

Terms and Conditions for the Supply of Mechanical Parts and Subassemblies

1. General

- 1.1 These Terms and Conditions for the Supply of Mechanical Parts and Subassemblies (hereinafter referred to as Terms and Conditions) apply to all present and future supplies of mechanical parts and subassemblies provided to the Customer by Manz, even if these supplies from Manz are provided without the use of or express reference to these Terms and Conditions.
- 1.2 Any Terms and Conditions of the Customer which deviate from or conflict with these Terms and Conditions do not form part of the contract, even if Manz does not expressly object thereto. Even if Manz refers to correspondence which contains Terms and Conditions of the Customer or of third parties or makes mention of such, this does not suggest any agreement to the validity of such Terms and Conditions. Any regulation to the contrary shall only apply provided Manz approved of this in a writing order confirmation.
- 1.3 No verbal side-agreements have been made. Any agreements that differ from or supplement these Terms and Conditions must be recorded in writing.
- 1.4 Samples, models, drawings or data carriers provided by the Customer will only be returned upon the request and at the expense of the Customer. In cases in which no subsequent order is placed, and no such request for return is made in due course, Manz is entitled to destroy such samples, models and drawings within one month of making the offer, without being liable for any claims for damages.

2. Offer, Contract Conclusion

- 2.1. All offers submitted by Manz shall be non-binding and shall be subject to confirmation unless otherwise stated in the offer.
- 2.2. Manz reserves the right to carry out an automated credit assessment prior to accepting an offer.
- 2.3. Orders shall not be binding unless an order confirmation has been sent by mail, fax or e-mail or if the order is carried out by Manz.
- 2.4. Manz shall not be bound by order confirmations that contain any obvious errors, typographical errors, or calculation errors.

3. Technical Specifications

- 3.1 All technical specifications such as drawings, models, bill of materials shall be supplied by customer and Manz shall not be responsible for the completeness and correctness of the specifications received.
- 3.2 In case the technical specifications do not specify items such as painting, surface treatment, packaging, etc. the general manufacturing guidelines of Manz shall apply.
- 3.3 The parties agree that all information exchanged between the parties shall be confidential. Disclosing party shall own all titles, copyrights and other property rights in all documents developed or provided by disclosing party. Such documents shall not be made accessible to third parties. At the request of the disclosing party, the receiving party shall return all documents promptly as soon as they are no longer required in the course of business including, but not limited to, all other documents, drafts, specimens, samples and models.

4. Prices

All prices shall be deemed to be net, FCA Manz manufacturing site, in Euros, without any deduction whatsoever. Any and all additional charges, such as but not limited to, freight charges, insurance premiums, fees for export, transit, import and other permits, as well as for certifications, shall be borne by Customer. Likewise, Customer shall bear all value-added taxes, sales taxes, withholding taxes, registration fees, as well as all other kinds of taxes, fees, levies, custom duties and the like which are levied against Manz in connection with the contract.

5. Terms of payment

- 5.1. The terms of payment are 30 % down payment upon receipt of order and 70 % upon shipment, payable within 14 days after date of invoice without deduction. The agreed dates of payment shall also be observed by Customer even if transport, delivery, installation, commissioning or taking over is delayed or prevented due to reasons beyond the control of Manz, or if minor parts are missing or if post-delivery work, which does not prevent the mechanical subassemblies from being used, is necessary.
- 5.2. The retention of payments or the setting-off against any counter claims shall be excluded. If Customer is overdue with an agreed payment, Manz, without prejudice to its legal rights, shall be entitled to suspend the further execution of the contract, to stop the fabrication or to retain the deliveries which are ready for dispatch.
- 5.3. With effect from the agreed due date Manz shall be entitled to charge the Customer interest on the amount unpaid on a daily basis at the rate of nine percentage points (9 %) per annum above the EZB base rate.

6. Retention of title

The mechanical subassemblies shall remain the property of Manz until paid for in full to the extent that such retention of property is valid under the law of the area where the mechanical subassemblies are located. If retention of property is not valid under such law, Manz reserves and may exercise any other rights related to the mechanical subassemblies as permitted by such law. The Customer shall at the request of Manz assist in taking any measures necessary to protect Manz's title to the mechanical subassemblies or any such other rights in the country concerned. In these cases the Customer shall not grant any pledge or lien or other right to transfer title in the mechanical subassemblies to any third party. In the event that the mechanical subassembly are seized by any third party or a pledge or lien is granted by court order to such third party, Customer shall notify Manz thereof immediately.

7. Terms of delivery

- 7.1 The contractually agreed date starts after receipt of all approvals, permissions, authorizations, Customer's data and documents necessary for completing the contract (in particular the technical specifications, the data regarding the power supply, etc.) and in any event not before the receipt of a partial payment that may have been agreed on and the presentation of a payment guarantee in conformance with the contract.
- 7.2 The terms of delivery are considered to have been fulfilled if, by that date, the ready for dispatch or acceptance note has been sent.

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- 7.3 Manz is only bound to respect the date of delivery if the Customer has complied with all of the commitments deriving from previous contracts with Manz. The date of delivery will be proportionally extended when the Customer is in delay with the fulfilment of his commitments.
- 7.4 Partial deliveries are allowed.
- 7.5 If the delay has been caused by Manz, the Customer is authorized to request liquidated damages for delay (with the exclusion of further rights or consequential damages). The liquidated damages amount to 0.25 % of the value of the delayed deliveries for each complete week of delay, with a maximum of 5 % of the value of the delayed deliveries. No liquidated damages shall be payable for the first four weeks of delay.
- 7.6 No penalties will be paid for delays in deliveries from third party suppliers prescribed by the Customer.
- 7.7 If the delivery is delayed due to causes attributable to the Customer, the Customer shall process payments on the basis of the terms of delivery foreseen originally. In such an event Manz will be authorized to store the supply and may invoice a storage fee of 0.5 % of the sales price per each month started.
- 8. Force Majeure**
- 8.1. If force majeure prevents Manz from fulfilling its contractually agreed upon obligations including, but not limited to, providing the agreed upon Services, Manz shall be released from its obligations without owing damages to the Customer for the duration of the force majeure event and for a reasonable period of time thereafter. The same shall apply if the fulfilling of such obligations by Manz is rendered unreasonably difficult or temporarily impossible due to unexpected circumstances or circumstances beyond the control of Manz including, but not limited to, strike, governmental measure, energy shortage, impaired delivery for a Customer, substantial interruptions to operations, or if such circumstances affect a subcontractor. If Manz is released from its obligations, it shall reimburse the Customer for any and all advance efforts, especially advance payments made.
- 8.2. Manz shall be entitled to rescind the agreement after a reasonable period of time if the force majeure event continues for more than four months.
- 9. Transfer of risk**
- 9.1 The supplies are carried out in accordance with the agreed INCOTERMS. If not otherwise agreed, the risk for the mechanical subassemblies is transferred to the Customer at the same time in which the advice that the subassemblies are ready for dispatch is sent. This also applies if the dispatch is delayed upon request of the Customer or for other reasons not caused by Manz.
- 9.2 From the moment of risk transfer the Customer must insure the supply, which will be stored by Manz on behalf of the Customer but at the Customers risk.
- 9.3 The mechanical subassemblies delivered must be accepted by the Customer irrespective of any warranty rights. The Customer is bound to check the packaging on receipt of the mechanical subassemblies, ensure proof and immediately report any visible defects to Manz in writing. If the above mentioned procedure is not followed, the supply will be considered accepted in relation to the condition and completeness. If the packaging is damaged, the Customer must adopt all necessary measures to prevent further imminent damage and to limit any damage already caused.
- 10. Special parts, provisions and safety regulations in the destination location**
- 10.1 The Customer is responsible for the conformity of all the mechanical subassemblies with the safety regulations in the destination location. Any change requests submitted in good time will be carried out by Manz at the cost and risk of the client, as long as operational safety is maintained.
- 10.2 If the Customer fails to inform Manz of different rules and regulations in force or of the necessity to supply special parts or gives false information at the time in which the order is awarded, the Customer must bear the cost of any modifications, subsequent supplies or other corrective action that Manz may have to provide for. If the Customer employs a third party to make any modifications, Manz will no longer have any responsibility and the warranty will cease to be valid.
- 10.3 Manz assumes no warranty for samples, models, drawings or data carriers provided by the Customer for mechanical subassemblies.
- 11. Liability**
- 11.1. Manz shall not be liable for any damage to property caused by the mechanical subassemblies after they have been delivered and whilst it is the possession of the Customer.
- 11.2. The warranty and liability claims of Customer are exhaustively covered by these conditions. Manz is only liable to compensate Customer for the costs of remedying defects in the delivered mechanical subassembly itself. As long as there are no specific mandatory laws to the contrary, in no case whatsoever shall Customer be entitled to contractual or tort claims for damages resulting from, but not limited to, loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damages.
- 11.3. The limitation of liability as per Art. 11.1 and 11.2 shall not apply where Manz has been guilty of gross negligence or willful misconduct.
- 12. Installation**
- Customer is solely responsible for the installation and commissioning of mechanical subassembly.
- 13. Place of performance**
- Unless agreed otherwise, the place of performance shall be the registered offices of Manz.
- 14. Warranty and liability for defects**
- 14.1. Before expiry of warranty period, Manz is responsible to repair or replace, any parts which, are proven to be unusable due to bad materials or poor workmanship. If a part is still defective, despite a replacement or repair, Manz is entitled to take back the defective part against reimbursement of the received payments.

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- 14.2. The warranty period is 6 months for all mechanical subassemblies and parts starting at the date of delivery.
- 14.3. The defective mechanical subassemblies must be made available to Manz for the purpose of rectification of defects at the place of performance specified in Article 13 hereof.
- 14.4. The compliance of Manz with its warranty obligations presupposes fulfilment of payment obligations by Customer in due time.
- 14.5. The granting of a proper replacement or repair under the warranty period does not extend the original warranty period.
- 14.6. Excluded from Manz's warranty and liability are all deficiencies beyond the responsibility of Manz, especially if resulting from improper storage, normal wear and tear, false or incomplete technical specifications from Customer, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic action, combination with non-original parts, installation, changes or repairs by Customer or third parties, events of Force Majeure specified in Article 7.
- 14.7. The warranty for used mechanical subassembly is excluded in any case.

15. Risk of loss and insurance

The transfer of risk is made according to agreed INCOTERMS. If dispatch is delayed for reasons beyond the control of Manz, mechanical subassemblies are stored and insured at the expense and the risk of Customer.

16. Final provisions

- 16.1. Any contracts entered into between Manz and the Customer shall be subject to German law under exclusion of the CISG.
- 16.2. All disputes arising between the Parties out of or in connection with the present agreement which cannot be settled amicably, shall be exclusively settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce, Paris by one or more arbitrators appointed in accordance with the said rules. The arbitration shall be held in Zurich, Switzerland, in the English language. The arbitrators' decision shall be final and binding on both parties.

Judgement upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- 16.3. Should any of the provisions of these Terms and Conditions be or become invalid or unenforceable in full or in part or should there be a gap in these Terms and Conditions, the validity of the remainder of the provisions of these Terms and Conditions or of the valid parts of such invalid or unenforceable provision or provisions shall remain unaffected. The parties hereby agree to replace invalid or unenforceable provisions with valid provisions that come as close as possible to the parties' economic intention. In the case of gaps, such replacement provision shall be deemed to be agreed upon provided it stipulates that which would have been agreed upon pursuant to the objectives of these Terms and Conditions had the parties thought to include a provision relevant to the matter before entering into the agreement.