

**TERMS of DELIVERY of  
MALI Spezialfahrzeuge GmbH, Heinrichsburg 1, D- 88436 Eberhardszell**

**1. Area of application**

1.1. All agreements and offers of MALI Spezialfahrzeuge GmbH (hereinafter: "MALI") are based on these general terms of delivery. These terms apply exclusively. Contrary regulations or regulations deviating from these terms of delivery are not acknowledged by MALI unless MALI consented to their application without reservation. The terms of delivery shall also apply if MALI renders the performance to the customer without reservation while knowing of contrary or deviating conditions.

1.2. All undertakings made with reference to the agreement between the customer and MALI are to be set down in writing in the agreement. The requirement of written form may only be waived in writing.

1.3. The terms of delivery also shall apply to all future transactions with the customer even if they are not separately agreed again.

**2. Subject matter of the agreement when purchasing a MALI product**

The conditions determined in the specification determine the characteristics of the delivery item comprehensively and finally.

**3. Offer and offer documents**

The prices on which the offers are based are exclusive of the valid VAT. The offers are subject to change and without commitment unless otherwise stated in the order confirmation. Purchase orders and orders may be accepted by MALI within fourteen days after receipt. MALI shall no longer be bound by the offer prices after expiry of a period of four weeks after the date of the offer. MALI reserves the property rights and copyrights in the offer documents, especially illustrations, drawings, calculations and other documents. They may not be made accessible to third parties without sufficient consent of MALI. Upon request of MALI, the principal has to return the items completely to MALI and to destroy copies possibly made if they are no longer needed by it in the ordinary course of business or if the negotiations do not result in the conclusion of an agreement.

**4. Prices and terms of payment**

4.1. All prices are exclusive of the statutory VAT. The VAT is shown separately according to the VAT rate applying as of the day of invoicing.

4.2. The deduction of cash discounts requires a separate agreement.

4.3. To the extent that the list prices of MALI are taken as basis and the delivery is to be executed more than four months after conclusion of the agreement, the list prices of MALI valid upon delivery shall apply (in each case minus a fix or agreed discount agreed on percentage basis). In case of a significant increase of prices, the customer is entitled to a right of termination.

4.4. The remuneration shall be completely due upon delivery unless otherwise agreed in writing. If the principal does not perform upon maturity, the outstanding amounts shall bear interests of 5% as of the day of maturity; the assertion of higher interest rates and further damage in case of default shall remain unaffected. If defects are present, the customer shall not be entitled to a right of retention unless the delivery is obviously defective or the customer is obviously entitled to a right to refuse the acceptance of the works. In such case, the customer only shall be entitled to retention to that extent that the retained amount is in a reasonable proportion to the defects and the expected costs of supplementary performance (especially removal of defects). The customer shall not be entitled to assert claims and rights due to defects if the customer has not effected due payments and the due amount is in a reasonable proportion to the value of the defective deliveries or works.

4.5. The setting off with counterclaims of the principal or the retention of payments due to such claims shall only be admissible to the extent that the counterclaims are uncontested or ascertained legally bindingly.

**5. Delivery time**

5.1. MALI shall be liable in case of delay of performance only for cases of intention or gross negligence within the framework of the statutory provisions. However, in case of gross negligence, the liability of MALI shall be limited to the foreseeable damage typical for the contract; this does not apply in case of liability due to injury to life, body or health.

5.2. MALI shall not be liable for the impossibility of delivery or delays in delivery to the extent that they were caused by force majeure or other events unforeseeable as of the time of conclusion of the agreement (such as for example interruption of operations of all kinds, difficulties in procurement of material and energy, strike or the missing, incorrect or untimely delivery by the suppliers) beyond the control of MALI. If such events significantly impede the delivery or make it impossible and the impairment is not only of temporary nature, MALI shall be entitled to withdraw from the agreement. MALI has to inform the customer in good time about the non-availability or delayed availability of the supply. In addition, MALI has to repay the consideration received immediately.

5.3. If the customer is in default of acceptance or if he violates other existing duties to cooperate, MALI shall be entitled to claim the damage occurred including additional expenses. In this case of purchase of a product of MALI, the risk of loss or accidental deterioration of the object of the purchase passes to the customer in such moment in which he falls in default of acceptance.

**6. Reservation of title**

The delivery item remains the property of MALI until fulfilment of all claims against the customer to which it is entitled under the business relationship. To the extent that the value of all security interests to which MALI is entitled exceeds the amount of all claims secured by more than 20%, MALI will release a corresponding share of the security interests upon request of the customer. In case of dereliction of duty by the customer, especially in the case of default of payment, MALI is authorized to require the issuance of the delivery item and to resign the contract without fixing a deadline; the customer is obliged to hand out the delivery item. The requirement of handing out the delivery item shall not be seen as a declaration of resignation of MALI, unless this is declared expressly.

**7. Warranty for defects**

7.1. MALI warrants that the new product is free from defects as of the time of passing of the risk to the customer.

7.2. Warranties with regard to the characteristics of the product may only be made by the management of MALI. They must be made in writing and marked expressly as warranty.

7.3. Warranty rights of the customer shall only exist if the latter examines the delivery item immediately upon delivery and notifies detectable defects to MALI immediately. If a defect becomes apparent subsequently, also such defect is to be notified to MALI immediately. Otherwise, the delivery item shall be deemed as approved even in consideration of the defect.

7.4. Claims for defects shall not exist in cases of only insignificant deviation from the agreed condition or only insignificant impairment of the usability.

7.5. In case of material defects, MALI shall be given the opportunity to effect supplementary performance. MALI shall be entitled to the right to choose between removal of defects and subsequent delivery.

7.6. If the supplementary performance fails, the customer may withdraw from the agreement or reduce the remuneration pursuant to the statutory provisions. What applies to claims for damages is regulated in sector 9.

7.7. In case of defects of components of other manufacturers which MALI cannot remove for licensing or actual reasons, MALI will at its own choice assign its warranty claims against the manufacturers and suppliers for account of the principal. Subject to other

requirements and pursuant to these general terms of delivery, warranty claims against MALI only shall exist in case of such defects if the judicial enforcement of the above-mentioned claims against the manufacturer and supplier was unsuccessful or is hopeless for example due to a bankruptcy. For the duration of the legal dispute, the limitation of actions of the warranty claims in question of the principal against MALI shall be limited.

7.8. Further claims of the customer for whatever legal ground shall be excluded.

## **8. Industrial property rights**

8.1.: The seller guarantees to this section 8 that the delivered goods are free of industrial property rights or copyrights by third persons.

8.2.: In the case of infringement of law by vendors supplied products from other manufacturers the seller chooses if he claims against the manufacturers and suppliers on behalf of the principal or if he assign his rights to the principal.

Claims against the seller only exist in such cases in accordance with this section 8 if the judicial enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful or, for example due to insolvency, is hopeless.

## **9. Damages**

9.1. The liability of MALI for damages for whatever legal ground, especially for impossibility, default, defective or incorrect delivery, breach of contract, violation of duties upon contractual negotiations and tort shall be restricted pursuant to this section 9 if the fault is of importance in each case.

9.2. The seller shall not be liable

a) in case of ordinary negligence of his bodies, legal representatives, employees or other *Erfüllungsgehilfen* [persons employed in performing an obligation];

b) in case of gross negligence of his non-executive employees or other *Erfüllungsgehilfen*,

unless a violation of duties material to the agreement is concerned. What is material to the agreement are the obligation to timely delivery free from defects and counselling, protection and care duties which are supposed to enable the principal to use the delivery item in accordance with the agreement or aim at protection of body and life of the staff of the principal or third parties or the protection of the property of the principal against significant damage.

9.3. To the extent that MALI is liable pursuant to section 9.2. on the merits, this liability shall be restricted to the damage that the seller foresaw as possible consequence of a breach upon conclusion of the agreement or should have foreseen when applying due diligence taking into account the circumstances that were known to him or should have become known to him (foreseeable damage typical for the agreement). In addition, indirect damage and consequential damage being the consequence of defects of the delivery item shall only be recoverable to the extent that such damage is to be typically expected in case of intended use of the delivery item.

9.4. In case of a liability for ordinary negligence, MALI's obligation to indemnify for damage to property or persons shall be restricted to an amount of 5.000.000, 00 € for damage to persons and 500.000,00 € for damage to property (corresponding to the third-party liability insurance) per case of damage, even if a violation of duties material to the agreement is concerned. This applies to the extent that foreseeable damage typical for the agreement is covered.

9.5. The above-mentioned exclusions and restrictions of liability apply to the same extent in favour of bodies, legal representatives, employees and other "*Erfüllungsgehilfen*" of the seller.

## **10. Limitation of actions**

10.1. The period of limitation for claims and rights due to material defects – for whatever legal ground – amounts to 1 year. In cases of § 438 I no. 2 BGB [German Civil Code], § 479 I BGB or § 634a I no. 2 BGB, the statutory regulations shall apply.

10.2. The periods of limitation pursuant to paragraph 1 also shall apply to all claims for damages against MALI that are connected with a defect - regardless of the legal basis of the claim.

10.3. The periods of limitation pursuant to paragraphs 1 and 2 shall not apply

a) in case of intention,

b) if MALI fraudulently concealed a defect,

c) in cases of injury to life, body or health, in case of claims under the product liability law, in case of a grossly negligent violation of duties or in case of violation of material contractual duties.

10.4. In case of all claims, except the ones described in paragraphs 1 s. 2 as well as paragraph 3, the limitation of actions starts upon delivery of the item. If the customer owes the acceptance of the item, the limitation of actions shall start upon the time of acceptance.

10.5. Unless otherwise provided for, the statutory provisions regarding the start of the limitation period, the suspension of the expiry of the limitation of actions, the interruption and the new start of the periods shall remain unaffected.

## **11. Prohibition of assignment, place of performance**

11.1. The assignment of claims of the customer against MALI is only admissible with the written consent of MALI.

11.2. Unless otherwise stated in the order confirmation, the place of business of MALI shall be the place of performance.

## **12. Applicable law, place of jurisdiction**

12.1. If the customer is a merchant, place of jurisdiction for all disputes resulting from this agreement directly or indirectly shall be the place of business of MALI. However, MALI shall be entitled to sue the customer also at the place of general jurisdiction applying to him.

12.2. The legal relationships under this agreement shall be governed by German substantive law under exclusion of the UN Convention on the International Sales of Goods (CISG).

## **13. Invalidity of individual provisions**

If individual provisions of these terms of delivery are invalid, the validity of the remaining agreement shall not be affected by that.

The invalid provision shall be replaced by the statutory regulations.