

1. Scope

- 1.1 These General Terms and Conditions of MBE Coal & Minerals Technology Holding GmbH (referred to below as "MBE HOLDING") apply to all contracts between MBE HOLDING and its customers on the sale and/or delivery of movable objects (also referred to below as "products") and the performance of services (also referred to below as "services"), where the customer is
- a corporate entity or individual performing their trade or profession (entrepreneur) at the time of conclusion of the contract, or
 - a corporate entity established under public law or a special fund under public law.
- 1.2 These General Terms and Conditions shall apply exclusively. General terms and conditions of the customer shall only apply if and to the extent that MBE HOLDING expressly acknowledges them in writing. In particular, silence on the part of MBE HOLDING shall not constitute acceptance of or consent to such deviating terms and conditions, even in the case of future contracts. These General Terms and Conditions shall also apply instead of any general terms and conditions of the customer (e.g. purchasing terms and conditions) even if they state that acceptance of the order constitutes unconditional acceptance of the general terms and conditions.
- 1.3 These General Terms and Conditions in their current version shall also apply as a framework agreement to future contracts on the sale and/or delivery of movable objects or the performance of services with the same customer, without MBE HOLDING being obliged to refer to them in each individual case.
- 1.4 To the extent that individual agreements have been made with the customer in particular cases, they shall have priority over these General Terms and Conditions. The contents of such agreements shall only be effective when stated in a written contract or confirmed in writing by MBE HOLDING.
- 1.5 Legally relevant statements and notifications which are to be made to MBE HOLDING by the customer after conclusion of the contract (e.g. setting of deadlines, reports of defects or declarations of withdrawal or price reduction) shall only be effective if made in writing.

2. Information, Advice, Characteristics of the Products, Guarantee

- 2.1 Information and advice and other services by MBE HOLDING are provided exclusively on the basis of gained experience. All statements on MBE HOLDING's products and services, and especially those in the illustrations, drawings, details of capacity and performance and other details contained in MBE HOLDING's quotations and publications are to be regarded as approximate average values.
- 2.2 The directions for application are compiled by MBE HOLDING with the due care exercised in the industry, but do not relieve the customer of his obligation to check the suitability of the products for the purpose which he intends.
- 2.3 The documents belonging to quotations, such as drawings, illustrations, technical data, references to standards and statements in advertising materials do not constitute statements of quality, warranties of characteristics or guarantees unless they are expressly designated in writing as such.
- 2.4 MBE HOLDING expressly retains all copyrights to all products, packaging, catalogues, documentation (e.g. drawings, plans, statements of weights and dimensions, calculations and costs) and other product descriptions or documents, including those in electronic form. Unless otherwise agreed, the sale and delivery of products does not entitle the customer to copyrights or licence. The customer commits itself not to make the documents listed in the previous sentence accessible to third parties unless MBE HOLDING issues its express written consent.

3. Conclusion of Contract

- 3.1 The communication from MBE HOLDING to the customer designated as "quotations" are non-binding and are made without engagement. They constitute an invitation to the customer to place an order for goods or services.
- 3.2 The order of products by the customer shall constitute a binding offer of a contract. Unless otherwise stated in the order, MBE HOLDING shall be entitled to accept this offer of a contract within two weeks after it has been received by MBE HOLDING.
- 3.3 A contract shall only come into effect – even in the course of normal business – when MBE HOLDING accepts the customer's order. Acceptance may either be communicated in writing (e.g. in confirmation of order) or constituted by the despatch of the products to the customer. The content of the contract shall be determined by MBE HOLDING's confirmation of order.

4. Scope of Supply, Risk of Performance

- 4.1 In case of supply from stock, MBE HOLDING shall only be obliged to supply goods which are on its stock, unless otherwise expressly agreed in writing. The assumption of a procurement risk shall in particular not be imposed solely by MBE HOLDING's obligation to deliver an object defined by type only.
- 4.2 MBE HOLDING shall be entitled to deliver additional or reduced quantities or weights by up to 5% in relation to the ordered volume.
- 4.3 In the event of call orders or acceptance delays caused by the customer, MBE HOLDING shall be entitled to provide the service immediately, in particular to procure necessary material for the complete order and manufacture and offer the entire product immediately resp. to carry out the order. Any wishes for modifications by the customer cannot therefore be taken into account after the order has been placed, unless this has expressly been agreed in writing.
- 4.4 The customer is to inform MBE HOLDING in writing and in due time prior

to the conclusion of the contract of any special requirements he has for MBE HOLDING's products or services.

5. Period of Delivery, Delay in Delivery

- 5.1 Periods of delivery for goods or services shall only be binding when they have been expressly confirmed as binding in writing by MBE HOLDING. They shall commence on the date of the acknowledgement of order unless the parties have agreed otherwise. Unless otherwise agreed, the period of delivery shall be deemed to have been met if the customer has received the notice of readiness for despatch of the objects to be supplied at the agreed time or within the agreed period, and in the case of other services, if the service has commenced within the period. It shall be permissible to deliver goods and provide services before the end of the delivery period.
- 5.2 Compliance with periods of delivery for goods and services shall be dependent on the clarification of all technical and commercial questions, and in particular on the prompt receipt of all documents, necessary approvals and releases to be provided by the customer, and compliance with the agreed terms of payment and other obligations of the customer. Should the above conditions not be fulfilled, the periods shall be appropriately extended; this shall not apply to the extent that the delay is within MBE HOLDING's control.
- 5.3 MBE HOLDING reserves the right to make partial deliveries to a reasonable extent.
- 5.4 Should the delivery period for goods or services be exceeded for reasons within MBE HOLDING's control, the customer shall be entitled, after setting an appropriate period of grace, to withdraw from the contract. Claims for damages shall be governed by the provisions of clause 11 of these General Terms and Conditions.
- 5.5 Should the customer cause a delay in delivery of the objects to be supplied or in the performance of other services, MBE HOLDING shall be entitled to require compensation for the losses or damages it has incurred in this respect, including any additional expenses. The right to make further claims or assert further rights is reserved.
- 5.6 In the case of default in payment by the customer, MBE HOLDING shall be entitled to exercise a right of retention for further deliveries or other services.

6. Reservation as to oneself obtaining delivery, Force Majeure

- 6.1 To the extent that MBE HOLDING cannot meet binding delivery periods for reasons beyond its control (non-availability of the goods), it shall inform the customer of this without delay within seven (07) working days from the date of the effectiveness of the event or circumstance that may cause any delay by Force Majeure and at the same time notify him of the prospective new delivery period. If the goods are still not available within the new delivery period, MBE HOLDING shall be entitled to withdraw from the contract in whole or in part without any liability arising on its part to pay damages; any consideration already paid by the customer shall be refunded by MBE HOLDING without delay.
- 6.2 MBE HOLDING shall in particular be entitled to withdraw from the purchase contract if it is not correctly and punctually supplied by its suppliers for reasons beyond its control and in spite of having concluded a corresponding covering transaction.
- 6.3 In the case of force majeure, the provisions set out in clause 6.1 shall apply accordingly. This applies in particular in the event of conflict with German and/or European Union and/or American and/or United Nations and/or WTO recognized/ initiated resolutions, trade measures, export, import, customs and payment regulations (e.g. embargos) that directly or indirectly concern the performances of services by MBE HOLDING or the purchase of the products by the customer, regardless of whether these were foreseeable or not. Furthermore, force majeure shall include war, riot, act of god, natural disasters, terror, industrial disputes, strikes, lock-outs, official directives or actions, pandemics, epidemics or government lockdown orders, unavoidable shortages of energy or raw materials, transport bottlenecks beyond MBE HOLDING's control, unforeseeable disruptions to operation, for example due to fire, flood and damage to machinery, and all other hindrances which, when viewed objectively, have not been culpably brought about by MBE HOLDING.
- 6.4 If a delivery date or delivery period has been agreed as binding and if the agreed delivery date or delivery period is exceeded as a result of events as set out in clauses 6.1 to 6.3, the customer shall be entitled, after setting a reasonable period of grace which expires without performance, to withdraw from the as yet unfulfilled part of the contract if he cannot in an objective view be reasonably expected to continue to adhere to it. In such a case, further claims by the customer, including in particular claims for damages, shall be excluded.

7. Delivery, Transfer of Risk, Acceptance, Default in Acceptance

- 7.1 Unless otherwise agreed, delivery for domestic transactions shall be made ex-works (as defined in Incoterms® 2020) at the registered office of MBE HOLDING, which shall also be the place of performance.
- 7.2 Unless otherwise agreed, delivery for international transactions shall be made ex-works (as defined in Incoterms® 2020) at the registered office of MBE HOLDING, which shall also be the place of performance.
- 7.3 If agreed separately between MBE HOLDING and the customer, the products will be consigned to a different destination (sale by delivery to a place other than the place of performance) on customer's request and expense. Unless otherwise agreed, MBE HOLDING shall in this case be entitled to determine the method of consignment (and in particular the

- carrier, transport route and packaging) itself.
- 7.4 In case of sale by delivery to a place other than the place of performance, the dispatch shall be insured by MBE HOLDING against theft, breakage, transport, fire, water and other damages only at customer's express request and at its expense.
- 7.5 The risks of accidental destruction and accidental deterioration of the products shall be transferred to the customer for ex works deliveries and free carrier deliveries on the day of notification of readiness, at the latest, however, on handover of the products to the customer or to a person or organisation appointed by the customer for acceptance at the registered office of MBE HOLDING.
- 7.6 In the case of sale by delivery to a place other than the place of performance, the risks of accidental destruction and accidental deterioration of the products and the risk of delay shall be transferred on handover of the products to the forwarding agent, carrier or other person or organization appointed to carry out the shipment.
- 7.7 For all deliveries, the risk of accidental destruction or accidental deterioration of the goods is transferred to the customer at latest when the products are handed over to the customer or to a person or organisation appointed by the customer for acceptance and the products have left the factory premises of MBE HOLDING. This shall also apply, in particular, in case of partial deliveries or in case MBE HOLDING has assumed further performances, for example, shipping costs or delivery and installation.
- 7.8 When an acceptance inspection has been agreed, the transfer of risk shall take place at that time. For the rest, any agreed acceptance inspection shall also be governed by the provisions of the law on contracts of manufacture. Should the customer be in default of acceptance, this shall be equivalent to handover or acceptance.
- 7.9 Insofar as an acceptance inspection has to take place, the sale goods are considered accepted when:
- the delivery and, in case MBE HOLDING is also responsible for installation, the installation is concluded
 - MBE HOLDING notifies the customer under the provisions of deemed acceptance as per clause 7.9 and requests the acceptance of the delivery
 - twelve working days have ensued since delivery or installation, or the customer has started using the delivered item (e.g. the supplied equipment has been put into operation) and in this case since delivery or installation six working days have ensued, and
 - the customer failed to take acceptance of delivery within the stipulated period of time because of reasons besides the ones indicated to MBE HOLDING, that make the delivered item impossible to use or considerably affects.
- 7.10 Should the acceptance inspection of the products or their dispatch be delayed for reasons within the customer's control, MBE HOLDING shall be entitled at its own option, after setting a 14-day period of grace, to require immediate payment of the purchase price or to withdraw from the contract or to refuse performance and require damages in lieu of performance in its entirety.
- 7.11 Should the customer be in default of acceptance or fail to provide assistance or should MBE HOLDING's delivery be delayed for other reasons within the customer's control, MBE HOLDING shall be entitled to require compensation for the resulting damages including additional expenses (e.g. storage costs). This will be charged as lump sum compensation in the amount of 0.25% of the agreed net invoice amount per calendar week or part thereof, commencing on the delivery date or – in the absence of a delivery date – on notification of the readiness for dispatch of the products. This shall not prejudice the demonstration of any greater damages and pursuit of further claims by MBE HOLDING (including in particular reimbursement of additional expenses, appropriate compensation and termination of the contract); the lump sum shall however be set off against any further monetary claims. The customer shall be permitted to demonstrate that MBE HOLDING has incurred no losses or damages or significantly lower losses or damages than the above lumpsum.
- 7.12 The customer is obliged to comply with the European Trade Policy and with the restrictions of the Dual-Use Export, available at http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/index_en.htm. The direct or indirect resell of the products in the countries which are under export restrictions is strictly forbidden. In case of resell, the customer is obliged to certify to MBE HOLDING the final destination of the products in written form prior to resell pursuant to the valid export regulations.
- 7.13 The customer is obliged to comply with the relevant legal regulations regarding the anticorruption.
- 8. Prices, Terms of Payment, Defence of Insecurity**
- 8.1 In principle, all prices are stated in euros, ex-works excluding loading in the factory, plus the taxes to be borne by the customer, as far as statutorily applicable.
- 8.2 MBE HOLDING is entitled to adjust the agreed price in accordance with the wages and prices of raw materials without any specific agreement, if this applies to the goods and services, which are delivered or performed either later than four months after the conclusion of the contract or in the course of a continuing obligation.
- 8.3 In the absence of any specific agreement, the purchase price shall be due upon the issue of the invoice and delivery of the products or notification of readiness. The timeliness of payment shall be determined by the time of receipt of the payment in MBE HOLDING's account. Cheques payments are not accepted.
- 8.4 The payments are to be made directly by the customer. Payments from third parties are not accepted.
- 8.5 Even if no reminder is issued, the customer shall be deemed in default with payment if he fails to pay after the due date and within 30 days of receipt of the invoice. This applies also in case the due date is determined deviating from clause 8.6 for whatever reason. During the period of default, the purchase price shall bear interest at the applicable statutory default interest rate. The interest rate for the year is nine percentage points above the base rate (Section 288 of the German Civil Code (BGB)). MBE HOLDING reserves the right to pursue claims for further damages from default. This shall not prejudice MBE HOLDING's entitlement in dealings with merchants to the interest counting from the due date (Section 353 of the German Commercial Code (HGB)).
- 8.6 The customer shall only have a right of setting-off or retention with respect to claims that are undisputed or recognized by declaratory judgement. This shall not prejudice clause 10.5 in the case of defects in the supply.
- 8.7 Should it become apparent after conclusion of the contract that MBE HOLDING's entitlement to the purchase price is at risk from inability of the customer to pay (e.g. as a result of an application to institute insolvency proceedings), MBE HOLDING shall be entitled as provided for in law to refuse performance and – after setting a period of grace if necessary – to withdraw from the contract (Section 321 of the German Civil Code (BGB)). In the case of contracts for the production of non-fungible things (individual custom-made items), MBE HOLDING may declare its withdrawal immediately; this shall not prejudice the statutory provisions on the dispensability of setting a period for performance.
- 9. Retention of Title**
- 9.1 All products supplied by MBE HOLDING shall remain the property of MBE HOLDING ("goods subject to retention of title") until all present and future sums owing to MBE HOLDING as a result of the purchase contract and a continuing business relationship are paid in full.
- 9.2 The customer is to insure the goods subject to retention of title sufficiently, in particular against fire and theft. Claims on the insurance policy resulting from damage to the goods subject to retention of title are herewith already assigned to MBE HOLDING in the amount of the value of the goods subject to retention of title.
- 9.3 The customer may neither pledge the goods subject to retention of title to third parties nor assign them as security until all the sums owing as stated in clause 9.1 have been paid in full. The customer is to notify MBE HOLDING in writing without delay if and to the extent that the goods subject to retention of title are seized by third parties.
- 9.4 On conduct of the customer in contravention to the contract, and in particular non-payment of the purchase price due, MBE HOLDING shall be entitled as provided for in law to withdraw from the contract and/or require the surrender of the products on grounds of the retention of title. The demand for surrender shall not automatically constitute a declaration of withdrawal; MBE HOLDING shall rather be entitled merely to require surrender of the products and reserve the right to withdraw from the contract. Should the customer fail to pay the purchase price due, MBE HOLDING may only exercise these rights when it has previously set the customer a reasonable period for payment without result, or when the setting of such a period is dispensable under the terms of the law.
- 9.5 The customer shall be entitled to resell and/or to process the goods subject to retention of title in the normal course of business. In such a case, the following provisions shall additionally apply.
- 9.6 The retention of title shall also extend to the full value of the goods created by processing, mixing or joining MBE HOLDING's products, with MBE HOLDING deemed to be the manufacturer. Should, on processing, mixing or joining the products with products from third parties, the ownership rights of those third parties persist, MBE HOLDING shall acquire co-ownership in proportion to the invoice values of the processed, mixed or joined products. For the rest, the same shall apply to the goods created as to the products delivered subject to retention of title.
- 9.7 The customer hereby assigns his receivables from third parties resulting from the resale of the products or the goods created therefrom in full or in the amount of MBE HOLDING's co-ownership share as applicable in accordance with the previous paragraph to MBE HOLDING as security. MBE HOLDING accepts the assignment. The obligations of the customer set out in clause 9.3 shall also apply with regard to the assigned receivables.
- 9.8 The customer, together with MBE HOLDING, shall be entitled to collect the receivables from the resale. MBE HOLDING undertakes not to collect the receivables as long as the customer fulfils his payment obligations to MBE HOLDING, is not in default with payments, no application for institution of insolvency proceedings has been made and there is no other deficiency in his ability to pay. If this should however be the case, MBE HOLDING may require the customer to notify MBE HOLDING of the assigned receivables and the relevant debtors, to provide all the information necessary for collection, hand over the corresponding documents and notify the debtors (third parties) of the assignment.
- 9.9 Should the realizable value of the securities exceed MBE HOLDING's receivables by more than 10%, MBE HOLDING shall release securities of its choice on request by the customer.
- 10. Customer's claims based on defects**
- 10.1 The customer's rights in the case of defects of quality and defects of title (including incorrect deliveries and shortfalls, and incorrect installation or defective installation instructions) shall be governed, unless otherwise stipulated below, by the provisions of the law.
- 10.2 The basis of MBE HOLDING's liability for defects shall be above all the agreement reached concerning the quality of the products. The product descriptions (including those of the manufacturer) which were provided to the customer before he placed his order or were adopted in the contract in

the same way as these General Terms and Conditions shall constitute agreements on the quality of the products when they are designated as such.

- 10.3 The statutory obligations to examine the products and report defects (Sections 377 and 381 of the German Commercial Code (HGB)) are applicable. The customer must report defects immediately and no later than within two working days after the possible defects have or should have become evident.
- 10.4 If the objects delivered are defective, MBE HOLDING may first opt to cure either by remedying the defect (subsequent improvement) or by supplying products free of defects (replacement delivery). This shall not prejudice MBE HOLDING's right to refuse the selected method of cure when the legal conditions for such refusal are fulfilled.
- 10.5 MBE HOLDING shall be entitled to make the cure owed dependent on the customer paying the purchase price due. The customer shall however be entitled to retain a reasonable amount of the purchase price in proportion to the defect.
- 10.6 The customer is to give MBE HOLDING the necessary time and opportunity to effect the cure owed, and in particular to hand over the products which have been found defective for test purposes. In the case of a replacement delivery, the customer is to return the defective objects to MBE HOLDING in accordance with the provisions of the law.
- 10.7 Transport charges resulting from the transfer of the rejected products to another location than the place of performance, as well as costs for assembly and disassembly shall not be borne by MBE HOLDING.
- 10.8 If the cure fails or a reasonable period to be set by the customer for the cure expires without result or such period is dispensable under the terms of the law, the customer may withdraw from the purchase contract or reduce the purchase price. There shall however be no right of withdrawal in the case of a minor defect.
- 10.9 Claims by the customer for damages or compensation for futile expenditure shall only be valid as per clause 11 and are for the rest excluded.
- 10.10 Should a customer request for remedy of defects be unjustified, MBE HOLDING may require the customer to reimburse MBE HOLDING for the costs incurred.
- 10.11 The place of cure performance is the registered office of MBE HOLDING. Deviating from that, MBE HOLDING can choose the situs of the products as place of cure performance.

11. Other Liability

- 11.1 Unless otherwise stipulated in these General Terms and Conditions, including the provisions below, MBE HOLDING shall be liable in accordance with the relevant provisions of law for infringement of contractual and non-contractual obligations.
- 11.2 MBE HOLDING shall be liable for damages – on whatever legal grounds – in the cases of malicious intent and gross negligence. In the case of ordinary negligence, MBE HOLDING shall only be liable
 - a) for damages resulting from fatalities, personal injury or damage to health,
 - b) for damages resulting from infringement of a material contractual obligation (an obligation whose fulfilment makes the orderly implementation of the contract possible in the first place and compliance with which is and can be normally expected by the parties); in such a case MBE HOLDING's liability shall however be limited to compensation for the foreseeable loss or damage which typically occurs.
- 11.3 None of the above shall prejudice any liability because of fraudulent concealment of defects, the provision of a guarantee or the acceptance of a procurement risk, liability under the German Product Liability Act and under other mandatory provisions of the law.
- 11.4 The above exclusions and limitations to liability shall apply to the same extent to MBE HOLDING's managers and employees, other agents and subcontractors.
- 11.5 The above stipulations are not associated with any reversal of the burden of proof.

12. Statute of Limitations

- 12.1 In deviation from Section 438, paragraph 1, no. 3 of the German Civil Code (BGB), the general limitation period for claims based on defects of quality and defects of title shall be one year from delivery. To the extent that an acceptance inspection has been agreed, the limitation period shall commence on acceptance.
- 12.2 If, however, the product is a building structure or an object which according to its normal purpose has been used for a building structure and has caused the defectiveness of that building structure (construction material), the limitation period shall be 5 years from delivery as provided for by the statutory regulation (Section 438, paragraph 1, no. 2 of the German Civil Code (BGB)). None of the above shall prejudice the special statutory regulations for real rights of third parties to return of the object purchased (Section 438, paragraph 1, no. 1 of the German Civil Code (BGB)), fraud on the part of the seller (Section 438, paragraph 3 of the German Civil Code (BGB)) and recourse claims on suppliers on final delivery to a consumer (Section 479 of the German Civil Code (BGB)).
- 12.3 The above limitation periods set down in purchasing law shall also apply to contractual and non-contractual claims for damages by the customer which are based on a defect in the products, unless application of the regular statutory limitation period (Sections 195 and 199 of the German Civil Code (BGB)) would lead in an individual case to a shorter limitation period. In no case shall any of the above prejudice the limitation periods set down in the German Product Liability Act.

13. Software utilisation

If software is included in the scope of delivery, the customer shall be granted a non-exclusive and non-transferable right to use the software delivered including its documentation; it shall be transferred for use exclusively on the designated delivered item. The utilisation of the software on more than one system is not allowed. The customer is allowed to duplicate, edit, translate or convert the software from the object to the source code solely to the extent permitted by law (Section 69 of the German Copyright Act (UrhG)). The customer commits himself not to remove the manufacturer's specifications - especially the copyright references - or to change them without the express prior consent of the supplier. All other rights to the software and its documentation, including copies, shall remain with MBE HOLDING or with the software supplier. Sublicensing is not permitted.

14. Final Provisions

- 14.1 These General Terms and Conditions and all legal relationships between MBE HOLDING and the customer shall be exclusively governed by the law of the Federal Republic of Germany, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG). The prerequisites for and the effects of retention of title as set out in clause 9, shall be governed by the law in force at the place where the goods are located when, in accordance with that law, the choice of German law would be impermissible or ineffective.
- 14.2 If the customer is a merchant as defined by the German Commercial Code (HGB), a corporate entity established under public law or a special fund under public law, and if the customer has its registered office in the European Union, Switzerland, Norway or Iceland, the exclusive venue for all disputes – including international disputes – arising directly or indirectly from the contractual relationship shall be a competent court at the location of MBE HOLDING's registered office. MBE HOLDING shall however also be entitled to bring actions against the customer at the customer's general place of jurisdiction.
- 14.3 If the customer has its registered office neither in the European Union, nor in Switzerland, Norway or Iceland, all disputes arising in connection with the respective delivery contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration is at the location of MBE HOLDING's registered office. The language of the arbitral proceedings is German.
- 14.4 Amendments to the contract by individual agreements shall require no particular form to be effective. For the rest, amendments and additions to these General Terms and Conditions and supplementary agreements shall only be effective if made in writing. This shall also apply to any waiver or cancellation of this clause requiring written form.
- 14.5 Employees of MBE HOLDING are not entitled to complement or deviate contents of the contract. This does not apply to MBE HOLDING's institutions and proxy holder ("Prokurist") as well as to representatives authorised by MBE HOLDING to this in writing.
- 14.6 Should any of the above provisions be or become ineffective, this shall not affect the validity of the remaining provisions. The parties shall be obliged to replace the ineffective provision with a stipulation that approximates to it in its commercial effect as closely as possible.