



## Terms of Sale

### § 1 Scope of application

- (1) The Terms of Sale govern all business relationships between MAPAL Präzisionswerkzeuge Dr. Kress KG and or German subsidiaries ("MAPAL Group") on the one hand and our purchasers ("Purchaser") on the other. The MAPAL Group is composed of the following enterprises: MAPAL Fabrik für Präzisionswerkzeuge Dr. Kress KG, MAPAL WWS GmbH & Co. KG, MAPAL ITS GmbH, Miller GmbH & Co. KG, Präzisionswerkzeuge, August Beck GmbH & Co. KG, Weisskopf Werkzeuge GmbH and WTE Präzisionstechnik GmbH.
- (2) The Terms of Sale apply only to relations with entrepreneurs (§§ 14, 310 (1) BGB). Our Terms of Sale further govern all of our future transactions with the Purchaser.
- (3) Our Terms of Sale apply exclusively, and we do not recognize the Purchaser's terms insofar as they oppose or deviate from these Terms of Sale. Our Terms of Sale apply even if and to the extent that we effect delivery in knowledge of terms on the Purchaser's side that oppose or deviate from these terms.
- (4) In the event that we have entered into individual agreements with the Purchaser on a case-by-case basis, such agreements take precedence over our Terms of Sale. Only a written contract or our written confirmation can give effect to the terms of such agreements.
- (5) Insofar as reference is made to legal provisions, such references only serve the purpose of clarification, and legal provisions apply even in the absence of an explicit reference to the extent that these Terms of Sale do not directly modify or exclude them.

### § 2 Offer, acceptance

- (1) Our offers are subject to change and non-binding in nature, and this is true even insofar as we furnished the Purchaser with images, drawings, technical documentation, calculations, other records or product descriptions ("Documents") in whatever form.
- (2) The Purchaser's order of merchandise constitutes a binding contractual offer. We are entitled to accept such offer within two weeks of receipt unless the order provides otherwise.
- (3) The minimum order value is EUR 50.00 (net).
- (4) We accept offers in writing (e.g., confirming the order) or by effecting delivery to the Purchaser.
- (5) We retain the title and reserve copyrights to Documents, and those marked "confidential" must not be shared with third parties without our express written consent.

### § 3 Delivery period, default

- (1) The delivery period is agreed on a case-by-case basis or stated in the order confirmation.
- (2) We are bound by our delivery commitment only insofar as the Purchaser promptly and properly fulfils its obligations, including but not limited to the Purchaser's provision of the documents, approvals and releases it is to procure, along with its payment of any agreed down-payment. In the event that delays are encountered, the delivery period is extended accordingly.
- (3) In cases in which non-compliance with delivery periods is the result of Force Majeure, labour disputes or other events beyond our control, the delivery period is extended accordingly. This is true even if such circumstances are encountered by sub-suppliers, provided that our compliance with a given delivery period was demonstrably affected thereby. While we will immediately inform the Purchaser of circumstances of this nature, we will not be responsible for such events even if they occur during an ongoing event of default. In this case, default is suspended for the duration of the event.
- (4) The occurrence of default in delivery on our part is subject to applicable legal provisions and requires written notice by the Purchaser. If we are in default in delivery, the Purchaser may demand payment of a flat default penalty ("Default Penalty"), such penalty to equal 0.5% for each full week of default, up to 5% of the net value of such delivery as may be so delayed. We retain the right to furnish evidence to the effect that the Purchaser incurred no damages, or that such damages were far lower than the Default Penalty.

- (5) If delivery has been agreed "on demand," we may deliver, and invoice, merchandise twelve months after the closing ("On-Demand Order Period"), at the latest, even if the Purchaser has not placed the order by then. Following the lapse of the On-Demand Order Period, we may communicate to the Purchaser our preparedness to effect delivery and call on it to place the order. In the event that the Purchaser does not order the merchandise in question within the period allotted, we may demand payment of a flat storage fee ("Flat Storage Fee") to offset storage costs. The Flat Storage Fee equals 0.5% of the nominal merchandise value for each full week. The Purchaser retains the right to furnish evidence to the effect that we incurred no damages, or that such damages were far lower than the Flat Storage Fee. In the event that the order is not placed within the period we allotted, we may otherwise dispose of the merchandise. The legal provisions on rescission are not affected.

### § 4 Delivery, default in acceptance

- (1) Unless the order confirmation indicates otherwise, delivery is agreed to be effected "ex works," which further refers to the place of performance, and any subsequent performance, with respect to the merchandise. At the Purchaser's demand and expense, the merchandise will be sent to another destination (sales shipment). Unless otherwise provided, we are entitled to determine the method of shipment.
- (2) Partial delivery is permissible unless an arrangement of this nature places an unreasonable burden on the Purchaser.
- (3) To the extent reasonable, the Purchaser must accept deliveries even if the merchandise supplied is flawed, provided that such flaws are minor.
- (4) The risk of the merchandise's accidental demise and deterioration passes to the Purchaser upon delivery, at the latest. In cases of sales shipments, the risk of the merchandise's accidental demise and deterioration, along with the risk of delay, already passes upon the merchandise's handover to the freight forwarder, carrier or such other person as may have been tasked with shipment. The Purchaser's default in acceptance is tantamount to delivery.
- (5) If the Purchaser finds itself in default in acceptance, if it fails to discharge its duties of cooperation or if our delivery is delayed for other reasons attributable to the Purchaser, we are entitled to demand compensation for any related damages, included added expenditures.

### § 5 Terms of payment

- (1) Unless the order confirmation indicates otherwise, our rates apply at the amounts current as of the closing, plus VAT as imposed by law.
- (2) In cases of sales shipments, the Purchaser bears the costs of packaging as well as shipping ex works. If the Purchaser so desires, we will obtain transport insurance coverage for delivery at the expense of the Purchaser, who further bears any applicable customs duties, fees, taxes and other public dues. Shipment and other packaging mandated by packaging regulations become the Purchaser's property; save for pallets, we will not take back such packaging.
- (3) Unless the order confirmation indicates otherwise, the purchase price, plus VAT as imposed by law, is due and payable in full immediately upon invoice receipt and delivery. The consequences of default in payment are subject to applicable law.
- (4) Unless the order confirmation indicates otherwise, we are entitled, as a matter of principle, to demand a down-payment in the amount of 30% of the purchase price for any delivery valued EUR 5,000.00 and higher, such down-payment being due and payable within 14 days of the invoice date.
- (5) The Purchaser is afforded a right of set-off, and it may exercise a right of retention, only if and to the extent that its counter-claims are undisputed or have been effectively established. The Purchaser's rights on the basis of merchandise defects (cf. § 7) are not affected.
- (6) In the event that, following the closing, it becomes apparent that the Purchaser's lack of insolvency jeopardizes our claim for payment of the purchase price, we are entitled to rescind the



agreement subject to applicable legal provisions. With respect to agreements on the production of unjustifiable items (e.g., unique products), we may rescind the agreement with immediate effect; applicable legal provisions on the dispensability of deadlines are not affected.

#### § 6 Retention of title

- (1) We retain the title to the merchandise until all payments from the business relationship with the Purchaser have been paid. If the Purchaser violates the agreement, especially in cases of default in payment, we are entitled, subject to applicable legal provisions, to rescind the agreement and demand that the merchandise be returned.
- (2) Merchandise that is subject to retention of title may be neither pledged nor used as collateral prior to the Purchaser's payment in full, and the Purchaser must immediately notify us in writing of any pledge or other third-party interference with merchandise we own.
- (3) The Purchaser is entitled to resell merchandise in the regular course of business. However, it hereby already assigns to us such claims against third parties as may accrue to it from the resale (including VAT) to customers or other third parties. The Purchaser remains entitled to collect on such claims even beyond assignment, and our right to collect on our own is not affected. However, we undertake not to collect on claims unless and until the Purchaser no longer meets its payment obligations or is in default, an application is filed for the institution of insolvency proceedings or its capacity for performance is otherwise impaired. If this is the case, we may demand that the Purchaser disclose to us the claims assigned as well as the debtors thereof, furnishes such other information as may be needed for collection, hands over any related record and informs the debtors (third parties) of the assignment.
- (4) Upon the Purchaser's demand, we will release the security to which we are entitled insofar as the realizable value of our security exceeds the claims secured thereby by more than 10%; we select the security to be released at our discretion.
- (5) The Purchaser is obligated to treat merchandise with care; specifically, it must insure it against fire, water and theft, and it will, at its own expense, perform any needed maintenance and inspection work in a timely manner.

#### § 7 Liability for defects

- (1) Unless otherwise agreed, the Purchaser's rights concerning material and legal defects are subject to applicable legal provisions.
- (2) Any claim on the Purchaser's part requires that it has discharged its duties to inspect merchandise and report defects pursuant to § 377 of the commercial code (HGB). If a defect is detected, on the occasion of the inspection or at a later point in time, we must be promptly notified in writing. A notice is deemed to have been made in a timely fashion if it is given – i.e., dispatched – within two weeks. Irrespective of such duties to inspect merchandise and report defects, the Purchaser must report patent defects within two weeks of delivery in writing. Again, a notice is deemed to have been made in a timely fashion if it is dispatched by the applicable deadline. In the event that the Purchaser fails to properly inspect merchandise and/or report defects, our liability for such unreported defects is excluded.
- (3) The Purchaser must give us the time and opportunity needed for remedial performance as well as hand over the merchandise with which it found fault for inspection. Where merchandise is replaced, the Purchaser must return to us the defective merchandise in accordance with applicable legal provisions. Remedial performance includes neither the reinstallation of defective items nor the installation of replacements if we were not originally obligated to see to installation.
- (4) We bear the expenditures needed for purposes of inspection and remedial performance, including but not limited to shipping, road, labour and material costs, provided that there is an actual defect. If, on the other hand, a rectification request made by the Purchaser is found to be unjustified, we may ask the Purchaser to reimburse us for any associated costs.

- (5) In the event that remedial performance would cause disproportionate expenditures, the claim for rectification is excluded.
- (6) The Purchaser's claims for damages or the reimbursement of expenditures made in vain are excluded save for the extent provided by § 9.
- (7) The period of limitation for claims based on defects is one year, starting with the passage of risk. This does not apply insofar as § 438 (2) BGB (fraudulent intent) mandates longer periods.

#### § 8 Returns

- (1) The Purchaser may return any non-defective merchandise within 30 days from receipt if we previously consented to such return in writing. This does not give rise to a right to return merchandise, and returns are excluded once the above period has lapsed.
- (2) The Purchaser bears – and must pay in advance – the cost of any return, which include but are not limited to transport insurance. The merchandise must be accompanied by all necessary documents (e.g., order and invoice amounts, delivery date as well as reason for return).
- (3) We charge a flat restocking fee for returns of up to 20% of the merchandise value, but no less than EUR 35.00. If the Purchaser has already paid for the merchandise, we will refund payment upon receipt of the return, as adjusted by such flat fee.
- (4) Returns are permitted only if the merchandise is a standard product capable of being warehoused and in as-new condition. Returns are not permitted if the merchandise has already been put to its intended use, as well as in cases of custom tools.

#### § 9 Liability in other respects

- (1) We are liable for damages, irrespective of legal grounds, in cases of wilful misconduct and gross negligence. In cases of slight negligence, our liability is limited to damages from:
  - a) injuries to life, body and health; and
  - b) violations of a significant contractual obligation, which refers to any obligation the satisfaction of which (i) makes the proper implementation of the agreement possible in the first place, and (ii) is and may reasonably be assumed by the Purchaser, in which case our liability is limited to foreseeable and typical damages.
- (2) The limitation of liability set forth in the preceding paragraph does not apply insofar as we fraudulently concealed a defect or warranted merchandise to be of a certain quality. The same is true for the Purchaser's claims under the product liability act (Produkthaftungsgesetz).
- (3) The Purchaser may rescind or terminate the agreement on account of breaches of duty that do not consist of a defect only if such breach is attributable to us; the Purchaser is not entitled to terminate the agreement freely. In other respects, requirements and legal consequences apply as provided by law.

#### § 10 Industrial property rights

- (1) Unless otherwise agreed, our obligation to deliver merchandise free from third-party industrial property rights / copyrights ("industrial property rights") is limited to the country where delivery is effected.
- (2) In the event that the use of the merchandise gives rise to the infringement on property rights, for which we are responsible, we must procure for the Purchaser's benefit the right of ongoing use or modify the merchandise (i) in ways acceptable to the Purchaser and (ii) to the effect of ending such infringement; if doing so is impossible at reasonable economic conditions or within a reasonable period of time, we may rescind the agreement. Under these conditions, the Purchaser likewise has a right of rescission.
- (3) The Purchaser is obligated promptly to inform us of third-party claims in writing.
- (4) The Purchaser is liable for procuring that the documents it must supply, such as drawings, theories, designs, etc., as well as the merchandise to be created on the basis of such supplies will not infringe upon third-party property rights. We are not obligated to review documents supplied by the Purchaser for possible violations of third-party property rights.



MAPAL  
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**§ 11 Legal venue**

- (1) Disputes arising from or in connection with the contractual relationship with the Purchaser, whether directly or indirectly, are exclusively settled by the courts of Aalen (Germany) if the Purchaser is a merchant. However, we are also entitled to sue in the place of performance (cf. § 4 (1)) or the Purchaser's general legal venue.
- (2) These Terms of Sale as well as all legal relations between us and the Purchaser are subject to the laws of the Federal Republic of Germany, to the exclusion of international private law as well as the United Nations Convention on Contracts for the International Sale of Goods (CISG).