

MONTI WERKZEUGE GmbH
GENERAL TERMS AND CONDITIONS

1. Controlling Provisions

These General Terms and Conditions shall apply to all offers, advices, orders, agreements and deliveries between any Customer (collectively for the purposes of the agreement the "Customers" and each, individually, a "Customer") and MONTI WERKZEUGE GmbH ("MONTI") as far as the Customer is a business, a legal entity under public law or a special fund under public law. They expressly do not apply to Customers who are consumers. Any such different or additional terms are hereby rejected. In the absence of written acceptance of these terms and conditions by the Customer, any acceptance of any delivery or service covered by an order will constitute an acceptance of these terms and conditions. No waiver, alteration or modification of these provisions or any terms of the order will be valid unless made in writing and signed by an officer or other authorized representative of MONTI. In the event of any discrepancy between any purchase order accepted by MONTI and these provisions, these provisions shall govern. In case MONTI does not enforce, at any time, any one of these General Terms and Conditions, such event shall not be interpreted as a change of said General Terms and Conditions, nor as MONTI'S waiver to exercise any of said General Terms and Conditions. These terms and conditions of sale shall also govern all future transactions between the parties and shall also apply if MONTI performs delivery despite knowledge of differing or contrary terms.

2. General Conditions

MONTI reserves the right to discontinue products (the "Product") and to revoke or change prices or terms of service, except when otherwise indicated in these terms and conditions. If, at any time, it becomes necessary to discontinue service to Customer, to revoke or modify any provisions in this schedule, or to allocate distribution of any Products, MONTI will take whatever action it considers in its sole and absolute judgment is fair and appropriate.

3. Acceptance

3.1. All orders for Products are subject to acceptance in writing by MONTI and shall not be binding until the earlier of such acceptance or shipment of the products and, in the case of acceptance by shipment, only as to the portion of the order actually shipped. MONTI shall use reasonable commercial efforts to fill orders promptly. Notwithstanding any prior acceptance by MONTI of a purchase order for a Product, MONTI shall not be obligated to ship any Product if Customer is in breach of any of these provisions or other contractual obligations towards MONTI at the time of scheduled shipment. The ultimate shipment of orders to Customer shall be subject to the right and ability of MONTI to make such sales, and obtain required licenses and permits, under all decrees, statutes, rules and regulations of the governments of Germany and the United States of America and agencies or instrumentalities thereof presently in effect or which may be in effect hereafter.

3.2. Customer hereby agrees:

- (i) to assist MONTI in obtaining any such required licenses or permits by supplying such documentation or information as may be requested by MONTI;
- (ii) to comply with such decrees, statutes, rules and regulations of the governments of Germany and the United States of America and agencies or instrumentalities thereof;
- (iii) to maintain the necessary records to comply with such decrees, statutes, rules and regulations;
- (iv) not to export any Products except in compliance with such decrees, statutes, rules and regulations;
- (v) to obtain all governmental approvals and licenses necessary to import the Products into any country;
- (vi) not to sell, transfer or otherwise dispose of Products in violation of the export laws of the United States of America, and
- (vii) to indemnify and hold harmless MONTI from any and all fines, damages, losses, costs and expenses (including reasonable attorneys' fees) incurred by MONTI as a result of any breach of this subsection 3.2. by Customer or any of Customer's customers.

4. Payment Terms, Interest

4.1. Invoices are due and payable within 14 days from the date of the invoice except as otherwise provided in the order confirmation or any other agreement.

4.2. Payments due to MONTI under these provisions shall, if not paid when due under the terms of such agreement, bear interest during time of default. The default rate of interest per year is 9 percentage points above the basic rate of interest of the European Central Bank, calculated on the basis of a 360-day year for the number of days actually elapsed, beginning on the due date and ending on the day prior to the day on which payment is made in full. Interest accruing under this subsection 4.2. shall be due to MONTI on demand. The accrual or receipt by MONTI of interest under this subsection shall not constitute a waiver by MONTI of any right it may otherwise have to declare a default under such agreement or to terminate such agreement.

4.3. If the Customer fails to pay any amount due, MONTI may, without notice to the Customer, suspend all service provided in such agreement and Customer shall deliver to MONTI all Products in its possession.

5. Shipping Charges; Taxes

5.1. Shipping and handling shall be Ex Works MONTI Germany, MONTIPOWER AMERICAS INC. USA or such other location where the Product is produced or stored on behalf of MONTI. In case MONTI shall organize the shipment on behalf of the Customer all shipping and handling charges shall be charged separately and shall be itemized on MONTI'S invoice(s). Any discount shall be agreed upon in writing.

5.2. MONTI will add to all prices and other charges any taxes, however designated or levied or based on the prices or other charges made for the Products or any services rendered or parts supplied pursuant to such agreement. This section will not apply to organizations that are tax-exempt and provide MONTI with supporting documentation in form and substance satisfactory to MONTI.

6. No Right of Setoff

The Customer shall be entitled to offset only insofar as the customers counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The Customer is entitled to claim retainer rights only to the extent such rights are based on the same transaction

7. Delivery

7.1. All shipping dates are tentative. If Customer fails to accept the order, Customer shall nonetheless make payment to MONTI. Where Customer wrongfully rejects or revokes acceptance of the Products or fails to make payments as set forth herein or repudiates with respect to all or part of the contract for the Products shipped, MONTI may withhold delivery, or stop delivery of the Products or cancel the contract and/or sue for damages at MONTI'S exclusive option. MONTI is entitled to claim liquidated damages of 10% of the purchase price.

7.2. The proof of a higher damage and our legal claims (in particular reimbursement of additional expenses, appropriate compensation, termination) shall remain unaffected; however, the liquidated damages shall be set off against further monetary claims. The Customer shall be entitled to prove that MONTI has incurred no damage at all or substantially less damage than the stated sum.

7.3. If Customer causes a delay in the delivery of the Products, or any part thereof, MONTI, at its exclusive option, may extend the period of delivery by a period reasonable in consideration of the circumstances, and, if the delay causes MONTI substantial inconvenience, MONTI has the right to cancel with respect to the Products whose delivery is delayed. Any expenses or damages resulting from such delays shall be the exclusive responsibility of Customer. Unless otherwise agreed in writing, MONTI reserves the right to make partial shipments and to submit invoices for partial shipments.

7.4. MONTI'S responsibility ceases upon delivery to common carrier at the stated shipping point, and risk of loss, damage, injury or destruction to any of the Products shall pass to Customer upon such delivery to the carrier. In no event shall any loss, damage, injury or destruction operate in any manner to release Customer from the obligation to make payments as set forth herein.

7.5. Upon demand of the Customer and at its costs MONTI will insure the product for damages during shipment. Customer shall notify MONTI and the shipping agent of any damages during shipment within three (3) business days of delivery or such shorter time period as may be required by carrier.

7.6. MONTI agrees to make a good faith effort to deliver the Product by the date set forth in the order confirmation, provided, however, that MONTI shall have no responsibility or liability whatsoever for loss or damage by causes beyond its control including but not limited to, delays by fire, flood, war embargoes, labor disputes, acts of sabotage, riots, accidents, delay of carriers, voluntary or mandatory compliance with any governmental act, regulations or request, shortage of labor, materials or manufacturing facilities, or any other causes beyond MONTI'S control. Any delivery of software shall also be subject to license agreements of MONTI. There are no implied licenses under these provisions, and any rights not expressly granted to Customer hereunder are reserved by MONTI.

8. Retention of Title

8.1. MONTI shall retain title to all products sold until full payment of the purchase price has been received and all claims arising out of the agreement have been satisfied. Customer shall not be able to lease, pledge or otherwise encumber the products until full title passes to the Customer.

8.2. Any installation or application of the products by the Customer shall always occur on behalf of, and for the benefit of, MONTI. If Customer processes, combines or mixes the products with those of its own or third parties, then MONTI shall acquire joint title, pro rata, to that part of the goods representing the invoiced value of MONTI'S products.

8.3. If Customer combines or mixes the products with the main products of a third party for compensation, Customer assigns to MONTI its right to compensation from that third party to the extent of the value of MONTI'S products.

8.4. Customer may, in the ordinary course of its business, resell products subject to MONTI'S retention of title. If Customer does not receive the full purchase price, it shall agree a retention of title with its customer in accordance with these Terms. Customer assigns to MONTI all of its claims arising from such resale and its rights to retention of title on a pro-rata basis in relation to the MONTI'S products.

8.5. As long as MONTI holds title to its products, Customer shall inform MONTI of any risk of the products falling under (bankruptcy) attachment or any other claim in respect of MONTI'S products. If third parties take any action with regard to the products to which MONTI holds title, Customer shall immediately inform such third parties of MONTI'S title.

8.6. MONTI shall be entitled to demand that Customer deliver up and surrender the products if Customer does not fulfil its obligations.

9. Inspection and Notification

9.1. Customer shall inspect the Products within three (3) business days of delivery to verify compliance with the specifications as set forth in Customer's delivery orders accepted by MONTI in writing.

9.2. In the event of any non-conformity or defect, Customer shall notify MONTI within three (3) business days thereafter in writing. Customer shall identify and document issues in a detailed manner.

9.3. In the event that Customer does not inspect or notify MONTI of any defect in the manner described above, the Product shall be considered accepted.

10. Warranty

MONTI warrants for 12 months from delivery of the Products to the Customer that the Products will be free from material defects in materials and workmanship under normal use, and will conform to MONTI'S published specifications of the Products. The foregoing warranty is subject to proper installation, operation and maintenance of the Products in accordance with installation and/or use instructions and the User Manual. All warranty claims must be made by Customer to MONTI in writing within three (3) days of occurrence of a defect and prior to the end of the Warranty Period. In case of non-conformity of the goods the purchaser is entitled to alternative performance in the form of subsequent improvement or delivery of conforming goods. If such alternative performance has failed, the purchaser is entitled to reduce the purchase price or to withdraw from the contract.

11. LIMITATION OF LIABILITY

11.1. IN CASE OF INTENT OR GROSS NEGLIGENCE ON PART OF MONTI OR ITS AGENTS OR ASSISTANTS IN PERFORMANCE MONTI IS LIABLE ACCORDING TO THE PROVISIONS OF APPLICABLE LAW; THE SAME APPLIES IN CASE OF BREACH OF FUNDAMENTAL CONTRACT OBLIGATIONS. TO THE EXTENT THE BREACH OF CONTRACT IS UNINTENTIONALLY THE LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE TYPICALLY PREDICTABLE DAMAGE.

11.2. MONTI'S LIABILITY FOR CULPABLE DAMAGE TO LIFE, BODY OR HEALTH AS WELL AS OUR LIABILITY UNDER THE PRODUCT LIABILITY ACT SHALL REMAIN UNAFFECTED.

11.3. ANY LIABILITY NOT EXPRESSLY PROVIDED FOR ABOVE SHALL BE DISCLAIMED.

12. Proprietary Rights and Trademarks

Customer hereby recognizes MONTI'S absolute right, title and interest in all patents, trademarks, trade names, logos, copyrights and all other proprietary interest incorporated as any part of either the Products or other material received from MONTI. Customer shall have no right to register any of MONTI'S trade names or trademarks in its own name or right, whether as owner, user or otherwise. Customer shall release any rights it may have acquired in the trade names and trademarks of MONTI and shall execute any and all instruments MONTI may deem necessary or advisable from time to time to accomplish such release. Upon termination or expiration of this Agreement, Customer shall immediately cease using all trade names and trademarks of MONTI and shall not thereafter use any marks or names similar thereto either in connection with the Products or otherwise. Any and all goodwill associated with such Intellectual Property Rights shall at all times remain the sole property of MONTI, and upon the expiration or termination of this Agreement for any reason, Customer shall not be entitled to any compensation for such goodwill or otherwise. Customer shall promptly advise MONTI of any known or threatened infringement of any MONTI patents, trademarks, copyrights or Confidential Information with respect to the Products. At MONTI'S request and expense, Customer shall assist MONTI in any enforcement action MONTI in its discretion determines to take in respect of any such infringement. During the term of the Agreement, MONTI shall have the right to use the trade names, logos and trademarks of Customer in advertising and promotional literature and MONTI'S Web site upon Customer's prior consent.

13. Miscellaneous

13.1. Export Regulations: Customer acknowledges that the licensed products and any direct products thereof may be subject to United States export laws, statutes and regulations, and that Customer will at all times comply with the provisions of such laws, statutes and regulations including obtaining any necessary or required licenses. Customer shall not export or re-export or otherwise transmit, directly or indirectly, the licensed products or any direct products thereof into, or use the licensed products or any direct products thereof in, any country prohibited or restricted under United States export laws, statutes or regulations or any other applicable laws.

13.2. Governing Law: The agreements between the parties shall be governed and construed in accordance with the laws of Germany. Furthermore, the parties agree that the terms of The Convention of Contracts for the International Sale of Goods do not apply to this Agreement.

13.3. Jurisdiction: Any dispute arising from or in connection with these Terms shall be brought exclusively before the courts of Bonn, Germany, provided MONTI may always bring claims against Customer before the competent courts of Customer's place of business.

13.4. Notice: All written notices given by either party under the agreements between the parties shall be given to the other party at the address shown on the face hereof by mail, overnight mail delivery, or telefax.

13.5. Severability: The invalidity or unenforceability of any term or provision of the agreements between the parties or these provisions shall not affect the validity or enforceability of the remaining terms or provisions of the agreement between the parties or these provisions which shall remain in full force and effect and any such invalid or unenforceable term or provision shall be given full effect to the maximum extent permissible so as to affect the intent of the parties. Failure by either party to enforce any provision of the agreement between the parties or these provisions will not be deemed a waiver of future enforcement of that or any other provision.