

**I. Scope of Application**

- A. These General Terms and Conditions of Sale and Delivery (hereinafter called "Delivery Conditions") shall apply to all present and future offers, orders, sales and deliveries of components, equipment, accessories, spare parts and services (hereinafter called "Products") by Maxitrol GmbH & Co. KG (hereinafter called "Maxitrol"), unless otherwise expressly agreed in writing.
- B. Deviating general conditions of Maxitrol's business partner (hereinafter called "Customer") shall not apply, even if Customer refers to them and Maxitrol fails to oppose the same expressly. Maxitrol hereby expressly opposes all deviating conditions of Customer.

**II. Placement of Order and Quality of Products**

- A. All orders for Products must be placed with Maxitrol in writing containing a description of the Products being ordered with an exact specification, order number, place of delivery, recipients billing address and requested delivery date. Any conditions in orders and/or any documents which are supplementary to or inconsistent with Maxitrol's Delivery Conditions are not applicable, unless expressly accepted in writing by Maxitrol.
- B. Orders shall be deemed binding on Maxitrol only if Maxitrol has confirmed the same in writing or complied with the same by sending the Products and the invoice.
- C. Maxitrol may correct clerical errors without modifying the interpretation of the Delivery Conditions.
- D. Qualities of the Products that Customer can expect according to Maxitrol's or Maxitrol's agents' public announcements, notably in advertisements and in connection with labeling of the Products or based on trade practice, form part of the contractual quality of the Products only if they have been explicitly designated as such by Maxitrol in an order or in an order confirmation. Warranties are binding on Maxitrol only if they have been designated as such by Maxitrol in an offer or in an offer confirmation and if such document also contains in detail Maxitrol's obligations resulting from such warranty.
- E. Customer shall be solely responsible for testing the usability of the Products for its own purposes.
- F. Technical data printed in brochures or advertising material is only approximate. Data regarding commercial usability are examples only and do not constitute a guarantee of quality unless clearly warranted in writing.
- G. Customer shall hold all Maxitrol information obtained from Maxitrol or obtained from testing as confidential and trade secret information unless shown to be previously available to the public. Customer shall not provide prototypes of the Products to any third party and shall not reverse engineer, test or otherwise analyze any of the Products for the purpose of designing products, and shall be responsible for any third party who does so with any of the Products herein supplied to the Customer. Damages are agreed to be EUR 500,000 per occurrence if either Customer or a third party associated with Customer reverse engineers, tests or otherwise analyzes any part of the Products for the purpose of designing a product to be supplied to and/or sold by or to Customer and/or any third party.

**III. Prices and Terms of Payment**

- A. Prices are net as indicated in the order confirmation. Prices do not include packing or delivery costs. Customer is responsible for all customs duties, all sales tax, excise tax, and other taxes. All prices are quoted in Euro (EUR) unless stated otherwise.
- B. Unless indicated otherwise in the order confirmation, all payments shall be paid immediately without any deductions upon receipt of the invoice. In addition, Maxitrol reserves the right to request cash in advance, submission of a letter of credit or a bank guarantee issued by a major German bank at least thirty (30) days prior to the scheduled delivery date.
- C. If Customer fails to fulfil its contractual obligations when due, including those resulting from prior orders, Maxitrol reserves the right to suspend any further deliveries in part or in whole and to request immediate payment of all outstanding accounts or the provision of reasonable security. This shall also apply in the event of any reason for doubting the Customer's ability to perform.
- D. In the event of non-payment despite default, Maxitrol is entitled to charge interest on overdue accounts at the rate of 8 percent above the current base rate as published by the German Bundesbank and to assert further claims for default damages, including attorney fees for recovering the debt.
- E. Customer may not assert a set-off or a right of retention in this respect unless if its counter-claims are undisputed or acknowledged as final and non-appealable.

**IV. Delivery, Risk of loss, Default of Delivery**

- A. The risk of accidental loss shall pass to Customer upon delivery of the Products. This shall also apply to partial deliveries. Upon request of Customer and at Customer's expense, Maxitrol shall insure the delivery against theft, breakage and damage caused by transport, fire and water.
- B. Delivery dates indicated on quotes and/or order confirmations are not binding, unless expressly confirmed in writing by Maxitrol. Delivery dates shall commence upon the day of receipt of order confirmation. Delivery dates are deemed to have been met if the Products are dispatched on the delivery day.
- C. Delivery dates shall be reasonably extended in the event of strike, force majeure, or other causes beyond Maxitrol reasonable control rendering it substantially more difficult for Maxitrol to meet the delivery date. Maxitrol shall be entitled to make partial deliveries.
- D. If Maxitrol exceeds the delivery date, and if an additional reasonable extension granted in writing by Customer expires without result, Customer is entitled to terminate the Contract or to assert a claim for damages. An extension may be dispensed in accordance with the statutory provision of Sec. 323 II of the German Civil Code (BGB).
- E. Customer may terminate the contract only if Maxitrol is responsible for exceeding the delivery date. The right to assert a claim for damages is subject to clause VI.
- F. Above rights shall lapse if Customer accepts the later delivery of the Products.

**V. Complaints and Warranty**

- A. Customer must check whether the Product supplied meets the contractually agreed standards of quality and is suited to its intended purpose. Upon failure to perform such check or to perform it to a sufficiently thorough extent, or if Maxitrol is not notified about visible defects, including deviations in quantity, or incorrect deliveries immediately after receipt of the Products, the Products shall be deemed accepted in respect of such defects. Hidden defects shall be deemed accepted unless Maxitrol is immediately notified of such defects upon discovery of same, or at latest within 12 months after delivery of the Products to their dispatch address. Notice of visible defects to Products in transit shall be given to Maxitrol immediately, notice of hidden defects to Products in transit within 3 days from arrival of the Products.
- B. Complaints must be made in writing and state the details on the order, the invoice and consignment numbers, and the code for the Products about which the complaint is made. Maxitrol is under no obligation to return or store any Products that have been sent back to it without Maxitrol's prior consent. All returned Products must be in accordance with Maxitrol written Return Goods Policy.
- C. Maxitrol shall respond to justified and duly made complaints by either replacing the Products or remedy the defect free of charge. To the extent that the Products have been processed or altered, or the buyer cannot return them for other reasons, the statutory provisions of Sec. 346 I, II of the German Civil Code (BGB) shall apply. If Maxitrol fails to replace the Product or remedy the defect and if a reasonable extension period granted in writing by Customer expires without success, or if the replacement of the Products or the remedy of the defect are without result, Customer shall be entitled to its choice of either reduction in price or termination of the Contract. Further warranty claims of any kind whatsoever are excluded, except for claims limited in accordance with clause VI.
- D. Maxitrol shall not be liable for defects or damages of the Products delivered that are out of Maxitrol's control; and involve,
  - i. a use not in accordance with Maxitrol's Products instructions and specifications; including exposure to excessive pressure and temperature, moisture and/or corrosive chemicals, debris, magnetism, or other environmental influences;
  - ii. a use not in accordance with Maxitrol's Product installation instructions, including misuse or abuse, adjustments, repairs or modifications by the Customer,
  - iii. Products used in an improper application by a third party or Customer that is not in accordance with its intended use specified by Maxitrol;
  - iv. Products damaged by connection with other Products, unless Customer proves that the defect and/or damage are not a result of such an act, omission or condition.
- E. The Products shall be sent back to Maxitrol at Customer's expense. Customer shall be reimbursed by Maxitrol if the Product is defective. Customer shall bear all costs for inspection, transport, taxes and customs based on Maxitrol's price list valid from time to time for all Products which turn out to be free of defect according to clause V, unless Customer proves that it is not responsible.
- F. In the event that parts of the Products have been removed or sent back, the notification of defect is deemed to be an offer to transfer title in the parts. Maxitrol accepts upon repair or redelivery of the same.
- G. The limitation period for warranty claims, including compensation in lieu of performance, is 24 months from delivery of the Products at Customer's office for most products unless Maxitrol has acted fraudulently or Maxitrol guarantees the quality of the Product. Please contact Maxitrol for a list of products and warranty periods that apply to the product(s). The statute of limitation shall commence on the date of delivery if the Customer is in default of acceptance. In the event of remedy of the defect or replacement of the Product, the statute of limitation shall commence anew with respect to the subsequently repaired or replaced parts. Notwithstanding anything to the contrary contained in Customer's Purchase Documents, Maxitrol expressly rejects any warranty terms proposed by Customer whether contained in Customer's Purchase Documents, acknowledgement, confirmation or otherwise, and such warranty terms are not a part of any order for Products accepted by Maxitrol. The limited warranty extends to only the original purchaser.
- H. The aforementioned provisions shall not apply to recourse claims of Customers in respect of Products that

have been sold to a consumer. Such recourse claims exist only to the extent that the Customer has not given any warranties to its customer exceeding the warranties provided for by statute. With regard to the extent of such recourse claims, the provisions of clause VI apply.

**VI. Limitation of Liability**

- A. Maxitrol shall be liable only for wilful intent and gross negligence, as well as slight negligence when breaching a material obligation or a cardinal obligation in a way jeopardizing the purpose of the Agreement.
- B. In the case of liability for slight negligence, Maxitrol's liability shall be limited to such damage that could have been typically foreseen. This also applies in the case of gross negligence on the part of Maxitrol's vicarious agents (i.e. not legal representatives or executives).
- C. In the case of liability for slight negligence Maxitrol's liability is limited to a maximum amount of EUR 150,000 and EUR 50,000 in the case of mere pecuniary loss.
- D. Other claims for damages shall fall under the statute of limitations at the latest two years after Customer has gained knowledge of the damage and irrespective of such knowledge three years after the damaging event. This shall not apply to claims for damages based on wilful intent.
- E. The aforementioned provisions shall not apply to claims for damages based on product liability law, for personal injury, for defects following a guarantee for the quality of the products and in case of fraudulently concealed defects. In all other cases the aforementioned provisions shall apply irrespective of the legal cause of the claim, including all claims in tort.
- F. The aforementioned restrictions on liability shall also apply if the Products are specified only with respect to type. They shall apply analogously to claims against Maxitrol's employees or agents.

**VII. Retention of Title**

- A. Maxitrol retains title to the delivered Products ("Reserved Products") until full payment by Customer and settlement of all claims resulting from the delivery or of any other claims Maxitrol may have against Customer, irrespective of the legal cause, at the time an order is confirmed.
- B. Customer shall store the Reserved Products for Maxitrol and insure them in a sufficient manner against risks, including, but not limited to, fire, water, humidity, and theft, at its own expense. Upon order confirmation, Customer assigns its corresponding claims under the insurance policies to Maxitrol and Maxitrol accepts such assignment.
- C. Customer shall without undue delay notify Maxitrol in writing of any attempts of attachment, seizure or other impairment of the Reserved Products by third parties. The cost of any measures required to protect the rights of Maxitrol shall be borne by Customer to the extent such Products cannot be recovered from a third party.
- D. Customer shall be entitled to process, link or commingle Reserved Products within the scope of its ordinary course of business. The processing, linking or commingling of Reserved Products, however, shall only be in favor of Maxitrol who acquires a co-ownership share in Customer's finished product. In this case, clause VII. B. shall apply analogously.
- E. In addition, Customer shall be entitled to resell Reserved Products or final products in which Maxitrol holds a co-ownership share in the ordinary course of its business subject to retention of title. As a security, and until full settlement of all claims mentioned in clause VII.A., Customer hereby assigns to Maxitrol its future claims resulting from the resale of Reserved Products in the amount corresponding to the invoice value of such Reserved Products and Maxitrol accepts such assignment. This assignment shall have priority over all other claims. Customer shall provide Maxitrol upon the request of the latter with names and addresses of its customers and upon further request inform Maxitrol about the nature and extent of its claims against such customers. Maxitrol shall be entitled to disclose such assignment at any time in order to secure its claims for payment. Reserved Products may neither be pledged nor assigned by way of security.
- F. In the event of default of payment, or the existence of any reasonable ground for doubting Customer's solvency, Maxitrol shall be entitled to revoke the rights of disposal and collection granted to the Customer, and to collect the assigned receivables itself, and take back the Products subject to reservation of title without prior rescission of Contract; however the rescission of the Contract does not require the prior granting of an extension and shall be deemed valid only if Maxitrol expressly confirms same in writing.
- G. To the extent Maxitrol is entitled to take back Reserved Products, Customer grants to Maxitrol and its authorized agents the irrevocable right to enter its premises during customary business hours in order to collect the Reserved Products.
- H. If, under the statutory regulations applicable in Customer's country, retention of title is not admissible or admissible only to a certain extent, the scope of Maxitrol aforementioned rights shall be restricted to the legally admissible extent.

**VIII. Patents, Trademarks and Copyrights**

- A. All patents, trademarks, copyrights and other industrial property rights existing with respect to the Products and all information and documents pertaining to development, production and sale of the Products shall remain the exclusive property of Maxitrol or Maxitrol Company. Customer undertakes and warrants that it shall not use any information received from Maxitrol or Maxitrol Company with respect to the Products in order to develop or manufacture goods which compete with Maxitrol or Maxitrol Company products. Customer shall hold Maxitrol and Maxitrol Company free and harmless from all costs and shall compensate Maxitrol and Maxitrol Company for all losses or loss of profit due to infringement by Customer of Maxitrol's and Maxitrol Company's patents, trademarks, copyrights and other industrial property rights.
- B. Customer shall give Maxitrol and/or Maxitrol Company immediate written notice if any claims are asserted against Customer by third parties for alleged infringement of the Products. If any such claims are asserted against the Customer for infringement of patents, trademarks, copyrights and other industrial property rights of third parties in the use of the Products, Maxitrol and Maxitrol Company shall decide, at its sole discretion, if and how any litigation arising there from is to be conducted. In this respect, Customer shall not settle or make any other concession without the prior written consent of Maxitrol or Maxitrol Company. Maxitrol's and Maxitrol Company's liability vis-à-vis Customer for infringement of patents, trademarks, copyrights and other industrial property rights is in any case limited to the purchase price of the Product.
- C. Maxitrol and Maxitrol Company shall not be liable for the infringement of patents, trademarks, copyrights and other industrial property rights in connection with the delivered Products, if they are not used in a way permitted by Maxitrol and/or Maxitrol Company, or if the infringement is caused by utilization or connecting of the Products with other goods unless Maxitrol and/or Maxitrol Company has given its written consent hereto.

**IX. Termination**

- A. Customer may upon five (5) days' notice from the date of order confirmation in writing, cancel the sales order in whole or in part, and without penalty unless otherwise specified in Maxitrol confirmation of termination.
- B. Customer may cancel the order in whole or in part ninety (90) days prior to the date scheduled for delivery of Maxitrol Products, but only with the written consent of Maxitrol. Customer shall pay the agreed price less the expenses which Maxitrol saves by virtue of the termination of the Contract.

**X. Packaging**

Packaging shall be disposed of by Customer at its own expense. If such packaging is reused, product markings and company markings on the packing shall be obscured by Customer.

**XI. General**

- A. Except with the prior written consent by Maxitrol, Customer shall not be entitled to assign any rights arising from its business relation with Maxitrol or any claims it may have against Maxitrol, to third parties unless this is necessary to perform the contract with Maxitrol.
- B. Maxitrol may in connection with the business relations with the Customer disclose to Customer information which by its nature is confidential or proprietary to Maxitrol or is expressly designated as such. Customer or its employees shall neither disclose nor provide such confidential or proprietary information to any third party nor make own use of the same.
- C. Except with the prior written consent by Maxitrol, Customer and its affiliated companies are not entitled to use any element of Maxitrol's names, trademarks, or commercial designations.
- D. If any authorization or certificate by a public authority or any third party is needed for the use of the Products as intended by Customer, Customer is exclusively responsible for obtaining such authorization or certificate.
- E. Any changes, amendments, or modifications of these General Conditions and of confirmed orders shall be invalid unless made in writing and signed by both parties. This written form requirement may be waived only by written Agreement concluded between Maxitrol and Customer.
- F. The contract is governed exclusively by the laws of the Federal Republic of Germany; the provisions of the United Nations Convention on Contract for the International Sale of Goods dated April 11, 1980 and the rules of the conflict of laws of the Federal Republic of Germany are excluded.
- G. If Customer is a merchant the place of performance is Thale.
- H. If Customer is a merchant and unless exclusive place of jurisdiction exists according to legal provisions, the place of jurisdiction for all pecuniary claims shall be Magdeburg, and for claims by Maxitrol the place of jurisdiction may also be Customer's general place of jurisdiction.
- I. Should one or more provisions of these General Conditions be or become invalid, the validity of the remaining provisions shall not be affected thereby. All headings contained in these General Conditions are for reference purposes only and are not part of these General Conditions.