

Terms of Sale and Delivery

of marks-3zet GmbH & Co. KG, Lahnstraße 38, D-45478 Mülheim an der Ruhr
(hereinafter referred to as “marks-3zet”)

Effective as from 1 July 2018

§ 1 Scope

Unless expressly stated otherwise in writing, these Terms of Sale and Delivery of marks-3zet shall apply exclusively to all business relations between marks-3zet and its contractual partners (hereinafter referred to as “Buyers” or “Customers”). They shall also cover all future business relations, even if they are not expressly agreed upon. Any deviating or contradictory General Terms and Conditions of the respective contractual partners shall not be deemed part of the contract, even if their existence is known, unless marks-3zet has agreed to their applicability in writing. The Terms of Sale and Delivery shall not apply to transactions with consumers within the meaning of Art. 13 BGB (German Civil Code).

§ 2 Contract Execution

- (1) The contract shall not be deemed valid until marks-3zet confirms the Buyer's order in writing or until the goods are delivered. To satisfy the written form requirement, transmission via telecommunication channels, such as telefax or e-mail, shall suffice, as long as a copy of the signed statement is transmitted.
- (2) marks-3zet shall only assume such guarantees as are expressly confirmed in writing by marks-3zet.
- (3) The documents submitted by marks-3zet within the context of contract negotiation and execution, such as images or drawings, as well as any information marks-3zet provides with regard to weight, dimension, power requirements, and performance, shall be relevant. Customary deviations and deviations due to legal requirements or technical improvements as well as the replacement of components by equivalent parts shall be admissible, as long as they do not impact the usability for the contractually intended purpose.

§ 3 Scope of Delivery, Transport, and Passing of Risk

- (1) All deliveries are effected ex works.
- (2) Delivery periods shall start, at the earliest, upon receipt of all documentation that is required for the detailed specification of the order, if the Buyer is contractually obliged to provide such documentation, and, if the Buyer is contractually obliged to make a down payment, upon receipt of such down payment by marks-3zet.
- (3) Delivery times and dates for goods and services advised by marks-3zet shall always be deemed to be approximate, unless a fixed time or date has been promised or agreed upon. If shipment has been agreed upon, the delivery periods and dates shall relate to the time of handover to the forwarder, freight carrier, or other third party commissioned with the transport of the goods.
- (4) Notwithstanding its right in the event of the Customer's default, marks-3zet may request that the Customer grant an extension of delivery or performance periods, or a delay of delivery or performance dates by the time period during which the Customer fails to meet its contractual obligations vis-à-vis the Seller.

- (5) marks-3zet shall not be held liable for impossible or delayed delivery if it is caused by force majeure or other events that were not foreseeable at the time of execution of the contract (e.g., interruptions of operations of any kind, difficulties in the procurement of materials or energy, delays in transport, strikes, lawful lockouts, shortage of staff, energy, or raw materials, difficulties in the procurement of regulatory permits, government actions, or lack of, incorrect, or delayed delivery by suppliers) and through no fault of mark-3zet. Should such events put marks-3zet in a position where delivery or performance is significantly impeded or impossible, and if the impairment is not temporary, the Seller shall be entitled to withdraw from the contract. If the impairment is temporary, the delivery or performance periods shall be extended or the delivery or performance dates shall be delayed by the duration of the impairment, plus an adequate run-up period. Should acceptance of the delivery or performance be unacceptable to the Customer due to the delay, the Customer shall be entitled to withdraw from the contract via immediate written communication to the Seller.
- (6) Should the despatch or the delivery of the delivery item be delayed at the Buyer's request or due to circumstances caused within the Buyer's sphere or risk and/or responsibility, the Buyer shall reimburse marks-3zet for the storage expenses incurred as well as the cost of interest for the capital bound by the delivery item. In the event of storage by marks-3zet, their claim shall amount to 0.5% of the outstanding invoice amount for each new month, commencing one month after notification that the goods are ready for despatch; the Customer shall be free to substantiate lower damage suffered. However, marks-3zet shall be entitled to dispose of the delivery item after an adequate grade period has lapsed and to make replacement delivery to the Customer with an adequately extended delivery period.
- (7) marks-3zet shall only be entitled to make partial deliveries if
 - (a) the Customer can make use of such partial deliveries within the scope of the contractually agreed purpose,
 - (b) the delivery of the remaining goods has been ensured, and
 - (c) if no considerable extra expense is incurred by the Customer (unless, the Seller agrees to assume such extra cost).
- (8) Should marks-3zet be in arrears with a delivery or performance, or should marks-3zet be unable to deliver or perform, regardless of the reason, the Seller's liability for damages shall be restricted to the provisions set forth in § 7 of these Terms of Sale and Delivery.
- (9) At the Buyer's written request (whereupon e-mail or telefax shall suffice), marks-3zet shall take out transport insurance on behalf of and on account of the Buyer, based on the general transport terms for the transport of the contractual goods ex works to the stipulated place of destination.
- (10) Should trade terms be agreed upon, the Incoterms in the currently valid version shall apply. The scope of delivery shall be specified in the order confirmation.
- (11) For net values of 500 euros and more per order and delivery, the goods shall be shipped franco domicile within the Federal Republic of Germany (1,700 euros and more per order and delivery for domestic resellers), via the cheapest mode of transport, including customary packaging. Packaging cannot be returned. For orders up to 150 euros, a small order surcharge of 25 euros will be charged.

§ 4 Warranty, Material Defects

- (1) The warranty period shall be six months after delivery, or, in the event of acceptance, after acceptance. This period shall not be applicable to the Customer's claims for compensation for damages to life, limb, or health, or to intentional or grossly negligent breaches of duty on the part of the Seller or its agents. These shall become time-barred according to the legally applicable statute of limitation.

- (2) The Buyer or a third party commissioned by the Buyer shall carefully inspect the goods immediately upon delivery. The goods shall be deemed approved by the Buyer with regard to obvious defects or other defects that could have been detected in the course of an immediate, careful inspection, unless marks-3zet receives a written note of defects within five working days of delivery. With regard to other defects, the delivery items shall be deemed approved by the Buyer, unless marks-3zet receives a written note of defects within five working days after the time at which the defect became obvious; if the Customer could have identified the defect at an earlier time in the course or regular use of the goods, this earlier time shall be relevant for submission of the note of defects. At marks-3zet's request, the defective delivery item shall be returned free of charge. If the claim is justified, marks-3zet shall reimburse the cost of the cheapest mode of transport; this shall not apply in the event of increased costs if the delivery item is located at a place different from the place of intended use.
- (3) In the event of material defects to the delivery items, marks-3zet shall be obliged and entitled to rectify the defect or arrange for replacement delivery, at its discretion, within an adequate time period. Should the rectification or replacement delivery be impossible, unacceptable, refused, or delayed by an inappropriate time period, the Customer shall be entitled to withdraw from the contract or reduce the purchase price by an adequate amount.
- (4) If the defect is caused by a fault of marks-3zet, the Customer may demand compensation for damages, subject to the conditions stipulated in § 7.
- (5) If components from third-party manufacturers are defective, and marks-3zet is not able to remove the defect for licensing or factual reasons, marks-3zet shall, at its discretion, enforce its warranty claims vis-à-vis the manufacturers and suppliers on the Customer's account or assign such claims to the Customer. marks-3zet shall only be liable to warranty claims for such defects under other circumstances and as stipulated in these Terms of Sale and Delivery if the legal enforcement of the aforementioned claims against manufacturers and suppliers has been unsuccessful or is futile, for instance, due to insolvency. For the duration of litigation, the statute of limitation of the relating warranty claims of the Customer's against marks-3zet shall be suspended.
- (6) The warranty shall be void if the Customer modifies or arranges for third parties to modify the delivery items without marks-3zet's prior consent and if such modification renders the removal of defects impossible or unreasonably hard. In any event, the Customer shall bear the additional cost of rectifying defects caused by such modifications.
- (7) Any second-hand items delivered to the Customer under separate agreements shall not be subject to warranty for material defects.

§ 5 Software Delivery

- (1) If the delivery item is sold together with electronic equipment, marks-3zet shall grant the Buyer a non-exclusive, revocable, and principally not assignable right of use to the related software. The assignment shall be permissible in exceptional cases, if the user can substantiate a reasonable interest in transferring its own right of use to a third party (whilst ceding its own use), e.g., in the event of a sale of the entire device.
- (2) All documents and software programmes required for operating the delivery item shall, as a rule, be subject to copyright and property rights and shall remain the property of marks-3zet and/or its subsidiaries.

§ 6 Prices

- (1) marks-3zet delivers at the prices indicated in the applicable price list, unless marks-3zet and the Buyer have agreed upon a different price, which marks-3zet has confirmed in writing or via telecommunication, in particular via telefax or e-mail. All prices are quoted ex works or place of dispatch. Additional costs or remuneration might arise for handling

the delivery item. Unless otherwise specified, all prices are quoted in euros and are exclusive of transport, insurance, installation, and instruction fees, as well as the applicable VAT.

- (2) marks-3zet shall be entitled to unilaterally adjust its prices if circumstances arise between the time of the order confirmation and the time of delivery that increase the production or procurement of the delivery items by more than five percent and if such increase is no fault of marks-3zet. In addition to changes to the raw materials market, such circumstances include foreign exchange effects and supplier price increases. In the event of a price adjustment of more than 10 percent of the overall value, the Buyer shall be entitled to withdraw from the contract.

§ 7 Liability for Damages due to Fault

- (1) Unless otherwise stated in these Terms of Sale and Delivery and the following provisions, marks-3zet shall be liable for violation of contractual and non-contractual obligations in accordance with applicable law.
- (2) In the event of simple negligence, marks-3zet shall only be liable for
 - (a) damages to life, limb, or health;
 - (b) damages arising from the violation of a material contractual obligation (an obligation whose fulfilment is instrumental to the appropriate execution of the contract and whose fulfilment the contractual partner will generally rely on); in such event, the liability on the part of marks-3zet shall be limited to compensation for the foreseeable, reasonably expected damage. This clause shall comprise damages not caused to the delivery subject itself. Any further liability is excluded.
- (3) Indirect and consequential damage arising from defects in the delivery item shall only qualify for compensation if such damage can reasonably be expected in the course of the intended use of the delivery item.
- (4) The limitations to liability stated in § 7 (2) and (3) above shall not be applicable if marks-3zet has fraudulently concealed the defect or has assumed a warranty for the quality of the goods. The same shall apply to claims on the part of the Customer on the basis of the product liability law.
- (5) To the extent that marks-3zet provides technical information or consultancy and such information or consultancy is not comprised in the contractually owed scope of delivery, such information or consultancy shall be provided free of charge and without warranty.
- (6) The aforementioned exclusions and limitations of liability shall apply to the same extent to marks-3zet's bodies, legal representatives, employees, and other agents.

§ Payment and Default

- (1) Invoices issued by marks-3zet shall be due and payable within 14 calendar days after date of invoice, unless otherwise agreed in writing. Payment must be made to the bank account specified in the invoice. Discounts are subject to prior written agreements.
- (2) Deliveries outside the EU shall only be made against payment in advance, unless otherwise agreed in writing.
- (3) In the event of delays in payment, interest on arrears shall be charged at the statutory rate.
- (4) If payment in instalments has been agreed upon, marks-3zet shall be entitled to demand immediate payment of the outstanding balance if the Buyer is in default of two or more successive payments and if the amount owed accounts for more than 10 percent of the purchase price.

- (5) If, after confirming the order, marks-3zet becomes aware of circumstances that give rise to doubting the Customer's ability or willingness to pay, as well as in the event of the Customer's delay in payment, marks-3zet shall be entitled to suspend the execution of further deliveries until the full purchase price or adequate collateral stipulated by marks-3zet has been paid. Should the Customer fail to respond to such request within an adequate time period, marks-3zet shall be entitled to withdraw from the contract in whole or in part.

§ 9 Retention of Title

- (1) Deliveries by marks-3zet shall always be subject to the retention of title specified below. This shall also apply to future deliveries, even if this clause is not specifically referred to.
- (2) marks-3zet reserves the ownership of the delivery item until full payment has been made. The retention of title shall continue to apply until all claims from the business relationship with the Buyer have been settled and all bills of exchanges have been honoured. At the Customer's request, marks-3zet shall release its ownership of the delivery item in proportion to its security interests being satisfied. The legitimate interest in the provision of security shall no longer be applicable if the attainable value of the delivery item exceeds 110 percent of the secured claims on a permanent basis. It shall be assumed that the aforementioned limit is reached if the expert assessment value of the delivery item at the time release is requested amounts to 150 percent of the secured claims. Substantiation of a different attainable value of the delivery item shall be optional.
- (3) The Buyer shall be entitled to process and/or sell the delivery item in its ordinary course of business as long as it is not in default. Pledging and chattel mortgaging are inadmissible. As a precautionary measure, the Buyer hereby assigns its claims arising from the sale of or on other legal grounds pertaining to the delivery item to marks-3zet up to a maximum amount of the purchase price owed to marks-3zet. This assignment shall be applicable regardless of whether the delivery item is sold prior to or after further processing. marks-3zet hereby revocably authorizes the Buyer to collect the claim thus assigned to marks-3zet on its own behalf and for the account of marks-3zet. The authorization to collect may only be revoked if the Buyer fails to properly meet its payment obligations via-à-vis marks-3zet.
- (4) Any processing or remodelling of the delivery items shall always be effected on behalf of marks-3zet, but involving no obligation for marks-3zet. If marks-3zet's (co-)ownership in the delivery items is cancelled out by joining, mixing, and/or processing, the parties hereby agree that the Buyer's (co-)ownership in the whole item shall be assigned to marks-3zet in proportion to the value of the overall claim, pursuant to § 9 Clause 2, to the value of the other items. The Buyer shall store the property of marks-3zet free of charge.
- (5) The following shall apply during the period of retention of title:
 - (a) marks-3zet shall be entitled to take back the delivery item if the Buyer's behaviour is contrary to the contract.
 - (b) The Buyer shall protect the delivery item from third-party access at its own cost and shall communicate imminent access in writing without delay, including access to the Buyer's premises.
 - (c) In the event of third-party access to the delivery item, in particular garnishment, the Buyer shall point out that the item is the property of marks-3zet and shall notify marks-3zet immediately so as to enable marks-3zet to enforce its property rights. Should the third party not be in a position to reimburse marks-3zet for the court or out-of-court fees occurred in this connection, the Buyer shall be held liable in this respect.
 - (d) The location of the delivery item may only be changed with marks-3zet's prior written consent, and the relocation must be carried out by marks-3zet or its representatives.

- (e) The Buyer shall maintain the delivery item in an impeccable condition. The Buyer shall take out insurance in favour of marks-3zet against transport, assembly, breakage, fire, theft, and mains water damage and shall provide marks-3zet with evidence of the insurance policy and the payment of the premiums on request.
- (f) The Buyer shall authorize marks-3zet or its representatives to inspect the delivery item and, for this purpose, shall grant access to the premises in which it is located. The Buyer undertakes to render any required assistance free of charge.
- (6) marks-3zet shall retain the property and copyrights to cost estimates, drawings, and concepts as well as other supporting documents. Any copying or transfer to third parties requires the prior written consent of marks-3zet.

§ 10 Warranty Period – Statute of Limitation

If a delivery item is defective, marks-3zet shall be subject to warranty obligations in line with the provisions set forth below.

- (1) Provisions for consumable supplies:
 - (a) The Buyer shall inspect the delivery item immediately. The Buyer shall notify marks-3zet of obvious defects of the delivery item within six days after receipt of the delivery item and of hidden defects within six days after detection of such defects in writing; otherwise, the goods shall be deemed accepted, and warranty shall be excluded. The Buyer shall bear the burden of proof with regard to all conditions of entitlement to warrant claims, in particular, with regard to the existence of defects, to the time the defect was detected, and for the timeliness of notification of defects.
 - (b) As soon as a defect is detected, the consumable supplies must be separated in their defective condition, held ready for inspection by marks-3zet, and returned to marks-3zet. Otherwise, they shall be deemed accepted as delivered, excluding further liability on the part of marks-3zet. § 10 Clause 1 a) shall apply accordingly.
 - (c) If the Buyer meets the requirements set forth in sections a) and b) above, marks-3zet shall be obliged to cure the defect and shall, at its own discretion, either rectify the defect (rework) or deliver defect-free replacement.
 - (d) Should marks-3zet fail to cure the defect, the Buyer shall be entitled to withdraw from the contract or reduce the purchase price. Curing the defect shall be deemed to have failed if marks-3zet has unsuccessfully attempted to cure the defect at least twice. Withdrawing from the contract is admissible if marks-3zet's breach is negligible.
 - (e) In coordination with marks-3zet, the Buyer shall provide marks-3zet with the time and opportunity to carry out all remedial action and replacement deliveries marks-3zet deems appropriate.
 - (f) marks-3zet shall bear the expense related to curing the defect, in particular, transport, road, labour, and material costs, only to the place of delivery, unless the delivery item has been relocated to another of the Customer's premises, pursuant to § 9 Clause 5 d).
 - (g) Any additional costs incurred because the delivery item had been relocated to a place other than the place of delivery without marks-3zet's consent shall be borne by the Customer.
 - (h) Should the Buyer request the express commissioning of a technician, involving additional costs to marks-3zet for operational reasons, or should the Buyer request the work to be carried out outside regular working hours, the Buyer shall bear the additional costs thus incurred (e.g., overtime surcharges, cost of extended travel time).
 - (i) Replaced parts shall become the property of marks-3zet.
 - (j) The statute of limitation for warranty claims for consumable supplies shall be limited to 12 months after the passing of risk (§ 4 Clause 1).

- (k) The delivery item shall not be deemed defective, if
 - (aa) the Buyer uses purchase items delivered by marks-3zet in functional combination with existing or third-party hardware or software components, provided the disruption was not caused by the components delivered by marks-3zet or the lack of compatibility of such components. If marks-3zet has expressly assured compatibility with third-party products, such assurance shall only refer to the latest product version at the time the assurance was given, but not to previous or future versions (updates or upgrades) of the same product.
 - (bb) and to the extent that the disruption is caused by failure on the part of the Customer to ensure that the technical conditions defined in the documentation and the accompanying documents are met.
 - (cc) If marks-3zet removes the disruptions described in k) aa) and bb) above, the Buyer shall reimburse marks-3zet against invoice for customary fees and costs.
- (2) For machinery, comparable systems, and software, all rectifications of defects, services, and supplies of parts shall be carried out directly by the respective manufacturers or marks-3zet's suppliers. In the event of defects, the Buyer shall be obliged to contact the respective manufacturers or suppliers, as indicated by marks-3zet. For this purpose and to the legally permissible extent, marks-3zet hereby assigns all warranty claims against the manufacturers or suppliers to the Buyer. Further warranties by marks-3zet are excluded.
- (3) For the rest, warranty claims against marks-3zet, regardless of their legal basis, shall be excluded, unless marks-3zet has guaranteed an item's quality or has fraudulently withheld knowledge of a defect. The above shall, in particular, apply to second-hand machinery or other used items, unless warranty has expressly been agreed upon, as well as to components that are prone to early wear and tear due to their nature or the way they are used.

§ 11 Reversal of the Purchase Agreement

- (1) In the event of a reversal of the purchase agreement (e.g., if one of the parties withdraws from the contract), the Buyer shall be obliged to return the delivery item to marks-3zet, regardless of the further procedure as defined below. marks-3zet shall be entitled to have the delivery item collected from the Buyer's premises.
- (2) If the delivery item is in an inferior condition, has perished, or cannot be returned for other reasons that are the fault of the Buyer, marks-3zet shall be entitled to claim compensation for the damage thus incurred.
- (3) Furthermore, marks-3zet shall be entitled to claim appropriate remuneration for the use of the delivery item if the value of the delivery item has been diminished between the completion of its installation and its complete and direct repossession by marks-3zet. Such decrease in value shall be calculated as the balance between the total price as stipulated in the underlying contract and the fair value that is determined by the sales proceeds or, if selling the item is not possible, via an estimate by a sworn expert, taking into consideration the expert fees.

§ 12 Assignment

The assignment of the Buyer's rights and/or obligations under this contract shall only be admissible with marks-3zet's prior written consent.

§ 13 Export Control Provisions

The delivery items and the related software may be subject to the export control provisions of the Federal Republic of Germany, the European Union, the United States of America, or other states. If the delivery item is intended for export, the Buyer shall be responsible for compliance with the statutory provisions.

§ 14 Place of Jurisdiction, Applicable Law, and Severability Clause

- (1) For contracts with merchants, legal entities under public law, and public special funds, Mülheim an der Ruhr shall be the sole place of jurisdiction.
- (2) Unless conclusively provided for in the aforementioned terms, German law shall be applicable; the UN Convention on the International Sale of Goods shall be excluded.
- (3) Should a provision of these Terms of Sale and Delivery be or become void, ineffective, or unenforceable, in whole or in part, the effectiveness and enforceability of all remaining provisions shall remain unaffected. The void, ineffective, or unenforceable provision shall be deemed to be replaced by an effective and enforceable provision that comes closest to the intent of the void, ineffective, or unenforceable provision with regard to subject, dimension, time, place, or scope. The same shall apply to any gaps in these Terms of Sale and Delivery.

§15 Subject to alterations

marks-3zet is entitled to unilaterally change these Terms of Sale and Delivery in case of the occurrence of extenuating circumstances beyond those anticipated in the agreement or for the adaptation to changed legal or technical conditions. marks-3zet will inform the customer of any changes by notifying the content of the altered regulations to the last known e-mail address of the customer. The change becomes an integral part of the contract if the customer does not object in text or written form to marks-3zet within six weeks after receipt of the alteration notice.

Please note:

The Customer acknowledges that marks-3zet saves data from the contractual relationship pursuant to Art. 28 Bundesdatenschutzgesetz (Federal Data Protection Act) and reserves the right to transfer such data to third parties (e.g., insurance companies), if required to execute the contract.