

Terms and Conditions Manz AG

1. General Provisions

- 1.1. All contracts between Manz and its Customers are subject to Manz's Standard Terms and Conditions; conditions that are contrary to or differ from these standard terms and conditions will not be recognized unless Manz has expressly consented to their application in writing.
- 1.2. No verbal side-agreements have been made. Any agreements that differ from or supplement these terms and conditions must be recorded in writing.
- 1.3. Manz reserves rights of title and copyright as well as industrial property rights to documents accompanying a quotation, especially drawings, models, samples, cost estimates and any software and other technical documents that the Customer receives from Manz. These documents and the information that they incorporate must be kept secret and may not be made accessible to third parties without Manz express written consent. They must be returned to Manz immediately should a contract not be concluded.
- 1.4. For FAT (Factory Acceptance Test, done at Manz, after finishing of the goods before delivery) and SAT (Site Acceptance Test, after installation on site) process it is necessary that the testing procedure shall be defined before order date of the goods.
- 1.5. The goods to be delivered and services to be performed under the contract comply with laws and prescriptions in force at the place of delivery at the date of coming into force of the contract. The Customer shall inform Manz in due time about deviations and changes of applicable laws and prescription and the Parties shall agree on the respective consequences of such changes on price and delivery time.

2. Price, Payment

- 2.1 Unless Manz's order confirmation states anything to the contrary, Manz's net prices plus the legally applicable turnover tax will apply. Except as otherwise provided in the contract, the price basis shall be FCA Manz manufacturing site (according to INCOTERMS in force at date of contract) as specified in the contract. Any taxes, duties, customs duties, or other charges arising outside seller's country as well as value added tax, if applicable, shall be for the account of Customer.
- 2.2 In the absence of any agreement to the contrary, payment will be made within 14 days of the invoice date, without any deduction as follows:
 - a. 40 % as down payment following receipt of the confirmation of order;
 - b. 50 % after successful acceptance tests at Manz facility (i.e. Factory Acceptance Test) if applicable and as soon as the notification is provided to the Customer that the goods/services are ready for dispatch,
 - c. 10 % payable upon site acceptance at Customer facility (i.e. Site Acceptance Test), however at the latest upon start of commercial operation or 6 weeks after date of shipment in case site acceptance does not take place for reasons not attributable to Manz.
- 2.3 All payments, except the down payment as 2.2.a., shall be made by an irrevocable letter of credit (the "L/C"), to be opened by Customer in Manz's favor through a first-class bank and confirmed by a first-class international bank to be approved by Manz. This L/C shall be opened and confirmed at the latest 30 days after signing the contract and shall be payable against the shipping documents and invoices. It shall be opened in the currency of the contract, shall have a minimum validity of 2 months after expiry of the delivery time according to IV. an shall be extended if necessary. The L/C shall be in accordance with terms of payment as stated

above, the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication N° 600, shall apply. All expenses connected with opening, amending, confirming, negotiating and maintaining of the L/C shall be borne by Customer.

- 2.4 Should payment not be received on time, Manz is entitled to demand interest of five percentage points above base rate applicable in Germany and to suspend the performance of the contract, after having notified the Customer in writing, until payment has been credited on Manz accounts. Manz expressly reserves the right to claim additional damages. If the Customer fails to pay within three months from the due date, Manz shall be entitled to terminate the contract by written notice to the Customer and to claim compensation for the loss incurred.
- 2.5 The Customer shall only be entitled to a right to withhold payments, or offset them against counterclaims, insofar his counterclaims are undisputed or have been determined by final judicial decision.

3. Acceptance Test

- 3.1 Acceptance of the goods shall occur at the place of manufacture. The Customer is entitled and obliged to examine the goods. Acceptance tests (FAT) provided for in the contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. Site acceptance tests (SAT) provided for in the contract shall, unless otherwise agreed, be carried out at the place of installation during normal working hours. The Customer is entitled and obliged to examine the goods with respect to the installation works executed by Manz.
- 3.2 If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with general practice at Manz's facility in the country of manufacture. Performance criteria warranted in the contract, if any, are demonstrated exclusively during such acceptance test.
- 3.3 Manz is required to inform the Customer in sufficient time and in writing of these tests in order that the Customer may be represented when they are carried out. Should the Customer not be represented, he will receive the test report from Manz, the correctness of which he may no longer dispute.
- 3.4 Should the tests reveal that the goods are not according to the contract, Manz shall remedy defects in order to restore the goods to a condition in compliance with the contract. The Customer may only demand that the test be repeated or refuse acceptance in cases of significant defects which hamper the proper functioning of the goods. The Customer shall not refuse acceptance in the event of a minor defect.
- 3.5 The Customer will provide at his expense all materials required to commission, to ramp-up and to run the acceptance tests which are not specified as parts of the scope to be delivered or provided by Manz. The customer shall ensure that this testing material corresponds to the drawings or specifications in terms of both dimensions and tolerances and the material composition is in line with any defined criteria. Only if expressly requested by the customer, Manz will return this material to the customer.
- 3.6 Manz will pay all its costs (Manz personnel, facility cost) of tests carried out at the place of manufacture. The Customer is required to pay all his costs in connection with the tests such as costs incurred by his representatives (salary, travel and accommodation) and all costs (if applicable) for the attendance of or approvals by third parties or authorities.
- 3.7 In case FAT does not take place for reason not attributable to Manz within 2 weeks after notification from Manz that the goods are ready for acceptance, the goods shall be deemed accepted, even without signed record.

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In case SAT does not take place for reason not attributable to Manz, the goods shall be deemed accepted latest upon start of commercial operation or 6 weeks after date of shipment, even without signed record.

4. Time for Delivery, Delay

- 4.1 If the parties, instead of specifying the date for delivery have specified a period of time within which delivery shall take place, such period shall start to run as soon as the contract is entered into and all agreed preconditions to be fulfilled by the Customer have been satisfied, such as official formalities, payments due at the formation of the contract and securities. Completion dates or completion periods, whether agreed as binding or not, must be in writing. Should amendments to the contract be agreed subsequently or should the Customer be in delay with his obligations, such as providing information or effecting payments, a new completion date or completion period must be agreed if required.
- 4.2 Manz shall notify the Customer as soon as possible if delays attributable to Manz become apparent.
- 4.3 The delivery deadline has been met when the goods/services have been shipped before the deadline has expired or the Customer has been notified that the goods/services are ready to ship.
- 4.4 If the Customer fails to accept delivery at the agreed date, the Customer shall pay any part of the purchase price which becomes due at the time for delivery, as if delivery had taken place at the time for delivery. Manz shall arrange for storage of the goods/services at the risk and expense of the Customer. Manz shall also, if the Customer so requires, insure the goods/services at the Customer's expense.
- 4.5 Notwithstanding other provisions in these Standard Terms and Conditions regarding suspension, Manz shall be entitled to suspend the performance of its obligations under the contract, where it is clear from circumstances that the Customer is not going to perform his obligations. If Manz suspends its performance of the contract it shall forthwith notify the Customer thereof in writing. If delay in delivery is caused by an event of Force Majeure or any circumstances attributable to the Customer, Manz shall be entitled to adjust the time of delivery considering all circumstances of the case.
- 4.6 If the goods are not delivered at the agreed delivery date due to Manz fault and the Customer suffers undisputed damage, he is entitled to demand liquidated damages for delay resulting thereof. This compensation amounts to 0,1% of the price of the delayed parts for each full week, starting from the fourth week of delay, up to a maximum of 1% of the price of the delayed parts.
- 4.7 The liquidated damages shall become due at the Customer's demand in writing but not before delivery has been completed or the contract is terminated. The Customer shall forfeit his right if he has not lodged a claim in writing for such damages within six months after the time when delivery should have taken place.
- 4.8 Furthermore should the Customer want to withdraw from the contract, he must set an extension of at least one week after the grace period from 14 weeks under clause 4.6. The total compensation, including the liquidated damages which are payable under Clause 4.6 shall not exceed 15% of that part of the purchase price which is attributable to the part of the goods/services in respect of which the contract is terminated.
- 4.9 All rights and entitlements of the Customer in case of delay of Manz are exclusively stated in this section 4. All other claims against Manz based on delay shall be excluded, except where Manz has been guilty of gross negligence.

5. Transfer of Risk

- 5.1 The transfer of risk to the Customer shall take effect according to agreed INCOTERMS. This shall also apply in the event of partial deliveries, or in the event that Manz assumes other services, e.g. shipping costs or delivery and installation.
- 5.2 In the event of delay or failure of the dispatch or acceptance on grounds, for which Manz is not responsible, the risk will be transferred to the Customer from the day of notification of the dispatch or readiness for acceptance on part of Manz. Manz shall also, if the Customer so requires, insure the goods/services at the Customer's expense.
- 5.3 Partial delivery is admissible insofar as is reasonable for the Customer.

6. Retention of Title

The goods/services 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 goods/services are located. If retention of property is not valid under such law, Manz reserves and may exercise any other rights related to the goods/services as permitted by such law. In particular Manz is entitled to prohibit the operation and/or use of the goods. The Customer shall at the request of Manz assist in taking any measures necessary to protect Manz's title to the goods/services 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 goods/services to any third party. In the event that the goods/services 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. Liability for Defects

In the case of material defects and defects of title regarding the delivery Manz shall warrant as follows.

- 7.1 Material Defects
 - 7.1.1 Manz warrants that the goods/services shall be free from defects in design, material and workmanship for a period of 12 months starting at the date of SAT or start date of commercial use (i.e. goods are used to produce products in line with technical specifications). Should SAT be delayed for reasons for which Manz is not responsible, the warranty period commences six weeks after date of shipment. No warranty shall apply for defects, which arise after the risk has passed to the Customer. Defective parts, which have been replaced, shall be made available to Manz and shall be Manz property.
 - 7.1.2 For any claims of the Customer based on alleged failures or errors in services, advice or consulting carried out before or after formation of the contract, or in other contractual services such as operation or maintenance instructions or manuals, the provisions of this section shall apply accordingly, to the exclusion of any further claims.
 - 7.1.3 If any goods or parts thereof prove to be defective during the warranty period, Manz shall at its option and its cost repair or replace the defective goods or parts thereof. Repair shall be carried out at the place where the goods are located unless Manz deems it more appropriate that the goods are sent to Manz or a destination specified by Manz. If the defect can be remedied by replacement or repair of defective part and if dismantling and re-installation of the part do not require Manz's specific knowledge, Manz may demand that the defective part is sent to Manz or a destination specified by Manz. In such case Manz shall have fulfilled its obligations in respect of the defect when Manz delivers a duly repaired part or a part in replacement to the Customer.

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7.1.4 After consulting Manz, the Customer shall provide the necessary time and opportunity for Manz to proceed with all apparently necessary repairs and replacement deliveries; otherwise Manz is relieved from the liability for the resulting consequences. Customer only has the right to eliminate the defects himself or have them eliminated by a third party and demand refunds from Manz for the corresponding costs in urgent cases of danger to operating safety or to prevent unreasonably large damage, in which case Manz must be informed immediately.

As far as the direct costs involved in repair or replacement delivery are concerned, if the complaint proves to be justified, Manz pays the costs for the replacement part including shipment. In case the complaint is not justified or no defect is found for which Manz is liable, Manz shall be entitled to compensation of all cost arisen at Manz due to the wrong notice received.

7.1.5 In case that additional expenses to repair or replace the goods/services arise, because the Customer has transferred the goods/services after delivery to another place than the agreed place of performance, the Customer has to bear the additional costs.

7.1.6 The initial warranty period is not affected by replacement or repair of goods/services.

7.1.7 No warranty is granted particularly in the following cases: Unsuitable or improper use, incorrect installation and/or putting into service by the Customer or third parties, usual wear and tear, defective or negligent handling or operation, improper maintenance, excessive load, unsuitable operating materials; inadequate construction work or design specified by the Customer.

7.1.8 Liability shall be waived for any damages if the Customer or any third party remedies defects without being entitled to do so or without prior approval of Manz or improperly remedies defects. The same applies for modifications of the supplied good made without the prior approval of Manz.

7.1.9 If Manz does not fulfil its obligations under this warranty, the Customer shall be entitled to fix in writing a final reasonable period for completion of Manz's obligations, which shall not be less than one week.

If Manz fails to fulfil within such final period, the Customer may engage a third party to do necessary repair work at the expense of Manz.

Where such repair has been undertaken successfully by the third party or Customer, reimbursement by Manz of reasonable direct cost incurred by the Customer shall be in full settlement of Manz liabilities of the defect claimed.

7.1.10 Where the goods/services have not been successfully repaired, the Customer shall be entitled to a reduction of the purchase price in proportion to the reduced value of the goods/services provided that under no circumstances shall such reduction exceed 15 % of the purchase price.

7.1.11 Where the defect is so substantial as to significantly deprive the Customer of the benefit of the contract as regards the goods/services or a substantial part of it, the Customer may terminate the contract by notice in writing in respect of such part of the goods/services as cannot in consequence of the defect be used as intended by the parties. The Customer shall then be entitled to compensation for his loss, costs and damages up to a maximum of 15 % of that part of the purchase price which is attributable to the part of the goods/services in respect of which the contract is terminated.

7.1.12 Save as agreed in this section Manz shall not be liable for defects, this applies to any loss the defect may cause. This limitation of Manz's liability shall not apply if he has been guilty of gross negligence.

7.1.13 Claims under this section must reach Manz within the warranty period, and shall be deemed waived if notified thereafter.

7.2 Defects of Title

7.2.1 Should the use of the goods entail the infringement of commercial proprietary rights or copyrights in the country where the goods are manufactured, Manz will either procure the right to continued use by the Customer or modify the goods in a manner that is reasonable for the Customer so that the proprietary right is no longer infringed or defend the Customer from any infringement claim at the expense of Manz.

7.2.2 The Customer is entitled to cancel the contract should this not be possible at commercially reasonable conditions or within a reasonable period of time. Manz will also be entitled to cancel the contract under these circumstances.

7.2.3 Manz will also relieve the Customer of undisputed claims or claims established in law lodged by the owner of the proprietary rights concerned.

The remedies stated are Customer's sole remedies for infringement and misappropriation of third party intellectual property rights.

They will only apply provided that

- a. the Customer notifies Manz immediately about any alleged infringements of proprietary rights or copyrights and about any claims to be expected,
- b. the Customer provides reasonable support to Manz in defending claims or enables Manz to carry out the modifications referred to in section 7.2.1.
- c. Manz reserves the right to carry out all defense measures including out-of-court agreements and the defect of title has not been caused by the Customer unilaterally changing or using the goods in a manner not according to contract.

8. Allocation of Liability

8.1 Manz shall not be liable for any damage to property caused by the goods/services after they have been delivered. Further, Manz undertakes no liability for damages to products manufactured by the Customer or to any other products that contain products of the Customer. This limitation of liability shall not apply where Manz has been guilty of gross negligence.

8.2 If Manz incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Customer shall indemnify, defend and hold Manz harmless.

8.3 If a claim for damage as described in this clause is raised by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.

8.4 Manz and the Customer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages raised against one of them on the basis of damage allegedly caused by the goods/services. The liability between Manz and the Customer shall however be settled in accordance with section 11.

8.5 NOTWITHSTANDING ANYTHING STATED TO THE CONTRARY IN THIS CONTRACT MANZ'S LIABILITY SHALL BE LIMITED TO THE CONTRACT PRICE.

IN NO EVENT SHALL MANZ BE LIABLE, WHETHER BY REASON OF ANY BREACH OF THE CONTRACT OR OF STATUTORY DUTY OR IN TORT, (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR STRICT LIABILITY FOR LOSS OF PRODUCTION, LOSS OF PROFITS, LOSS OF USE, LOSS OF

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CONTRACTS, ADDITIONAL PRODUCTION COST, OR FOR ANY FINANCIAL OR ECONOMIC LOSS OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY DESCRIPTION.

9. Software Use

- 9.1 Should software be included in the contents of the delivery, the Customer is granted a non-exclusive right to use the software provided including its documentation. Use is permitted for the goods provided for this purpose. Use of the software on more than one system is not permitted.
- 9.2 All other rights to the software and the documentation including copies remain the property of Manz or the software supplier. The granting of sublicenses is not permitted.

10. Force Majeure and Export Control Authorization

- 10.1 Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance or the performance of a subcontractor or sub supplier is impeded or made unreasonably onerous by Force Majeure (such events include but are not limited to any legal prohibition, wars, rebellions, revolutions, delays in deliveries by sub-contractors, strikes or other labor disputes, fire, flood, sabotage, nuclear accident, earthquake, hurricane, epidemic).
- 10.2 If non-observance of the delivery is due to Force Majeure, strikes or other events outside of Manz responsibilities, then the time of delivery is extended appropriately in accordance with the duration of the event which triggered the delay. During the period in which the Force Majeure continues, parties can suspend the obligations of the contract.
- 10.3 Both parties shall promptly notify in writing the end of the Force Majeure event.
- 10.4 If the supply of goods/services by Manz is subject to the approval of the relevant export control authorities, Manz obligation to deliver the goods/services shall come into force in this regard only upon receipt of the required approvals.

11. Disputes and Applicable Law

- 11.1 All disputes arising out of or in connection with the Contract including all amendments shall be exclusively and finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators nominated in accordance with the said rules. The arbitration shall be held in Zurich, Switzerland in the English language. The Contract shall be governed by and construed in accordance with Swiss law, to the exclusion of its rules for the conflict of laws and the Vienna Convention on Contracts for the International Sale of Goods (CISG).
- 11.2 Manz shall be exempted to fulfill its obligation if and to the extent that the performance of such obligation is in violation of, or otherwise inconsistent with, any legislative or regulatory provisions or regulation.