

# Terms and Conditions of Sale and Delivery (Terms and Conditions)

MEIKO Maschinenbau GmbH & Co. KG, 77652 Offenburg, Germany  
and MEIKO subsidiaries in accordance with § 13



## § 1 Area of application

- (1) These Terms and Conditions of Sale and Delivery (Terms and Conditions) of MEIKO Maschinenbau GmbH & Co. KG (hereafter: MEIKO) apply for all contracts, ancillary services, consultations and information with our customers (hereafter: PURCHASER). The Terms and Conditions apply only if the PURCHASER is a company (§ 14 German Civil Code), a corporate body under public law or a special fund under public law.
- (2) The Terms and Conditions apply in their respective version also for future contracts, ancillary services, consultations and information.
- (3) **These Terms and Conditions apply exclusively. Deviating, opposing or supplementary purchasing conditions and/or general terms and conditions of business of the PURCHASER are part of the contract only and insofar as MEIKO has expressly agreed to their applicability in writing.** This approval requirement applies in every case, for example, even when MEIKO, knowing of the PURCHASER's terms and conditions, carries out the delivery without reservation.

## § 2 Offers and conclusion of contract

The offers of MEIKO are subject to change and are non-binding. The PURCHASER's ordering of the product is considered a binding offer of contract. Unless otherwise specified in the order, MEIKO is entitled to accept this offer of contract within three (3) weeks of receipt. Acceptance can be declared in writing (e.g. through order confirmation) or through shipment of the product to the PURCHASER.

## § 3 Content of the contract

- (1) The contract concluded in writing, including these Terms and Conditions, is solely definitive for the legal relationships between MEIKO and the PURCHASER. The contract completely describes all agreements between the contractual parties on the subject of the contract. Oral commitments by MEIKO before conclusion of a contract are not legally binding and are contractually valid only if included in the contract in writing.
- (2) Indications by MEIKO on the subject of the performance (e.g. weights, dimensions, values in use, load capacity, tolerances and technical data) as well as depictions of these (e.g. drawings and figures) are only approximately definitive unless use for the contractually intended purpose requires exact correspondence. They are not guaranteed quality features, but rather descriptions or markings of the product or service supplied. Deviations that are customary in the trade, result from legal regulations or represent technical improvements are permitted if they do not impair usability for the contractually intended purpose.
- (3) MEIKO retains property rights and copyright to cost estimates, drawings and other documentation. The PURCHASER must not make these documents available to third persons without the approval of MEIKO.

## § 4 Cancellation; percentage cancellation costs

**If the PURCHASER cancels the order, MEIKO is entitled to demand from the PURCHASER a standard cost percentage to compensate us for the resulting damages. The standard cost percentage is 15% of the order value. For products produced according to the specifications of the PURCHASER, an increased cost compensation of 30% of the order value applies.** In deviation from this, MEIKO reserves the right to prove higher costs in specific cases. The PURCHASER is permitted to prove that MEIKO has incurred no costs or costs lower than the above percentages.

## § 5 Prices and payment; payment in arrears by the PURCHASER

- (1) Prices are without statutory sales tax and exclude packaging, freight and installation, unless MEIKO has included them in the content of the contract. For export deliveries, the price is increased by tariff duties, fees and other public payments.
- (2) Payments shall be made to MEIKO. This does not apply if something else has been agreed in the written acceptance of the order (e.g. order confirmation).
- (3) All payments shall be made without discount within 30 days of the invoice date; after this period, the PURCHASER is in arrears.
- (4) MEIKO is entitled to perform deliveries or services which are still outstanding only in return for security provisions if, after signing of the contract, it becomes aware of circumstances that materially impair the creditworthiness of the PURCHASER. If the PURCHASER fails to provide the prepayment or security within a suitable time set by MEIKO, MEIKO can withdraw from the contract and demand payment for damages for breach of contract.
- (5) The PURCHASER is entitled to assert offset or lien rights only to the extent that its claim has been established as legally binding or is uncontested. In case of defects in delivery, § 8 par. 4 remains unaffected.

## § 6 Place of performance, delivery, transfer of risk, insurance costs

- (1) The place of performance for all obligations from the contractual relationship is Offenburg, Germany, if not established otherwise.  
**Goods are delivered FCA outside Germany and EX WORKS inside Germany in accordance with INCOTERMS 2010, unless otherwise agreed.**
- (2) The risk of accidental loss or accidental deterioration of the product passes to the PURCHASER no later than with the transfer thereof. Transfer is immediate when the PURCHASER is delayed in receiving it. In the case of sale by dispatch, the risk of accidental loss or deterioration of the product takes place when MEIKO has informed the PURCHASER in writing of its readiness to ship, but no later than delivery of the product to the person charged with execution of shipment. The same applies to partial deliveries.
- (3) **MEIKO will insure the shipment against breakage, transportation, fire and water damage at the PURCHASER's expense, for which 0.5% of the invoice amount is charged.**

## § 7 Delivery deadline; delay in delivery; contractual penalty for PURCHASER-caused delay

- (1) The delivery deadline is individually agreed or specified by MEIKO upon acceptance of the order; it begins when MEIKO sends the order confirmation but not before the PURCHASER has provided any required documents and not before receipt of any agreed deposit. The delivery deadline is met when the product has left MEIKO's factory or readiness to ship has been announced.
- (2) Delay in delivery does not begin until the PURCHASER issues a reminder. MEIKO is not liable for impossibility of delivery or delivery delays if caused by force majeure or other events not foreseeable when the contract was signed (e.g. operational problems of all kinds, difficulties procuring materials or energy, transportation delays, government actions or delay in delivery by suppliers) and which are beyond MEIKO's control.
- (3) If MEIKO cannot meet binding delivery deadlines for reasons beyond its control, the PURCHASER will be informed of this without delay and provided with the expected new delivery date. If the good or service is not available before the new deadline, MEIKO is entitled to withdraw from the contract in whole or in part; MEIKO will immediately return any consideration provided by the PURCHASER. Non-availability of the goods or service as meant here includes, in particular, cases in which suppliers do not deliver on time when MEIKO has executed a matching cover transaction. A matching cover transaction is assumed when the supplier's obligations to deliver under the purchase contract from MEIKO offer at least the same security for delivery as MEIKO itself ensures the PURCHASER in the sales contract. The PURCHASER's rights to withdraw from the contract in accordance with § 8 of these Terms and Conditions remain unaffected.
- (4) If the PURCHASER is delayed in receiving shipments, fails to provide required assistance, or MEIKO's delivery is delayed for other reasons within the PURCHASER'S control, MEIKO is entitled to demand compensation for the resulting damages, including additional expenses, and in particular storage costs. **For this delay, MEIKO charges a standard compensation fee of 0.5% of the invoice amount for each month or start thereof, starting one month after it announces its readiness to ship the product.** Proof of greater damages and our legal claims (in particular, compensation for additional expenses, appropriate compensation, termination) remain unaffected; but the standard compensation fee is offset against any further monetary claims. The PURCHASER is permitted to prove that MEIKO has sustained no damages, or lower damages than the above percentages.
- (5) MEIKO's compliance with the delivery date has as prerequisite that the PURCHASER has fulfilled its above contractual duties.
- (6) MEIKO is entitled to make partial deliveries if the PURCHASER can use the partial delivery for its contractually intended purpose, supply of the remaining ordered goods is ensured, and the PURCHASER does not suffer significant increased effort or additional costs.

## § 8 Liability for defects

- (1) The basis for MEIKO's liability for defects is primarily the agreement made on the quality of the product. If the quality was not agreed, evaluation of whether or not a defect exists is based on statutory rules.
- (2) The rights of the PURCHASER from liability for defects have as prerequisite that the PURCHASER properly met its legally required duties of investigation and complaint (§§ 377 and 381 of the German Commercial Code). **The delivered product must be carefully examined immediately after delivery to the PURCHASER or to a third party determined by the PURCHASER, and any defect must be reported in writing without delay within five calendar days.** If the PURCHASER fails to ensure proper examination and/or notification of a defect, MEIKO's liability for this defect is excluded.
- (3) If MEIKO receives timely notification of a product defect for which it is responsible, MEIKO can choose to satisfy the PURCHASER's claim for remedy either through repair (elimination of defect) or replacement of the defective product. MEIKO is not responsible for defects caused by the PURCHASER through failure to perform the prescribed maintenance, care and cleaning work. MEIKO accepts no responsibility for suitability of the locally available operating materials that have an influence on the delivered object; this applies even when MEIKO carried out an inspection beforehand.
- (4) **MEIKO is entitled to make the required remedy dependent on payment by the PURCHASER of the sales price due.** However, the PURCHASER is entitled to withhold a part of the sales price that is appropriate in relation to the defect.
- (5) **MEIKO bears the costs required for inspection and remedy, in particular for transportation, travel, labour and materials, if a defect does in fact exist. However, if the PURCHASER's demand to remedy the defect turns out to be unjustified, MEIKO can demand that the PURCHASER reimburses the costs incurred as a result.**
- (6) Claims of the PURCHASER for damages or reimbursement of ineffective expenses can be made only in accordance with § 9 and are otherwise excluded.

### § 9 Other liability

- (1) Unless otherwise determined in these Terms and Conditions, including the following provisions, MEIKO is liable for breach of contractual and non-contractual obligations in accordance with the relevant legal regulations.
- (2) MEIKO is liable for damages – regardless of the legal grounds – if intentional or due to gross negligence. **In case of ordinary negligence, we are liable only**
  - (a) for damages resulting from loss of life or health or bodily injury,
  - (b) for damages from the breach of a material contractual obligation (an obligation whose fulfillment is essential for proper performance of the contract and on the fulfillment of which the other party normally relies and may rely); in this case, however, MEIKO's liability is limited to compensation for the foreseeable, typical damage.
- (3) The limitations of liability resulting from Par. 2 do not apply if a defect is fraudulently concealed or a guarantee for the property of the product was accepted. The limitations of liability as defined in Par. 2 also do not apply for claims of the PURCHASER under product liability law.
- (4) The PURCHASER can withdraw from the contract due to a breach of obligation other than a defect only if MEIKO is responsible for breaching the obligation. Otherwise, the legal prerequisites and consequences apply.
- (5) These exclusions and limitations of liability apply to the same extent for MEIKO's managers, employees, representatives and agents.

### § 10 Limitation of actions

- (1) In deviation from § 438 Par. 1 no. 3 of the German Civil Code, the general limitation of actions for claims from material and legal defects is one year from delivery unless otherwise agreed. Special statutory rules for claims for surrender of property to third parties (§ 438 Par. 1 no. 1 of the German Civil Code), for fraud and for supplier recourse claims after final delivery to a consumer (§ 479 of the German Civil Code) remain unaffected.
- (2) **These limitations of action under sale of goods law apply also for contractual and non-contractual damage claims by the PURCHASER resulting from a defect in the product,** unless application of the regular statutory limitation of action (§§ 195 and 199 of the German Civil Code) would result in a shorter limitation of action in the individual case. The limitations of action under the product liability law remain unaffected in any case. Otherwise, the statutory limitations of action for damage claims by the PURCHASER under § 9 apply exclusively.

### § 11 Transferability of the contract

The PURCHASER may transfer its contractual rights under the contract to third parties only with our prior consent.

### § 12 Retention of title

- (1) **The delivered product (goods subject to retention of title) remains the property of MEIKO until fulfillment of all claims that MEIKO has against the PURCHASER, now or in future.** If the PURCHASER acts in breach of contract – in particular, if it is in arrears with payment of an invoice – MEIKO has the right to take back the goods subject to retention of title after setting an appropriate deadline for payment. The PURCHASER bears the transportation charges for the return. If MEIKO takes back the goods subject to retention of title or seizes them, this represents a withdrawal from the contract. MEIKO may sell the goods subject to retention of title that MEIKO takes back. The proceeds of the sale will be offset against the amounts that the PURCHASER owes MEIKO after MEIKO deducts an appropriate amount for the costs of the sale.
- (2) The PURCHASER must treat the goods subject to retention of title carefully and adequately insure them, at the PURCHASER's own expense, for their value as new goods against fire and water damage as well as theft.
- (3) The PURCHASER may use the goods subject to retention of title and sell them in the normal course of business as long as it is not in arrears in payment. However, it must not pledge the goods subject to retention of title or transfer them to others as security. The PURCHASER even now assigns to MEIKO as security in its full amount the claims against its customers from sale of the goods subject to retention of title, as well as those claims of the PURCHASER regarding the goods subject to retention of title against its customers or third parties arising under a different legal basis (in particular claims from torts and from insurance), including all balances owed from trade credit. MEIKO accepts this assignment. The PURCHASER may collect these assigned claims at its own expense and on its own behalf for MEIKO, as long as MEIKO does not revoke this authorisation. This does not impair MEIKO's right to collect these claims itself, but MEIKO will not assert the claims itself and will not revoke the collection authorisation as long as the PURCHASER properly meets its payment obligations. However, if the PURCHASER acts in breach of contract – in particular, if it is in arrears with payment of a claim – MEIKO can demand that the PURCHASER reveals the assigned payment claims and the respective debtors, inform the respective debtors of the claim assignment, and give MEIKO all documents and provide all information that MEIKO requires to assert the claim.
- (4) **Processing or transformation of the goods subject to retention of title by the PURCHASER is always performed for MEIKO. If the goods subject to retention of title are processed together with other items not belonging to MEIKO, MEIKO acquires co-ownership of the new goods in the ratio of the value of the goods subject to retention of title (final invoice amount, incl. sales tax) to the value of the other processed items at the time of processing.** Otherwise, the same applies to the new goods arising from the processing as for the goods subject to retention of title. If the goods subject to retention of title are joined inseparably or mixed together with other items not belonging to MEIKO, MEIKO acquires co-ownership of the new goods in the ratio of the value of the goods subject to retention of title (final invoice amount, including sales tax) to the value of the other joined or mixed items at the time of joining or mixing. If the goods subject to retention of title are joined or mixed in such a way that the PURCHASER's item is the main item, the PURCHASER and we agree even now that the PURCHASER transfers co-ownership of this item to us proportionately. MEIKO accepts this transfer. The PURCHASER will safely maintain for MEIKO the resulting sole ownership or co-ownership of the item.
- (5) In case of seizure of the goods subject to retention of title by a third party or other interventions by third parties, the PURCHASER must inform the parties of MEIKO's ownership and report this to MEIKO without delay and in writing so that MEIKO can enforce its property rights. If the third party is unable to reimburse MEIKO for the court or out-of-court costs arising in this context, the PURCHASER will be liable for this.
- (6) If the PURCHASER so demands, MEIKO is required to release the security to which MEIKO is entitled to the extent that its realisable value exceeds the value of open claims by MEIKO against the PURCHASER by more than 10%. However, MEIKO may select the security to be released.

### § 13 Final stipulations; application of the Terms and Conditions for MEIKO subsidiaries

- (1) Applicable law for these Terms and Conditions and for all legal relationships between MEIKO and the PURCHASER is the law of the Federal Republic of Germany.
- (2) Exclusive jurisdiction is with the court responsible for Offenburg, Germany.
- (3) These Terms and Conditions apply also for the MEIKO subsidiaries:

**MEIKO Werksvertretung BERLIN GmbH,  
MEIKO Werksvertretung DRESDEN / LEIPZIG GmbH,  
MEIKO Werksvertretung HAMBURG GmbH,  
MEIKO Werksvertretung HANNOVER GmbH,  
MEIKO Werksvertretung MÜNCHEN GmbH,  
MEIKO Werksvertretung NORDBAYERN GmbH,  
MEIKO Werksvertretung RHEINLAND GmbH,  
MEIKO Werksvertretung RHEIN-MAIN GmbH,  
MEIKO Werksvertretung STUTTGART GmbH,  
MEIKO Werksvertretung SÜDWEST GmbH**

### Note on data protection:

Data from the contractual relationship is stored in accordance with § 28 of the German Federal Data Protection Act for the purpose of data processing; MEIKO reserves the right to transfer the data to third parties if required for contract fulfillment.