

1. General Information - Applicability

These Conditions of Sale shall apply to all business relations between the MARKATOR Group and the customer. Even if we are aware of them, any different, contrary or supplementary general terms and conditions shall not become an integral part of the contract, unless we have expressly approved their validity in writing.

2. Formation and Contents of the Contract

Our quotations shall be non-binding. Contracts shall only come about after we have confirmed the order in writing. Our written confirmation shall be the sole decisive factor in relation to the contents of the contract. Incidental arrangements, the assurance of properties and amendments to the contract shall not be agreed before we have confirmed them in writing.

3. Reservation of Right of Modification

Descriptions and pictures of the delivery items shall only be regarded as roughly definitive. We shall reserve the right to make technical and design-related modifications - especially in regard to shape, colour or weight - up to the time of delivery. However, the interests of the customer may not be unreasonably prejudiced by these modifications.

4. Prices, Transport, Passing of Risk

Prices shall be regarded as ex warehouse Ludwigsburg, excluding value-added tax, transport costs, packing and transport insurance. These costs shall be borne by the customer. Packaging shall not be taken back. Unless otherwise agreed in writing, we shall determine the means of transport without being responsible for selecting the quickest or cheapest method.

The minimum order value amounts to 70.00 €. For orders of a lower value a minimum order surcharge of 30.00 € will be charged.

Risk shall pass in all cases to the customer as soon as the delivery item leaves our warehouse. We shall insure the consignment against damage in transit at the expense of the customer. This insurance shall only be omitted if the customer prohibits it in writing.

5. Delivery Period

The delivery period shall commence on the date when the order is confirmed, but not before receipt of the specimen parts, drawings or other documents, which have to be acquired by the customer and form the basis of the contract, or before receipt of an agreed advance payment. The delivery period shall be deemed to have been observed if the delivery item left the warehouse before the end of this period or - if delivery has not been made due to reasons for which the customer is responsible - notification of readiness for dispatch has been sent to the customer.

Observation of the delivery period shall depend on the customer fulfilling his contractual obligations. If a delivery date is exceeded, the customer may withdraw from the contract after he has granted us a period of grace of at least 8 weeks in writing and this period has expired without being used.

If we are unable to effect delivery due to force majeure, the delivery period shall be automatically extended by the duration of this event. Force majeure shall be regarded as tantamount to circumstances which make it extremely difficult or impossible for us to effect delivery, for example industrial disputes, official measures, business interruptions and an inadequate supply of raw materials, irrespective of whether they occur in our company or at our subcontractors. In these cases, we shall be entitled to withdraw from the contract. At the request of the customer, we shall state whether we wish to withdraw from the contract or effect delivery within a period of time to be stipulated by us.

6. Default in Acceptance

Risk shall pass to the customer if he unjustifiably refuses to accept the delivery item, if delivery is delayed due to reasons for which the customer is responsible or if the customer does not call off call-off orders on time. The customer shall pay the normal storage charges if we warehouse the goods. If the goods are warehoused at third parties, the customer shall pay the costs incurred in this case. We may also demand immediate payment for the delivery item or dispose of it in another way and deliver the goods to the customer with a suitably extended period of time.

We may execute orders in the form of part deliveries, which shall be paid separately each time. If the customer delays payment for a part delivery, we shall be entitled to suspend the other part deliveries relating to the order.

7. Default in Delivery

Compensation claims by the customer due to default in delivery shall be excluded, unless we were responsible for this due to intent or gross negligence.

In this case, compensation claims by the customer shall also be limited for every full week of the delay to a maximum amount of 0.5%, but at most 5% of the value of that part of the consignment which cannot be used promptly or for the intended purpose on account of our default in delivery.

Any other compensation claims, especially in connection with lost profit or the loss of use on other machines of the customer, shall be expressly excluded.

8. Terms of Payment

Unless otherwise agreed in writing, the following terms of payment shall apply:

- For standard products:
Prepayment net or against irrevocable letter of credit.
- For special execution products:
1/3 after receipt of the order confirmation and advance payment invoice, net
1/3 after receipt of the notice of readiness for dispatch and advance payment invoice, net
Balance within 30 days after the date of the final invoice, net.
- For work services such as installation, repair and maintenance, as well as goods deliveries with a value of less than € 30.00 + VAT:
Prepayment.

The decisive factor each time shall be the date on which the money is credited to our account or the date when a cheque is paid into our account.

9. Payments, Repayment, Default in Payment

All payments shall be made without us incurring any expenses. Payments shall always redeem the oldest invoice. We shall only accept other means of payment such as cash or transfers to the accounts stipulated by us on the basis of a written agreement and solely on account of performance. The customer shall pay discount charges and other expenses even without an express agreement.

In the event of any payment retention or deduction not approved by us and if the period allowed for payment is exceeded, we shall be entitled to calculate default interest even without having to issue a reminder. During the period of default, the customer shall pay interest on the debt amounting to 8% above the base rate of the European Central Bank. We shall reserve the right to provide evidence of higher damage caused by default and take action to enforce a claim due to default in payment.

If the customer fails to make due payments on time or if justified doubts about his ability to pay arise after conclusion of the contract, we shall be entitled to either demand a cash payment for all outstanding claims including notes receivable or securities. We shall not be obliged to make any further deliveries from any current contract before this demand has been satisfied.

The customer shall only be entitled to carry out offsetting if his counterclaims are final and absolute or have been accepted by our company. The customer may only exercise a right of retention if his counterclaim is based on the same contract.

10. Reservation of Ownership

All deliveries shall be made subject to reservation of ownership. Ownership shall only pass to the customer after he has paid all his obligations arising from his business relations with our company. This provision shall also apply if the purchase price has been paid for specific deliveries designated by the customer. In the case of a current account, reserved ownership may be applied to secure the balance claim.

If payment has been made in the form of bills of exchange or cheques, they shall only be accepted for the sake of security. Payment shall only be deemed to have been made after they have been redeemed.

Supplied material shall be treated or processed to the exclusion of acquisition of ownership in accordance with § 950 of the German Civil Code (BGB) with no obligation on our part. The processed goods shall be used as security to the sum of the invoice value of the processed reserved goods.

If the customer carries out processing with other goods not belonging to us, we shall acquire ownership of the new product in the ratio of the invoice value of the processed reserved goods to the purchase price of the other processed goods.

The customer shall be entitled to resell the goods in the ordinary course of business. The customer shall now assign to us all claims which amount to the invoice sum and accrue to him through resale to a third party. We shall accept this assignment. Following assignment, the customer shall be entitled to collect the claim. We shall reserve the right to collect the claim ourselves if the customer fails to comply with his payment obligations and gets into arrears. This assignment shall apply even if the reserved goods have been previously treated or processed by the customer or if they are resold to several purchasers. The assigned claim shall be used as security to the sum of the invoice value of the resold goods.

If the goods are resold by the customer together with other goods not belonging to us - either without or after treatment or processing - the assignment shall only apply to the sum of the involved goods value according to our invoices.

The customer shall be obliged to inform us straightaway about access by third parties to the goods, for example in the event of attachment and any damage or destruction of the goods. The customer shall inform us immediately about any change of ownership of the goods and if he changes the domicile of his company.

In the event of a breach of the contract by the customer, especially default in payment or infringement of the above-mentioned notification and reporting obligations, we shall be entitled to withdraw from the contract and demand that the goods be returned.

We shall also be entitled to sell the system supplied under reservation of ownership in our own name or in the name of the customer at our reasonable discretion. This provision shall also include a private sale. After the system has been sold, we shall credit the proceeds, less any VAT, costs and expenses, against the purchase price still due from the customer.

11. Warranty for Defects

We shall furnish the following warranty, to the exclusion of any other claims, for defects in our goods and services, which also include the lack of assured properties:

We shall initially furnish a warranty for defective goods either in the form of rework or a replacement delivery. If re-performance (rework or replacement delivery) fails, the customer may choose, in principle, to either reduce the remuneration (reduction in purchase price) or revoke the contract (withdrawal). In the event of a minor breach of the contract, especially minor defects, the customer shall not, however, be entitled to withdraw from the contract.

The customer shall examine supplied goods as soon as they have been received and shall inform us immediately in writing about any complaints, but at the latest within 1 week. This provision shall also apply to any subsequent occurrence of defects, which shall be notified immediately by the customer, but at the latest within one week.

Warranty claims shall expire if the customer does not immediately report the defects or if he does not take suitable action straightaway to minimise the damage or give us an opportunity to remedy the defects.

We shall accept no liability for defects or damage which occurred due to the following reasons:

Materials supplied by the customer, design stipulated by the customer, modifications carried out by the customer or third parties, defective maintenance, improper use and use contrary to regulations, incorrect installation or set-up, natural wear and tear, defective and negligent handling, and excessive loading and use of unsuitable operating resources.

In the event of rework and replacement deliveries, we shall bear the costs of the new spare parts including dispatch to European countries. The customer shall pay any costs for the return of the used parts and the costs for dispatch into non-European countries. The defective parts replaced under the terms of the warranty shall remain our property or shall become our property again.

Any other claims by the customer, especially in connection with payment of compensation, shall be excluded if this is legally permissible.

It has been expressly agreed that we shall not be liable to the customer for physical injury, damage to other items of the customer or third parties, or for loss of earnings due to defective goods or services.

The warranty period shall be 1 year from the date of delivery of the goods. In the case of used goods, the warranty period shall be 6 months from the date of delivery of the goods. This provision shall not apply if the customer has not informed us in good time about the defect.

It has been agreed, in principle, that only our product description shall be regarded as the representation of the condition of the goods. Public comments, eulogies or advertising shall not be regarded as a description of the condition of the goods.

12. Utilisation Rights, Industrial Property Rights

When the customer purchases any type of MARKATOR software and the related documentation in return for a consideration, he shall acquire a non-exclusive, non-transferable and permanent utilisation right thereof on a specific hardware product to be defined in an individual case.

We shall remain the holder of the copyright and all other industrial property rights.

The right to make copies shall only be granted for the purpose of data backup. Copyright notes may not be removed.

Transfer to third parties shall be subject to our permission.

If software is handed over for the purpose of resale, care shall be taken to ensure that the third party accepts these Conditions of Sale.

Changes shall not be allowed.

In the event of contravention of these Conditions of Sale, the customer shall pay a contractual penalty amounting to 10 times the value of the order. This contractual penalty shall not be offset against any compensation claim. The software and the related documentation shall be handed back immediately in this case on request.

13. Place of Jurisdiction and Applicable Law

If the customer is a merchant, a legal person under public law or a special public asset, the sole place of jurisdiction for all disputes arising from the contract shall be the court responsible for the town in which our head office is situated. This provision shall also apply if the customer does not have any general place of jurisdiction in Germany or his head office or normal domicile is not known when legal action is taken. However, we shall reserve the right to take legal action, if necessary, at the place where the customer is domiciled.

The law of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on the International Sale of Goods (CISG) dated 11 April 1980 shall not apply.

The place of performance shall be, in principle, Ludwigsburg.

14. Saving Clause

If all or some of the clauses of these Conditions of Sale are invalid or unenforceable, the validity of the other clauses shall not be affected. The invalid or void clause shall be replaced by a new legally valid agreement which comes as close as possible in economic terms to the invalid or void clause.