General Terms and Conditions of Sale and Delivery of Mechonics AG, Paderborn

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I. General / Scope

(1) Our Terms and Conditions of Sale and Delivery ("Terms") apply exclusively. We do not accept conflicting or deviating terms of the Customer unless we have expressly agreed to them in writing. Our Terms also apply if we carry out delivery without reservation in the knowledge of conflicting or deviating terms of the Customer.

(2) Individual agreements made with the Customer in a specific case take precedence over these Terms. A written contract or our written confirmation is decisive for the content of such agreements.

(3) Where these Terms require written form, text form (e.g. e-mail) is sufficient.

(4) These Terms apply only to entrepreneurs (§ 14 German Civil Code, BGB), legal entities under public law and special funds under public law (§ 310 (1) BGB). We do not sell to consumers.

II. Offers / Documents / Conclusion of Contract

(1) Our offers are non-binding unless the offer or order confirmation states otherwise. A contract is concluded only when we confirm the order in writing or begin performance or delivery. Collateral agreements and amendments require our written confirmation.

(2) We are released from our obligation to deliver if, despite proper and timely procurement, we ourselves are not supplied or not supplied correctly through no fault of our own, as well as in cases of force majeure or official orders. We will inform the Customer without undue delay and refund any consideration already received.

(3) Illustrations, drawings, weights and dimensions in offers, catalogs and on our website are approximate unless expressly designated as binding. We reserve ownership and copyright in cost estimates, drawings, CAD data and other documents; they must not be made accessible to third parties without our consent. We will only make plans designated as confidential by the Customer accessible to third parties with the Customer's consent.

III. Delivery Times

(1) The delivery period begins when the order confirmation is sent, but not before the Customer has provided all documents, permits (including any export licenses) and approvals and not before receipt of any agreed down payment.

(2) The delivery period is met if the goods have left the factory or the Customer has been notified that they are ready for dispatch by the end of the period.

(3) The delivery period is extended appropriately in the event of industrial action, in particular strikes and lockouts, and unforeseeable obstacles beyond our control, insofar as they demonstrably have a significant effect on completion or delivery. This also applies if such circumstances occur at sub-suppliers. We will inform the Customer of the beginning and end of such obstacles as soon as possible.

(4) If we are in default, the Customer may withdraw from the contract after an appropriate grace period of at least 4 weeks has expired without result. If the Customer suffers damage as a result of the delay, it may claim compensation of 0.5 % for each full week of delay, up to a maximum of 5 % of the value of that part of the delivery which cannot be used in time or as contractually agreed due to the delay. This limitation does not apply in cases of intent or gross negligence or injury to life, body or health.

(5) If dispatch is delayed at the Customer's request, storage costs will be charged starting one month after notification of readiness for dispatch, for storage at our factory at least 0.5 % of the invoice amount per month. After an appropriate deadline has expired without result, we are entitled to dispose of the goods otherwise and to deliver to the Customer within an appropriately extended period.

(6) Compliance with the delivery period requires the Customer to fulfill its contractual obligations.

IV. Prices / Payment

(1) Unless the order confirmation states otherwise, our prices are ex works Paderborn (EXW, Incoterms® 2020), plus packaging and shipping. Orders without an expressly agreed fixed price are charged at the list prices valid on the day of delivery. Prices "excluding customs duty" apply subject to timely presentation of a customs exemption declaration and acceptance by the customs authorities.

(2) Statutory VAT is not included in our prices; it is shown separately on the invoice at the statutory rate on the invoice date.

(3) Invoices are payable without deduction within 30 days of receipt. The Customer is in default at the latest when this period expires or, where a calendar date for payment has been agreed, when that date passes. We reserve the right to deliver only against advance payment, in particular for first orders, export deliveries or after payment deadlines have been exceeded.

(4) Payments are deemed received only when the amount is at our disposal.

(5) The Customer may only set off undisputed claims or claims established by final judgment. It may only exercise a right of retention insofar as its counterclaim arises from the same contractual relationship.

(6) In the event of default the Customer owes default interest at the statutory rate (currently 9 percentage points above the base rate, § 288 (2) BGB) and the lump sum pursuant to § 288 (5) BGB. We reserve the right to claim further damages.

(7) We may make outstanding deliveries conditional upon timely receipt of payments due. If, after conclusion of the contract, we become aware of circumstances that significantly reduce the Customer's creditworthiness, we may demand advance payment or security and, if these are not provided within a reasonable period, withdraw from the contract.

V. Transfer of Risk / Insurance / Packaging

(1) Risk passes to the Customer upon handover to the forwarder or carrier, at the latest when the goods leave the factory, also in the case of partial deliveries or if we have assumed other services (e.g. shipping). At the Customer's request and expense we will insure the shipment against theft, breakage, transport, fire and water damage and other insurable risks.

(2) If dispatch is delayed for reasons for which the Customer is responsible, risk passes to the Customer on the day of readiness for dispatch; at the Customer's request and expense we will take out the insurance it requires.

(3) Delivered goods must be accepted by the Customer even if they have minor defects, without prejudice to its rights under Section VII.

(4) Partial deliveries are permitted insofar as they are reasonable for the Customer.

(5) To the extent permitted by law, we do not take back transport or other packaging under the German Packaging Act (VerpackG); the Customer shall dispose of it at its own expense.

VI. Retention of Title

(1) We retain title to the goods until receipt of all payments arising from the business relationship with the Customer.

(2) The Customer shall insure the goods at its own expense against fire, water, theft and other damage at replacement value. If it does not provide proof of this, we are entitled to insure the goods at the Customer's expense.

(3) The Customer may resell the goods in the ordinary course of business but may not pledge them, assign them as security or otherwise dispose of them to the detriment of our retained title.

(4) The Customer shall carry out any necessary maintenance and inspection work in good time at its own expense.

(5) In the event of seizure or other interventions by third parties, the Customer shall notify us without delay in text form so that we can take legal action pursuant to § 771 German Code of Civil Procedure (ZPO). Insofar as the third party is unable to reimburse the court and out-of-court costs of such action, the Customer is liable for the loss.

(6) Any processing of the goods subject to retention of title is carried out by the Customer on our behalf without obligation on our part. If the goods are processed, combined or mixed with other goods not belonging to us, we acquire co-ownership of the new item in the ratio of the value of our goods to the other goods at the time of processing. If the Customer acquires sole ownership, it grants us co-ownership in this ratio and holds the item in safe custody for us free of charge.

(7) The Customer hereby assigns to us all claims in the amount of the final invoice amount (including VAT) arising from the resale of the goods or of products made from them. The Customer remains authorized to collect these claims. We will not collect the claims ourselves as long as the Customer meets its payment obligations, is not in default and no application for insolvency proceedings has been filed. Otherwise we may demand that the Customer discloses the assigned claims and their debtors, provides all information and documents required for collection and notifies the debtors of the assignment.

(8) At the Customer's request we will release securities to the extent that their realizable value exceeds the claims to be secured by more than 10 %.

(9) In the event of breach of contract by the Customer, in particular default in payment, we are entitled to withdraw from the contract in accordance with statutory provisions and to demand return of the goods. The Customer bears the costs of the return.

VII. Claims for Defects

(1) Claims for defects require that the Customer has complied with its obligations to inspect and give notice of defects under § 377 German Commercial Code (HGB). Obvious defects must be notified to us in text form within 10 days of delivery, hidden defects without delay after discovery.

(2) In the event of defects we shall, at our option, remedy the defect or deliver a defect-free item. If subsequent performance fails twice, the Customer may, at its option, reduce the purchase price or withdraw from the contract. Claims for damages are governed by Section VIII.

(3) Customary minor deviations in manufacture, design or color do not constitute defects. Replaced parts become our property.

(4) We accept no liability for damage resulting from unsuitable or improper use, incorrect installation or commissioning by the Customer or third parties, operation outside the specified environmental conditions (e.g. vacuum, temperature, voltage), natural wear, incorrect or negligent handling, unsuitable operating materials or chemical, electrochemical or electrical influences, unless caused by our fault.

(5) The Customer shall give us the time and opportunity required for subsequent performance. Only in urgent cases where operational safety is at risk or to prevent disproportionately large damage – in which case we must be notified immediately – or if we are in default with remedying the defect, may the Customer remedy the defect itself or have it remedied by third parties and claim reimbursement of the necessary expenses.

(6) We bear the expenses required for subsequent performance, in particular transport, travel, labor and material costs, if a defect actually exists. We do not bear additional costs incurred because the goods were moved to a location other than the Customer's place of business, unless this corresponds to their intended use. If inspection of returned goods shows that there is no defect or that the defect is due to improper handling by the Customer, the Customer bears the cost of troubleshooting; we will offer repair against payment.

(7) Claims for defects become time-barred 12 months after delivery. This does not apply in the cases of §§ 438 (1) no. 2, 445b and 478 BGB, in cases of intent, gross negligence, fraudulent concealment of a defect, assumption of a guarantee, injury to life, body or health or under the Product Liability Act; in these cases the statutory periods apply.

(8) Liability for the consequences of improper modifications or repairs carried out by the Customer or third parties without our prior consent is excluded.

(9) Wear and consumable parts (e.g. fuses, batteries) are excluded from warranty insofar as the defect is due to normal wear.

(10) We only assume a guarantee by express written declaration.

VIII. Liability

(1) We are liable without limitation for intent and gross negligence, for injury to life, body or health, under the Product Liability Act and within the scope of any guarantee assumed.

(2) In cases of slight negligence we are only liable for breach of an essential contractual obligation (an obligation whose fulfillment makes proper performance of the contract possible in the first place and on whose fulfillment the Customer may regularly rely), limited to the foreseeable damage typical for the contract at the time of its conclusion. Otherwise liability for slight negligence is excluded.

(3) Liability for delay in delivery is governed by Section III (4).

(4) Insofar as our liability is excluded or limited, this also applies to the personal liability of our legal representatives, employees and vicarious agents.

IX. Export Control and Sanctions

(1) Our products may be subject to national, European (in particular Regulation (EU) 2021/821 – Dual-Use Regulation) and US export control and sanctions regulations. When passing on the goods, the Customer is responsible for compliance with these regulations.

(2) Performance of the contract is subject to there being no obstacles due to national or international foreign trade regulations, embargoes or other sanctions. Delays caused by licensing procedures extend delivery periods accordingly.

(3) The Customer undertakes not to sell, export or re-export the goods, directly or indirectly, to persons or countries subject to EU sanctions, in particular not to the Russian Federation or Belarus or for use there (cf. Art. 12g Regulation (EU) No 833/2014).

X. Electrical and Electronic Equipment (WEEE)

Mechonics AG is registered with stiftung elektro-altgeräte register (EAR) under WEEE reg. no. DE 15408579. For equipment used exclusively outside private households (B2B equipment), we arrange the take-back and disposal of waste equipment in accordance with § 19 of the German Electrical and Electronic Equipment Act (ElektroG). Waste equipment supplied by us may be returned to us after prior agreement; the Customer bears the shipping costs unless otherwise agreed.

XI. Software

Where software forms part of the delivery (e.g. NOVA software, drivers), the Customer receives a non-exclusive, non-transferable right to use the software with the products supplied. Further license terms enclosed with the software take precedence.

XII. Data Protection

We process personal data of the Customer and its contact persons for the performance of the contract in accordance with Art. 6 (1) (b) GDPR. Further information can be found in our privacy policy at www.mechonics.de/data-privacy-notice/.

XIII. Miscellaneous

(1) Should individual provisions of these Terms be or become invalid in whole or in part, the validity of the remaining provisions shall not be affected. The invalid provision shall be replaced by the statutory provisions.

(2) Separate conditions apply to installation and service work.

(3) These Terms are available in German and English. In the event of discrepancies, the German version shall prevail.

XIV. Place of Performance / Jurisdiction / Applicable Law

(1) The place of performance for all obligations arising from the contractual relationship is Paderborn, Germany.

(2) The exclusive place of jurisdiction for all disputes arising from the contractual relationship is Paderborn, Germany. We are also entitled to bring an action at the Customer's general place of jurisdiction.

(3) The law of the Federal Republic of Germany applies, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).