

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

of

### MAYER BRAIDTECH GmbH

#### 1. Scope of Application

Contracts on sales and deliveries (hereinafter referred to as “Contracts” or “Contract”) by MAYER BBRAIDTECH GMBH (hereinafter referred to as “MAYER BRAIDTECH”) shall apply exclusively in accordance with the following General Terms and Conditions of Sale and Delivery (hereinafter referred to as the “Terms of Delivery”), which are accepted by the purchaser by placing an order or the accepting deliveries. The Terms of Delivery shall also apply to all future transactions with the customer. Any conflicting and supplementary terms and conditions of the customer shall not apply, even if MAYER BRAIDTECH fails to expressly object to their application.

#### 2. Conclusion of Contract

- 2.1 Offers by MAYER BRAIDTECH shall be non-binding. Except as otherwise agreed in an individual case, a Contract is concluded only after the customer has signed and returned to MAYER BRAIDTECH’s written order confirmation (or both). The content of the Contract shall be governed exclusively by the content of the order confirmation and these Terms of Delivery. Any oral agreements or undertakings or changes of the order confirmation shall only be valid if confirmed in writing by MAYER BRAIDTECH
- 2.2 MAYER BRAIDTECH reserves all rights in the sales documentation (in particular pictures, drawings, data on weight and size) and the samples. These are the intellectual property of MAYER BRAIDTECH and must not be made available to third parties nor used for purposes not related to the Contract or personal purposes and shall be returned to MAYER BRAIDTECH upon request without undue delay. Such documents may only be disclosed to third parties upon MAYER BRAIDTECH’s prior written consent.
- 2.3 Any Contracts negotiated by field staff in the name of MAYER BRAIDTECH . shall be deemed concluded only upon the customer’s acceptance of MAYER BRAIDTECH’s order confirmation in accordance with Clause 2.1 of these Terms of Delivery.

#### 3. Delivery Periods and Dates

- 3.1 Upon receipt of an order, MAYER BRAIDTECH specifies a maximum period for delivery of 14 days. MAYER BRAIDTECH will inform the customer of the specific delivery date (which will be within the specified maximum period for delivery) within, at a minimum, 5 working days in advance of the specified delivery date. The notified delivery date is the binding date of delivery.  
Delivery dates and delivery periods shall only be binding if they have been confirmed by MAYER BRAIDTECH in writing and if the customer has communicated or provided MAYER BRAIDTECH in a timely manner with all the information and documentation required for the performance of such delivery and if the customer has made any advance payments in the manner and amount as agreed upon by the parties or has provided bank guarantees or similar security including letters of credit. Any periods agreed upon shall commence on the date of the conclusion of the Contract. In the event of subsequent additional or supplementary orders or changes of the order, the agreed delivery periods are extended accordingly.
- 3.2 For the duration of unforeseeable or unavoidable events and events that are beyond MAYER BRAIDTECH’s control and not attributable to MAYER BRAIDTECH, such events including Force Majeure events, war, acts of God, official orders or labor disputes, MAYER BRAIDTECH shall be released from its obligation to make timely delivery or to perform timely. Any periods agreed upon shall be extended by the time any such disturbance lasts; the customer shall be informed of the occurrence of such disturbance in a reasonable manner. If the end of such disturbance is not foreseeable, or should it continue for more than two months, each party is entitled to rescind the contract.
- 3.3 If deliveries by MAYER BRAIDTECH are delayed, the customer shall only be entitled to rescind the Contract if the delay is attributable to MAYER BRAIDTECH and if a reasonable grace period set by the customer has lapsed to no avail.

- 3.4 Should the customer be in default in accepting delivery or fail to comply with any other obligations to cooperate or requests the delivery after the binding delivery date MAYER BRAIDTECH shall be entitled to (i) store the good in an appropriate manner at the customer's risk and expense and (ii) claim from the customer for the period of such storage payment of liquidated damages in the amount of EUR 30.00 per day of storage to compensate MAYER BRAIDTECH for the handling costs (such as, for example, storage costs, administration costs, etc.) it incurs as a result of such storage; the right of the customer to prove that MAYER BRAIDTECH incurred a lower damage and the right of MAYER BRAIDTECH to claim higher damages, if proven, remains unaffected. Notwithstanding its other rights, MAYER BRAIDTECH is entitled to rescind the Contract if a reasonable grace period set by MAYER BRAIDTECH for the acceptance of the delivery by the customer has lapsed to no avail.
- 3.5 MAYER BRAIDTECH may make partial deliveries for good reason if and to the extent this is reasonable for the customer.

#### **4. Shipping, Customs**

- 4.1 Unless otherwise instructed by the customer, the goods shall be shipped in customary packing and using an appropriate method of shipment.
- 4.2 The goods shall be shipped in accordance with the INCOTERMS 2010 as set forth in the order confirmation.
- 4.3 Upon passing the order or at the latest upon request immediately after the conclusion of the Contract, the customer shall state whether it has the status of an authorized economic operator (AEO) as defined in the Union Customs Code (Regulation (EU) No. 952/2013) and the corresponding implementing regulations (Commission Delegated Regulation (EU) 2015/2446 and Commission Implementing Regulation (EU) 2015/2447) and shall inform MAYER BRAIDTECH at its own initiative of any changes to this status. If requested by MAYER BRAIDTECH, the customer shall provide evidence documenting its status as an authorized economic operator.

#### **5. Prices, Terms of Payment**

- 5.1 The valid price shall be as agreed between the parties. Unless the parties have agreed upon a certain price, the price shall be determined in accordance with the price list of MAYER BRAIDTECH as applicable at the date of the conclusion of the Contract.
- 5.2 MAYER BRAIDTECH's prices shall be subject to the provisions of the order confirmation. Except as otherwise agreed, prices are ex works, not including statutory VAT at the applicable rate nor any customs duties or packing and shipping costs, which will be charged separately.
- 5.3 Except as otherwise agreed in the order confirmation, any invoiced amounts shall become due for payment without deductions upon receipt of the respective invoice. Payments made by the customer shall be deemed to have been effected only when MAYER BRAIDTECH is able to dispose of the respective amount. MAYER & BRAIDTECH is entitled to issue partial invoices for partial deliveries as defined in Clause 3.5.
- 5.4 In the event that the customer is in default, MAYER & CIE. shall be entitled to demand default interest in the applicable statutory amount. Any claims for further damages due to the default shall remain unaffected.
- 5.5 The customer is only entitled to set-off with counterclaims that are uncontested, ready for decision or have been finally adjudicated.
- 5.6 The customer shall only be entitled to assert a right of retention to the extent that its counterclaim is based on the same Contract and is uncontested, ready for decision or has been finally adjudicated.
- 5.7 If MAYER BRAIDTECH becomes aware of the customer's potential inability to perform the Contract after the conclusion of the Contract, MAYER BRAIDTECH shall be entitled to make any outstanding deliveries dependent on prepayment or the provision of a security. If such prepayments or security have not been provided even after the expiration of a reasonable grace period, MAYER BRAIDTECH may partially or totally rescind any individual or all of the Contracts concerned. MAYER BRAIDTECH shall be free to assert any further rights.

#### **6. Agreement on Quality; no Guarantee**

- 6.1 Upon the passing of the risk, the delivered items shall be of the agreed quality. The agreed quality shall be determined exclusively by the specific written agreements between the parties as to the characteristics, features and specifications of the delivered items. Variations resulting from the manufacturing process, as well as minor deviations which do not impair the functionality of the delivered items, may occur. Regarding any delivered items that were manufactured in accordance with the specific instructions of or data provided by the customer, MAYER BRAIDTECH shall not be liable for the suitability of the items for the intended purpose nor for the accuracy of the relevant data.

- 6.2 MAYER BRAIDTECH guarantees ("*garantiert*") by no means the quality of the delivered items.
- 6.3 Information provided to the customer by MAYER BRAIDTECH in sales catalogues, price lists and any other information material shall under no circumstances constitute a guarantee ("*Garantie*") of a certain quality of the delivered items or a guarantee ("*Garantie*") regarding their quality.
- 6.4 If the parties wish to agree upon a guarantee ("*Garantie*") in deviation from Clauses 6.2 and 6.3 in an individual case, such agreement must be made expressly and in writing.

## **7. Rights in Case of Defects, Duty to Examine**

- 7.1 The customer shall only be entitled to rights in case of defects (*Mängelrechte*) if it examines the respective delivered items without undue delay after delivery and reports any obvious defects to MAYER BRAIDTECH in writing and without undue delay, however, not later than two weeks after delivery. In case of hidden defects, the customer is obliged to notify MAYER BRAIDTECH in writing without undue delay upon the discovery of such defects.
- 7.2 In the event of any notification of a defect, MAYER BRAIDTECH shall have the right to inspect and test the rejected item and the conditions under which it is used. MAYER BRAIDTECH may require the customer to return the rejected item to MAYER BRAIDTECH at MAYER BRAIDTECH's expense. Should the customer's notification of a defect prove to be unjustified, the customer shall be obliged to reimburse MAYER BRAIDTECH for all expenses incurred in this respect, e.g. shipping costs.
- 7.3 MAYER BRAIDTECH shall be entitled to remedy defects subject to rights in case of defects free of charge at its own option by either removing the defect or by providing a replacement that is free of defects (hereinafter collectively referred to as "Subsequent Performance").
- 7.4 If the rejected item was relocated from the initial shipping address, the customer shall bear the additional expenses resulting from this circumstance with respect to the Subsequent Performance, in particular additional shipment and handling charges. The customer shall return to MAYER BRAIDTECH all parts replaced by MAYER BRAIDTECH in the course of the Subsequent Performance.
- 7.5 The customer shall be entitled at its own choice, and in each case in accordance with the applicable statutory provisions, to either rescind the Contract, to reduce the purchase price or to claim damages pursuant to Clause 8 or, if applicable, reimbursement of its expenses, if MAYER BRAIDTECH seriously and finally refuses Subsequent Performance, if specific circumstances exist which - after thoroughly weighing the parties' interests - justify the immediate assertion of rights other than those set forth in Clause 7.3, if the removal of defects or replacement fails, if such removal or replacement is unacceptable for the customer, or if MAYER BRAIDTECH refuses to remove defects or make replacements pursuant to § 439 (4) German Civil Code (BGB).
- 7.6 The customer shall communicate any grace periods set for Subsequent Performance pursuant to Clause 7.5 to MAYER BRAIDTECH in writing.
- 7.7 The customer is not entitled to rights in case of defects if the relevant defects and damage result from inappropriate or improper use, incorrect implementation or handling, inaccurate attempts of repair and improvement on the part of the customer or third parties, normal wear and tear or unsuitable operating equipment. The provisions of Clause 8 of these Terms of Delivery shall remain unaffected.
- 7.8 The claim for defects ("*Mängelanspruch*") shall become statute-barred after twelve months following the delivery of the item to the customer. The statutory limitation period shall apply:
- (a) to the customer's rights with respect to defects concealed in bad faith or caused intentionally;
  - (b) if and to the extent MAYER & CIE. has assumed a guarantee;
  - (c) to the customer's damage claims due to culpably caused personal injuries;
  - (d) to the customer's damage claims for damages caused by MAYER & CIE. intentionally or by gross negligence;
  - (e) to the customer's damage claims due to other reasons than defects of the goods; as well as
  - (f) to claims under the German Product Liability Act or any other mandatory statutory liability.
- The provisions on the statute of limitations of § 445b German Civil Code (BGB) shall remain unaffected, if and to the extent the last buyer in the supply chain is a consumer.

## 8. Liability and Damages

- 8.1 In accordance with the statutory provisions, MAYER BRAIDTECH shall be liable for damages without limitation
- (a) in the event of willful or grossly negligent conduct on the part of MAYER BRAIDTECH, its legal representatives or vicarious agents;
  - (b) in the event MAYER BRAIDTECH has assumed a guarantee ("*Garantie*"), to the extent that the described guarantee event occurred and the purpose of the guarantee was to protect the customer against the specific damage suffered;
  - (c) in the case of culpably caused damage to life, body or health;
  - (d) in the case of claims pursuant to the German Product Liability Act ("*Produkthaftungsgesetz*");
  - (e) based on other mandatory statutory liability provisions.
- 8.2 Furthermore, MAYER BRAIDTECH shall also be liable in case of minor negligence up to the amount of the typically foreseeable damage at the time of entering into the contract if such damage results from a violation of a material contractual obligation on the part of either MAYER BRAIDTECH or its vicarious agents or legal representatives.
- 8.3 Any liability exceeding Clauses 8.1 and 8.2 shall be excluded.
- 8.4 This limitation of liability shall apply to all claims for damages irrespective of their respective legal basis, including but not limited to pre-contractual or ancillary claims and tort law claims.
- 8.5 The customer shall take reasonable measures to avert and minimize damage.

## 9. Retention of Title

- 9.1 The delivered items shall remain the property of MAYER BRAIDTECH until any and all claims of MAYER BRAIDTECH arising under its business relationship with the customer have been paid in full (hereinafter referred to as "Products Subject to Retention of Title").
- 9.2 In the case of current accounts, such retention of title shall provide security for the balance of any unpaid invoices to which MAYER BRAIDTECH is entitled.
- 9.3 The customer may sell, pledge or otherwise dispose of the Products Subject to Retention of Title in any way that would jeopardize the property of MAYER BRAIDTECH only with the prior written consent of MAYER BRAIDTECH
- 9.4 Any processing ("*Verarbeitung*") or transformation ("*Umbildung*") of the Products Subject to Retention of Title by the customer shall always be deemed performed for MAYER BRAIDTECH If Products Subject to Retention of Title are processed with other goods, MAYER BRAIDTECH shall acquire joint ownership of the new goods in proportion to the value of the Products Subject to Retention of Title as compared to the value of the other processed goods at the time of processing. In all other respects, the provisions applicable to the Products Subject to Retention of Title shall also apply to the new goods created by way of processing.
- 9.5 If Products Subject to Retention of Title are incorporated into other goods, MAYER BRAIDTECH shall acquire joint ownership of the new goods in proportion to the value of the Products Subject to Retention of Title as compared to the value of the other goods at the time of incorporation. Should the incorporation of the goods occur in such manner that the customer's product must be considered the principal element, it shall be deemed agreed that the customer shall transfer proportionate joint ownership to MAYER BRAIDTECH The customer shall hold the jointly held property created in such manner in custody for MAYER BRAIDTECH
- 9.6 The customer hereby assigns its receivables arising from the resale of the products to MAYER BRAIDTECH, and MAYER BRAIDTECH hereby accepts such assignment. Should the customer sell the Products Subject to Retention of Title after processing or transformation or joining of such products with other goods or together with other goods, this assignment of receivables shall only be agreed to for an amount equivalent to the price agreed to between MAYER BRAIDTECH and the customer plus a safety margin of 10 % of this price. The customer is granted the revocable authorization to collect in trust the claims assigned to MAYER BRAIDTECH in his own name. MAYER BRAIDTECH may revoke such authorization and the right to resell the products if the customer is in default of the performance of material obligations such as making payment to MAYER BRAIDTECH.
- 9.7 The customer shall provide MAYER BRAIDTECH at all times with all desired information concerning the Products Subject to Retention of Title. The customer shall immediately report to MAYER BRAIDTECH any attachments of or claims by third parties to the Products Subject to Retention of Title and submit the relevant documentation. At the same time, the customer shall advise the relevant third party of MAYER BRAIDTECH's retention of title. The costs of a defense against any such attachments and claims shall be borne by the customer.
- 9.8 The customer is obliged to treat the Products Subject to Retention of Title with care for the duration of the retention of title.

- 9.9 The customer is entitled to demand release to the extent that the realizable value of the securities exceeds by more than 10% all of MAYER BRAIDTECH's secured claims.
- 9.10 If the customer fails to effect a performance e.g. a payment to MAYER BRAIDTECH that is due, MAYER BRAIDTECH may rescind the Contract, redeem the Products Subject to Retention of Title and use them for other purposes in order to satisfy claims due against the customer after expiry of a reasonable grace period set, unless such period can be dispensed pursuant to § 323 (2) BGB. In such a case of rescission from the Contract, the customer shall grant MAYER BRAIDTECH or MAYER BRAIDTECH's agents immediate access to the Products

Subject to Retention of Title and surrender the same. If MAYER BRAIDTECH demands surrender according to this provision, this shall constitute a rescission of the Contract.

- 9.11 In the case of deliveries to other jurisdictions in which the foregoing provisions governing retention of title do not have the same security effect as in Germany, the customer shall do everything to create equivalent security rights for MAYER BRAIDTECH without undue delay. The customer shall cooperate in all measures such as registration, publication, etc., that are required for and beneficial to the validity and enforceability of such security rights.
- 9.12 The customer undertakes to provide adequate insurance cover for the Products Subject to Retention of Title, to furnish proof of such insurance cover to MAYER BRAIDTECH and to assign the claims under the relevant insurance contract to MAYER BRAIDTECH
- 9.13 If the customer culpably violates its obligations under Clauses 9.11 or 9.12 of these Terms of Delivery, the customer shall pay to MAYER BRAIDTECH a contractual penalty in the amount of the purchase price for the relevant Product Subject to Retention of Title for each breach; the defense of treating a series of violations as one single breach shall be excluded (*Ausschluss der Einrede des Fortsetzungszusammenhangs*).

## 10. Product Liability

In the event that the customer sells the delivered items either unchanged or after processing, transformation or incorporation into other goods, the customer shall indemnify MAYER BRAIDTECH against any product liability claims of third parties to the extent that the defect triggering liability is attributable to the customer.

## 11. IP Rights

If the customer instructs MAYER BRAIDTECH by means of specific instructions, information, documentation, drafts or drawings on how to manufacture the products to be delivered, the customer shall be responsible that MAYER BRAIDTECH does not infringe any rights of third parties, such as patents, utility models and other intellectual property rights and copyrights when following such instructions. The customer shall indemnify MAYER BRAIDTECH against any claims third parties might assert against MAYER BRAIDTECH due to any such infringement to the extent the customer is responsible for such claims.

## 12. General Provisions

- 12.1 Changes of and amendments to the Contract and any additional agreements must be made in writing. This also applies to any amendment of this writing requirement.
- 12.2 If a provision of the Contract is fully or partially invalid this shall not affect the validity of the remaining provisions. In such a case, the parties undertake to replace the invalid provision by a valid provision reflecting the commercial purpose of the invalid provision as closely as possible.
- 12.3 If the customer is a merchant ("*Kaufmann*"), a legal entity under public law (*juristische Person des öffentlichen Rechts*) or a separate fund or estate under public law (*öffentlich-rechtliches Sondervermögen*), the exclusive venue for all disputes arising from the Contract shall be Stuttgart, Germany. The same shall apply if the customer has no general venue in the Federal Republic of Germany or moved its ordinary residence to a country outside Germany after the conclusion of the Contract. MAYER BRAIDTECH shall be entitled, however, to sue the customer at any other court having statutory jurisdiction.
- 12.4 German law shall be applicable excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.5 The German language version of these Terms of Delivery shall be controlling and legally binding in all respects and shall prevail in case of any inconsistencies.