

General Terms and Conditions of Sale and Delivery of Moog Components Group GmbH

MOOG

1. Scope of application

1.1 These terms and conditions apply to all deliveries made by Moog Components Group GmbH, a wholly owned subsidiary of Moog Inc. ("Moog"). Deliveries shall be made exclusively subject to the following terms and conditions.

1.2 Deviating provisions of the purchaser shall only apply if Moog agrees thereto in writing. Delivery shall not be deemed to be consent. If Moog agrees to deviating provisions of the purchaser these shall only apply to the transaction for which they are concluded.

1.3 These terms and conditions apply to all future agreements with purchasers even if they are not expressly agreed in the future.

1.4 These terms and conditions are available in German and in English. Both versions are binding. In the event of contradictions or lack of clarity the English version shall prevail.

1.5 Technical documents, drawings and calculations which are provided to the purchaser in connection with the order negotiations and the execution of the agreement are confidential and shall not be used for other purposes, duplicated or disclosed to third parties by the purchaser. We reserve title, copyright and other rights in such documents.

2. Offer

2.1 Moog's offers shall be subject to confirmation.

2.2 Only written offers shall apply. Additional verbal consent or descriptions shall only apply if confirmed by Moog in writing.

2.3 The documents, drawings, delivery periods, weights and dimensions which are part of the offers are non-binding guidelines to the extent that they are not expressly confirmed as binding by Moog in writing.

2.4 Moog retains title and copyrights in offers, illustrations, drawings, calculations, samples and other documents. These may not be disclosed to third parties without Moog's express written consent. If Moog is not awarded a contract the documents shall be returned to Moog forthwith.

3. Agreement

3.1 The purchase agreement is concluded on written confirmation by Moog.

3.2 Moog's liability for defects which are the result of the documents submitted by the purchaser (e.g. illustrations, drawings, calculations) and incorrect or unclear, including verbal information provided by the Purchaser, is excluded.

4. Delivery period, delivery date and delivery

4.1 The delivery period shall begin when the purchaser receives the order confirmation from Moog or when Moog receives the acceptance declaration from the purchaser, but not before the purchaser has provided the licences, permits, contractual duties or other formalities or before settlement of the agreed payments.

4.2 The delivery date is met if the goods leave Moog's premises or the agreed place of dispatch or the purchaser has been notified that the goods are ready for dispatch by expiry of the deadline. Delivery by Moog shall be ex works (EXW Incoterms 2010). Deviating provisions must be agreed in writing.

4.3 In the event of delay in delivery, a 14 day subsequent delivery period shall apply ("waiting period"). The purchaser shall not be entitled to any rights owing to delayed delivery during this waiting period.

4.4 After expiry of the waiting period the purchaser may rescind the agreement with respect to the delayed part after setting a reasonable subsequent deadline, with the threat of refusal to accept performance if Moog does not deliver by the deadline, unless acceptance of the part performance cannot be expected of the purchaser. Further claims arising from the delay in delivery shall be determined exclusively by 8.7. of these General Terms and Conditions of Sale and Delivery.

4.5 At the request of Moog the Purchaser is obliged to declare within a reasonable period whether it withdraws from the agreement due to the delay in delivery and/or it demands compensation in lieu of performance or insists on performance.

4.6 Part deliveries are permissible to the extent that they can be reasonably expected of the purchaser.

5. Transfer of risk

5.1 The transfer of risk is in accordance with 4.2, i.e. in accordance with the Incoterms 2010. If the purchaser does not accept the goods and is not entitled to refuse acceptance the risk shall pass to the purchaser anyway.

5.2 In the event of damage to or loss of the goods during carriage, a detailed and qualified loss assessment must be carried out by the purchaser at the freight carrier forthwith once knowledge has been gained. In addition, Moog shall be informed in writing without undue delay.

6. Terms of payment

6.1 Where there is no special agreement, all prices are excluding packaging. The VAT applicable under the respective law shall be in addition to the prices.

6.2 Where not otherwise agreed in writing, Moog's invoices shall be due for payment within 30 days of the date of the invoice. If the invoices are not paid within 30 days of receipt of the invoice, at the latest 40 days after delivery, the Purchaser shall be deemed to be in default with payment and Moog can claim default interest and any further damages caused by such default.

6.3 All payments shall be made free of charges to Moog. If the purchaser is in default with payment, Moog is entitled to charge default interest of 8 % above the respective basic interest rate in accordance with § 247 of the German Civil Code (Bürgerliches Gesetzbuch). Moog reserves the right to assert any further default damages.

6.4 The purchaser may neither retain payments owing to counterclaims, nor set them off against payments, unless the counterclaim is recognised by Moog or has been determined finally and absolutely.

6.5 If the terms of payment are not observed by the purchaser, all open claims arising from this order shall be due immediately. In the case of part payments not received, in the case of default, or after fruitless expiry of a reasonable subsequent period, Moog is entitled to terminate the agreement, stop work and to invoice the purchaser for all services already provided and to assert claims for compensation.

7. Reservation of title

7.1 Moog reserves title in the goods delivered until all claims to payment arising from the business relationship between Moog and the purchaser have been settled in full. The purchaser shall treat the goods carefully; in particular, it shall insure them sufficiently at its own cost against fire, water and theft at replacement value.

7.2 Where goods delivered by Moog are processed by the purchaser, Moog shall be deemed to be the manufacturer without any obligations resulting for Moog and Moog shall acquire ownership in the new goods. If the goods are processed together with other materials, Moog shall acquire co-ownership on a pro rata basis of the invoice value of the goods and the value of the other materials.

7.3 In case of a combination or intermingling of Moog's goods with one of the purchaser's products, the co-ownership in the product will devolve to Moog proportionately to the invoice value, or in case of the absence of such, proportionately to the ordinary market value. In these cases the purchaser is deemed to be the custodian.

7.4 The purchaser is entitled to sell the goods in which Moog has ownership rights in the framework of proper business practice. The purchaser assigns already now all claims arising from the sale of such goods, to the extent of Moog's title in the sold goods, to Moog as security. The purchaser is entitled to collect the claims until justified revocation by Moog.

7.5 The purchaser shall notify Moog without undue delay of any garnishments, seizures or other disposals and interventions by third parties. If the third party cannot refund the court and out-of-court costs of third-party action opposing execution of a court decision pursuant to § 771 German Code of Civil Procedure (Zivilprozessordnung) the purchaser is liable for the shortfall incurred by Moog.

7.6 In the event of defaults with payments and if Moog withdraws from the agreement, the purchaser is obliged to hand over the goods under reservation of title immediately. For this event, the purchaser hereby irrevocably permits Moog to collect the reserved goods immediately and unobstructed access to its business premises and storerooms for this purpose. Once Moog has withdrawn from the contract and has repossessed the reserved goods it may commercialise such goods freely provided that it has warned the purchaser accordingly beforehand. Any proceeds thereby realized will be offset against the amount owed by the purchaser. The purchaser shall bear the costs of commercialisation proven by Moog.

7.7 If the realisable value of the securities due to Moog exceeds the claims by more than 10 %, Moog shall release securities to this extent – at its discretion - at the request of the purchaser.

8. Defect warranty, liability

8.1 The purchaser shall inspect the goods received without undue delay on arrival, for defects and guaranteed quality. Moog shall be informed of any obvious defects of the goods in writing, no later than seven days after receipt of the goods. Latent defects shall be reported in writing no later than seven days after discovery. Otherwise, the goods shall be deemed to have been approved.

8.2 Unless otherwise agreed, the quality of the goods as required under the contract shall be solely as stated in the Moog product specifications which applied at the time of delivery. The quality of samples and specimens is only binding to the extent that this has been expressly agreed; the agreement must comply with written-form requirements. Statements regarding quality and durability and any other data are not guarantees ("Garantie") unless they have been agreed and designated as such in writing.

8.3 Moog warrants to Customer that Products purchased hereunder will conform to the applicable manufacturer's specifications for such Products and that any value-added work performed by Moog on such Products will conform to applicable Customer's specifications relating to such work for a period of 2 years from the date of purchase. Moog makes no other warranty, express or implied, with respect to the Products. The purchaser shall provide Moog the opportunity to investigate the complaint; in particular it shall make damaged goods and the packaging available for inspection by Moog. If the purchaser refuses to comply with this requirement Moog may refuse to perform warranty for defective goods for the duration of such refusal.

8.4 IN PARTICULAR, MOOG MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE OR RESPECTING INFRINGEMENT. However, Moog will transfer to Customer whatever transferable warranties and indemnities Moog receives from the manufacturer of the Products. With respect to value-added work by Moog which does not meet applicable Customer's specifications, Moog's liability is limited (at Moog's election) to (1) refund of Customer's purchase price for such Products (without interest), (2) repair of such Products or (3) replacement of such Products; provided, however, that such Products must be returned to Moog, along with acceptable evidence of purchase, within twenty (20) days from date of delivery, transportation charges prepaid.

8.5 The transport and carriage expenses shall be borne by the purchaser. Moog's duty to render subsequent performance does not include removal and assembly costs. Costs associated with unjustified complaints regarding defects shall be borne by the purchaser.

8.6 Moog shall not be liable for damages to or defects in the goods caused by unsuitable or incorrect use or storage, faulty assembly, commissioning, disassembly, modification or repair by the purchaser or by third parties not authorised by Moog, natural wear and tear, faulty or negligent treatment, circumstances or influences for which the purchaser is responsible, unsuitable operating materials, replacement materials, chemical, electro-chemical or electrical influences, unless Moog is in default.

8.7 CUSTOMER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND MOOG SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, WITHOUT BEING LIMITED TO, LOSS OF PROFIT, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS. CUSTOMER'S RECOVERY FROM MOOG FOR ANY CLAIM SHALL NOT EXCEED CUSTOMER'S PURCHASE PRICE FOR THE PRODUCTS IRRESPECTIVE OF THE NATURE OF THE CLAIM WHETHER IN CONTRACT, TORT WARRANTY, OR OTHERWISE.

8.8 The provisions of this paragraph shall not apply in as far as they concern claims for compensation or statute prescribes mandatory longer deadlines pursuant to §438 (1) no. 2 (Construction and Construction Properties (Bauwerke und Sachen für Bauwerke)), §479 (1) (Right of Recovery (Rückgriffsanspruch)), §634a (1) no. 2 (Construction Defects (Baumängel)) of the German Civil Code and §12 German Product Liability Act.

9. Force majeure

9.1 Each party shall not be liable for non-fulfilment of one of their contractual duties if the non-fulfilment is the result of an obstacle outside its control, in particular of one of the following reasons: fire, natural catastrophes, war, confiscation, general lack of raw materials, restriction of energy consumption, labour disputes, where no official permit is granted or where the permit is not granted in due time or where the permit is revoked, or where breaches of contract by suppliers are the result of one of these reasons outside of the control of the obliged parties, or if breaches of contract by suppliers are the result of one of these reasons. The provision applies to all contractual duties including the duties to pay compensation.

9.2 Each party can terminate the agreement by written notice of termination in the event that its implementation is hindered for more than six months in accordance with 9.1.

10. Patent Infringement

10.1 To the extent that the items ordered are manufactured to designs, drawings, specifications or instructions furnished by Purchaser, Purchaser guarantees that the manufacture and sale or use of such items will not infringe upon any German or foreign patents. Purchaser further agrees to indemnify and hold harmless Moog from any expense, loss, cost, damage or liability of any kind which may be incurred because of any such infringement or alleged infringement of patent rights with respect to such items and to defend, at its own cost and expense, any action or claim in which such infringement is alleged. Purchaser shall promptly notify Moog of any such action and shall provide Moog an opportunity, at Moog's option, to participate in any defense of such action or claim at Moog's own expense.

10.2 Moog shall hold Purchaser harmless from costs actually incurred arising directly from the defense of any suit for infringement of any domestic or foreign patent by a Moog-manufactured item, provided Moog shall be given timely written notice of such suit and the option to replace the same, obtain a license, make other arrangements to avoid litigation or to defend the suit. No indemnification is offered for alleged infringement arising from the use of Moog's items in combination with other items supplied by Purchaser or from compliance with drawings, specifications or instructions furnished by Purchaser as described in the paragraph above.

11. Raw Material Surcharges

11.1 The price for supplies containing precious metals, nonferrous metals, magnetic minerals, and/or alloys thereof shall be subject to application of surcharge(s) at time of shipment, based upon fluctuations in the market value of such raw materials.

12. Limitation of Liability

12.1 Notwithstanding any other provisions hereof, Moog shall not under any circumstances be liable for any damages greater than the unit price of any item(s) sold hereunder with respect to which any claim is made. No indirect costs and expenses, attorney fees, special, incidental or consequential damages of any nature whatsoever, whether arising from Moog's breach of contract, or breach of expressed or implied warranty, arising in tort, at law or in equity, or any law giving rise to a claim of strict liability, or for any other cause, shall apply under this order.

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MOOG

13. Miscellaneous

13.1 Business correspondence shall principally be in German and English.

13.2 The purchaser may only use the trade marks, trade names and other marks belonging to Moog with Moog's prior written consent.

13.3 In the event that individual provisions are invalid, the remaining provisions shall remain unaffected thereby. Should any part of a clause be invalid, this shall not affect the validity of the rest of the clause if it can be separated in terms of its content, is comprehensible in itself or if it constitutes a meaningful clause in the overall context of the agreement.

13.4 These Terms constitute the entire agreement between the parties concerning the subject matter hereunder and the parties acknowledge and agree that none of them has made any representation with respect to the Terms or any representations including the execution and delivery hereof except as specifically set forth herein.

13.5 These Terms and the terms of any resulting order may not be modified except by written instrument executed by the parties with the same formality.

14. Place of performance, jurisdiction, applicable law

14.1 The legal relationships between the purchaser and Moog shall be subject to the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980. Moreover, the German law of the German Civil Code/German Commercial Code (Handelsgesetzbuch) shall apply to the contractual relationships.

14.2 All disputes which arise in connection with this agreement shall be decided finally and bindingly by the state courts competent for the domicile of Moog. Moog reserves the right to also file a claim to the state courts competent for the domicile of the purchaser instead.

15. Observation of statute

15.1 Moog shall be responsible for observing the German safety regulations where there is no written agreement determining otherwise.

15.2 Observation and implementation of the relevant external economic provisions, and other statutes of its country and the country to which the goods are to be delivered, is the responsibility of the purchaser. The purchaser shall inform Moog of any peculiarities which arise from these provisions.

15.3 Purchaser acknowledges that if the items purchased hereunder are to be exported, they are subject to the U.S. Commerce and/or State Department Export Regulations as well as applicable German law under the Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA). Purchaser accepts full responsibility for and agrees to comply fully with such regulations, including obtaining export licenses and re-export permission unless otherwise agreed by Moog.