

# **Terms and Conditions of Meyer Sound Europe GmbH**

## **1 General information**

1. Our terms and conditions, which also apply to all future orders, apply exclusively to all contracts concluded with us and to our deliveries and services. Provisions deviating from these conditions, particularly the customer's terms and conditions, do not apply, even if we have not objected separately to their validity in individual cases. Even in cases where we refer to a correspondence that contains or refers to the terms and conditions of the customer or a third party, this does not constitute acknowledgement of the validity of the other terms and conditions. Our terms and conditions only apply if the customer is an entrepreneur pursuant to Section 14 of the German Civil Code (§ 14 BGB), a legal entity as defined under public law or a special fund under public law.
2. All agreements made with us must be in the written form. The written form is also upheld through communication via email.
3. Individual agreements made with the customer in individual cases (including ancillary agreements, supplements and amendments) always take precedence over these terms and conditions. Subject to evidence to the contrary, a written contract or our written confirmation is decisive for the content of such agreements.
4. Legally relevant declarations and notifications of the customer relating to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, meaning in written or text form (e.g. letter, email, fax). Statutory formal requirements and other evidence, especially where there are doubts regarding the legitimacy of the declarant, remain unaffected.
5. References to the validity of legal regulations are only significant in terms of providing clarification. Even without such clarification, statutory provisions apply unless they are directly modified or expressly excluded in these terms and conditions.

## **2 Offer and contract**

1. Our offers are always non-binding and subject to change. Following placement of an order by the customer, the contract comes into being with our order confirmation. The validity date of the offer is defined in the respective offer. If the customer's order qualifies as an offer pursuant to Section 145 of the German Civil Code (§ 145 BGB), we can accept it within 14 days.
2. Unless otherwise agreed, cost estimates are non-binding and subject to a charge.
3. Our information on the subject of the delivery or service (e.g. concerning dimensions, weights, physical properties, outputs, load bearing capacities, tolerances and other technical data) in catalogues, brochures, circulars, advertisements, illustrations, price lists and other publications is only approximate, unless its usefulness for the contractually intended purpose requires precise conformity. These details are not guaranteed characteristics, but descriptions or distinctions of the delivery or service. Customary divergences in commercial terms or deviations that occur due to statutory regulations or represent technical improvements are permissible, provided they do not impair usability for the contractual purpose.
4. Models, samples, drawings and descriptions, other documents and moulds and tools that are manufactured by us or by third parties on our behalf remain our property. We continue to hold the copyright to these. They may not be rendered accessible to third parties without written permission. These items must be returned to us in full on request, and any copies made must be destroyed if they are no longer required or a

contract has not been concluded.

5. The scope of performance owed by us is determined by the contract concluded with the customer or, if such a contract has not been expressly concluded, by our order confirmation.

## **3 Prices and payment**

1. All prices are exclusive of value-added tax (VAT) and official duties or levies. The price agreed in EURO applies.
2. If no special agreement has been concluded, prices are "ex works" or "ex warehouse", excluding packaging, freight and insurance. In this event, costs incurred for packaging, freight and insurance shall be invoiced separately to the customer. Shipment is realised according to our preference (e.g. by rail, post or forwarding agent). At the request of the customer, we shall take out transport insurance for the delivery at the customer's expense.
3. Our prices only apply for the agreed scope of service and delivery. In the absence of a fixed price agreement, we reserve the right to adjust prices accordingly to a reasonable extent starting four months after conclusion of the contract.
4. Unless otherwise agreed in writing, all payments shall be made without any deductions to our bank account within 14 days of the invoice date. Discounts are only permitted if this has been expressly agreed in writing.
5. Bills of exchange are only accepted on account of performance. They do not entitle any party to a discount. Bank, discount and collection charges shall be borne by the customer. In the event of payment by bill of exchange or cheque, our claim shall only be deemed to have been fulfilled after the respective amount has been credited to our account.
6. We are entitled to demand securities of our own choice from the customer at any time for outstanding claims against the customer.
7. If the customer is in default of payment, we are entitled to charge default interest of 9 percentage points above the respective base interest rate of the European Central Bank. We reserve the right to assert a claim for further damages.
8. If there is a significant deterioration in the customer's economic situation, in particular if there is potentially a risk to the customer's creditworthiness, credit or our payment claims, we are entitled to refuse to realise the respective order or to withdraw from or terminate the contract if the customer refuses to eliminate the endangerment to the purpose of the contract that has arisen due to the deterioration of its financial situation within a reasonable period of time through step-by-step performance or the provision of security.
9. The customer is only entitled to offset against counterclaims insofar as its counterclaims are undisputed, have been legally established or are pending a decision regarding a *lis pendens*.
10. The customer is only entitled to withhold payments insofar as its counterclaims are undisputed, have been legally established or are pending a decision regarding a *lis pendens*.

## **4 Retention of title**

1. We reserve the right of ownership to the delivered goods until all claims emanating from the business relationship to which we are entitled and those that shall arise have been settled in full.
2. The customer is obliged to insure the delivered goods at its own expense against damage caused by fire, water and theft, said insurance being adequate to cover the reinstatement value. If maintenance and inspection

work is necessary, the customer must realise this in good time at its own expense.

3. The customer is entitled to process or combine the goods in the ordinary course of business. We shall acquire co-ownership of the products resulting from processing or combination in order to secure our claims referred to in Section 1. The customer shall transfer this co-ownership to us with immediate effect. The customer must store the items subject to our co-ownership free of charge as an additional contractual obligation. The level of our co-ownership share is determined by the ratio of the value of the product (calculated according to the final invoice amount including VAT) to the object created by processing or combination at the time of processing or combination.
4. The customer is entitled to resell in the ordinary course of business for cash payment or subject to retention of title. The customer shall assign all claims and ancillary rights to which it is entitled from the resale of the goods in full and with immediate effect to us, regardless of whether the goods have been further processed or not. We shall accept the assignment today. The assigned claims serve to secure our claims according to Section 1. The customer is entitled to collect the assigned claims. We can revoke the rights of the customer according to Section 3 if the customer does not properly meet its payment obligations to us, defaults on payment, stops its payment or if the customer applies to open insolvency proceedings or comparable proceedings to settle debts through its assets. We can also revoke the rights of the customer according to Section 3 if a significant deterioration in the customer's financial situation occurs or threatens to occur or the customer is insolvent or over-indebted.
5. At our request, the customer must inform us immediately in writing concerning whom it has sold the goods to which it has ownership or co-ownership to and with regard to the claims it is entitled to from the resale. In addition, the customer must issue us with officially attested documents on the assignment of the claims at its own expense.
6. The customer is not entitled to dispose of the items in our reserved ownership or co-ownership in any other way, nor the claims assigned to us. The customer must inform us immediately of attachments or other legal impairments of the items or claims belonging to us in whole or in part. The customer shall bear all costs incurred to remove third-party access to our reserved or security property and to replace the item, insofar as they cannot be collected from third parties.
7. We undertake to release the securities to which we are entitled at the customer's request insofar as the realisable value of its securities exceeds the claims to be secured by more than 10%. We shall select the securities to be released at our own discretion.

## **5 Customer cooperation**

1. Insofar as the customer's cooperation is required in performance of the contract, the customer is obliged to provide us with all useful and necessary data or information in good time or to carry out necessary cooperative actions.
2. If it has been agreed that the customer should provide material and information, these must meet the specifications and requirements necessary for realisation of the work. In this event, the customer shall be informed by us in advance about the requirements necessary for service provision.
3. If the information and materials necessary for performance of the contract are not available to us in good time or as agreed, or if the customer fails to fulfil its obligations in any other way, we are entitled to postpone the agreed dates for performance of the contract to the same extent. Additional costs arising from this can be invoiced by us at the usual cost rates.

## **6 Delivery, deadlines, performance, default**

1. The scope of the services to be provided by us is based on contractual agreements, in particular our order confirmation.
2. Specified performance or delivery deadlines for the order are only approximate, unless otherwise expressly agreed.
3. In the event of a delay in performance or an impossibility for which we are responsible, the customer is entitled to withdraw from the contract. However, in the event of a delay, the customer is only entitled to withdraw from the contract if we have culpably allowed a period of grace set by the customer to elapse without exploiting it. The occurrence of our delay in delivery is determined by statutory provisions. However, a reminder issued by the customer is necessary in every case.
4. The performance time for the order is extended appropriately in the event of unforeseeable and/or unavoidable and/or extraordinary events and operational disruptions, strikes and labour disputes of any kind and other cases of force majeure. If it becomes impossible for us to perform the service, particularly if due to one of the aforementioned events, we shall be released from any obligation to perform. Claims for damages of the customer are excluded in both cases.
5. We reserve all rights to offers and cost estimates submitted by us and to tools, aids, illustrations, descriptions and other documents originating from us or third parties and made available to the customer. The customer is not entitled to render these items and documents accessible to third parties, to disclose them, to use them itself or through third parties or to reproduce them without our consent. The customer must return all the items, documents and any copies at our request if they are no longer required in the ordinary course of business or if negotiations have not led to the conclusion of a contract.
6. If the customer is in default of acceptance or culpably violates other obligations to cooperate, we are entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs). We shall demand flat-rate compensation in this respect amounting to 0.5% of the price of the delivery items for each calendar day, starting with the delivery deadline or, in the absence of a delivery deadline, with the notification that the goods are ready for dispatch. However, flat-rate compensation shall not exceed a total of 15% of the price of the items supplied. The contracting parties are free to provide evidence of higher or lower additional expenses. Flat-rate compensation shall be taken into account in this case. Further claims due to default of acceptance remain unaffected. In the event of default of acceptance, the risk of accidental loss or accidental deterioration of the delivery items shall be transferred to the customer.
7. In the case of return deliveries caused by the customer at our expense, the selection of the transport company must be agreed with us prior to the return delivery. Failure to do so shall mean that the difference in costs between our transport company and that chosen by the customer shall not be borne.
8. Transport and all other packaging conforming to the packaging ordinance shall not be taken back by us. Exceptions are standardised reusable packaging such as EURO pallets and lattice pallet boxes. The customer is obliged to ensure that packaging is disposed of at its own expense. Prescribed statutory and ecological disposal regulations (recycling loop) must be observed.
9. Partial deliveries and corresponding invoices are permitted unless these are unreasonable for the customer.

## **7 Liability for defects**

1. We shall bear no liability for defects (material and legal

defects) that can be traced back to incorrect information, documents or materials from the customer.

2. Customer claims for defects shall not be entertained in the case of only insignificant deviations from the agreed quality or only insignificant impairment of usability.
3. Material defects are not
  - natural wear and tear. In particular, typical wear parts are products that we offer as spare parts;
  - the quality of goods or damage that occurs after the transfer of risk as a result of improper handling, storage, care, non-observance of installation and maintenance instructions or excessive stress or use;
  - the quality of the goods or damage caused by force majeure, special external influences that are not provided for in the contract or due to use of the goods beyond that provided for in the contract or normal use;

Claims for material defects do not exist if the delivered goods are modified by third parties or through the integration of parts from third parties, unless the defect is not causally related to the modification, or the third party has been expressly commissioned by us.

We shall bear no liability for the quality of goods based on the design or choice of material where the customer has specified the design or material.

4. Claims for defects by the customer presuppose that the customer has complied with its statutory inspection and notification obligations pursuant to Sections 377 and 381 of the German Commercial Code (§377, 381 HGB). If a defect becomes apparent upon delivery, inspection or at any later point in time, we must be notified of this in writing without delay. Obvious defects must be reported in all cases in writing within five working days of delivery, and defects not identified during inspection must be reported in writing within the same period of time after discovery. Should the customer fail to act correctly with regard to inspection and/or notification of defects, our liability for the defect that is not reported, not reported in a timely manner or not reported properly is excluded in accordance with statutory provisions.
5. In the event of a defect, we are entitled, at our discretion, to remedy the defect (rectification) or provide a replacement free of defects. Our right to refuse supplementary performance under the statutory requirements remains unaffected.
6. In the event of the supplementary performance we have chosen (Section 5) failing, which can only be assumed after the second unsuccessful attempt, the customer has the right, at its discretion, to demand a reduction in payment or to withdraw from the contract.
7. Claims due to material defects, including recourse claims by the customer, are excluded if the customer has not had the defect rectified by us or a specialist installer authorised by us. The customer has the right in urgent cases (e.g. where there is a risk to operational safety or to prevent disproportionate damage) to remedy the defect itself and demand compensation from us for expenses considered objectively necessary for this purpose. We must be informed immediately, or where possible beforehand, of any self-remedying of this nature. The right of self-remedy does not exist if we were entitled to refuse subsequent performance according to statutory provisions.
8. Warranty claims can only be asserted directly by the customer. The customer is not entitled to assign its warranty claims directed against us to a third party unless we have expressly agreed to the assignment in writing.
9. The provisions of the above sections apply accordingly to defects of title that are not based on the infringement of property rights of third parties.

## 8 Liability

1. In the case of intent or gross negligence on our part or on the part of our representatives or vicarious agents, we are liable according to statutory provisions. This also

applies in the case of culpable violation of essential contractual obligations. Insofar as there is no intentional breach of contract, compensation to be paid by us is limited to foreseeable, typically occurring damage.

2. Liability for culpable injury to life, limb or health and liability pursuant to the German Product Liability Act (Produkthaftungsgesetz) remain unaffected.
3. Any further liability for damages than that provided for in Section 1 and Section 2 is excluded, regardless of the legal nature of the asserted claim. This applies in particular to claims for damages relating to fault in conclusion of contract (*culpa in contrahendo*), other breaches of duty or tortious claims for compensation for property damage pursuant to Section 823 of the German Civil Code (§ 823 BGB).
4. Insofar as our liability for damages is excluded, this shall also apply with regard to the personal liability for damages of our employees, representatives and vicarious agents.
5. A change in the burden of proof to the detriment of the customer is not associated with the above provisions.

## 9 Limitation

Claims against us arising from contractual breaches of duty for which we are responsible shall be barred by limitation after a period of 1 year. This does not apply to intentional breaches of duty or claims for defects by the customer pursuant to Section 634a (1) No. 2 of the German Civil Code (§ 634a Abs. 1 Nr. 2 BGB). Statutory provisions apply to the commencement of the limitation period.

## 10 Applicable law, place of performance, place of jurisdiction and severability clause

1. The law of the Federal Republic of Germany applies exclusively to our deliveries to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and private international law.
2. The place of performance for the service provided by us depends on the respective content of the contract and is our place of business (registered office), unless otherwise stated in the order confirmation.
3. The place of jurisdiction is Montabaur, Germany if our customer
  - is a merchant or
  - has no general domestic place of jurisdiction or
  - relocates its domicile or habitual abode abroad after conclusion of the contract or its domicile or habitual abode is not known at the time the action is filed.We are also entitled to appeal to a court at the customer's place of business (registered office).
4. Should a provision in these terms and conditions or a provision in supplementary agreements be or become wholly or partially invalid, this shall not affect the validity of the remaining provisions. A provision that comes closest to the intended purpose shall replace the invalid provision.