

**General Terms of Service and Delivery  
of Contura MTC GmbH (“GTSD”)  
Version: 31/07/2020**

**1. General, scope**

1.1 These GTSD apply only to companies in accordance with section 14 BGB [German Civil Code]. They apply exclusively and conclusively, even if not separately agreed on an individual basis. In the case of ongoing business relations, this shall also apply in case of contract conclusion by telex or telephone or other form, particularly electronic form.

1.2 Any terms of the contractual partner that are contrary to or deviate from our GTSD are expressly rejected. We will not recognise them unless we have expressly agreed to their validity in writing. Any differing and deviating general terms of business or delivery of the contractual partner are hereby rejected. They shall be deemed to be waived, even if they are not expressly rejected again upon conclusion of the contract or at a later date.

Our terms of sale shall also apply if we accept the performance of the contractual partner without reservation in the knowledge that the contractual partner's terms are contrary to or deviate from GTSD. A fulfilment of the contract by us shall not replace the express written confirmation of deviating terms.

1.3 Our employees are not authorised to agree verbally or in writing or otherwise to the validity of any other than these GTSD. Amendments to these GTSD or other contractual contents require approval by our management or executive board.

1.4 Subsidiary agreements, amendments, supplements or additions to the contract must be in writing; these GTSD shall also apply to them.

1.5 Insofar as declarations according to these GTSD must be made in writing, this shall not only mean written form, but also text form.

**2. Tender documents, offer**

2.1 We supply products specially adapted to the needs of the respective customer, including custom-made items. The customer must independently and personally examine our products and other offers in this respect, in particular to determine whether they meet the customer's requirements and needs.

2.2 Upon request of a customer, we shall be at liberty to check whether we will make an offer regarding the desired object or item.

We shall then be at liberty to make an offer for a design and technical solution, including a delivery or completion schedule. The prices quoted shall be subject to the proviso that the order data on which the offer is based remain unchanged.

Once the customer accepts the offer, the conceptual, technical solution, including the time schedule, shall also be deemed agreed. In addition, the customer shall be obliged to countersign the 3-D data or drawings and plans, even if changes occur during design and manufacture. Changes proposed by us in writing shall require the countersignature of the customer in order to be considered approved and agreed. If there is no reaction from the customer to the changes in schedule and technical and design solution proposed by us, said changes shall be deemed to have been approved and agreed upon after 10 working days after their receipt by the customer. This applies in particular to any price adjustments we may propose in connection with the change.

- 2.3 If the order is to be qualified as an offer according to section 145 BGB, we can accept said offer within four weeks. The contract shall only be concluded upon receipt of our written order confirmation. Until written confirmation of the order, all offers shall be subject to change and considered non-binding. In the event of immediate order execution, the delivery note or the goods invoice shall also be considered as an order confirmation.

### **3. Terms of payment, pricing**

- 3.1 Unless otherwise stated in the order confirmation, our prices shall be “ex works”, plus the value added tax applicable on the day of invoicing.

Insofar as delivery to a location other than our registered office or installation or assembly at a location other than our registered office is agreed, the customer shall bear, in addition to the agreed remuneration, all necessary ancillary costs, such as travel expenses, transport costs, including the costs of packaging customarily used by us or packaging requested by the customer, costs for the outward and return transport of our tools and goods, as well as allowances.

Where statutory disposal costs are charged, these costs must be paid to us separately in addition to the agreed prices.

The prices in each case shall apply only for the contractually agreed quantity and execution. If the customer requests changes which require greater expenditures than provided for by the contract basis, we reserve the right to change the prices commensurately.

If, after conclusion of the contract, our costs increase unforeseeably, in particular due to collective agreements, increases in material prices, in particular increases in raw material or energy prices, we reserve the right to increase our prices by the amount of the resulting cost increase. In this case, price changes shall only be possible within the scope of compensation for the aforementioned price and cost increases. If, with consideration to such circumstances, our prices change by more than 5% of the price stated in the order confirmation, customers who are neither merchants within the meaning of the Handelsgesetzbuch [German Commercial Code] nor special funds under public law nor legal entities under public law shall be entitled to withdraw from the part of

the contract not yet fulfilled. The same right shall be entitled to merchants within the meaning of the Handelsgesetzbuch for such legal transactions that are not part of the operation of their commercial business.

- 3.2 Statutory value added tax is not included in our prices; it is accounted for separately on the invoice at the statutory rate on the day of invoicing.
- 3.3 The deduction of discounts shall require a special written agreement. Insofar as a discount agreement exists: partial payments shall not be discountable.
- 3.4 Unless otherwise stated in the order confirmation, the price shall payable net (without deduction) and free of transaction charges and shall be due for payment immediately. If a customer is in default of payment, we shall be entitled to charge interest on arrears at a rate of 9 percentage points above the statutory base interest rate per annum. If we are in a position to prove higher damages caused by default, we shall be entitled to claim these. However, the customer shall be entitled to prove to us that we have not incurred any damage or that the damage incurred by us as a result of the payment default is significantly lower.
- 3.5 The customer shall only be entitled to offsetting rights if customer's counterclaims have been legally established, are undisputed or acknowledged by us, or if they are in a reciprocal (synallagmatic) relationship with the main claim. The customer shall only be entitled to a right of retention on the basis of established, undisputed counterclaims recognised by us or counterclaims which are in a reciprocal (synallagmatic) relationship with the main claim. In addition, the customer shall be entitled to exercise a right of retention insofar as customer's counterclaim is based on the same contractual relationship. Credit notes shall be issued expressly for the purpose of offsetting. There shall be no claim to pay-outs.
- 3.6 The customer agrees that we reserve the right to check customer's credit rating. If there are doubts about customer's solvency, we reserve the right to demand advance payments or a provision of security. If the customer's property is attached unsuccessfully or if the customer suffers financial collapse, we shall be entitled to withdraw from the contract, taking into account the expenses incurred. Under the same conditions, we shall be entitled, after delivery to the customer, to inspect the customer's warehouse and to provisionally secure goods subject to retention of title or ownership by way of security, irrespective of any earlier agreements to the contrary, until payment in cash or provision of security. Transport and storage costs shall be borne by the customer.
- 3.7 Insofar as we are entitled to make partial deliveries and render partial services, these shall be paid when the respective partial services are rendered.

#### **4. Delivery time and execution**

- 4.1 Unless the order confirmation expressly states otherwise, the delivery dates stated shall be non-binding and no guarantee shall be given as to compliance with said dates.

- 4.2 The delivery period shall commence on the date of the final order confirmation, but not before complete clarification of all execution details, in particular the receipt of any data and documents to be supplied by the customer, as well as the receipt of an agreed down payment due upon conclusion of the contract. In addition, compliance with the delivery period requires the fulfilment of contractual obligations, in particular any obligations to cooperate, such as the provision of the documents, provisions, permits and releases to be procured by the customer.
- 4.3 The agreed delivery period shall be extended, without prejudice to our rights arising from default, by the period during which the customer is in default with any obligations under this or any other contract.
- 4.4 The delivery period shall be deemed to have been observed if the delivery item has left the factory by the time of the period's expiry or, in the event of collection by the customer, the delivery is ready for dispatch and the customer is notified of this.

The customer shall not be entitled to reject partial deliveries, unless a partial delivery is not reasonable or was expressly excluded by agreement.

- 4.5 The agreed deadlines shall also be deemed to have been met upon notification of readiness for dispatch if the delivery items could not be delivered on time or the service could not be provided on time through no fault of ours. The delivery period shall be extended appropriately in the event of measures within the framework of industrial disputes, in particular strikes and lockouts in our own company and in the event of industrial disputes in third-party companies, provided that we are not at fault for any takeover, precautionary or preventive measures, and also in the event of unforeseeable events such as mobilisation, war, blockade, export and import bans, special statutory or official regulations, shortage of raw materials or fuel, fire or traffic blocks or force majeure, insofar as such hindrances affect the completion or delivery of the delivery item, occur at our company, at a sub-supplier or carrier and are not our responsibility, whereby our liability shall only be excluded for slight negligence. If such conditions arise, we shall also be entitled to withdraw from the contract. The present delivery time extensions shall also apply if the disruptions occur at a time when we are in default.
- 4.6 If the delivery, manufacture or installation is delayed at the request of the customer or for reasons for which the customer is responsible, we shall charge the customer for the costs arising from the storage and delay, in the case of storage in our works at least at 2% of the invoice amount for each month or part thereof (subject to proof of substantially lower costs), beginning one month after notification of readiness for execution or dispatch. The assertion of further rights arising from default shall remain unaffected.
- 4.7 In addition, we shall be entitled to withdraw from the contract and/or to demand compensation for damages after determination and fruitless expiry of a reasonable deadline for acceptance.

## **5. Assembly, commissioning and installation**

In the event that assembly, commissioning or installation is agreed, the following shall apply:

5.1 The customer must carry out the necessary preparatory work before the start of assembly, commissioning or installation. In particular, the customer must provide access to electrical and other lines as well as necessary provisions and objects required for assembly, commissioning or installation. The customer shall ensure that the necessary preparatory work has progressed to such an extent that the installation or assembly can be carried out according to schedule.

5.2 The customer shall provide in good time and at customer's own expense the commodities and materials required for assembly, commissioning or installation, such as protective clothing and protective equipment, scaffolding, lifting gear, water and electricity, as well as circuit and performance diagrams.

The customer shall ensure that the technical, structural and other prerequisites for assembly, commissioning and installation are fulfilled in good time and in accordance with the schedule.

5.3 The customer shall provide at customer's own expense sufficiently large, dry and lockable storage rooms for the parts, materials, tools and other equipment required for assembly or installation at the place of assembly, commissioning or installation. The customer shall ensure that appropriate rooms are available for the assembly personnel which comply with the relevant statutory and industrial safety requirements.

## **6. Transfer of risk**

6.1 Unless otherwise stated in the order confirmation, delivery "ex works" is agreed. This shall also apply to carriage paid delivery and similar transport clauses. If processed goods are returned for reasons for which we are not responsible, the customer shall bear all risk.

If installation or assembly at another location has been agreed, the risk shall pass upon completion of the installation or assembly, unless otherwise agreed.

6.2 If the customer so wishes, we shall arrange for the delivery to be insured against theft, breakage, damage due to transport, fire or water, and other insurable risks; the costs incurred in this respect shall be borne by the customer.

6.3 A special acceptance of the goods must be agreed. This acceptance shall take place on the agreed acceptance date in our factory or, if delivery to or installation or assembly at another location has been agreed, at the place of destination. If this acceptance does not take place within three days of the acceptance date, acceptance shall be deemed to have taken place and our goods and services shall be deemed to be in accordance with the contract and free of defects.

6.4 The customer may not refuse to accept services due to minor defects.

## **7. Liability for defects**

7.1 Our services and deliveries shall be deemed to be in accordance with the contract and accepted if the customer does not immediately, but at the latest within 10 days of receipt, give notice of defects in writing. In any case, the customer putting the item to use shall be considered as acceptance in accordance with the contract. In addition to the sale of the goods, any form of treatment or processing, as well as the beginning of any subsequent work, for which our services are to be regarded as preliminary work, shall be regarded as use by the customer. Minor deviations, in particular those which are technically customary, with regard to dimensional accuracy, as well as shape and position of the components, which are due to the heat treatment of the same, shall not entitle the customer to make a complaint.

Warranty claims of the customer require that the customer inspects the delivery immediately upon receipt, as far as this is feasible in the ordinary course of business, and if a defect is found, the seller is notified immediately.

A defect in a partial delivery shall not entitle the customer to withdraw from the entire contract, unless the customer's interest in the entire contract is lost.

7.2 Insofar as there is a defect in the delivery, we shall be entitled to supplementary performance in the form of remedy of the defect or delivery of a new defect-free item at our discretion. In the case of remedy of defects, we shall be obliged to bear all expenses necessary for the purpose of supplementary performance, in particular transport, travel, labour and material costs, provided that these are not increased by the fact that the object of sale was taken to a place other than the place of performance. We shall be entitled to refuse supplementary performance if the expenses for the remedy of defects are likely to exceed the purchase price.

7.3 If the supplementary performance fails, the customer shall be entitled to demand rescission or reduction of the purchase price at customer's discretion

7.4 We shall be liable in accordance with statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. As far as we are not accused of intentional breach of contract, the liability for damages shall be limited to foreseeable, typically occurring damage.

7.5 We shall be liable in accordance with statutory provisions if we culpably violate an essential contractual obligation; however, even in this case the liability for damages shall be limited to foreseeable, typically occurring damage. An essential contractual obligation exists if the breach of duty refers to an obligation on the fulfilment of which the customer has relied and was entitled to rely.

- 7.6 Liability for culpable injury to life, body or health shall remain unaffected; this shall also apply to mandatory liability under the Produkthaftungsgesetz [German Product Liability Act].
- 7.7 Unless otherwise stipulated above, liability shall be excluded.
- 7.8 The limitation period for defect claims shall be 12 months, calculated from the time of transfer of risk.
- 7.9 If a notice of defect proves to be unjustified, we shall be entitled to charge the customer for all expenses incurred by us as a result.
- 7.10 Missing parts shall only be replaced if their delivery to us is acknowledged or documented by a delivery note signed by us and the risk for the missing parts has passed to us. We shall accept the goods delivered to us by the customer on receipt subject to the correct information regarding weight and refinement capacity. An inspection shall be carried out during production. For missing parts which are delivered in larger quantities, replacement shall therefore only be made if their delivery is documented and the quantity or weight was jointly assessed upon acceptance.

## **8. Joint and several liability**

- 8.1 Any further liability for damages than that provided for above shall be excluded, irrespective of the legal nature of the claim asserted. This shall apply in particular to claims for damages arising from culpa in contrahendo, other breaches of duty or tortious claims for compensation for property damage in accordance with section 823 BGB.
- 8.2 A preclusive period of 18 months shall apply to the limitation of all claims that are not subject to the limitation period due to a defect. It shall begin from knowledge of the damage and the tortfeasor.
- 8.3 The foregoing limitation shall also apply if the customer demands compensation for useless expenses in place of a claim for compensation for damages instead of performance.
- 8.4 Insofar as liability for damages against us is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

## **9. Retention of title/ownership by way of security**

- 9.1 We reserve title to the delivered goods until receipt of all payments arising from the business relationship with the customer. If payment of the purchase debt on the basis of the cheque/bill of exchange procedure has been agreed with the customer, the reservation shall also extend to the redemption of the bill of exchange accepted by us by the customer and shall not expire when the cheque received is credited to us. If the customer violates contractual obliga-

tions or is in default of payment, we may withdraw from the contract if customer does not fulfil the obligations after a reasonable period of grace or if we cannot reasonably be expected to adhere to the contract even without a reminder. We shall also be permitted to declare withdrawal from the contract by taking back the purchased item. After taking back the purchased item, we shall be entitled to sell it, whereby the proceeds of such sale shall be set off against the customer's liabilities less reasonable administrative costs.

- 9.2 Until the final transfer of ownership, the customer shall be obliged to treat the item with care; in particular, the customer shall be obliged to insure it sufficiently at customer's own expense against fire, water and theft damage at replacement value. If maintenance and inspection work is required, the customer must carry this out in good time at customer's own expense.
- 9.3 In the event of seizure or other interventions by third parties, the customer must inform us immediately in writing so that we can take legal action in accordance with section 771 ZPO [German Code of Civil Procedure]. Insofar as the third party is not in a position to reimburse us for costs incurred in and out of court for an action pursuant to section 771 ZPO, the customer shall be liable for the loss incurred by us.
- 9.4 The customer shall be entitled to resell the item in the ordinary course of business; however, the customer hereby assigns to us all claims in the amount of the final invoice amount (including VAT) of our claim, which accrue to the customer from the resale against customer's buyers or third parties, irrespective of whether the item has been resold without or after processing. The customer shall remain authorised to collect this claim even after the assignment. Our authority to collect the claim ourselves shall remain unaffected by this. We undertake, however, not to collect the claim, provided that the customer meets payment obligations from the proceeds received, does not fall into arrears and, in particular, has not filed for any opening of composition or insolvency proceedings or suspended payments. However, if this is the case, we shall be entitled to demand that the customer informs us about the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. The claim assigned by us in advance shall also relate to the acknowledged balance, as in the case of the customer's insolvency to the then existing causal balance.
- 9.5 The processing or transformation of the item by the customer shall always be carried out for us. If the object of sale is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount including VAT) to the other processed objects at the time of processing. The same terms shall apply to the object created by processing as to the object delivered under reservation of title.
- 9.6 If the item is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the purchased item (final invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the customer's

item is to be regarded as the main item, it shall be deemed agreed that the customer shall transfer proportional co-ownership to us. The customer shall keep the sole ownership or co-ownership thus created in safekeeping for us.

- 9.7 The customer shall also assign to us the claims which arise against a third party through the connection of the object of sale with a property to secure our claims against the customer.
- 9.8 We undertake to release the securities to which we are entitled at the request of the customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released shall be at our discretion.

## **10. Property rights**

- 10.1 We reserve the property rights and copyrights to illustrations, 3-D data, drawings, calculations and documents, unless they are expressly transferred; they may not be made accessible to third parties and must be returned to us on request. This shall also apply to written documents that are designated as “confidential”. Before transferring such documents to third parties, the customer shall require our express written consent. Offers shall only be valid in written form.
- 10.2 Products which are commissioned to us by the customer according to drawings, specifications or samples are subject to the obligation of the customer to check possible industrial property rights of third parties and not to violate them. If, in the event of non-observance of this obligation, a third party prohibits us from manufacturing the product by invoking an industrial property right belonging to it, or if the product cannot be used because of the infringement of the industrial property right, we shall be entitled – without examining the legal situation and excluding all claims for damages by the customer for whatever legal reason – to stop manufacturing and delivery until the facts of the case have been clarified, and to demand compensation from the customer, at least in the amount of 15% of the invoice value for the product ordered. The customer hereby undertakes to indemnify us on first demand from damages and other claims for compensation by third parties, in particular by holders of rights. The scope of the damage shall also include such costs incurred by us in defending ourselves against third-party claims.
- 10.3 It is expressly not agreed that the deliveries to a location other than our factory and to the place of delivery or the place of installation and assembly are free of third-party rights, including industrial property rights, trademark rights and copyright.

Any claims of the customer based on an infringement of property rights shall be excluded if the customer is at least also responsible for such infringement, or if such infringement is based on customer’s specifications or instructions, or if it is caused by the fact that the customer has modified the supplies or taken them to a place other than the place of delivery or installation. Furthermore, claims of the customer due to infringement of property rights shall be excluded.

ed, unless the customer informs us immediately of claims asserted by third parties.

If we are responsible for the infringement of an industrial property right, we shall be entitled, at our own discretion and expense, to obtain a right of use, or to modify or to exchange our performance so that an infringement of industrial property rights no longer exists. If this is not possible for us, the customer shall be entitled to the rights in respect of defects in accordance with items 7 and 8 of these GTSD.

## **11. Governing Law, jurisdiction, final provisions**

- 11.1 The laws of the Federal Republic of Germany shall apply to all legal relations between us and the contract partner. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be expressly excluded.
- 11.2 Unless otherwise agreed, the place of performance for all rights and obligations arising from this legal relationship, including deliveries and payments, shall be our headquarters, 58708 Menden, Germany.
- 11.3 If the supplier is a merchant, the place of jurisdiction for all disputes arising shall be [Place A], Germany, to the exclusion of other places of jurisdiction; however, we shall be entitled to sue the contract party at its general place of jurisdiction.
- 11.4 These GTSD shall remain valid even in the event that individual clauses prove to be legally invalid. Any invalid clause shall be amended or reinterpreted by the parties in such a manner that the economic purpose intended by the invalid clause is achieved as far as possible. The same shall apply in the event that a gap is identified in the execution of the contractual relationship. If the invalidity is due to a performance or time provision, the statutorily admissible extent shall apply instead.
- 11.5 Where a provision of these GTSD becomes invalid with regards to mandatory foreign law, the contract partner shall on request arrange for such contractual amendments with us and make such declarations towards third parties or authorities that guarantee the effect of the provision in question and, should that not be possible, their economic content under foreign law.