

## Standard Delivery Terms of Mack Rides GmbH & Co KG

### I. Applicability

1. The following terms and the statutory law which supplements them shall be exclusively applicable to all deliveries of Mack Rides GmbH & Co KG ("Supplier"). Contract terms of the Customer which are contrary to or deviate from these contract terms shall not be recognized, unless the Supplier has expressly consented to them in writing.
2. These contract terms shall also be applicable to all future transactions between the Supplier and the Customer.
3. These contract terms shall only be applicable to companies, public entities and special public assets within the meaning of §§ 14, 310 par. 1 BGB [*Bürgerliches Gesetzbuch*, German Civil Code].

### II. Bid and conclusion of the contract

1. If the Customer submits a contractual bid, it shall be bound by such bid for four weeks.
2. The contract between the Supplier and Customer shall come into existence if the Supplier confirms acceptance of the order within said time period or performs the delivery. (If the Supplier performs the order after the expiration of said time period, the contract shall nevertheless come into existence, unless the Customer promptly returns the merchandise.)
3. The written order confirmation shall govern for purposes of the type and scope of deliveries and services by the Supplier. Oral agreements which are concluded prior to the conclusion of the contract must be in written form in order to be valid.
4. All statements in handbooks, catalogues, prospectuses, type lists, data sheets and other promotional documents, as well as product specifications, shall, in the absence of separate written agreements, not be deemed to constitute guarantees or quality descriptions within the meaning of § 434 BGB.  
A guarantee shall only be assumed in the case of the conclusion of a separate indemnity contract. The requirements and scope of the Customer's claims arising from the guarantee shall be based exclusively on the guarantee contract. The Customer's claims arising from a guarantee shall exist in addition to the claims which the Customer has under these Standard Contract Terms or by law.
5. The Supplier shall retain unrestricted ownership rights and copyrights to documents, such as weight and dimension statements and advance cost estimates. Before forwarding them to third parties, the Customer shall require the express written consent of the Supplier.

### III. Prices and payment terms

1. All prices are net prices ex factory or warehouse, plus the applicable value-added tax, if it accrues, and delivery costs. The minimum net sum per invoice shall be Euro 50.00.
2. Unless otherwise agreed, the prices stated in the order confirmation shall be payable as follows:
  - a) 1/3 down payment after receipt of the order confirmation;
  - b) 1/3 after the Customer has received notification that the merchandise is ready to ship;
  - c) the residual sum shall be payable 10 days after receipt of the final invoice.
3. Payments by the Customer shall be transferred to the Supplier's headquarters at the Customer's expense and risk. The Customer shall only be authorized to pay by means of check or draft if this has been specifically agreed upon with the Supplier. Checks and drafts shall only be accepted on account of performance. The Buyer shall bear collection and discount fees.
4. The Customer shall only have the right to retain payments or offset counterclaims if its counterclaims are undisputed or established by final judgment.



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5. If the Supplier has simultaneously assumed setup or assembly, and no agreement exists to the contrary, the Customer shall bear all necessary ancillary costs, such as travel costs, costs of transport of hand tools and personal luggage, as well as severance payments, in addition to the agreed upon remuneration.

#### IV. Payment default

1. The Customer shall be in default with respect to the payments stated in sec. III. 2. if it
  - a) does not make the down payment set forth in sec. III. 2 a) within 14 days of receipt of the order confirmation;
  - b) does not make the residual payments set forth in sec. III. 2 b) and c) within 10 days after notification of readiness for shipment and after receipt of the closing invoice respectively.  
In the event of payment default, the Supplier shall be authorized to call the residual purchase price due immediately.  
The Supplier may also call the residual purchase price due immediately if the Customer's asset situation deteriorates or if such deterioration is to be feared, in particular, if the Customer has filed a petition for the opening of an insolvency proceeding or if the Supplier learns of an endangerment or deterioration of the Customer's asset situation after the conclusion the contract, and the Supplier's claims against the Customer are endangered thereby. This shall only apply, however, if the Supplier has first given the Customer a reasonable time period to furnish the Supplier with security in the amount of the due claims, and said time period has lapsed unsuccessfully.
2. If the Customer is not obligated to make prepayment under an agreement concluded with the Supplier, default shall occur (10 days) after receipt of the Supplier's invoice.
3. In the event of payment default, the Customer shall be obligated to pay default interest at a rate of 8% above the applicable base interest rate. The Supplier reserves the right to assert greater interest damage and additional damages.

#### V. Supplier's right of rescission

1. If the Customer's asset situation deteriorates substantially after the conclusion of the contract or if such deterioration is to be feared, in particular, if the Customer has filed a petition for the opening of an insolvency proceeding or if the Supplier learns of a substantial endangerment or deterioration of the Customer's asset situation after the conclusion the contract, and the Supplier's claims against the Customer are endangered thereby, the Supplier may demand that the Customer furnish security within a reasonable period of time for all claims which exist at that point in time.
2. The Supplier may rescind the contract following the unsuccessful lapse of said time period.

#### VI. Delivery and default

1. The delivery times (delivery periods and deadlines) shall constitute merely non-binding approximate statements, unless the Supplier expressly designates them as binding.
2. The delivery time (delivery period and deadline) shall begin on the date of the order confirmation. Compliance with the binding delivery times shall presuppose the timely receipt of all documents, approvals and clearances which are to be supplied by the Customer, as well as compliance with the agreed upon payment terms. If said prerequisites are not provided by the Customer, the delivery times shall be reasonably extended. This shall not apply if the Supplier is responsible for the delay.
3. The delivery time shall be deemed to be satisfied if the delivery has left the plant or the Supplier has informed the Customer of readiness to ship or, if an acceptance test of the merchandise is agreed upon, the Customer has accepted the merchandise.



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4. The delivery time shall be extended reasonably if the Supplier is prevented from complying with the delivery time as a result of circumstances for which it is not responsible (in particular, force majeure, labor struggles, strike, governmental order, lack of material, unavailability of merchandise, non-deliverability of merchandise or other non-culpable and unforeseeable circumstances). The Supplier shall inform the Customer concerning the occurrence of such circumstances.
5. If, after the conclusion of the contract, circumstances which are based on unforeseen circumstances for which the Supplier is not culpable result in the situation in which it is anticipated that performance will become impossible on a lasting basis, the Supplier shall be authorized to rescind the contract after four months, calculated from the occurrence of the impediment.
6. If the Supplier defaults, the Customer may demand default compensation—provided that the Customer proves that it has suffered damage as a result. Said default compensation shall be, for each completed week of default, 0.5% of the price for the portion of deliveries which cannot be used in a timely manner or in accordance with the contract as a result of the default, but shall not exceed 5% of said price.  
All further compensatory damage claims by the Customer with respect to delay of delivery, including a compensatory damage claim in lieu of performance, shall be barred in all cases of delayed delivery. This shall not apply if the Supplier is guilty of intentional or grossly negligent conduct with respect to the delay of delivery or if the Customer asserts compensatory damage claims on the basis of injury to life, body or health.
7. In the event of delivery default, the Customer shall be authorized to rescind the contract in accordance with the statutory provisions. However, this shall only apply if the Customer has first imposed upon the Supplier a period of 30% of the agreed upon delivery time, but not less than six weeks, for remedial delivery, and said time period has lapsed unsuccessfully.  
Rescission shall be barred if the Customer is solely or predominately responsible for non-compliance with the delivery period or if the delivery is delayed as a result of circumstances for which the Supplier is not responsible and the Customer is in default with respect to acceptance at that point in time.  
At the Supplier's request, the Customer must declare within a period of two weeks whether it will rescind the contract on the grounds of delivery delay or insist on delivery.
8. The Supplier is entitled to partial deliveries.

## VII. Transfer of risk and shipping

1. If no deviating agreement has been concluded, the place of service and place of performance shall be Supplier's business headquarters.
2. Risk shall pass to the Customer upon dispatch of the merchandise. This shall apply even if the Supplier has taken on additional services, such as delivery and setup, or if it has undertaken the bearing of shipping costs.
3. In the case of self-pickup—including pickup by third parties—loading and transport shall take place at that party's risk.
4. If shipping is delayed as a result of circumstances for which the Customer is responsible, risk shall pass to the Customer starting on the date of readiness for shipping.
5. At the Customer's request and expense, the merchandise may be insured by the Supplier against theft of damage, breakage damage, transport damage, fire damage, water damage and other insurable risks.

## VIII. Default with respect to acceptance and termination by the Customer

1. If shipping is delayed at the Customer's request or for reasons for which the Customer is responsible or if the Customer and Supplier have agreed that the Customer must accept the merchandise and acceptance is delayed as a result of circumstances for which the Customer is responsible, the Supplier may charge the Customer warehouse costs, starting from the month after notification of readiness for shipping, in the amount of 0.5 % of the price of the delivery items for each started month, but not more than a total of 5 % of said price.



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2. In addition, the Supplier shall be authorized in the event of default with respect to acceptance to demand compensation in accordance with § 304 BGB [Civil Code] from the Customer for the additional costs which arise therefrom.
3. If the Supplier manufactures movable non-unique property for the Customer (§ 651 sentence 3 BGB), the Supplier's right to demand reasonable compensation in accordance with § 642 BGB in the event of omission of acts by the Customer and terminate the contract in accordance with § 643 BGB shall remain unaffected.
4. If the contract is ended by mutual agreement between the Supplier and Customer before the Supplier has notified the Customer of readiness of the merchandise for shipping, the Supplier shall be entitled to compensation for the expenditures which it has made to manufacture the merchandise and for lost profit. Said compensation shall total a minimum of 30% of the price of the contract items, plus the expenditures documented by the Supplier within the manufacturing process for the contractual items. Following the completion of design, the compensation shall be at least 50% of the price of the contractual items. Following completion of the merchandise, the compensation shall be at least 90% of the price of the contractual items.

#### IX. Reservation of ownership

1. The Supplier reserves the right of ownership of the delivered merchandise, until the Customer has paid the purchase price/work compensation, all obligations which have arisen or arise in connection with the contract (for example, arising from repairs, delivery of replacement parts or accessories) and all claims which exist at the time of the contract of the contract arising from the business relationship between the Supplier and the Customer and until complete release from contingent liabilities which the Supplier has entered into in the Customer's interests. If a current account relationship exists between the Supplier and the Customer, the Reservation of ownership shall not be extinguished until full payment of all of the Supplier's claims arising from the business relationship. In each instance, the acknowledged balance shall govern.
2. The Customer shall carefully treat and maintain custody of the merchandise subject to reservation of ownership and perform all necessary and typical inspection, maintenance and preservation work at its own expense. As long as the reservation of ownership exists, the sale, pledge, collateral assignment, rental or other impairment of the merchandise subject to reservation of ownership shall only be permissible following the prior written consent of the Supplier. The Customer shall immediately inform the Supplier in writing of third-party access to the merchandise subject to reservation of ownership, particularly by way of attachment, exercise of a contractor's lien or seizure, and inform the third parties of the existence of the reservation of ownership. If the third party is not able to reimburse the Supplier for the judicial and extrajudicial costs of a successful third-party protest action in accordance with § 771 ZPO [German Code of Civil Procedure], the Customer shall be liable to the Supplier for the damage arising therefrom.
3. In the event of culpable, contractually violative conduct by the Customer, particularly in the case of payment default, the Supplier shall be authorized to take back the delivered merchandise. Taking back the merchandise shall not constitute rescission of the contract, unless the Supplier expressly declares rescission in writing.
4. The Customer shall be obligated to act at his own expense to insure the merchandise subject to reservation of ownership at the replacement value against risks, against which the merchandise subject to reservation of ownership is, according to its nature, typically insured. If the Customer does not comply with this obligation, the Supplier shall be authorized to conclude such an insurance contract at the Customer's expense.



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5. The reservation of ownership shall be expanded and extended as follows:
  - a) The processing and transformation of the delivered merchandise by the Customer shall always be undertaken for the Supplier. If the merchandise is processed with other items which do not belong to the Supplier, the Supplier shall acquire joint ownership of the new property according to the ratio which the value of the merchandise subject to reservation of ownership (invoice amount, plus sales tax) bears to the value of the other processed items at the time of processing. The property which comes into existence as a result of processing shall, moreover, serve as the same collateral for the Supplier as the merchandise subject to reservation of ownership.
  - b) If the merchandise which is delivered subject to reservation of ownership is inseparately mixed or combined with other property, the Supplier shall become joint owner of the new property according to the ratio which the value of the merchandise subject to the reservation of ownership (invoice amount, plus sales tax) bears to the value of the other mixed or combined items at the time of the mixture or combination. If the combination is carried out in such a manner that the Customer's property is to be viewed as the primary property, the Supplier and the Customer hereby agree in advance that the Customer shall assign to the Supplier joint ownership of the property to the extent stated in sentence 1.
  - c) The Customer shall be entitled to resell the merchandise subject to reservation of ownership in the ordinary course of business with the written consent of the Supplier in accordance with the usual contract terms. The Supplier may revoke the authorization, if the Customer is in payment default.
6. The Customer hereby assigns to the Supplier at this time its claims arising from the resale, further processing, combination and mixing. The Customer shall be authorized to collect the assigned claims in its own name. However, the Customer shall be obligated to remit the collected proceeds to the Supplier in the amount in which the Supplier has due claims (sec. 1) against the Customer. The Supplier shall be authorized to revoke the collection authorization, as soon as the Customer goes into payment default. In such case, the Customer shall be obligated to announce the assigned claims and their debtors, surrender all documents necessary to the assertion thereof and provide all information necessary to the collection thereof.
7. If the realizable value of the Supplier's existing collateral (merchandise subject to reservation of ownership, joint ownership, collateral assignment) exceeds the Supplier's claims set forth in sec. IX 1 by more than 20% on a more than temporary basis, the Supplier shall be obligated insofar on Customer's demand to a reassignment of its own choice.

## X. Warranty

1. The Customer shall promptly check the received merchandise for defects and promptly announce defects to the Supplier in writing. If the Customer fails to announce defects within this time period, the delivered merchandise shall be deemed to be approved.  
If the Customer and Supplier have agreed on an acceptance test for the merchandise, the provision in § 640 par. 2 BGB shall remain unaffected.  
Defects which were not detected, even with a careful check of the merchandise, shall be promptly announced to the Supplier in writing after they are detected; otherwise, the delivered merchandise shall be deemed to be approved with respect to said defects as well.
2. The Supplier shall not be liable for its public statements or for public statements of the manufacturer or its assistants relating to characteristics of the delivered merchandise, if and to the extent that the Customer is unable to prove that such statements influenced its decision to conclude the contract, if the Supplier was not, and was not required to be, aware of the statements or if the statements had already been corrected at the time of the conclusion of the contract.



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3. The Supplier shall not be liable for insubstantial defects. Defects are "insubstantial," if they only insubstantially impair the contractually agreed upon condition of the merchandise or, in the event that no such agreement was concluded, if they only insubstantially impair the use assumed under the contract or, in the event that no such use was agreed upon, if they only insubstantially impair the normal use of the merchandise, and the defects soon disappears on its own or can be remedied by the Customer personally at insubstantial expense. Liability for normal wear and tear shall be barred.  
In the event of defect complaints, payments by the Customer may be withheld in an amount which bears a reasonable relationship to the material defects which have arisen. The Customer may only withhold payments if a defect complaint is asserted, concerning whose legitimacy there can be no doubt.
4. If the delivered merchandise is defective at the time of the transfer of risk, the Supplier shall be authorized, by way of deviation from § 439 par. 1 BGB, to choose between re-delivery (substitute delivery) or remediation of the defect (defect remediation).  
If necessary in order to avert a danger to operational safety or to avert disproportionately serious damage, the Customer shall have the right to personally remedy the defect or have it remedied by third parties and demand reimbursement of the necessary costs from the Supplier. However, this shall only apply if the Customer has promptly informed the Supplier of the defect (or the endangerment of operational safety or the danger of the emergence of disproportionately serious damage) caused by the defect and the Supplier has not promptly remedied the defect. The Supplier's duty to bear costs shall be limited to the sum which it personally would have had to expend in order to remedy the defect.
5. In the event of defect remediation, the Supplier shall, in principle, bear all expenditures which are necessary for that purpose. However, this shall not apply if expenditures for defect remediation are increased as a result of the fact that the delivered merchandise has been taken to a location other than the agreed upon delivery address of the Customer, unless such relocation corresponds to the intended use of the merchandise.  
The Customer shall have no right to reimbursement of expenditures if the Customer's defect complaint was made wrongfully. In such case, the Supplier shall be authorized to demand reimbursement from the Customer for the expenditures which were incurred as part of the review of the defect complaint.
6. If the defect remediation or substitute delivery fails on multiple occasions, the Customer may, at its election, demand reduction of the price or rescinded the contract. The Supplier must only pay compensatory damages in accordance with sec. XI.
7. Defect liability shall be barred if:
  - a) the Customer has not promptly announced a defect in accordance with sec. X. 1;
  - b) the Supplier manufactures a non-unique item for the Customer and the defect which the delivered merchandise contains is attributable to the material supplied by the Customer or a defective instruction issued by the Customer;
  - c) the merchandise has been improperly handled or overloaded;
  - d) the merchandise has been defectively assembled, improperly used or defectively placed in operation by the Customer or third parties or if the merchandise has been modified or repaired without the prior consent of the Supplier; in the case of defective assembly, however, this shall not apply if the assembly directions provided by the Supplier were defective;
  - e) the Customer has used unsuitable operating materials or substitute materials;
  - f) equipment has been set up on unsuitable building ground;
  - g) the delivered merchandise has been exposed to chemical, electrochemical or electric influences.

The Customer must prove that a defect was not caused by one of the circumstances stated in b) through g). § 442 par. 1 BGB shall remain unaffected.



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8. Warranty claims shall become time-barred in twelve months. This shall not apply if the statute provides for longer time periods, specifically, in accordance with § 438 par. 1 no. 2 BGB (buildings and items for buildings), § 479 par. 1 BGB (recourse claim) or § 634 a par. 1 no. 2 BGB (construction defects), as well as in cases of injury to life, body or health, intentional or grossly negligent breach of duty by the Supplier, or in the event of concealment or malice. The statutory provisions concerning tolling of expiration, tolling and restarting of the time periods shall remain unaffected.

However, warranty claims by the Customer shall be barred if the warranty period for claims by the Supplier against its pre-suppliers has expired.

The warranty period for welded parts shall be limited to the usual lifetime of the parts. Recourse claims of the Customer against the Supplier in accordance with § 478 BGB (recourse of the entrepreneur) shall only exist to the extent that the Customer has not concluded any agreements with its customers which go beyond the statutory defect claims.

#### XI. General limitation of liability

1. Compensatory damage claims and claims for reimbursement of expenses on the part of the Customer, regardless of the legal ground, particularly because of violation of duties arising from the contractual obligation and tortious act, shall be excluded.
2. This shall not apply insofar as obligatory liability like, for example, in accordance with the Product Liability Act, in cases of intentional or gross negligence, liability due to injury to life, body or health or liability due to the violation of substantial contractual duties. The compensatory damage claim for the violation of substantial contractual duties shall, however, be limited to the contractually typical, foreseeable damage, unless intentional or grossly negligent conduct is present or liability exists on the grounds of injury to life, body or health. An amendment of the burden of proof to the detriment of the Customer is not affiliated with the before-mentioned provisions.
3. As far as the compensatory damage liability with regard to the Supplier is excluded or limited, this shall also apply to the personal compensatory damage liability of employees, members of staff, jobholders, representatives and assistants of the Supplier.

#### XII. Customer's duty of cooperation

1. According to §§ 4, 6 and 6a UStG (German Turnover Tax) exportations and deliveries within the Community are exempt from turnover tax if the conditions for the tax exemption are fulfilled by the entrepreneur/company. The legal regulations issued by the Bundesministerium der Finanzen (Federal Ministry of Finance) inform the entrepreneur about the verification that he/she must provide.
2. The customer shall be obliged to support the supplier in providing the corresponding verification being effective for the exemption from VAT (value added tax) in accordance with §§ 4, 6 and 6a UStG (German Turnover Tax). The customer shall be obliged to fill in all documents being necessary for the supplier, to contact third parties (such as authorities) to obtain the necessary documents, to furnish them to the supplier and to enable the supplier to keep the complete verifications and records. Upon request the supplier shall be obliged to transfer a list of all necessary documents.
3. If the supplier's verification management depends on the customer's duty of cooperation and if the customer does not comply with his/her duty of cooperation mentioned in para. 2 despite a request made by the supplier, the customer will be obliged to reimburse all arising turnover taxes to the supplier. Furthermore, the supplier shall be entitled to claim any additional damages.



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BIC: GENODE61EMM - IBAN: DE25 6809 2400 0045 306

Mack Rides GmbH & Co KG | Postfach 247 | D-79176 Waldkirch / Germany

### XIII. Final provisions

1. The place of venue shall be the Supplier's business domicile. This shall also apply to summary proceedings based on documentary evidence, special proceedings to litigate claims from drafts and special proceedings to litigate claims arising from checks. However, the Supplier shall be authorized to sue the Customer at any other statutory place of venue.
2. The relations between the contracting parties shall be based on the law of the Federal Republic of Germany under exclusion of UN purchasing law (CISG).
3. In case one provision in these Delivery Terms or one provision in the supplementary agreements shall be or become completely or partly ineffective, the effectivity hereof shall not be affected for the rest. In place of the ineffective provisions or the ineffective part of the provisions those legally effective provision applies which comes as close as possible to the purpose of the ineffective provision.
4. Translations of our Sales and Delivery Terms into English or other foreign languages to be solely made for reasons of service. In case of any objections with regard to the contents of the language versions or any doubts with regard to the interpretation, the German version of our Delivery Terms shall solely be decisive.



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Heinrich Mack GmbH: HRB 280094  
Mack Rides GmbH & Co KG: HRA 280231 eingetragen  
beim Registergericht Amtsgericht Freiburg

USt ID / VAT No.: DE141940835

Geschäftsführer:  
Dipl. Kfm. Christian Freiherr von Elverfeldt

Bankverbindungen / bank details:  
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BIC: DRESDEFF680 - IBAN: DE43 6808 0030 0510 057 400

Deutsche Bank AG Freiburg - (BLZ 680 700 30) 024 830 200  
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