

## General terms of delivery and payment

### 1. Scope

By signing the present general terms of delivery and payment or the individual order or the individual contract the buyer expressly declares that he agrees with these general terms of delivery and payment. The binding of the buyer to the present general terms of delivery and payment also exists for future contracts.

Amendments to the general terms of delivery and payment shall be notified to the buyer immediately and shall be regarded as acknowledged after seven days from the date of notification provided no written contradiction occurs.

Deviating provisions to these general terms of delivery and payment in the individual contract/in the individual order shall remain, if agreed in writing, reserved.

General business conditions or other documents of the buyer that replace, alter or supplement the present general terms of delivery and payment shall not be accepted even if there is a reference to such in any contract confirmation or in the business correspondence.

### 2. Orders

Each order of the buyer must be made in writing. The orders shall be regarded as accepted by M-Industry if confirmed to the buyer in writing. Alterations and cancellations of orders after receipt of the order confirmation at the buyer's are only permissible with the consent of M-Industry. M-Industry can refuse consent without giving any reasons.

### 3. Delivery

The delivery occurs in accordance with the order confirmation of M-Industry. Overrunning the delivery date does not entitle the buyer either to withdraw from the order or to claim damages.

M-Industry has the right to undertake partial deliveries. In the event of force majeure, M-Industry cannot be held responsible for any delivery shortfalls or other damages.

### 4. Prices and delivery conditions

Prices and delivery conditions must be agreed in writing. Alterations shall remain reserved.

### 5. Payment, offsetting, penalties for default

To ensure payment, M-Industry can demand from the buyer advance payment, an irrevocable letter of credit or an irrevocable bank guarantee. The letter of credit or the bank guarantee must be opened with a first-class bank and must be valid for 6 months after opening and be usable on sight. The costs of the letter of credit or bank guarantee shall be fully charged to the buyer.

The buyer must pay within 30 days of the date of invoice.

Any claims of the buyer acknowledged in writing against M-Industry can – after consultation and subject to the written approval of M-Industry – be set off against payment.

If the buyer defaults, M-Industry can charge the buyer at least 5% interest and grant a period of grace. After fruitless expiry of this period, M-Industry can reject further delivery unless payment is made in advance. Alternatively it is allowed to withdraw from the contract or from further deliveries/contracts.

### 6. Guarantee

For the period up to the date of expiry marked on the package, M-Industry guarantees that the products delivered have no defects if correctly stored and used.

M-Industry delivers the goods in the agreed quality and according to concrete specification. Minor external deviations are not regarded as defects.

The buyer undertakes to immediately check the goods for defects upon receipt and to notify M-Industry immediately in the event of any defects. If a notification of defects is not received within 14 days after delivery of the goods, the goods shall be regarded as free from defects and approved.

If a defect is determined and notified within 14 days after delivery, the buyer's right of option is explicitly excluded and M-Industry has the right, according to its choice, to remove the defect by subsequent improvement, by substitute delivery, by price reduction or conversion. M-Industry does not assume further guarantees, in particular any liability for further damages and consequential damages if legally permissible, is explicitly excluded.

## 7. Product liability insurance

The buyer undertakes to take out product liability insurance with an insured sum of at least CHF 5 million per personal and/or physical damage all-inclusive, whereby the insured sum does not limit the buyer's liability.

## 8. Legal liability

M-Industry guarantees that the products delivered do not infringe the rights of third parties unless the buyer, at the moment of concluding the contract, was aware of the risk of infringement.

In the event of a warranty claim arising on the part of a third party, the buyer is entitled to compensation for the loss or damage directly sustained. The liability of M-Industry for further damages and consequential damages is however – to the extent permitted by law – inapplicable here.

## 9. Immaterial assets and trademark rights

In the case of M-Industry's own brands, all immaterial assets and other proprietary rights to the products, in particular patent and trademark rights as well as copyrights or equipment rights shall remain with M-Industry and shall not be affected by the present contract. The buyer has no right to make trademark, design or patent registrations in his name.

In the case of the buyer's private labels, the trademark rights and the rights to the packaging design shall remain with the buyer. The latter guarantees that thanks to his packaging design incl. trademarks, any rights of third parties shall not be infringed either in Switzerland or in the country of sale and he shall fully indemnify M-Industry in this respect.

## 10. Authorizations

The buyer undertakes to obtain all the necessary permits from authorities etc. for the use and sale of the products of M-Industry.

## 11. Assignment ban

The assignment of rights and duties requires – except an assignment to the Migros Bank – the prior written approval of M-Industry.

## 12. Written form

The parties agree on the written form for all parts of the contract. In particular, therefore, alterations or cancellations of orders/agreements/contracts are only valid if they have been accepted in writing and countersigned by M-Industry.

## 13. Applicable law and jurisdiction

All legal relations between the parties shall be judged exclusively in accordance with **Swiss law** to the complete exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 (Viennese right to buy).

The exclusive **place of jurisdiction** for all disputes in connection with the present contract is **Aarau**.

## 14. Authoritative text

The **German text** of the General Terms for Delivery and Payment is the sole authoritative text.

Position at 25.02.2009