

## General Terms of Sale and Delivery of Menzel Italia S.r.l., Brugherio (Monza Brianza)

### I. General

1. Any offer, service and sale (hereinafter: "the Deliveries") by Menzel Italia S.r.l. (hereinafter "the Supplier") shall be exclusively subject to written contract terms as well as the terms and conditions set forth below. Deviating terms, if any (e.g. terms and conditions of the ordering party) or supplements shall be effective only if confirmed by the Supplier in writing. Oral agreements shall without exception be deemed non-binding.
2. The Supplier herewith reserves any property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. Sentences 1 and 2 shall also apply to documents of the Purchaser; these may, however, be made accessible to third parties to whom the Supplier may rightfully transfer Supplies.
3. The Purchaser shall have the non-exclusive right to use standard software, provided that it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. The Purchaser may make one back-up copy without express agreement.
4. Partial Supplies shall be allowed, unless they are unreasonable to accept for the Purchaser.

### II. Place of performance; Prices and Terms of Payment

1. Place of performance and place of settlement shall be the Supplier's principal office in any case and regardless of whether and at whose expense the goods are shipped.
2. If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required, e. g. travel costs, costs for the transport of tools and equipment, and personal luggage as well as allowances.
3. The prices are quoted ex works excluding packaging plus the applicable statutory value added sales tax.
4. Payments shall be made free Supplier's paying office.
5. The Purchaser may set off only those claims that are undisputed or which have been judiciary stated.

### III. Retention of Title

- The following basic and extended retention of title shall be agreed:
1. Items pertaining to the Supplies ("Retained Goods") shall remain the property of the Supplier until the Seller has received the full payment for them. If the combined value of the security interests of the Supplier exceeds the value of all secured claims by more than 20%, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser.
  2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
  - 3.a) If the Purchaser resells the retained goods, the Purchaser immediately assigns by way of security to the Supplier any claims from the resale to its customers, together with all accessory rights – including any payment balance requests – without the requirement to issue any further declarations. If the Retained Goods are resold together with other items without a single price being agreed for the Retained Goods, the Purchaser shall assign to the Supplier that part of the total price requested, that corresponds to the reserved goods price invoiced by the Supplier.
  - 3.b) Assuming a justified interest is substantiated, the Purchaser shall disclose any information, and hand over any document, to the Supplier that the latter requires in order to enforce its claims to the customer.
  - 3.c) Until revoked, the Purchaser is entitled to collect any relinquished claims arising from the resale. Given an important reason, as for example payments in arrear, default on payments, commencement of insolvency procedures, protest of a bill, or substantiated evidence for an over indebtedness or threatening insolvency on the part of the Purchaser, the Supplier shall have the right to revoke the Purchaser's power to collect.

Moreover, the Supplier may, subject to previous notification and observance of a short notice period, disclose the assignment by way of security, make direct use of the assigned claims, and demand that the Purchaser disclose the assignment by way of security vis-à-vis its customer.

- 4.a) The Purchaser shall be entitled to process the Retained Goods or mix or combine them with other items. The processing activities shall be performed for the Supplier. The Purchaser shall keep the resulting new item for the Supplier with the due care and diligence of a proper businessman. The item shall be deemed to be Retained Goods.
- 4.b) If the Retained Goods are modified or mixed with other objects that do not belong to the Supplier, the Supplier shall be awarded co-ownership in the new object at the proportionate amount which results from the ratio of the value of the modified or mixed Retained Goods to the value of the remaining goods at the date of performing any processing activities. To the extent that the Purchaser acquires sole ownership in the new item, Supplier and Purchaser agree that the Purchaser shall grant co-ownership of the new items created through processing, in proportion to the ratio between the value

of the processed Retained Goods and the other processed goods at the time of the processing.

- 4.c) In case the new item is sold, the Purchaser hereby assigns its claim arising out of the resale vis-à-vis the customer including all secondary rights as security to the Supplier without necessitating any further elaboration. This relinquishing of the Purchaser, however, only applies up to the value of the amount corresponding to the value of processed, or mixed Retained Goods that were invoiced by the Supplier. The share of the claims assigned to the Supplier shall be satisfied with priority. The terms – above – shall apply, mutatis mutandis, in regard to the collection right and in regard to the condition of its revocation.
- 4.d) If the Purchaser combines Retained Goods with real estate or movable things, then the Purchaser will also immediately assign his claim, which has been awarded to him as remuneration for such a combination, to the Supplier as a security with all accessory rights and in ratio to the value of the combined Retained Goods to the remaining combined goods at the time of combination.
- 4.e) The Purchaser shall inform the Supplier forthwith of any seizure or other acts of injunction by third parties.
- 4.f) If the Purchaser fails to fulfil the main obligations arising from the contract (e.g. payment of instalments for more than 1/8 of the price; obligations pertaining to the delivery; obligations pertaining to the protection of the Seller's IPR etc.), the Supplier shall be entitled, after short notice, to withdrawal from the contract and take back the Retained Goods; the statutory provisions that a time limit is not needed remain unaffected; the Purchaser shall be obliged to surrender the Retained Goods.

### IV. Time for Supplies; Delay

1. Times set for Supplies can only be observed if all Documents to be supplied by the Purchaser, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended appropriately; this shall not apply where the Supplier is responsible for the delay.
2. If non-observance of the times set is due to force majeure such as mobilization, war, rebellion or similar events, e. g. strike or lockout, such time shall be extended accordingly.
3. Purchaser's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3.1 above shall be excluded in all cases of delayed Supplies even upon expiry of a time set to the Supplier to effect the Supplies. This shall not apply in cases of intent, gross negligence, or due to injury of life, body or health. The Purchaser can withdraw from the contract only if the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.
4. The Purchaser is committed, at the request of the Supplier, within a short period of time, to declare whether the Purchaser withdraws from the contract due to the delayed Supplies or insists on the Supplies to be carried out.
5. If dispatch or shipment is delayed at the Purchaser's request by more than one month after notice of the readiness for shipment was given, the Purchaser may be charged, for every month commenced, storage costs of 0.5% of the price of the items of the Supplies, but in no case more than a total of 5%. The parties to the contract may prove that higher or, lower storage costs have been incurred.

### V. Transfer of Risk

1. In any case of delivery, even where delivery is freight free, the risk shall pass to the purchasers as follows:
  - 1.a) If the Supplies do not include assembly or erection, at the time when the Supplies are shipped or picked up by the carrier. Upon request of the Purchaser, the Supplier shall insure the Supplies against the usual risks of transport at the expense of the Purchaser;
  - 1.b) If the Supplies include assembly or erection, at the day of taking over in the own firm, or if so agreed, after faultless test service.
  - 1.c) If dispatch, shipping, the beginning, the start of performance of assembly or erection in the firm or the test service of the purchaser is delayed for justifiable reason, or if the purchaser for any other reason delays the acceptance, the risk pass to the purchaser.

### VI. Assembly and Erection

Unless otherwise agreed in writing, assembly/erection shall be subject to the following provisions:

1. The Purchaser shall provide at its own expense and punctual:
  - 1.a) all earth-, construction work and other ancillary work outside the scope of the Supplier, including the necessary skilled and unskilled labour, construction materials and tools,
  - 1.b) the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants,
  - 1.c) energy and water at the point of use including connections, heating and lighting,
  - 1.d) suitable dry and lockable rooms of sufficient size at the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances; furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the erection personnel at the site,
  - 1.e) protective clothing and protective devices needed due to particular conditions prevailing on the specific site.

2. In any case, before the erection works start, the Purchaser shall make available, of its own accord, any information required concerning the location of concealed electric power, gas and water lines, or of similar installations as well as the necessary structural data.
3. Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly/erection and any preparatory work must have advanced to such a degree that assembly/erection can be started as agreed and carried out without interruption. Access roads and the assembly/erection site itself must be level and clear.
4. If assembly, erection or commissioning is delayed due to circumstances directly or indirectly caused by the Purchaser, the Purchaser shall bear the costs incurred for idle times and any additional travelling of the Supplier or the erection personnel.
5. The provisions mentioned in point 4 here above, shall apply also to all circumstances when the supplier is not responsible.
6. The Purchaser shall attest to the hours worked by the erection personnel towards the Supplier at weekly intervals and the Purchaser shall without delay, under penalty of forfeiture, confirm in writing if assembly, erection or commissioning has been completed
7. If the Supplier demands acceptance of the delivery after completion, the Purchaser shall comply therewith within a period of two weeks. If this does not happen, the acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the Supplies are put to use, after completion of an agreed test phase, if any

### VII. Receiving of Supplies

The Purchaser may not refuse acceptance of deliveries due to minor defects.

### VIII. Defects

To the extent of these general terms and conditions, by material defects are meant:

- a) Defects that make the goods unsuitable for its intended use or that significantly reduce its value (art. 1490 c.c.)
- b) Lack of the agreed or essential quality for the use intended or lack of the agreed or essential quality for the specific kind of product and that the buyer may expect in view of the type of the product (art. 1497 c.c.)
- c) Supply by the seller of a different product (*aliud pro alio*)

The Supplier shall be liable for defects of the purchased goods as to quality (hereinafter referred to as "material Defects" or "Defect",) as follows:

1. All parts or services where a material defect becomes apparent within the limitation period shall, at the discretion of the Supplier, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the Defect had already existed at the time when the risk passed.
2. Warranty and claims for material Defects are subject to a limitation period of 12 months. This provision shall not apply where longer periods are prescribed by law, as well as in cases of injury of life, body or health, or where the Supplier intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a Defect. The Italian legal provisions regarding suspension of expiration, interruption and recommencement of limitation periods remain unaffected.
3. In any case of material defects mentioned above right under this title VIII as a), b) and c), the Purchaser shall immediately communicate material Defects to the Supplier in writing within the time-limit of 8 days (under penalty of forfeiture – art. 1470 e 2965 c.c.). All judicial actions on/for material defects must be started within a time-limit (under penalty of forfeiture (decadenza) – art. 2965 c.c.) of 12 months from the delivery. This shall not apply in cases of injury of life, body or health, or where the Supplier intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a Defect.
4. In the case of notification of a Defect, the Purchaser may withhold payments to a reasonable extent taking into account the Defect occurred. The Purchaser, however, may withhold payments only if the subject-matter of the communication of the Defect occurred is justified beyond doubt. Unjustified notifications of Defect shall entitle the Supplier to have its expenses reimbursed by the Purchaser.
5. The Supplier shall first be given the opportunity to supplement its performance within a reasonable period of time.
6. If supplementary performance is unsuccessful, the Purchaser shall be entitled to withdraw from the contract or reduce the remuneration, irrespective of any claims for damages it may have according to Art. XI.
7. There shall be no rights for damages based on material Defects in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from erroneous or negligent handling, excessive strain, unsuitable equipment, defective building work, inappropriate foundation soil or from particular external influences not assumed under the contract, as well as from non-reproducible software errors. Claims based on defects attributable to improper modifications or any kind of work carried out by the Purchaser or third parties and the consequences thereof shall be likewise excluded.
8. The Supplier shall be exempt from any liability for material Defects whenever the Purchaser undertook unauthorised modifications of the product supplied (e.g. attempted repairs) or ordered third parties to undertake such modifications without obtaining the Supplier's written consent.
9. Place of performance for rectification of defects is principally the Supplier's place of business. The costs for transporting the goods to the Supplier's place of business for the purpose of having defects rectified shall be borne by the Purchaser. If transportation of the goods to the Supplier's place of business would expose the ordering party to unreasonable hardship, the rectification of defects may also be

undertaken at the present location of the goods, upon Purchaser specific written request, with the supplier's agreement. In this case, the ordering party shall reimburse the Supplier for the costs generated in this context (specifically transportation, travel, labour and material costs). The Supplier may consent subject to the condition that a reasonable advance on the anticipated costs be paid

10. If, in addition to delivery, the installation of the goods by the Supplier is also subject to the agreement, then the rectification of defects shall be undertaken at the place where the Supplier installed the goods.
11. In no case shall the Supplier be liable for costs arising from the fact that the Purchaser permanently installed the goods, necessitating deinstallation and/or structural work to allow shipment of the goods for the rectification of defects or the installation of a replacement. If in such a case the ordering party requests that the rectification of defects shall be undertaken at the site of the goods, the ordering party shall reimburse the Supplier for any extra costs incurred.
12. If an article delivered is equipped with temperature sensors (e.g. PT100, PTC, KTY or similar temperature sensors), the ordering party is obliged to connect these for the protection of the article in accordance with the operating manual, and to monitor the device according to applicable temperature classes, and to ensure that the delivered article is switched off whenever it threatens to overheat. If the ordering party fails to do so, the Supplier's warranty in case of damage shall be limited to the damage that would have occurred even if the operating temperature had been properly monitored and the device had been switched off before it gets overheated.
13. The Purchaser shall have no claims with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labour, and material, to the extent that expenses are increased because the subject-matter of the Supplies was subsequently brought to another location than the Purchaser's branch office, unless doing so complies with the intended use of the Supplies.
14. The Purchaser's right of recourse against the Supplier is limited to cases where the Purchaser has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 8 above shall apply *mutatis mutandis* to the scope of the right of recourse the Purchaser has against the Supplier
15. Furthermore, the provisions of Art. XI (Other Claims for Damages) shall apply in respect of claims of damages. Any other claims of the Purchaser against the Supplier or its agents/employees or any such claims exceeding the claims provided for in this Art. VIII, based on a material Defect, shall be excluded.

### IX. Industrial Property Rights and Copyright; Defects in Title

1. Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the Purchaser based on an infringement of an IPR with respect to the Supplies made by the Supplier and then used in conformity with the contract, the Supplier shall be liable to the Purchaser within the time period stipulated in Art. VIII No. 2 as follows:
  - 1.a) The Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from the Supplier, the Purchaser may withdraw from the contract or reduce the remuneration pursuant to the applicable statutory provisions.
  - 1.b) The Supplier's liability to pay damages shall be governed by Art. XI.
  - 1.c) The above obligations of the Supplier shall only apply if the Purchaser without delay, under penalty of forfeiture, notifies the Supplier in writing of any such claim asserted by the third party, does not concede the existence of an infringement and leaves any legal measures and settlement negotiations to the Supplier. If the Purchaser stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
2. Claims of the Purchaser shall be excluded if it is itself responsible for the infringement of an IPR.
3. Claims of the Purchaser shall also be excluded if the infringement of the IPR is caused by special requirement made by the Purchaser, by a type of use not foreseeable by the Supplier or by the Supplies being modified by the Purchaser or being used together with products not provided by the Supplier.
4. With respect to claims by the Purchaser pursuant to No. 1 a) above, Art. VIII Nos. 4, 5, and 9 shall apply *mutatis mutandis* in the event of an infringement of an IPR.
5. Where other defects in title occur, Art. VIII shall apply.
6. Any other claims of the Purchaser against the Supplier or its agents or any such claims exceeding the claims provided for in this Art. IX, based on a defect in title, shall be excluded.

### X. Impossibility of Performance; Adaptation of Contract

1. To the extent that Supplies are impossible to be carried out, the Purchaser shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of life, body or health; this does not imply a change in the burden of proof to the detriment of the Purchaser. The right of the Purchaser to withdraw from the contract shall remain unaffected.

2. Where unforeseeable events within the meaning of Art. IV No. 2 substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unbearable, the Supplier shall have the right to withdraw from the contract; if the Supplier intends to withdraw from the contract, it shall notify the Purchaser thereof immediately after having realised the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Purchaser.

#### **XI. Other Claims for Damages**

1. Any claims for damages and reimbursement of expenses the Purchaser may have (hereinafter referred to as "Claims for Damages"), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded. The above shall not apply in the case of mandatory liability, in the case of intent, gross negligence, injury of life, body or health, or breach of major obligations of the contract except the case of slight/simple negligence and except the limits provided in Art. VIII.

2. However, Claims for Damages arising from those major obligations of the contract shall be limited to the foreseeable typical damages intrinsic to the specific kind of contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.

3. To the extent that the Purchaser has a valid right to Damages according to this Art. XI, all legal actions for damages must be started within a time limit of 12 months under penalty of forfeiture; if damages are due to material defects, they must be immediately communicated to the Supplier in writing within the time limit of 8 days under penalty of forfeiture. The limitation period for claims about damages is the same applicable to Defects claims pursuant to Art. VIII No. 2. Mandatory statutory provisions governing limitation periods shall also apply.

4. To the extent that the Purchaser has a valid right to Damages according to this Art. XI, it shall be time-barred upon expiration of the limitation period applicable to Defects claims pursuant to Art. VIII No. 2. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

#### **XII. Venue and Applicable Law**

If the Purchaser is a businessperson, sole venue for all disputes arising directly or indirectly out of the contract shall be the Supplier's place of business. However, the Supplier, at his choice, may also bring an action at the Purchaser's place of business. Legal relations existing in connection with this contract shall be governed by Italian substantive law, expressly excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **XIII. Severability Clause**

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions and of the contract as a whole. This shall not apply if it would be unbearable hard for one of the parties to continue the contract.