

MONTI Werkzeuge GmbH
GENERAL TERMS AND CONDITIONS

1. Controlling Provisions

These General Terms and Conditions ("Terms" or "Terms and Conditions") are the commercial terms of purchase of products ("Products") and shall apply to all offers, advices, orders, agreements and deliveries of Products between MONTI WERKZEUGE GmbH ("MONTI") and its subsidiaries and affiliates and any commercial Customer (collectively for the purposes of the agreement the "Customers" and each, individually, a "Customer") as far as the Customer is a business, a legal entity under public law or a special fund under public law. 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. Any different or additional terms from the Customer are hereby rejected, and 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 Terms and Conditions, such event shall not be interpreted as a change of said Terms and Conditions, nor as MONTI'S waiver to exercise any of said Terms and Conditions. These Terms 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 and to revoke or change pricing 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 these Terms, or to allocate distribution of any Products, MONTI will take whatever action it considers in its sole and absolute discretion 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 the 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 European Union and the Federal Republic of Germany 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 European Union and the Federal Republic of Germany and agencies or instrumentalities thereof, (iii) to maintain the necessary records to comply with such decrees, statutes, rules and regulations; and (iv) to indemnify and hold harmless MONTI from any and all fines, damages, losses, costs and expenses in accordance with Section 13 hereof.

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 with the Customer. In the event credit has not been established, MONTI reserves the right to require payment, or the issuance of an irrevocable letter of credit, in advance of production or shipment. Monti shall not be obligated to extend credit.

4.2. Payments due to MONTI under these provisions shall, if not paid when due under these Terms or any such agreement, bear interest during the time of default without prior notice. The default rate of interest per year is in accordance with §288 (2) Bürgerliches Gesetzbuch (German Civil Code) nine 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 day following 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 under these Terms or in any agreement and Customer shall deliver to MONTI all Products in its possession up to the value of the amount due. Customer agrees to pay MONTI's attorney's fees and expenses and other collection costs in the event collection or other enforcement efforts become necessary or appropriate in MONTI's discretion.

5. Shipping Charges, Taxes

5.1. Shipping and handling shall be Ex Works MONTI Germany 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 estimates only and are not guaranteed. 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, pandemics, 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.

7.2. 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 20 % of the purchase price.

7.3. 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.

7.4. If Customer causes a delay in the delivery of the Products, or any part thereof, MONTI, at its sole discretion, 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.

7.5. 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 ("Delivery"). 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.

7.6. 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.

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 rate, 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 fulfill its obligations.

9. Cancellation

9.1. Orders placed with and accepted by MONTI may not be cancelled by the Customer except upon MONTI'S written consent prior to shipment and Customer's acceptance of MONTI'S cancellation and restocking charges, which shall protect MONTI against all costs and losses.

9.2. Orders requiring special packaging, including packaging for export, and orders that are customized or otherwise "made to order" may not be cancelled or postponed.

9.3. If MONTI nevertheless agrees to delay or otherwise cancel the shipment of Products and, in its sole discretion, restocks or converts such Products, then Customer agrees to pay MONTI a restocking charge of twenty percent (20%) of the original purchase price.

10. Inspection and Notification

10.1. Customer shall inspect the Products within three (3) business days of receipt to verify compliance with the specifications as set forth in Monti's order confirmation.

10.2. 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 such non-conformity or defect in a detailed manner.

10.3. In the event that Customer does not inspect or notify MONTI of any non-conformity or defect in the manner described above, the Product shall be deemed accepted.

11. Warranty

11.1. MONTI warrants to the Customer for a period of twelve (12) months from the date of Delivery, as defined in 7.5 hereof, the Products 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) business 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.

11.2. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE THE MONTI OR ANY OF ITS SUBCONTRACTORS, SALES REPRESENTATIVES OR OTHER AGENTS MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, OR ANY RELATED SERVICES PERFORMED BY THE MONTI OR ANY OF ITS AGENTS OR SUBCONTRACTORS IN CONNECTION WITH ANY ORDER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WHICH OTHER WARRANTIES ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

12. LIMITATION OF LIABILITY

THE MONTI SHALL NOT BE LIABLE FOR PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM THE IMPROPER HANDLING, MODIFICATION, MISUSE OF THE PRODUCTS BY THE CUSTOMER OR ANY OTHER PERSON FOLLOWING DELIVERY BY THE MONTI. IN NO EVENT SHALL THE MONTI BE LIABLE TO ANY PERSON FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR GOODWILL, LOSS-OF-USE DAMAGES OR ADDITIONAL EXPENSES INCURRED, WHETHER PURSUANT TO A CLAIM IN CONTRACT, TORT OR OTHERWISE AND WHETHER IN AN ACTION FOR BREACH OF WARRANTY OR OTHERWISE. THE CUSTOMER MAY NOT BRING ANY ACTION ARISING OUT OF OR IN CONNECTION WITH ANY TRANSACTION COVERED BY THESE TERMS UNLESS SUCH ACTION IS COMMENCED WITHIN SIX (6) MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED.

13. SAFETY STANDARDS

The Customer shall comply with all laws, rules, regulations and industry standards existing with respect to the Products and the performance by the Customer of its obligations hereunder in the jurisdictions where the Customer carries on activities under these Terms and where Products are resold or distributed from time to time. Customers shall adhere to any safety instructions issued by Monti and inform its customers and employees accordingly. The Customers shall not export the Products unless such export complies with any applicable export laws and regulations; resellers shall be obligated to obtain export authorization from the MONTI in writing prior to export.

14. Indemnification

Customer hereby agrees to indemnify, defend, and hold Monti harmless from any and all claims, demands, costs, liabilities, losses, expenses and damages (including reasonable attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with any claim that, taking the claimant's allegations to be true, would result in a breach by the Customer of these terms or any other warranties and covenants in connection herewith, including but not limited to any safety violations or export regulations.

15. 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.

16. Miscellaneous.

16.1. Export Regulations. Customer acknowledges that the licensed Products and any direct products thereof may be subject to European Union or German 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 European or German export laws, statutes or regulations or any other applicable laws.

16.2. 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.

16.3. 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.

16.4. 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.

16.5. Severability and Waiver. 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.