the customer shall be borne by the customer itself. Necessary assembly and travel expenses incurred in connection with unjustified complaints regarding defects shall be borne by the customer. We shall not bear liability for consequential damage caused by any modifications or repair work improperly carried out by the customer or third parties without our prior written consent.

5. We shall not be liable for damage to the merchandise caused by natural wear and tear, unsuitable or incorrect use or use which does not comply with designated contractual use, faulty assembly or commissioning, excessive use or improper modification by the customer or third parties in as far as they are not our fault.
6. Claims of the customer for compensation over and above this, in particular for compensation in lieu of performance and for replacement of other direct or indirect damage are excluded. This shall not apply if
 - a) we fail to disclose with malicious intent a legal or material defect or have assumed a guarantee for the quality of the merchandise,
 - b) the damage is caused by intent or gross negligence on our part or on the part of our legal representatives or vicarious agents or negligent infringement of material contractual duties by such person, or
 - c) negligent infringement of duty on our part, on the part of our legal representatives or vicarious agents has led to personal injury or damage to health.

However, in the event of simple negligence our obligation to provide compensation is restricted in scope to foreseeable damage typical of this type of contract.

7. All claims for defects asserted by the customer, including the claims for compensation pursuant to (6) shall become time-barred one year after delivery of the merchandise to the customer. The warranty period for defects in the merchandise supplied shall be extended by the length of time required for repair work.

VII. Reservation of Title

1. We reserve title in all merchandise delivered by us until all claims to payment arising from the business relationship between us and the customer have been settled in full.
2. In the event of payment arrears, even where we do not withdraw from the agreement, the customer is obliged to hand over the merchandise. In this event, the customer hereby irrevocably permits us to collect the merchandise immediately and to have unobstructed access to its business premises for this purpose. If we assert reservation of title, this shall not be deemed to be rescission of the agreement. Once we have taken back the merchandise we are at liberty to dispose of it.

VIII. Repairs, Spare Parts

1. The customer shall make all reasonable efforts to take whatever action is necessary without undue delay to ascertain, limit and document the defect. This includes making a list of defects and providing other documents which illustrate the defects.
2. The customer shall support us in carrying out repair orders to the best of its ability.
3. Spare parts shall be dispatched at the expense of the customer to its registered business address. At the request of the customer we shall take out transport insurance for the spare parts at the expense of the customer.

4. In all other respects all other provisions of these General Terms and Conditions of Sale and Supply apply to repair and spares orders.

IX. Applicable Law, Jurisdiction, Partial Invalidity

1. The law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply. Place of jurisdiction shall be Stuttgart.
2. If individual provisions of these General Conditions should be or become invalid this shall not affect the validity of the other provisions. Should any part of a clause be invalid this shall not affect the validity of the rest of the clause if it can be separated in terms of its content, is comprehensible in itself and if it constitutes a meaningful clause in the overall context of the contract.

Date: March 2015