



**MEXIME** GmbH&Co.KG

construction machines

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## General Terms and Conditions of Mexime GmbH&Co.KG

### 1. Scope of the General Terms and Conditions

1.1 Any contract or any agreements based on such contracts concluded between Mexime GmbH&Co.KG and the client are exclusively subject to the following General Terms and Conditions. Consequently these conditions remain exclusively applicable even if the client includes his own terms and conditions when confirming the contract, insofar as the conclusion of the contract itself is not put at risk through this.

1.2 Client terms and conditions which differ are rejected. An explicit rejection statement is not required even if Mexime GmbH&Co.KG unconditionally hands over the delivered goods in the knowledge of client terms and conditions which differ.

1.3 Any change to these Terms of Sale will be notified to the client. The change will become part of the contract, if the client does not object within one month following notification of the change.

1.4 The following terms of sale are only valid for agreements with natural or legal persons or a legally valid business partnership which performs its commercial or independent professional activity by way of conclusion of a legal transaction (an entrepreneur in the sense of § 14 BGB).

### 2. Conclusion of the contract

2.1 A contract only comes into being upon written acceptance by Mexime GmbH&Co.KG.

2.2 Additions, changes and other ancillary agreements will also only become effective upon written confirmation by Mexime GmbH&Co.KG. Clause 1.3 remains unaffected.

2.3 In the event of a canceled order, from side of the Mexime GmbH & Co.KG, an invoice and / or a pro forma invoice, the Mexime GmbH & Co.KG is not liable for lost profits or business interruption losses of the customer, or a third party as well as other indirect losses.  
(Compensation claims generally cannot be invoked for this.)

### 3. Delivery and delays in delivery or acceptance

3.1 Delivery takes place through the provision of the delivery item for collection at the headquarters of Mexime GmbH&Co.KG, or at any other agreed place. Dispatch of the delivery item to another location will take place only at the request, expense and risk of the client.

3.2 Delivery dates are approximate. However, a delivery time is binding if it is expressly agreed in writing as a firm deal.

3.3 Delivery dates are subject to the timely delivery of parts which, in addition, are to be fitted by Mexime GmbH&Co.KG at the client's request. If the object of sale is new, the delivery date is subject to timely delivery by the manufacturer.

3.4 The delivery time is met if the goods have left the warehouse of Mexime GmbH&Co.KG or the manufacturer's works before the expiry of the delivery period or readiness of the delivery item for dispatch to the client has been demonstrated.

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**Persönlich haftender Gesellschafter:**

Mexime Verwaltungs GmbH, Amtsgericht Aachen HRB 1758

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3.5 If there are exceptional, temporary obstacles which are not the responsibility of Mexime GmbH&Co.KG during the agreed delivery period, then the delivery period will be extended by a reasonable period. The delivery period will also be appropriately extended in cases where a preliminary service to be provided by the client has not been implemented, especially if documents required for delivery, such as permits and drawings, have not been provided to Mexime GmbH&Co.KG in full and in good time. Exceptional obstacles in the sense of Clause 1 include in particular labour disputes, civil unrest, natural disasters or other events of force majeure. An extension of deadline in accordance with Clauses 1 and 2 cannot be considered if Mexime GmbH&Co.KG is in a position to meet the delivery date in spite of the obstacles, given due diligence or reasonable efforts.

3.6 In the event of delay in delivery Mexime GmbH&Co.KG will not be liable for lost profits or losses due to business interruption by the client or a third party, or other indirect damages.

3.7 If the client fails to collect the purchased item in good time (Figure 6.1), he will be liable to Mexime GmbH&Co.KG for each week of delay for an amount of 0.1% of the order value. (Liquidated damages for storage costs). This applies only insofar as the client cannot prove that no damage or lesser damage occurred, or where Mexime GmbH&Co.KG proves higher damages.

3.8 Partial deliveries are permitted.

3.9 The client cannot refuse to accept the delivery of an item provided or shipped simply on account of insignificant faults.

3.10 Inadequate performance is not considered to be late delivery.

#### **4. Transfer of risk, dispatch**

4.1 Dispatch from the place of delivery specified in Figure 3.1 takes place only at the request and expense of the client.

4.2 Once the item has been delivered to the carrier, the haulier or any other person or institution instructed to perform the dispatch, but at the latest on leaving the warehouse or manufacturing plant, the risk of accidental loss and accidental deterioration passes to the client.

4.3 The Mexime GmbH&Co.KG can specify a transport company in the name and on behalf of the client for the dispatch of the delivery item. Mexime GmbH&Co.KG is not a contract partner of the transport company. In any case, in the internal relationship between Mexime GmbH&Co.KG and the client Mexime GmbH&Co.KG is exempt from any liability to the transport company.

#### **5. Obligations of the Mexime GmbH&Co.KG**

5.1 The Mexime GmbH&Co.KG is required to inform the client as soon as significant delays occur.

#### **6. Obligations of the Client**

6.1 Unless dispatch is agreed, the client is required to collect the purchased item within 5 business days of receipt of the notification of readiness.

6.2 The client guarantees and avows that it will not use the purchased item (including software and/or related technology) provided to him under a contract by the Mexime GmbH&Co.KG to disrupt international peace, including the (i) construction, development, production or use of any weapons of mass destruction, such as nuclear, chemical or biological weapons or guided ballistic missiles, (ii) any other military activities or (iii) any support for such activities.

6.3 The client further guarantees and avows that it will not, directly or indirectly, sell, export, provide, license, rent, transmit or make the purchased item (including software and/or related technology) available to a third party in any other way if it knows that the third party or any other party will use it for any of the activities described in the previous clause. The client will procure the same guarantees and assertions from any third party to which it may sell, export, license, rent, assign or otherwise make available the purchased item (including software and/or related technology).

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## 7. Prices and terms of payment

7.1 All prices are ex-warehouse of Mexime GmbH&Co.KG and exclusive of costs for packaging and transport. The applicable sales tax will be added to the prices and shown separately in the invoice. If the item is shipped, the client must cover any additional packaging costs, freight costs, postage, etc.

7.2 All payments must be made in Euros.

7.3 Payment will be due upon submission of invoice unless otherwise agreed.

7.4 If payment is delayed, or there is a significant deterioration of the financial situation of the client, Mexime GmbH&Co.KG is entitled to assert its claims or to demand collateral. In such instances the Mexime GmbH&Co.KG can also make outstanding deliveries dependent on the prior provision of adequate collateral, or to cancel the order, invoice, delivery.

## 8. Warranty

8.1 Mexime GmbH&Co.KG gives no warranty in the sale of used items. The sale takes place under the exclusion of material defect complaints. No warranty, no demand for reduction, no claim for damages and no option for conversion.

8.2 In the case of defects of the contractual products which Mexime GmbH & Co.KG is not liable for lost profits and business interruption damages of the contractual partner or a third party.

8.3 If not all factory inspections prescribed maintenance plan in time carried out using the original spare parts, oils, filters, etc., are no warranty claims for such mistakes, which were caused by foreign parts.

8.4 The Mexime GmbH & Co.KG can make subsequent performance by remedying the defect or by delivery of a new item according to your own choice.

## 9. Withdrawal

9.1 Without prejudice to the legal reasons for withdrawal, there is a right of withdrawal for Mexime GmbH&Co.KG in the following cases:

9.1 for supply difficulties due to extraordinary obstacles of considerable duration.

9.1.2 upon default of payment or

9.1.3 upon any application to open insolvency proceedings over the client's assets.

9.2 The customer is only entitled to withdraw if he has the Mexime GmbH & Co.KG previously set in writing a reasonable period for performance, coupled with the threat to refuse the performance after the deadline (the threat of rejection). After this period the customer can exercise his right of withdrawal within the next 10 working days. If the customer exercises his right of withdrawal within this period is not sufficient, he is obliged to inform the Mexime GmbH & Co.KG again a reasonable grace period for performance under threat of rejection.

11.3 The client is required to treat the retained goods with care and to maintain them at its own cost. Maintenance and inspection work in this context are to be performed in accordance with the manufacturer's instructions.

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## 10. Ban on offsetting, right of retention

10.1 The purchaser may only offset undisputed or legally established claims against Mexime GmbH&Co.KG.

10.2 The rights to refuse performance and of retention are enjoyed by the purchaser only for undisputed or legally recognized claims against the Mexime GmbH&Co.KG.

## 11. Retention of title, insurance, legal costs

11.1 The Mexime GmbH&Co.KG will retain title of the delivered goods until full payment. Advance payments expire by failure to comply with the payment agreements.

11.2 If the client is a company in the sense of § 14 BGB, Mexime GmbH&Co.KG will retain title of the delivered item until payment of all existing receivables from the client and all future claims arising out of the business relationship (current account retention). The retention of title does not expire even if the purchase price is paid for certain deliveries designated by the client.

11.3 The customer has to ensure that markings on the delivery object remain unchanged, in particular, not be covered or made unrecognizable. According to prompted by the Mexime GmbH & Co.KG the customer is obligated to point out the ownership position of Mexime GmbH & Co.KG by references in the commercial documents and data on the delivery object.

11.4 The Mexime GmbH & Co.KG is entitled to review the duties to the ordinary business hours insight into call for the relevant business records of customers take and to inspect the goods.

11.5 If the customer is in arrears with his financial obligations so Mexime GmbH & Co.KG is entitled after appropriate threats to collect the reserved item. The collection of Matter under sentence 1 only constitutes a withdrawal, if this has been expressly declared by the Mexime GmbH & Co.KG. The customer is obligated to all necessary assistance actions, in particular the customer has the Mexime GmbH & Co.KG to allow access to the reserved goods and to eliminate any obstacles with respect to the pick-up.

11.6 With sale of the goods, the customer assigns in advance all out of his sale or entitled from any other legal reason claim against his customer in the amount of the purchase price, or in the case of Section 11.2 in the amount of Total demand (outstanding account) with all ancillary rights precaution in full to the Mexime GmbH & Co.KG. The customer remains entitled to collect the debt. The Mexime GmbH & Co.KG is entitled to collect the debt if the customer fails to meet its payment obligations, or a request for the opening of insolvency proceedings over the assets of the customer has been provided. Only in the case of the collection authorization by the Mexime GmbH & Co.KG, the customer has the Mexime GmbH & Co.KG to provide all the information necessary to meet the demand available.

11.7 If the value of existing securities exceeds the secured claims by more than 10%, so the Mexime GmbH & Co.KG is obliged on request of the customer, to release securities up to this limit after his election.

11.8 The customer transmitted without written permission of the Mexime GmbH & Co.KG the conditional goods as equitable lien, pledge or make other dispositions of the reserved goods. If the customer acts contrary to contract, the authorization may be revoked available.

11.9 If the goods are processed by the client or remodeled, this is done always for Mexime GmbH & Co.KG.

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11.10 The customer is obliged to inform the Mexime GmbH & Co.KG on any legal or actual hazards in terms of property rights, particularly in the case of seizure or other third party access to the conditional goods or damage and a loss of the reserved goods. The customer is obliged to inform the third party about the ownership status of Mexime GmbH & Co.KG, as far as possible.

### **12. Severability clause, written form, additional agreement**

12.1 If any provision of these General Terms and Conditions is invalid or unenforceable or becomes invalid or unenforceable after conclusion of the contract, the validity of the remaining provisions will not be affected. The invalid or unenforceable provision must be replaced by a valid and enforceable provision whose effects are closest to the economic aims of the parties in the invalid or unenforceable provision. The same applies in the event that the contract is found to be incomplete.  
12.2 Additions, changes and any other ancillary agreements must be made in writing. The same applies to any change of this written form requirement.

### **13. Place of jurisdiction, applicable law**

13.1 If the client is a merchant, a legal entity under public law or a public special fund, the exclusive venue for all disputes arising directly or indirectly from the contractual relationship is Aachen.

13.2 Aachen is also the exclusive place of jurisdiction if a client has no general place of jurisdiction in Germany, if a client has moved its place of residence or habitual residence abroad or if its domicile or habitual residence is unknown at the time of the proceedings.

13.3 The law of the Federal Republic of Germany is applicable, to the exclusion of the rules on the International Sale of Goods (CISG).

### **As of July 2014**

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