

MEIKO Clean Solutions Austria GmbH

General Terms and Conditions of MEIKO Austria GmbH

version April 2021

1. Scope of application

- 1.1. These General Terms and Conditions (hereinafter: GTC) of MEIKO Austria GmbH with its registered office in Vienna (FN 130710x; hereinafter: MEIKO) shall apply to all contracts, related services, consultations and information provided with or towards customers of MEIKO (these customers hereinafter: CUSTOMER). They shall apply equally to the delivery and/or sale of goods and the performance of services (e.g. repairs).
- 1.2. In the event of contradictions between conditions individually agreed upon by MEIKO with CUSTOMERS and these GTC, the individually agreed provisions shall apply.
- 1.3. These GTC shall apply exclusively. Differing, conflicting or additional terms and conditions of purchase or general terms and conditions of the CUSTOMER shall only become part of the contract if and insofar as MEIKO has expressly consented to their applicability in writing. This requirement of consent shall apply in all cases, e.g. even if MEIKO unconditionally carries out the delivery or its services in the knowledge of the CUSTOMER's terms and conditions.
- 1.4. These GTC shall not apply to contracts with consumers (*Konsumenten*) within the meaning of Section 1 para. 1 No 2 of the Austrian Consumer Protection Act (*Konsumentenschutzgesetz*).

2. Offers and conclusion of contract

All offers from MEIKO are subject to change and non-binding. The order of goods or the call-off of services by the CUSTOMER represents a binding offer of contract. Unless otherwise stated in the order, MEIKO shall be entitled to accept this contractual offer within three weeks of its receipt. Acceptance may be declared in writing (e.g. by order confirmation) or implicitly by delivery of the goods to the CUSTOMER or by rendering services for the CUSTOMER.

3. Content of the contract

- 3.1. The legal relationship between MEIKO and the CUSTOMER shall be governed solely by the contract concluded in writing, including these GTC. These documents fully reflect all agreements between the contracting parties on the subject matter of the contract. Verbal commitments made by MEIKO or its employees prior to conclusion of the contract are legally non-binding and shall only become part of the contract if they have been included in writing in the contract. As an exception to this, a contract with regard to services to be provided by MEIKO (e.g. urgent repairs) including deliveries of goods directly associated herewith (e.g. spare or small parts) may also be concluded verbally.
- 3.2. Information provided by MEIKO on a good that shall be delivered (e.g. weights, dimensions, functional values, load-bearing capacity, tolerances and technical data) as well as presentations of the same (e.g. drawings and illustrations) shall only be approximately significant unless usability for the contractually intended purpose requires exact conformity. They are not guaranteed quality features, but descriptions or characterisations of the delivery or service. Deviations that are customary in the trade or occur due to legal regulations or represent technical improvements are permissible insofar as they do not affect the usability for the contractually intended purpose.

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- 3.3. MEIKO reserves the right of ownership and copyright to cost estimates, drawings and other documents. The CUSTOMER may not make these documents accessible to third parties without MEIKO's consent.
- 3.4. MEIKO is not obliged to check the correctness or validity of information provided by the CUSTOMER, the content of documents provided et cetera prior to the conclusion of a contract and can rely that these are correct. Any disadvantages resulting from incorrect, defective or missing information or documents provided by the CUSTOMER shall be borne exclusively by the CUSTOMER and MEIKO shall be fully indemnified and held harmless.
- 3.5. In any case, MEIKO shall not provide any masonry and chiselling work, counter breakthroughs or electrical, water and gas installations.
- 3.6. MEIKO shall be entitled, to the extent permissible by statutory law, to have the performance of this contract carried out in whole or in part by third parties.

4. Prices and payment; default of payment by the CUSTOMER

- 4.1. The prices shall be governed by mutual agreement between MEIKO and the CUSTOMER (this is particularly the case with the delivery of machines) or by MEIKO's current price lists (e.g. for spare parts or for maintenance and repairs). These price lists may be consulted by the CUSTOMER at MEIKO's premises at any time or may be requested from MEIKO.
- 4.2. All prices do not include statutory VAT and costs for packaging, freight and assembly, unless MEIKO has assumed these costs according to the content of the contract. The applicable rate of VAT shall be specifically indicated. In the case of export deliveries, customs duties, fees and other public charges may be added to the price.
- 4.3. Unless expressly agreed otherwise, payments by the CUSTOMER for services by customer service (*Kundendienst*) shall be made to MEIKO within 8 days without any deductions. All other payments shall be made within 30 days from receipt of the invoice without any deductions.
- 4.4. MEIKO shall be entitled to perform outstanding deliveries or services only against provision of security if circumstances become known after conclusion of the contract which are likely to substantially reduce the creditworthiness of the CUSTOMER. If the CUSTOMER fails to make the advance payment or to provide the security within a reasonable period specified by MEIKO, MEIKO shall be entitled to withdraw from the contract and demand compensation for damages resulting from the non-performance.
- 4.5. The CUSTOMER shall only be entitled to rights of set-off or retention to the extent that his claim has been acknowledged by MEIKO or has been established by a court. In the event of defects in the delivery, section 8 para. 4 shall remain unaffected.

5. Cancellation; cancellation costs

If the CUSTOMER cancels the order, MEIKO shall be entitled to demand a lump sum fee from the CUSTOMER to compensate MEIKO for the loss incurred. The lump sum fee shall amount to **15% of the order value**. With respect to products manufactured individually according to the CUSTOMER's specifications, MEIKO shall be entitled to an additional cost reimbursement of 30% of the order value. Notwithstanding this, MEIKO reserves the right to provide evidence of higher costs and to raise respective claims in individual cases. The CUSTOMER shall be entitled to prove that MEIKO has incurred no or lower costs than the aforementioned flat rates.

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6. Place of performance, delivery, transfer of risk, insurance costs

- 6.1. Unless otherwise agreed, the place of performance for all obligations arising from the contractual relationship shall be MEIKO's registered office in Vienna and **delivery of the goods shall be EXW in accordance with INCOTERMS 2020.**
- 6.2. The risk of accidental loss and accidental deterioration of the goods shall pass to the CUSTOMER upon handover. The passing of the respective risk also takes place in case of default of acceptance by the CUSTOMER. In the case of sale by delivery, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the CUSTOMER as soon as MEIKO has notified the CUSTOMER in writing that the goods are ready for dispatch, but at the latest when the goods are delivered to the person designated to carry out the delivery. The same shall apply to partial deliveries.
- 6.3. **MEIKO shall only insure the consignment against breakage, transport, fire and water damage at the request and expense of the CUSTOMER, whereby 0.5% of the invoice amount shall be charged.**

7. Delivery period, delay in delivery, contractual penalty in the event of default by the CUSTOMER

- 7.1. The delivery period shall be agreed between the parties or stated by MEIKO upon acceptance of the order. Unless otherwise agreed, the delivery period shall commence with the dispatch of the order confirmation by MEIKO, but not before the CUSTOMER has provided any necessary documents and not before receipt of any agreed down payment. The delivery period shall be deemed to have been met when the delivery item has left MEIKO or notification has been given that it is ready for dispatch within the given period.
- 7.2. MEIKO shall not be liable for impossibility of delivery or for delays in delivery if these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, measures by public authorities or untimely delivery by suppliers) for which MEIKO is not responsible.
- 7.3. If MEIKO fails to meet binding delivery deadlines for reasons for which it is not responsible, the CUSTOMER shall be informed immediately and notified of the expected new delivery deadline. If the good is still not available or if the service can still not be provided due to force majeure within the new delivery period, MEIKO shall be entitled to withdraw from the contract in whole or in part. MEIKO shall immediately refund any payment already made by the CUSTOMER. A non-timely delivery by suppliers shall be deemed to be a case of non-availability of the service in this sense if MEIKO has concluded a congruent covering transaction. A congruent covering transaction shall be presumed if the supplier's delivery obligations resulting from the purchase contract between the supplier and to MEIKO grant at least the same security for delivery to MEIKO as MEIKO itself guarantees to the CUSTOMER in the sales contract. The CUSTOMER's rights of withdrawal in accordance with section 8 of these GTC shall remain unaffected.

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- 7.4. If the CUSTOMER is in default of acceptance, fails to cooperate or if MEIKO's delivery is delayed for other reasons for which the CUSTOMER is responsible, MEIKO shall be entitled to demand compensation for the resulting damage including additional expenses, in particular storage costs. **For this purpose, MEIKO shall charge a lump sum compensation amounting to 0,5% of the invoice amount for each month or part thereof, starting one month after notification that the goods are ready for dispatch.** Proof of higher damages and other statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected. However, the lump sum shall be credited against further monetary claims. The CUSTOMER shall be entitled to prove that MEIKO has incurred no damage or less damage than the aforementioned lump sum.
- 7.5. MEIKO's compliance with the delivery deadline is subject to the fulfilment of the contractual obligations of the CUSTOMER.
- 7.6. MEIKO shall be entitled to make partial deliveries if the partial delivery is suitable for the CUSTOMER within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the CUSTOMER does not incur any significant additional effort or costs as a result.

8. Warranty

- 8.1. The basis of MEIKO's warranty obligation is primarily the agreement on the features of the goods or services. Insofar as specific features have not been agreed, it shall be assessed in accordance with the statutory regulations whether a defect exists or not.
- 8.2. The CUSTOMER's warranty rights presuppose that the CUSTOMER has duly complied with his statutory obligations to examine the goods and give notice of defects (§§ 377 et. seqq. of the Austrian Commercial Code – *Unternehmensgesetzbuch* or *UGB*). In deviation from the statutory regulations, the following applies: **The delivered goods must be carefully inspected immediately after delivery to the CUSTOMER or to the third party designated by the CUSTOMER and any defect must be reported in writing immediately, but within five working days at the latest.** If the CUSTOMER fails to carry out the proper inspection and/or give notice of defects, MEIKO's liability for the non-notified defect shall be excluded.
- 8.3. In the event of a defect for which MEIKO is responsible and which is notified in good time, MEIKO shall be entitled to choose between rectification (remedy of the defect) or replacement (replacement delivery). MEIKO shall in particular not be responsible for defects which result from the CUSTOMER's failure to observe the prescribed maintenance, care and cleaning work. MEIKO shall not assume any liability for the suitability of the on-site operating equipment which have an influence on the goods delivered by MEIKO; this shall also apply if an inspection by MEIKO has taken place beforehand. MEIKO expressly points out that the selection and use of cleaning agents is the sole responsibility of the CUSTOMER. MEIKO shall not accept any liability in this respect.
- 8.4. **MEIKO shall be entitled to make the owed rectification or replacement dependent on the CUSTOMER paying the purchase price due.** The CUSTOMER shall, however, be entitled to retain a reasonable part of the purchase price in relation to the defect.
- 8.5. **MEIKO shall bear the expenses incurred for the purpose of inspection and rectification of defects, in particular transport, travel, labour and material costs, if a defect which entitles to warranty is actually present. However, if a request by the CUSTOMER to rectify a defect turns out to be unjustified, MEIKO may demand reimbursement of the costs incurred from the CUSTOMER.**

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- 8.7. The place of fulfilment of the warranty obligations is the place of improper performance of the defective subject matter of the contract or the place of transfer of risk.
- 8.8. Claims of the CUSTOMER for damages or reimbursement of frustrated expenses shall be excluded except for the claims in accordance with section 9 of these GTC.

9. Liability

- 9.1. Unless otherwise stipulated in these GTC, MEIKO shall be liable for a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
- 9.2. MEIKO shall be liable for damages – irrespective of the legal grounds – in the event of intent (*Vorsatz*) and gross negligence (*grobe Fahrlässigkeit*). In the event of slight negligence (*leichte Fahrlässigkeit*), MEIKO shall only be liable
- (a) for damages arising from injury to life or health; and
 - (b) for damages arising from the breach of an essential contractual obligation (obligation the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, MEIKO's liability shall be limited to compensation for the foreseeable, typically occurring damage.
- 9.3. The limitations of liability resulting from para. 2 shall not apply if a defect was fraudulently concealed or a guarantee for the characteristics of the product has been assumed. The limitations of liability according to para. 2 also do not apply to claims of the CUSTOMER according to the Austrian Product Liability Act (*Produkthaftungsgesetz*).
- 9.4. The CUSTOMER may only withdraw from the contract due to a breach of duty which does not consist of a defect if MEIKO is responsible for the breach of duty. Furthermore, the statutory conditions and consequences shall apply.
- 9.5. The above exclusions and limitations of liability shall apply to the same extent in favour of MEIKO's employees, workers, staff, representatives and vicarious agents. Liability on the part of MEIKO towards third parties is excluded in all cases.

10. Limitation (*Verjährung*)

- 10.1. In deviation from the statutory provisions and insofar as statutory provisions do not mandatorily provide for other limitation periods, any claim for damages may only be brought in court within one year after knowledge, but at the latest within three years after the occurrence of the (primary) damage.
- 10.2. Notwithstanding the statutory provisions and insofar as statutory provisions do not mandatorily provide for other limitation periods, the limitation period for claims arising from material defects and defects of title shall be one year from delivery.
- 10.3. The above limitation periods shall also apply to contractual and non-contractual claims of the CUSTOMER based on a service provided by MEIKO.

11. Transferability of the contract

The CUSTOMER may only transfer his rights under the contract to third parties if MEIKO has given its prior consent.

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12. Retention of title

12.1. The delivered goods shall remain the property of MEIKO until all of MEIKO's claims against the CUSTOMER from the relevant contract have been fulfilled. If the CUSTOMER acts in breach of contract – in particular is in delay with payment – MEIKO shall be entitled to take back the goods after setting a reasonable deadline for payment. The transport costs incurred for taking back the goods shall be borne by the CUSTOMER. If MEIKO takes back or seizes the goods, this shall constitute a withdrawal from the contract.

12.2. The CUSTOMER must insure the goods subject to retention of title at its own expense against fire, water and theft damage at value as new.

12.3. The CUSTOMER may use the goods subject to retention of title and resell them in the ordinary course of business as long as he is not in default of payment. However, he may not pledge them or assign them by way of security. The CUSTOMER hereby assigns to MEIKO in full, by way of security, the CUSTOMER's claims for payment against his customers arising from the resale of the goods subject to retention of title as well as the CUSTOMER's claims in respect of these goods which arise for any other legal reason against his customers or third parties (in particular claims arising from tort and claims for insurance benefits), including all balance claims from the current account. MEIKO accepts this assignment.

The CUSTOMER may collect these assigned claims for his account in his own name on behalf of MEIKO as long as MEIKO does not revoke this authorisation. MEIKO's right to collect these claims itself shall not be affected by this. However, MEIKO shall not enforce the claims itself and shall not revoke the direct debit authorisation as long as the CUSTOMER duly meets his payment obligations. However, if the CUSTOMER acts in breach of contract – in particular is in default – MEIKO may demand that the CUSTOMER reveals the assigned claims and the respective debtors, informs the respective debtors of the assignment and hands over to MEIKO all documents and information which MEIKO requires for enforcement.

12.4. In the event of seizure of the goods subject to retention of title by third parties or other interventions by third parties, the CUSTOMER must draw attention to MEIKO's ownership and notify MEIKO immediately in writing so that MEIKO can enforce its ownership rights. If the third party is unable to reimburse MEIKO for the court or out-of-court costs incurred in this regard, the CUSTOMER shall be liable for these.

12.5. If the CUSTOMER so requests, MEIKO shall be obliged to release the securities to which MEIKO is entitled to the extent that their realisable value exceeds the value of MEIKO's outstanding claims against the CUSTOMER by more than 10%. MEIKO may, however, choose the securities to be released.

13. Final provisions

13.1. Should any provision of these GTC or other parts of the contract be invalid or unenforceable, the validity of the remaining provisions shall not be affected. The invalid or unenforceable provision shall be replaced by a provision that comes as close as possible to the intentions expressed in these GTC. Should these GTC contain a gap, it shall likewise be filled according to the intention expressed in these GTC.

13.2. The contractual relationship between MEIKO and the CUSTOMER shall be governed by the law of the Republic of Austria excluding its regulations on international private law and the UN Convention on Contracts for the International Sale of Goods.

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- 13.3. The competent court for commercial matters at MEIKO's registered office shall have jurisdiction for all legal disputes arising from this contractual relationship.