

PURCHASE, DELIVERY AND PAYMENT TERMS OF MOROOKA EUROPE GMBH ("MOROOKA")

1. Applicability of these terms

(1) These purchase and delivery terms shall be applicable exclusively to business operators (within the meaning of Sec. 14 of the German Civil Code or "BGB"), incorporated entities and special estates. They shall apply to all subsequent transactions and business relationships at present or in the future regarding deliveries or services by MOROOKA.

(2) All offers, agreements, deliveries and services shall be carried out on the basis of and in accordance with the following terms. Contradictory or conflicting general terms, especially purchase terms, shall not be binding upon MOROOKA, unless MOROOKA has expressly declared its approval. In case two letters of confirmation are crossing, which contain conflicting terms, the letter of MOROOKA is binding.

(3) All Agreements and orders require the written form in order to be legally valid. Verbal side agreements do not exist. Proof to the contrary is not excluded.

2. Prices and payment

(1) Prices are binding and MOROOKA delivery address in Germany (Incoterms 2010). In case no delivery address in Germany is agreed, the Incoterm EXW registered seat of Morooka (Incoterms 2010) applies. Prices are quoted in EURO and exclude the respective VAT. In case of delivery to a foreign country, MOROOKA shall not be liable for the taxes and charges thereby incurred. If no fixed prices have been agreed, the respectively current list prices are applied.

(2) For express deliveries, a further addition shall be levied, which can be requested with the purchase order.

(3) The charging of claims from the same contract or of counterclaims from other business operations between the parties is not admissible, unless the claim has become res judicata in court or is not contested by MOROOKA.

(4) Invoices shall be paid within 5 days from date of invoice. Bank charges are assumed by the customer. MOROOKA reserves the right to deliver only against prepayment, cash or cash on delivery, especially in the case of first orders or in case of default of payment.

3. Delivery conditions

(1) If the goods are sent to the customer upon his own wish, a delivery period of at least two weeks shall be expected, even though the delivery will usually be operated in less time. For quantities of delivery exceeding the usual dimension, a delivery period of three months is assumed as agreed. These provisions are always under condition of correct and complete delivery to MOROOKA. The transfer of risk shall take place if the goods are being ready for dispatch. If the delivery or the take-over is delayed due to reasons for which MOROOKA is not responsible, the risk is transferred to the customer with the arrival of the information of readiness for dispatch.

(2) The transport shall only be insured by MOROOKA if explicitly wished by the customer. The eventual expenses shall be assumed by the customer. By expressing his wish to have the transport insured, the customer entitles MOROOKA to execute the necessary declarations.

(3) Binding delivery periods shall be fixed separately and individually. Partial deliveries are admissible. The delivery period is prolonged adequately in case of unpredictable, extraordinary events, which in spite of the necessary and reasonable care applied according to the circumstances of the case, could not be prevented. Such events are, e.g., business disruption, strike or lockouts, a ban on imports or exports, a refusal to issue or the revocation of authorizations or permissions or other administrative measures; this does also apply, should such an event strike a supplier or other producer.

4. Retention of title

(1) The delivered goods remain property of MOROOKA until the complete payment of all claims from the business operation, including a possible current account balance (as far as it has been accepted by the customer). In case of default or other breaches of duty, MOROOKA is entitled to rescind the contract and to take back any the goods subject to the retention of title, provided a suitable grace period has elapsed.

(2) The customer is not entitled to resell the goods subject to retention of title. The customer is not permitted to encumber the goods subject to retention of title with a pledge or a chattel mortgage.

(3) Any possible processing or treatment of the goods subjected to retention of title will be undertaken by the customer for MOROOKA. In the case of the treatment, combination and amalgamation or mixing of the goods subjected to retention of title with other objects not belonging to MOROOKA, MOROOKA is entitled to the co-ownership share of the new object resulting from the action proportionally, on the basis of the proportion of the value of the goods subject to retention of title to the rest of the treated goods at the time of treatment, combination and amalgamation or mixing.

(4) The customer is obliged to inform MOROOKA without delay of any seizures, confiscations or other enforcement measures or of provisions of third parties as to the goods subjected to retention of title or the claims ceded in advance, and to hand over the documents necessary for an intervention.

5. Liability

(1) Should the goods or service provided by MOROOKA be deficient, which includes the lack of the quality contractually agreed upon, MOROOKA may, at its own discretion, either deliver a substitute or repair the defect; at least two attempts of repair or of substitute deliveries must be permitted.

The warranty period is not renewed in that case. Such cure is executed EXW registered seat of MOROOKA.

(2) Perceptible deficiencies of the goods and/or service have to be communicated in written form within 24 hours after receipt, to avoid loss of rights.

(3) MOROOKA is not liable for damages due to improper use or treatment, deficient setting up and combination with other objects by the customer or by a third party, for natural abrasion, inappropriate equipment as well as chemical, electric or electrochemical influences originating from beyond the range of performance and sphere of influence of MOROOKA. If the customer receives a faulty instruction, MOROOKA is only obliged to deliver a correct instruction.

(4) MOROOKA is not liable for the compliance with foreign packaging and duty provisions. MOROOKA reserves the right to undertake technical improvements even without notification of or coordination with the customer.

(5) The limitation period for any claims in case of defects is one year. It begins with the handover of the goods to the customer.

(6) Warranty („Gewährleistung“) shall be granted for all services of MOROOKA in the amount and under the prerequisites of the following provisions.

MOROOKA is liable without limitation according to legal provisions, as far as MOROOKA or one of its representatives are responsible for a deliberate or grossly negligent breach of contract, or as far as an injury to life, body or health has ensued or if MOROOKA has assumed a guarantee. The liability for a slight negligence is excluded, unless an essential contractual obligation (cardinal obligation) has been violated. In this case, the liability is financially restricted to the predictable damage typical of the contract. These limitations of liability do likewise not apply, should MOROOKA as a supplier be sued for contribution claims according to b§478 BGB or for claims according to §§ 1, 4 Produkthaftungsgesetz.

6. Compensation in case of cancellation of order

Should an order be cancelled for reasons for which the customer is responsible, the customer will pay MOROOKA – without prejudice to the possible assertion of a greater actual damage – a compensation of 15 % of the net contract value, or, at his discretion, fulfill the contract. The customer is entitled to prove, that no or less damage has been caused to MOROOKA.

7. Severability Clause

Should any provision of this agreement be or become entirely or partly invalid, the validity of the contract and of the other terms of purchase, delivery and payment shall not be affected thereby. The parties are obliged to replace invalid or impracticable conditions or contractual terms by valid provisions, which, to the extent possible, implement the intent pursued by the invalid provision.

8. General provisions

As far as the customer is a business operator, an incorporated entity of public law or a special estate of public law, Darmstadt – Germany is the sole court of jurisdiction for all legal disputes arising directly or indirectly from the contract. However, MOROOKA is also entitled to sue at the customer's registered office. The place of fulfillment is the registered office of MOROOKA Europe GmbH. The contractual relationship is governed exclusively by German law (especially BGB and HGB) under the explicit exclusion of its collision rules and the UN Convention on the Sale of Goods (CISG).