

General Terms and Conditions of MAXIMATOR GmbH

(Current as of February 2022)

I. Applicability of General Terms and Conditions of MAXIMATOR GmbH

1. Unless the parties have expressly agreed otherwise, these "General Terms and Conditions of MAXIMATOR GmbH, Lange Straße 6, 99734 Nordhausen, Germany (current as of February 2022)" (hereinafter "Terms and Conditions") govern all supplies of machine, machine parts or other goods (hereinafter "Machines") as well as the provision of services by MAXIMATOR GmbH (hereinafter "MAXIMATOR").
 2. The Customer's order constitutes a binding offer made by the Customer to MAXIMATOR, by which the Customer is bound for a period of four weeks after MAXIMATOR's receipt thereof. The agreement is not concluded unless MAXIMATOR has expressly accepted the Customer's order by issuing a written order confirmation.
 3. Any oral commitments made by MAXIMATOR prior to the execution of the agreement are non-binding in a legal sense, and a written agreement supersedes any oral agreement made between the parties that does not specify that it is to continue in full force and effect. Changes and amendments to agreements made, including these Terms and Conditions, must be made in writing – the formal requirement of "in writing" is also satisfied by a transmission via facsimile, but transmissions using means of telecommunications, such as electronic mail, do not meet the formal requirement.
 4. MAXIMATOR specifically notes that information supplied about machines (e.g., weight, dimensions, present utilization value, load, tolerance level and technical data) as well as any representation of such information (e.g., drawings and illustrations) are approximations unless a precise match is needed for the machine's fitness for the intended and agreed purpose. Such information shall not constitute guaranteed characteristics but instead serves as a description or characterization. Common deviations and those resulting from legal provisions or technical improvements are permissible, as is the replacement of components by parts of equal value, provided that the fitness for the intended and agreed purpose is not compromised as a result.
 5. General terms and conditions of the Customer or third parties do not apply even if MAXIMATOR does not specifically object to them in a given case and provides its services without reservation. Even if MAXIMATOR references a letter containing the general terms and conditions of the Customer or third parties, such reference does not imply MAXIMATOR's agreement with the applicability of such general terms and conditions.
 6. In case Customers place orders via MAXIMATOR's web shop at www.eportal.maximator.de, the following shall apply:
 - In order to place orders via the web shop, Customers must first register by providing their title, name, an email address, a user name and a password. Customers are obliged to keep the password secret and not to disclose it under any circumstances to third parties, i.e. persons outside Customer's company or persons in Customer's company who have no power of representation. In addition to our general Privacy Statement for Customers, the special Privacy Statement for the web shop, which can be accessed under the following link <https://eportal.maximator.de/LegalNotice>, applies to orders placed via the web shop.
 - The presentation of the Machines and services in the web shop does not constitute a legally binding offer, but an invitation to order ("invitatio ad offerendum"). By clicking the "Place Order" button in the last step of the ordering process, the Customer makes a binding offer to purchase or book the machines and/or services displayed in the order overview. A contract between the Customer and MAXIMATOR is concluded upon MAXIMATOR separately accepting the order by email or, if applicable, by fax or telephone.
 - These Terms and Conditions can be accessed in the current version in the web shop under the following link <https://eportal.maximator.de/GeneralTerms&Conditions>; if MAXIMATOR accepts the order by email, the link to the Terms and Conditions will also be provided in that email.
 - Sec. 312i para. 1 no. 1 to 3 of the German Civil Code (BGB) shall not apply.
4. Unless otherwise agreed with the Customer, the agreed remuneration for services shall be paid as follows:
 - 30% upon the execution of the agreement, payable within ten calendar days;
 - 30% after expiry of half the agreed delivery time, payable within 10 calendar days;
 - 30% ten days prior to the agreed shipment or delivery of the machine to the Customer, its representative or freight carrier, payable within ten calendar days; and
 - the balance upon the shipment or delivery of the machine to the Customer, its representative or freight carrier, payable within thirty calendar days.
 5. All invoiced amounts are payable in full.
 6. If the Customer does not wish to receive a contractually agreed service (including goods agreed to be procured for this purpose) with a fixed/determined contract term after conclusion of the agreement but before provision of the service ("cancellation"), despite the absence of a legal right to do so, and MAXIMATOR accepts this cancellation, the Customer shall pay to MAXIMATOR a cancellation fee in the amount of 20% of the net value of the contractually agreed service (including goods to be procured for this purpose).
 7. In case of services contractually agreed with the Customer that do not fall under Item II No. 6 and for which no fixed amount was agreed, the Customer must pay a lump sum of EUR 250 as (partial) performance damages in the event of a cancellation. The Customer is permitted to prove that MAXIMATOR has incurred no damage at all or only less than the aforementioned lump sum.

III. Delivery period and partial deliveries

1. The contractually agreed delivery period or delivery date or the agreed period of performance applies. Insofar as goods are to be shipped or transported, delivery periods and dates refer to the time of delivery to the shipper, freight carrier or other third party entrusted with the transport.
2. In the event of force majeure, including but not limited to business disruptions, transport delays, collective action (especially strike and lock-out), epidemics and pandemics (statements/recommendations by the Foreign Office/WHO are considered indicative, e.g. such as for Corona) including/or governmental orders and the failure of MAXIMATOR's suppliers - upon conclusion of a congruent hedging transaction with the supplier - to effect timely and correct deliveries, irrespective of grounds (provision of proper self-supply), as well as all other impediments to performance which were not foreseeable at the time the agreement was concluded an which arise not through fault of MAXIMATOR, MAXIMATOR may postpone delivery and performance for the duration of such impediment plus a reasonable lead time. Insofar as such events significantly impede – or render impossible – MAXIMATOR's deliveries and performance, and the impediment is not just temporary in nature, MAXIMATOR may withdraw from the agreement. To the extent that, on account of such delays, the Customer cannot reasonably be expected to accept/receive deliveries or performance, it may rescind the agreement by promptly providing MAXIMATOR with written notice to that effect.
3. Partial deliveries are permissible if
 - the Customer has use for partial deliveries as part of the agreed purpose of use;
 - the supply of all remaining machine components is assured; and
 - the Customer does not incur – or MAXIMATOR agrees to bear any – significant added expenditures or costs.

IV. Transfer of risk, acceptance, default

1. Insofar as purchase prices are concerned, they are set out "ex works" (EXW Incoterms 2020). The Customer shall bear any and all costs of packaging, shipping and transport as well as duties, taxes and other public dues (same applies in regard to the provision of services, as far as applicable). MAXIMATOR will not take back shipping and other packaging materials subject to the German Packaging Ordinance. Instead, with the exception of pallets, such materials become the Customer's property. If the Customer so wishes, the goods may be insured at the Customer's expense against theft, breakage, shipping, fire and water damages as well as any other insurable risk.
2. The prices are exclusive of sales tax in the applicable amount.
3. Unless specifically agreed otherwise with the Customer, the purchase price for any machine is due as follows:
 2. Risk shall also pass as set out in Item IV No 1 in the event MAXIMATOR having assumed other services, such as the cost of shipping or transportation and set-up, save for cases subject to Item IV No. 3.

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3. In the event that the Customer refuses acceptance of ordered goods in a manner constituting a default in acceptance or if their shipment is delayed for other reasons culpably caused by the Customer, the risk of the machine's accidental demise or deterioration passes to the Customer upon the beginning of such default.
4. In the event that the Customer is in default with acceptance or if it violates other duties of cooperation, it must indemnify MAXIMATOR against any damages incurred to such extent, including but not limited to added expenditures. Specifically, the Customer bears the costs of MAXIMATOR's storage of any machine so affected, which MAXIMATOR may invoice at a flat rate of 0.5% of the machine's full agreed purchase price, unless the Customer furnishes proof to the effect that MAXIMATOR did not incur any – or less – damages as a result of storing such machine. MAXIMATOR's other legal rights arising from default in acceptance, if any, are not affected.
5. The Customer must accept delivery of any ordered goods even if the goods have minor defects; the Customer's rights under Item VI are not affected.
6. In the event that MAXIMATOR is in default, causing the Customer to suffer damages, the latter is entitled to demand compensation for default at a flat rate of 0.5% per week of default, the sum of which must not exceed 5% of the value (net) of the part of the entire delivery that cannot be put to timely – or the agreed – use due to default.

V. Retention of title

1. The retention-of-title clause agreed below serves the purpose of securing MAXIMATOR's present and future claims against the Customer under the agreement entered into between the parties.
2. The goods MAXIMATOR supplies to the Customer (in this Item V, hereinafter the "Goods Subject to Retention of Title") remains MAXIMATOR's property until all secured claims from the respective contractual relationship with the Customer have been paid in full.
3. The Customer treats and processes Goods Subject to Retention of Title on behalf of MAXIMATOR as manufacturer within the meaning of Sec. 950 BGB and to the exclusion of any obligation on MAXIMATOR's part. Goods treated or processed are deemed Goods Subject to Retention of Title according to Item V No. 1. In the event that the Customer treats, processes, combines or mixes Goods Subject to Retention of Title with other goods, creating new or combined goods, MAXIMATOR becomes a co-owner of these new or combined goods, with its share reflecting the proportion of the effective invoice amount of the Goods Subject to Retention of Title at the time of delivery to the value of such processed or combined goods. Co-ownership shares are deemed Goods Subject to Retention of Title according to Item V No. 1.
4. In the event that Goods Subject to Retention of Title are combined with other goods, and if goods belonging to the Customer must be deemed the principal component within the meaning of Sec. 947 BGB, the parties hereby already agree that (i) MAXIMATOR will become a co-owner thereof, with its share reflecting the proportion of the effective invoice amount of the Goods Subject to Retention of Title to the value of such principal component, and (ii) the Customer will store the good for MAXIMATOR free of charge. Co-ownership shares are deemed Goods Subject to Retention of Title according to Item V No. 1.
5. The Customer must store Goods Subject to Retention of Title for MAXIMATOR. Upon request, MAXIMATOR must be allowed, at any time, to take inventory of and adequately mark such goods where they are stored. The Customer must promptly notify MAXIMATOR of any third-party attachment or other encumbrance affecting MAXIMATOR's rights, providing such details necessary for MAXIMATOR to take action against such third party using all legal means possible.
6. The Customer may sell Goods Subject to Retention of Title (i) in the regular course of business, (ii) subject to its usual terms as well as to an agreement providing for retention of title and (iii) to the extent determined by MAXIMATOR, provided that the Customer's claims under the resale transaction pass to MAXIMATOR pursuant to Item V Nos. 7-11.
7. The Customer hereby already assigns to MAXIMATOR its claims under the resale transaction of Goods Subject to Retention of Title, including those under contracts for work and services or agreements for the supply of movable goods to be made or manufactured, along with any and all subsidiary rights, such claims serving as security for MAXIMATOR with respect to Goods Subject to Retention of Title to the same extent. The Customer must not assign claims to third parties without MAXIMATOR's prior written consent.
8. In the event that the Customer sells Goods Subject to Retention of Title along with other goods not supplied by MAXIMATOR, the assignment of the claim under the resale transaction is valid only in the sum of the effective amount of MAXIMATOR's invoice for such goods at the time of delivery. In cases of the sale of a machine co-owned by MAXIMATOR pursuant to Item V No. 3 or Item V No. 4, the claims' assignment is valid in the amount of such co-ownership share.

9. In the event that the assigned claim is included in a current account, the Customer hereby already assigns to MAXIMATOR the amount of the balance corresponding with such claim, including the final balance under the current account.
10. Until further notice, the Customer is entitled to collect receivables under resale transactions pursuant to Item V Nos. 6-9.
11. In the event that the Customer fails to meet its obligations under these Terms and Conditions,
 - MAXIMATOR may prohibit the resale, treatment and/or processing of Goods Subject to Retention of Title as well as their combination or compounding with other goods;
 - Insofar as such failure constitutes a material breach of these Terms and Conditions, MAXIMATOR may - if necessary, after setting a reasonable grace period - withdraw from the agreement with the Customer, in which case (i) the Customer's right to possess Goods Subject to Retention of Title lapses, (ii) MAXIMATOR may demand that such goods be returned, (iii) MAXIMATOR is entitled to enter the Customer's premises, take possession of Goods Subject to Retention of Title at the Customer's expense and, without prejudice to the Customer's payment and other obligations, put them to the best possible use by either selling them in the open market or auctioning them off, applying the proceeds, as adjusted for related costs, to the Customer's liabilities and disbursing any surplus to the Customer; and
 - the Customer must identify to MAXIMATOR upon request the debtors of the claims assigned to MAXIMATOR to enable MAXIMATOR to disclose the assignment and collect receivables; all proceeds to which MAXIMATOR is entitled under assignments must be disbursed to MAXIMATOR without delay upon receipt once MAXIMATOR's claims against the Customer are due.
12. If the value of the security to which MAXIMATOR is entitled exceeds the total claims by more than 10%, MAXIMATOR is obligated, upon the Customer's request, to release securities in the appropriate amount; the selection of securities to be released falls within MAXIMATOR's discretion.

VI. Warranty for defects

1. The Customer holds claims based on defects only if and to the extent that it met its duties of examination and defect notification (Secs. 377, 381 of the German Commercial Code (HGB)). In the event that a defect is identified upon examination or at a later point in time, MAXIMATOR must be given written notice thereof immediately, which for purposes hereof means that notice must be dispatched within two weeks. If the Customer fails to properly discharge its duties of examination and/or defect notification, it forfeits any claims related to the defect not notified. This shall not apply insofar as such defect was undetectable during proper examination.
2. Defects shall be remedied by MAXIMATOR, at MAXIMATOR's option, through free-of-charge removal of defects (repair) or replacement.
3. If such remedial action fails, the Customer may, at its option, withdraw from the agreement or demand that the purchase price be adequately reduced.
4. Irrespective of circumstances, the Customer holds no claims based on defects if and to the extent that damages resulted from inapt or improper handling, improper installation or commissioning by the Customer or third parties, regular wear and tear, improper or negligent treatment or maintenance, inappropriate operating resources or substitute materials, poor construction work, unsuitable building areas or chemical, electrochemical or electrical interference, provided and to the extent that such circumstances have not been culpably caused by MAXIMATOR.
5. The Customer's claims for damages or indemnification for expenditures incurred in vain are limited as set forth in Item VII and otherwise excluded.
6. The warranty period lapses one (1) year from the delivery, or upon acceptance if acceptance was agreed. This shortening of the statute of limitations shall not apply in case of fraudulent intent or absence of a quality guaranteed by MAXIMATOR. In such cases, solely the statutory limitation periods shall apply.

VII. Liability

1. MAXIMATOR bears unlimited liability for (i) damages resulting from injuries to life, body and health, which were culpably caused by MAXIMATOR, its legal representatives or agents, (ii) damages owing to the lack of properties and conditions warranted by MAXIMATOR and (iii) MAXIMATOR's malicious acts.
2. MAXIMATOR further bears unlimited liability for damages caused by MAXIMATOR, its legal representatives or agents intentionally or as a result of gross negligence.

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3. In cases of culpable violations of cardinal contractual obligations owing to slight negligence on the part of MAXIMATOR, its legal representatives or agents, MAXIMATOR's liability is limited to the amount of foreseeable typical damages, save for the cases set forth in Item VII No. 1 or Item VII No. 4. In abstract terms, cardinal contractual obligations are such obligations as may (i) be needed for the agreement's proper fulfilment and (ii) reasonably be relied upon by the parties to the agreement.
4. Any liability under the product liability act is not affected.
5. Any other liability on the part of MAXIMATOR is expressly excluded.
6. The period of limitation for claims for damages against MAXIMATOR equals one (1) year, excluding the cases set forth in Item VII no. 1, Item VII No. 2 or Item VII No. 4.

VIII. Services

1. Unless otherwise agreed in an agreement, the amount of remuneration for the services (including for outlays and expenses of MAXIMATOR) is based on MAXIMATOR's price list valid at the time of the order.
2. In order to provide the services, MAXIMATOR is dependent on the support and cooperation of the Customer. In particular, the Customer is obligated to provide MAXIMATOR's employees or the third parties commissioned with the provision of the services with all necessary work equipment, information and documents in full, in a timely manner and in the required quantity.
3. Insofar as a certain period of time or a certain number of calendar days have been agreed for the provision of the services, both parties are not entitled to ordinary terminate the respective agreement. The statutory rights of both parties to extraordinary termination for good cause shall remain unaffected. Declarations of termination must be in writing. Termination of an agreement for services shall not affect the term and validity of the other agreements for services and other agreements concluded between the parties.

IX. Export Right

MAXIMATOR shall be released from an obligation stemming from and occurring in connection with the contract if and insofar MAXIMATOR is or will be temporarily or permanently hindered from fulfilling such obligations due to the provisions of German, European or US law and/or fulfilment of such obligations is or will only be possible with risks in law or in fact. At MAXIMATOR's own discretion, MAXIMATOR will undertake reasonable efforts to remove such obstacles or risks. Otherwise, such obstacles and/or risks are to be regarded as force majeure. In such cases, MAXIMATOR shall be entitled to reimbursement of such expenses as MAXIMATOR has undertaken according to reasonable discretion in reliance upon the possibility of and/or absence of risk regarding the fulfilment of its duties. MAXIMATOR shall also be entitled to reimbursement of such disadvantages as MAXIMATOR has incurred due to the obstacles and/or risks of fulfilling such obligations. The parties will strive, to their best ability, to facilitate performance of such reimbursement.

X. Miscellaneous

1. Disputes arising from or in connection with the agreement are settled by the courts of Mülhausen or, at MAXIMATOR's option, those with jurisdiction over the location of the Customer's registered offices. The Customer's legal claims are settled exclusively by the courts of Hamburg. Applicable law on exclusive jurisdiction is not affected.
2. Unless agreed otherwise, the place of performance is the location of MAXIMATOR's registered offices.
3. Unless agreed otherwise, German law applies to the exclusion of provisions of international private law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) as well as any other, including future, bilateral or international treaties do not apply, even after being ratified.
4. Declarations and notices of legal relevance, which the Customer must issue to MAXIMATOR following the execution of the agreement (e.g., notices to cure default, of defect, rescission or abatement) must be provided in writing.
5. The Customer must not set off counter-claims or withhold payments on account of such claims unless its counter-claims are undisputed or have been effectively established.
6. The Customer is not entitled to assign to third parties claims against MAXIMATOR under the agreement without MAXIMATOR's prior written consent.
7. For purposes hereof, transactions with businesses are no different than transactions with legal entities or special funds under public law.