

MX Composites AB

General Terms and Conditions for Sale of Products

1. SCOPE

1.1 These General Terms and Conditions (“GTC”) shall always apply in all purchase and sale agreements and other agreement to which MXC is a party and shall thus be deemed to be an integral part of any such agreement unless otherwise agreed in writing, irrelevant of whether an explicit reference is made to these GTC or not.

2. DEFINITIONS

2.1 In addition to any capitalized terms defined in subsection 2.1.1 - 2.1.10 herein below and unless otherwise defined in these GTC, capitalized terms shall have the meaning set forth to them, all of which terms shall be equally applicable to the singular and plural forms of such terms.

2.1.1 “**Agreement**” means the entire relationship of legal rights and obligations between MXC and Buyer with regard to each sale and purchase of Products, consisting of one or several of (i) a contract in writing, or (ii) Confirmed Order and (iii) these GTC and appendices to said documents (if any).

2.1.2 “**Buyer**” means the purchaser of Products from MXC according to this Agreement.

2.1.3 “**Confirmed Order**” means a written purchase order from Buyer accompanied by an order confirmation from MXC. If the order confirmation from MXC deviates from Buyer’s purchase order, the terms set forth in the order confirmation shall apply as Confirmed Order, unless Buyer has specifically and without delay contested the order confirmation in writing.

2.1.4 “**Excusable Delay**” means a delay (i) caused by Buyer or any third party for whom Buyer is liable, (ii) caused by force majeure, (iii) caused by Buyer’s request for changes to the Products, the scope of a Confirmed Order and/or other aspects of the Agreement, (iv) approved by the Buyer, or (v) other circumstances outside MXC’s control.

2.1.5 “**GTC**” means this document including any appendices hereto.

2.1.6 “**MXC**” means MX Composites AB, 556291-6857, acting as supplier hereunder.

2.1.7 “**Products**” means MXC’s Metal Matrix Composites (MMC) components (including connecting rods) and/or other products ordered by Buyer, as further specified in the Confirmed Order.

2.1.8 “**Price List**” means MXC’s official price list, as amended from time to time.

2.1.9 “**IPR**” means either Party’s trademarks, patents, designs, inventions (including applications pending for any of the foregoing), utility models, utility marks, domain names, trade and business names, copyrights, confidential information, trade secrets, and registered database rights.

2.1.10 “**Parties**” means MXC and Buyer collectively.

3. RANKING OF DOCUMENTS

3.1 In case of any discrepancy between these GTC and any other documents in an Agreement, the provision in the document(s) with the higher ranking according to the following list, shall prevail: (i) contract (ii) Confirmed Order; (iii) these GTC. An attachment (such as an appendix or an exhibit) to any of these documents is ranked below the document to which it is attached but higher than a lower ranked document.

4. ORDERS

4.1 Any sale of Products is subject to a Confirmed Order. All purchase orders from Buyer shall be in writing and include specifications on which Product(s) is/are ordered and Buyer’s desired date of delivery.

4.2 MXC shall, in writing, either confirm or reject each purchase order referred to in Section 4.1. In case Buyer has neither received a confirmation nor a rejection of the purchase order within two (2)

weeks of the purchase order, the purchase order shall be deemed as rejected. Rejections of orders from MXC are always made by MXC without any obligation to compensate or otherwise indemnify Buyer therefore. MXC shall however not reject an order without reasonable grounds. Notwithstanding the above, MXC reserves the right to reject and/or cancel any order, in whole or in part, if such order can not be delivered due to actions brought upon MXC by a third party or if an order can reasonably be considered to cause damage to MXC’s business, reputation or moral standard.

5. PRICE AND PAYMENT TERMS

5.1 Buyer shall pay the price for the Products as set out in the MXC’s official Price List. MXC may change the Price List by giving Buyer thirty (30) days’ advance notice in writing.

5.2 Unless otherwise agreed in writing between the Parties, MXC may invoice Buyer immediately upon delivery of the Product(s) to Buyer.

5.3 All amounts in the Price List and this Agreement are exclusive of VAT and/or other governmental taxes, duties and charges. Should any payment under this Agreement be subject to withholding tax or any similar reduction, all amounts shall be increased with an amount corresponding to such tax or reduction i.e. that MXC actually shall be receiving the amounts set forth in MXC’s invoice

5.4 Unless otherwise agreed upon in a Confirmed Order or otherwise, payment shall be effected by Buyer no later than thirty (30) days from the date of the invoice from MXC. In case of late payment, MXC shall be entitled to

5.4.1 a penal interest on arrears of the applicable London InterBank Offered Rate (LIBOR) 12 months + five percent (5 %), calculated from the due date of the payment until full payment has been received by MXC; and/or

5.4.2 immediately suspend and/or cancel, in whole or in part, any orders for Products not yet produced and/or delivered to Buyer until full payment has been received by MXC; and/or

5.4.3 immediately suspend performance of any other agreement or understanding between the parties until full payment has been received by MXC.

5.4.4 with regard to any future orders from Buyer, receive full payment in advance and/or any guarantee, collateral or other security as requested by MXC.

6. DELIVERY TERMS

6.1 All deliveries are made Ex Works (INCOTERMS 2000) MXC’s site in Linköping, Sweden.

6.2 MXC’s order confirmation shall include information on the estimated time of delivery of the ordered Products. Except for circumstances attributable to an Excusable Delay, MXC will deliver ordered Products with the delivery times as set forth in the Price List or otherwise as agreed between the Parties in a Confirmed Order.

7. RETENTION OF TITLE

7.1 The Products shall, to the extent permitted under mandatory law, remain MXC’s property until the entire price for the Products has been paid by Buyer.

8. LIMITED WARRANTY

8.1 Subject to the exclusions and limitations set forth in Sections 9 – 11 below, MXC warrants – for a period of thirty (30) days after delivery of the Products – that the Products will generally and substantially correspond with the Documentation or other specifications accompanying the Products. This warranty does however not imply or suggest that the Products will be without errors or otherwise subject to potential improvements.

- 8.2 In case of a breach to the warranty provided in Section 8.1 above, MXC shall at its sole discretion (i) repair the Products, without any additional expense for Buyer, or (ii) replace/re-deliver the Products, without any additional expense for Buyer, or (iii) refund Buyer with the price paid by Buyer for the Products.
- 8.3 THE WARRANTY IN SECTION 8.1 IS MXC'S SOLE AND EXCLUSIVE WARRANTY BOTH IN RELATION TO MXC'S PRODUCTS AND SERVICES AND MXC MAKES NO ADDITIONAL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING – BUT NOT LIMITED TO – ANY IMPLIED WARRANTIES OF (I) MERCHANTABILITY OR (II) FITNESS FOR A PARTICULAR PURPOSE OR USE, WHICH WARRANTIES ARE HEREBY EXPRESSLY AND SPECIFICALLY DISCLAIMED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MXC, ITS BUYERS, DISTRIBUTORS, AGENTS, OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.
- 8.4 Buyer shall not make or pass on any express or implied warranty or representation on behalf of MXC or its licensors to any Customer or other third party.
- 9. NO LIABILITY**
- 9.1 MXC shall not be liable for defects, delays and/or other faults related to:
- 9.1.1 defects arising as a consequence of defects in Third Party Products,
- 9.1.2 defects caused by incorrect information provided by Buyer if the information received has been verified by Buyer to a reasonable extent and the incorrectness has nevertheless not been discovered,
- 9.1.3 defects occurred after modifications or interventions of the Products made by Buyer or any third party other than MXC,
- 9.1.4 defects caused by non-commercial/laboratory use of the Products,
- 9.1.5 defects caused by faulty, incorrect, inappropriate or unprofessional assembly of the Product with any Third Party Product,
- 9.1.6 defects caused by use of the Products in conflict with MXC's reasonable instructions or recommendations with regard to the use of the Products, and/or
- 9.1.7 Excusable Delays.
- 9.2 MXC SHALL HAVE NO LIABILITY TO BUYER OR IN RESPECT OF ANY DEFECTS, DELAYS OR DEFAULTS UNLESS BUYER HAS SERVED WRITTEN NOTICE OF THE SAME UPON MXC WITHOUT UNDUE DELAY AFTER THE DATE IT BECAME AWARE OF THE CIRCUMSTANCES GIVING RISE TO THE DEFECT, DEFAULT OR THE DATE WHEN BUYER OUGHT REASONABLY TO HAVE BECOME SO AWARE.
- 10. LIMITATION OF LIABILITY**
- 10.1 MXC'S ENTIRE LIABILITY, IN TERMS OF WARRANTY CLAIMS, INDEMNIFICATION CLAIMS AND ALL OTHER CLAIMS (INCLUDING CLAIMS FOR PRICE REDUCTION, HOWEVER EXCLUDING CLAIMS FOR PRODUCT LIABILITY) FROM BUYER ARISING OUT OF OR IN RELATION TO THIS AGREEMENT, SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID BY BUYER TO MXC UNDER THIS AGREEMENT DURING A TIME PERIOD OF TWELVE (12) MONTHS PRECEDING THE POINT IN TIME FOR THE LIABILITY CLAIM. THE EXISTENCE OF MORE THAN ONE (1) CLAIM FROM BUYER SHALL NOT ENLARGE OR EXTEND THE ABOVE MENTIONED LIMITATION OF LIABILITY.
- 10.2 NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF DATA OR ANY INDIRECT, SPECIAL INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING – BUT NOT LIMITED TO – LOST PROFITS, ANTICIPATED SAVINGS, LOSS OF SAVINGS OR BUSINESS OR LOSS OF DATA WHETHER IN CONTRACT, REGARDING PRODUCT LIABILITY OR OTHERWISE.
- 10.3 THE REMEDIES PROVIDED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE REMEDIES OF EACH PARTY. EXCEPT FOR SUCH LIABILITY EXPLICITLY STATED HEREIN, NEITHER PARTY WILL BE LIABLE FOR ANY ADDITIONAL DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY;
- UNLESS SUCH LIABILITY ARISES AS A CONSEQUENCE OF WILFUL MISCONDUCT OR GROSS NEGLIGENCE FROM THE BREACHING PARTY.
- 10.4 MXC'S LIABILITY (INCLUDING PRODUCT LIABILITY) FOR CLAIMS IN RELATION TO THE PRODUCTS, SHALL IN ANY EVENT, EXPIRE UPON THE FIRST OF (I) TWELVE (12) MONTHS AFTER DELIVERY OF THE RELEVANT PRODUCT GIVING CAUSE FOR THE CLAIM OR (II) SIX (6) MONTHS AFTER EXPIRY OF THE RELEVANT AGREEMENT WITH BUYER.
- 11. PRODUCT LIABILITY**
- 11.1 MXC and Buyer shall take out and maintain product liability insurance policies covering reasonable product liability risks related to the Products in the relevant jurisdictions.
- 11.2 MXC shall not have any obligations to any party, including Buyer, for product liability in excess of MXC's liability in the applicable mandatory legislation in the jurisdiction where liability occurs.
- 11.3 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, MXC'S ENTIRE LIABILITY TOWARDS BUYER FOR ALL PRODUCT LIABILITY CLAIMS SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED FIVEHUNDREDTHOUSAND (500.000) EURO PER CLAIM AND ONEMILLION (1.000.000) EURO FOR ALL CLAIMS DURING THE ENTIRE TERM OF THE AGREEMENT AND AFTERWARDS (IF APPLICABLE).
- 12. IPR**
- 12.1 All title and interest in respect of IPR relating to the Products and/or to MXC's business shall remain with MXC and Buyer shall acquire no other right to use MXC's IPR, except as expressly set out in these GTC or in an Agreement.
- 13. FORCE MAJEURE**
- 13.1 Neither Party hereto shall be responsible or liable in any way for failure, delay or omission carrying out the terms of an Agreement resulting from any cause or circumstance beyond its reasonable control, including, but not limited to, fire, flood, other natural disasters, war, labour strike, interruption of transit, terrorist acts, accident, general interruptions of data- or telecommunication facilities, general and unforeseen computer virus attacks, explosions, civil commotion, and acts of any governmental authority, provided, that the Party so affected shall give prompt notice thereof to the other.
- 13.2 No such failure, delay or omission shall terminate an Agreement, and each Party shall complete its obligations hereunder as promptly as reasonably practicable following cessation of the cause or circumstance of such failure or delay, provided, however, that if any of the above conditions continues to exist for more than three (3) months after the date of any notice given with regard thereto, either Party may terminate an Agreement forthwith upon written notice to the other Party. In such case no Party shall have any liability to the other Party. This Section 12 shall apply, *mutatis mutandis*, if MXC's failure, delay or omission to perform under an Agreement is due to a force majeure event (as described above) preventing MXC's sub-contractors to fulfill its obligations towards MXC.
- 14. GOVERNING LAW AND DISPUTES**
- 14.1 These GTC shall be construed in accordance with and be governed by Swedish law.
- 14.2 Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the SCC Institute). The Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce shall apply, unless the SCC Institute, taking into account the complexity of the case, the amount in dispute and other circumstances, determines, in its discretion, that the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce shall apply. In the latter case, the SCC Institute shall also decide whether the arbitral tribunal shall be composed of one or three arbitrators. The language to be used in the arbitral proceeding shall be English and the place for the proceeding shall be Stockholm.