

General Terms and Conditions of MB connect line GmbH Fernwartungssysteme

§ 1 Scope of application

1. These terms and conditions apply to entrepreneurs, legal entities under public law or special funds under public law (hereinafter referred to as "customer").
2. Our deliveries, services and offers are made exclusively on the basis of these conditions of sale and delivery. These also apply to all future transactions with the customer, insofar as these are legal transactions of the same or a related kind.
3. Business or purchasing conditions of the customer are hereby declared inapplicable. These are only valid if expressly approved in writing.

§ 2 Offer, content of the contract, scope of delivery

1. If an order is to be regarded as an offer according to § 145 BGB (German Civil Code), MB connect line GmbH (hereinafter MB connect line) can accept it within 30 days.
2. The scope of delivery depends on the order or the order confirmation of MB connect line.
3. Offers are non-binding, unless MB connect line has expressly designated them as binding.
4. All contracts for deliveries and services as well as all other agreements and legally relevant declarations require written confirmation in order to be valid. This also applies to additions and amendments.
5. The claims of the customer arising from the contractual relationship cannot be assigned without the consent of MB connect line.
6. Customary deviations and deviations, which take place due to legal regulations or represent technical improvements, are permissible, as far as they do not impair usability for the contractually provided purpose.

§ 3 Submitted documents, software

1. For all documents provided in connection with the placing of the order from the customer, e.g., calculations, drawings, etc., we reserve ownership and copyrights. These documents may not be made accessible to third parties, unless MB connect line gives the customer its express written consent. If MB connect line does not accept the offer of the customer within the term of § 2 no. 1, these documents must be returned to MB connect line immediately. Documents of the customer may, however, be made accessible to third parties to whom MB connect line has admissibly transferred deliveries.
2. The customer has the non-exclusive right to use the standard features and firmware on the agreed devices in unmodified form. The customer may create a backup copy of the standard software without express agreement.

§ 4 Prices and payment

1. The prices of MB connect line are ex works or warehouse plus freight and the applicable value added tax. The costs of any agreed transport or similar insurance, subject to other agreements, shall be borne by the customer.
2. The purchase price must be paid exclusively into one of the accounts stated in the invoice. The deduction of a cash discount is only permitted under a written special agreement.
3. Unless otherwise agreed, the first order is subject to prepayment, which must be paid within 10 working days of receipt of the proforma invoice. After this period, MB connect line reserves the right to withdraw from the contract of sale. From the second order, the purchase price has to be paid within 10 days after delivery. Default interest of 8% above the respective base interest rate p.a. is calculated. We reserve the right to assert a higher damage caused by default.
4. Unless a fixed price agreement has been made, we reserve the right to make reasonable price changes due to changes in labour, material and distribution costs for deliveries made 3 months or later after conclusion of the contract.
5. If no prices have been agreed upon conclusion of the contract, our prices valid on the day of delivery shall apply.
6. If MB connect line has taken over the installation or assembly and if nothing else has been agreed, the customer shall bear all necessary ancillary costs, such as travel and accommodation expenses in addition to the agreed payment.
7. The customer can only set off such claims that are undisputed, legally established or recognized by us.
8. The customer shall bear the responsibility for any necessary official export licenses and collect them himself or instruct MB connect line to collect them. MB connect line assumes no responsibility or liability for any necessary governmental export licenses. The customer declares that they will observe all export regulations and export restrictions and other provisions of foreign trade law, in particular of Germany, the EU and the EU member states, or of the country to be supplied to and to ensure that his contractual partners also comply with these regulations. The contracting party undertakes to duly and completely provide all necessary notices, information and other declarations and to communicate with us if the shipment is to be used for the following purposes: chemical, biological or nuclear weapons, rocket technology or other military use.
9. All customs duties, taxes or levies that arise in the case of a delivery abroad or service abroad shall be borne by the customer. MB connect line shall not be liable for any damages on account of any delays, cancellations or additional expenses of the delivery by MB connect line due to export regulations / approvals according to the legal system concerned.

§ 5 Rights of retention

The customer is only authorized to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

§ 6 Delivery time, deadlines, partial deliveries

1. Details of delivery times are approximate, unless otherwise agreed with the purchaser. Delivery periods begin only after complete clarification of all execution details and require the timely and proper fulfilment of the obligations of the customer.
2. MB connect line is entitled to partial deliveries, as far as this is reasonable for the customer. MB connect line is not obliged to make any advance deliveries.
3. In case of partial deliveries requested by the customer, each delivery can be invoiced separately.
4. The observance of delivery deadlines presupposes the timely receipt of all documents to be supplied by the customer, such as necessary approvals and releases, in particular, plans as well as compliance with the agreed terms of payment and other duties of the customer. If these conditions are not fulfilled in time, the deadlines will be extended accordingly; this does not apply if MB connect line is responsible for the delay.
5. If failure to meet the deadlines is due to
 - a. force majeure, e.g., mobilization, war, acts of terror, riot, or similar events (e.g., strike, lockout),
 - b. virus and other attacks of third parties on the IT system of MB connect line, insofar as these were carried out despite the usual care taken in protective measures,
 - c. obstacles due to German, US and other applicable national, EU or international regulations of foreign trade law or due to other circumstances beyond MB connect line's control, or
 - d. late or improper receipt of goods from MB connect line's suppliers, the deadlines will be extended appropriately.

If, due to this, performance becomes impossible for MB connect line or is significantly more difficult, MB connect line can withdraw from the contract in whole or in part. The customer is entitled to cancellation after written reminder of the delivery and if we do not deliver within a reasonable grace period to be set by the customer.

6. If there are delays, MB connect line undertakes to inform the customer as soon as possible.
7. MB connect line is entitled to exercise a right of retention even in the case of a contractually agreed delivery time in cases in which due claims from previous deliveries or services are not settled by the customer.
8. The delivery period shall be deemed to have been met for deliveries without installation or assembly if the ready-to-ship consignment has been dispatched or picked up within the agreed delivery or performance period; for deliveries with installation or assembly, if this is done within the agreed period.
9. If the customer is in default of acceptance or culpably violates other obligations to cooperate, MB connect line shall be entitled to demand compensation for any damage incurred, including any additional expenses. Further claims are reserved. If the above conditions are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the time at which the customer is in default of acceptance or payment.
10. If shipping or delivery is delayed by more than one month from the date of readiness for shipment at the request of the customer, MB connect line may charge a storage fee of 0.5% of the price of the goods for each month started, up to a maximum of 5%. The contracting parties remain free to provide proof of higher or lower storage costs.
11. MB connect line is not liable for impossibility of delivery or for delays in delivery, as far as these are due to force majeure or other unforeseeable events at the time of the conclusion of the contract (e.g., malfunctions of all kinds, difficulties in material or energy procurement, transport delays, strikes, legitimate lockouts, lack of manpower, energy or raw materials, difficulties in obtaining necessary regulatory approvals, regulatory action or the absence of, incorrect or late delivery from suppliers) that MB connect line is not responsible for. If such events make the delivery or service considerably more difficult or impossible for MB connect line and the hindrance is not just temporary, MB connect line is entitled to withdraw from the contract. In the event of obstacles of a temporary duration, the delivery or service periods shall be extended, or the delivery or service dates shall be postponed by the period of the hindrance plus a reasonable start-up period. Insofar as the customer cannot reasonably be expected to accept the delivery or service as a result of the delay, he can withdraw from the contract by means of an immediate written declaration to MB connect line.

§ 7 Transfer of risk upon dispatch

1. If the goods are shipped to the customer at the request of the customer, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer upon dispatch to the customer, at the latest when leaving the factory / warehouse. This applies regardless of whether the shipment of goods is from the place of performance or who bears the freight costs.
2. If shipping is delayed at the request of the customer, the risk passes to him upon notification of readiness for delivery.

§ 8 Liability for damages due to fault

1. MB connect line shall only be considered liable if the customer complies with the instructions in the product manual. In the event of damage resulting from disregarding the instructions in the product manual, the liability of MB connect line shall be excluded. In particular, the instructions in the product manual under the phrase "Maintenance" must be observed. The instructions listed herein must be strictly followed by the customer.
2. Should the customer act contrary to the specifications of the product manual supplied to him and not carry out any updates of the products in the designated time periods, then MB connect line shall not be liable for any damages arising therefrom.
3. The liability of MB connect line for damages, for whatever legal reason, in particular for impossibility, delay, inadequate or incorrect delivery, breach of contract, breach of obligations in contract negotiations and tort, insofar as it is at fault in all cases, according to this § 8 is restricted.
4. MB connect line is not liable in case of simple negligence of its bodies, legal representatives, employees or other vicarious agents, as far as it is not a violation of essential contractual obligations. Essential to the contract are the obligation to deliver and install the delivery item in a timely manner, freedom from defects in title and material defects that affect its functionality or serviceability more than insignificantly as well as advice, protection and custody, which should enable the customer the contractual use of the delivery item or the protection of life or limb of the customer's personnel or the protection of their property against significant damage.
5. As far as MB connect line is basically liable for damages acc. to § 8 No. 2, this liability is limited to damages that it foresaw at the time of conclusion of the contract as a possible consequence of a breach of contract or which it should have foreseen when applying customary care. Indirect damages and consequential damages, which are the result of defects in the delivery item, are also only substitutable, as far as such damages are typically to be expected when the delivery item is used as intended.
6. The above exclusions and limitations of liability apply to the same extent in favour of the bodies, legal representatives, employees and other vicarious agents of MB connect line.
7. If MB connect line provides technical information or acts in an advisory capacity and this information or advice does not belong to the contractually agreed scope of services owed by it, this is done free of charge and to the exclusion of any liability.
8. The limitations of this § 8 do not apply to the liability of MB connect line for intentional behaviour, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act.

§ 9 Retention of title

1. We reserve the ownership of the delivered goods until complete payment of all claims from the delivery contract. This also applies to all future deliveries, even if we do not always expressly refer to them. We are entitled, after setting a reasonable period, to take back the goods if the customer acts contrary to the contract. If we take back the reserved goods, this represents a withdrawal from the contract.
2. The customer is obliged, as long as the title has not been transferred to him, to handle the purchased goods with care. As long as ownership has not yet been transferred, MB connect line must be notified by the customer in writing without delay, if the delivered item is seized or subjected to other interventions by third parties. Insofar as the third party is not in a position to reimburse MB connect line for the legal and out-of-court costs of a claim in accordance with § 771 ZPO (Zivilprozessordnung – Code of Civil Procedure), the customer shall be liable for the loss incurred by MB connect line.
3. The customer is entitled to resell the reserved goods in the normal course of business. The customer hereby assigns the claims against the buyer from the resale of the reserved goods to MB connect line in the amount of the agreed final invoice amount (including value added tax). This assignment applies regardless of whether the purchased item was resold without or after processing. The customer remains authorized to collect the claim even after the assignment. The power of MB connect line to collect the claim itself remains unaffected. However, MB connect line will not collect the claim as long as the customer meets its payment obligations from the proceeds received, is not in default of payment and, in particular, has not filed for insolvency proceedings or ceased payments.
4. The processing and remodelling of the purchased item by the customer are always carried out in the name and on behalf of MB connect line. In this case, the right of expectancy of the customer to the purchased item continues with the remodelled item. If the purchased item is processed with other items not belonging to MB connect line, the latter acquires co-ownership of the new item in proportion to the objective value of the item purchased from MB connect line to the other processed items at the time of processing. The same applies to the case of mixing. If mixing takes place in such a way that the customer's item is to be regarded as the main item, it shall be deemed agreed that the customer transfers proportional co-ownership to MB connect line and keeps the resulting sole ownership or co-ownership for MB connect line.
5. MB connect line undertakes to release the securities to which it is entitled upon request of the customer, insofar as their value exceeds the claims to be secured by more than 20%.

§ 10 Warranty and notice of defects as well as recourse / manufacturer recourse

1. Warranty rights of the customer presuppose that the customer has duly fulfilled his duties of inspection and notification of defects according to § 377 HGB (German Commercial Code).
2. The limitation period for claims for defects is 36 months from the transfer of risk. For damage claims in case of intent and gross negligence as well as injury to life, body and health, which are based on a wilful or negligent breach of duty of the user, the statutory limitation period applies.
3. Prior to any return of the goods, the approval of MB connect line must be obtained. The return of the goods to MB connect line required in the event of a defect can only be made with its prior consent. Returns that occur without the consent of MB connect line need not be accepted by the latter. In this case the customer shall bear the costs of return.
4. If, despite all due care, the delivered goods have a defect that was already present at the time of the transfer of risk, MB connect line will repair the goods, subject to the timely notice of defects, at its discretion or provide replacement goods. MB connect line must always be given the opportunity to remedy within a reasonable time. Claims for recourse remain unaffected by the above provision without limitation.
5. If the subsequent performance fails, the customer can withdraw from the contract or reduce the remuneration, without prejudice to any claims for damages.
6. Claims for defects do not exist in cases of insignificant deviation from the agreed quality, in cases of only insignificant impairment of usability, in cases of natural wear or tear as well as in cases of damage occurring after the transfer of risk as a result of faulty or negligent treatment, excessive use, unsuitable equipment, inadequate system integration, or due to special external influences that are not anticipated by the contract. If the customer or a third party improperly carries out repair work or changes, no claims for defects shall be made for these and the resulting consequences.
7. Claims by the customer for the expenses required for the purpose of supplementary performance, in particular transport, travel, labour and material costs, are excluded if the expenses increase because the goods delivered by MB connect line were subsequently moved to a location other than the customer's premises.
8. Rights of recourse of the customer against MB connect line exist only to the extent that the customer has not made any agreements with his purchaser beyond the legally binding claims for defects. Paragraph 6 also applies accordingly to the scope of the claim of recourse of the customer against MB connect line.
9. Claims against MB connect line due to defects are only available to the customer and are not assignable.

§ 11 Miscellaneous

1. This contract and the entire legal relationships of the parties are subject to the laws of the Federal Republic of Germany excluding the UN Sales Convention (CISG).
2. If the customer is a businessman, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising from contractual relationships between the customer and MB connect line is the headquarters of MB connect line.
3. All agreements made between the parties for the purpose of executing this contract are set out in writing in this contract.
4. Changes to the contract can only take effect with the agreement of MB Connect Line.
5. Should individual provisions of these conditions be wholly or partially invalid or void, the remaining provisions remain unaffected. Rather, the contracting parties undertake to agree to a provision by which the meaning and purpose of the invalid or void provision in commercial matters is largely achieved.