



MA Lighting International GmbH  
An der Talle 24-28  
33102 Paderborn · Germany  
  
+49 52 51 68 88 65 10  
sales@malighting.com  
www.malighting.com

# Terms and Conditions (T&C) for Commercial Transactions of

MA Lighting International GmbH, An der Talle 24 -28, 33102 Paderborn

## 1. Scope of application

Any and all existing and future business relationships with us are exclusively subject to the present terms and conditions (hereinafter referred to as “T&C”). They also apply to those business relationships that are initiated and completed as part of distance sales / e-Commerce.

The present T&C take effect upon their publication on 15th January 2019 and apply – also if no reference to them is made in individual cases – to all business relationships unless deviating conditions were agreed in writing. Terms and conditions of the customer that deviate from, supplement or even oppose the present T&C will not become part of the contract even if we are aware of them.

Any T&C applicable or published prior to 15th January 2019 will lose their validity upon the present T&C entering into effect.

We only operate in the commercial sector. This means that customers are exclusively entrepreneurs, legal persons under public law or special funds under public law in terms of section 310 clause 1 BGB [Bürgerliches Gesetzbuch, German Civil Code]. All offers, also that of the online shop, are therefore not aimed at end consumers.

The present T&C also apply to any and all orders under future business transactions with the customer, provided that any such are legal transactions of a similar nature, even if the T&C are not attached to every individual order confirmation or if no reference was made to them.

## 2. Conclusion of contract

The contractual object is the delivery of goods/the provision of services in the sector light and event technology. Our goods and services are reserved for commercial



MA Lighting International GmbH  
An der Talle 24-28  
33102 Paderborn · Germany

+49 52 51 68 88 65 10  
sales@malighting.com  
www.malighting.com

customers/the trade sector. This means that we only intend to enter into business relationships with the above kind of customers. By ordering, the customer simultaneously confirms that they mainly use the goods/services for commercial or self-employed purposes and that they are therefore not entitled to a right of withdrawal under Fernabsatzrecht [Distance Sales Law].

All declarations regarding conclusion, amendment or termination of a business relationship must be made in writing.

Our sales offers are valid for a period of 28 days, they expire after lapse of that period.

Orders of the customer shall only be deemed accepted following express declaration. Non-communication following a customer order does not constitute acceptance.

The customer can place orders – also for the products offered in the online shop – in writing, by e-mail, by phone or online. By submitting an order, the customer is making an offer that we may accept. A contractual relationship is only established if we accept the offer.

### **3. Provided materials/documents**

We reserve the title and copyrights to any materials/documents provided to the customer in connection with the business relationship.

### **4. Prices and terms of payment**

The prices listed are given as net prices and are given excluding statutory value added tax ex works Paderborn. Our offer is non-binding. We reserve the right to change prices.

Payments must be made into the account specified by us. Discounts may only be applied after prior written permission.

Unless agreed otherwise, the price is payable without any deductions immediately after the invoice was issued. Payments are only accepted in form of advance payment, cash payment or bank transfer. Deviating terms of payment (e.g. by cheque) shall require our prior written permission.



MA Lighting International GmbH  
An der Talle 24-28  
33102 Paderborn · Germany

+49 52 51 68 88 65 10  
sales@malighting.com  
www.malighting.com

Interest on arrears is charged at 9 percentage points above the respective base rate per year and a lump-sum of EUR 40.00 will be invoiced. Application of a higher interest rate is reserved.

Provided that no agreement regarding fixed prices was concluded, changes to prices based on changed wages, material and sales costs for deliveries that take place three months or more after conclusion of the contract are reserved.

In case of inability to pay or delayed payment, all our claims including those for which we granted our customer payment targets become payable immediately. We have the right to demand interest on arrears at the rates set out above in case of delayed payment, but at least the statutory interest on arrears. The customer has the right to prove lower interest damage.

Payments of the customer are, at our choice and pursuant to section 367 [BGB](#), [\[Bürgerliches Gesetzbuch, German Civil Code\]](#) counted towards any and all costs, then interest claims under the current business relationship and then, also at our choice, to the respective oldest purchase price claim.

## **5. Right of retention**

The customer may only offset any such counterclaims against our claims or withhold payments due to such counterclaims against us if these are uncontested or were legally determined.

## **6. Delivery periods**

The customer is advised of the delivery period with the order confirmation. Delays of the delivery shall be communicated to the customer immediately after we become aware of them and the customer shall be advised of a new delivery time.

If the delivery becomes impossible, either partially or as a whole, due to circumstances that we are not responsible for, we shall be free from any obligation to deliver. The customer shall not be entitled to damage claims or other warranty claims under these circumstances.

Each partial delivery shall be deemed an independent transaction.



MA Lighting International GmbH  
An der Talle 24-28  
33102 Paderborn · Germany

+49 52 51 68 88 65 10  
sales@malighting.com  
www.malighting.com

The delivery period shall only commence after timely compliance with the obligations of the customer in due form. We reserve the objection of non-fulfilment of contract.

If the customer delays acceptance or culpably violates any other cooperation obligations, we shall have the right to demand compensation for any resulting damage, including any additional costs. The assertion of further claims is reserved. In case of occurrence of the above circumstances, the risk of accidental loss or accidental deterioration of the goods is transferred to the customer at the moment in which the customer is in delay with acceptance or in debtor's delay.

## **7. Transfer of risk when shipping**

Where goods are sent to the customer on customer's request, the risk of accidental loss or accidental deterioration of the goods is transferred to the customer upon shipping, but no later than upon the goods leaving the warehouse, irrespective of who is paying shipping costs or if the goods are dispatched from the place of performance. The customer shall therefore make sure that the goods are adequately insured.

## **8. Warranty, notice of defects and liability**

The customer is obliged to comply with their inspection obligations and notice of defects obligations pursuant to section 377 [HGB \[Handelsgesetzbuch, German Commercial Code\]](#). This means that defects of the goods must be reported to us without undue delay. A complaint regarding obviously damaged goods must be filed with the transport company. If notice of defects is not given in time, no claims based on such defects can be asserted against us.

In case of newly manufactured goods, claims for defects shall become time-barred after 24 months, after delivery of the goods to the customer. Damage claims based on deliberate action and gross negligence as well as such based on injury to life, limb or health caused by intentional or negligent violation of duty shall be subject to statutory limitation periods.

In case of a notice of defects, we shall have the right to inspect and test the goods regarding which the notice was filed without any changes having been made to the product. The goods regarding which the notice was filed may only be returned or used otherwise subject to our prior permission.



MA Lighting International GmbH  
An der Talle 24-28  
33102 Paderborn · Germany

+49 52 51 68 88 65 10  
sales@malighting.com  
www.malighting.com

There are no warranty entitlements for only insignificant deviations from the agreed quality, an only insignificant limitation of usability, in case of natural wear and tear and in case of damages that were caused after transfer of risk as a result of incorrect or negligent handling, excessive use, unsuitable operating equipment, deficient construction works or due to special influences that were not provided for in the contract. If the customer or third parties carry out improper repair works or make changes to the goods, there shall be no warranty for these and any consequences thereof, either.

Insignificant or customary deviations of the goods do not constitute defects. Insofar as parts of the delivery suffer from defects, this does not give rise to the right to reject the entire delivery, provided that the usability of the delivery as a whole is not limited in an unacceptable manner.

If the goods suffer from a defect that was already present at the time of transfer of risk and if the customer complied with their obligations regarding notice of defects, we shall have the right to, in the first place, provide a supplementary performance, namely at our choice by rectification/removal of defect or replacement delivery of goods free from defects in return for release of the defective goods. In case of incorrect quantities, we will provide an additional delivery. We shall always be granted the time and opportunity necessary for execution of the supplementary performance. If all our reasonable attempts at removal of defects or additional delivery were unsuccessful or not possible within an appropriate period, or if a reasonable grace period set by the customer lapses without the defect being repaired, the customer may at their choice withdraw from the contract or demand reduction (price reduction). There is no right to any further claims against us.

Claims of the customer regarding any costs necessary for supplementary performance, especially transport, road, labour and material cost, are excluded insofar as the costs increase because the delivered goods were subsequently transported to a place other than the customer's place of business, unless the relocation corresponds to their intended use.

Recourse claims of the customer against us are only valid provided that the customer has not concluded any agreements with their customers that exceed statutory warranty claims. As regards scope of the recourse claims, the above paragraphs apply mutatis mutandis.

No claims against us can be derived from the manufacturer's guarantee for the delivered goods.



MA Lighting International GmbH  
An der Talle 24-28  
33102 Paderborn · Germany

+49 52 51 68 88 65 10  
sales@malighting.com  
www.malighting.com

We only accept liability in case of culpable violation of such contractual duties the compliance with which makes the execution of the contract in due form possible in the first place and compliance with which may be relied on a customary basis. The amount for which we are liable for shall be limited to foreseeable damage typical under this kind of contract. Also included in the exclusion of liability are any claims against employees, legal representatives and vicarious agents. Any liability due to culpable injury to life, limb or health shall remain unaffected. Also unaffected is any liability for other damage that is caused by any deliberate or grossly negligent violation of duty on the part of a legal representative or a vicarious agent.

In accordance with the legal situation in regard to software or other digital products with an unlimited right of use as regards time, also in case of the sale of software and other digital products with limited rights of use as regards time, we shall not be liable for damages that were culpably caused by the manufacturer or their vicarious agents; the manufacturer is not one of our vicarious agents. Software and other digital products are provided in accordance with the licence conditions of the suppliers, the customer guarantees compliance with these.

## **9. Retention of title**

We retain title to the delivered goods until payment of all outstanding claims under the entire business relationship with the customer in full. This shall also apply to all future deliveries, even if we do not expressly refer to this provision. We shall have the right to demand the customer to release the goods in case of the customer being in breach of contract.

Until revocation, the customer has the right to resell the goods in our possession as part of his normal business operations and to collect the purchase price claims. The customer assigns the claims against the purchaser of the resale of the goods that are subject to retention of title to the amount of the invoice (including value added tax) to us in advance. We accept this assignment now already. This assignment shall apply irrespective of whether the goods were resold without or after processing. The customer shall remain entitled to collect the claim also after assignment. Our right to collect the claim ourselves shall remain unaffected by the above. We shall not collect the claim for as long as the customer complies with their payment obligations towards us from the generated proceeds, is not in delay with payments, and especially no application for opening of insolvency proceedings was filed or as long as payments do not cease.



MA Lighting International GmbH  
An der Talle 24-28  
33102 Paderborn · Germany

+49 52 51 68 88 65 10  
sales@malighting.com  
www.malighting.com

The customer has no right to make any further disposals regarding the goods that are subject of retention of title, such as assignment as security, pledging or resale as part of a sale-and-lease-back transaction.

In case of cashless payment, the advance assignment of the purchase price claim shall be replaced by the claim of customer, created by the credit note, towards the executing bank, including the claim under confirmation of balance, which is hereby also assigned to us as security in advance. On our request, the customer shall inform us of the bank details and the amount of the balance. The customer shall notify the bank of this assignment. The customer hereby authorises us to notify the bank of the assignment ourselves in his name and to obtain any information regarding the credit notes ourselves. We will only act on this authorisation if the secured event occurs.

The right of the customer to resell the goods that are subject to retention of title and to collect the assigned claims shall lapse in case of the following

- excessive debt and/or
- inability to pay and/or
- opening of insolvency proceedings against the customer's assets,

unless the customer can immediately provide proof that none of the above situations occurred.

We shall have the right to withdraw the permission for resale and collection granted by us if

- the payment of the customer is charged back or if a cheque cannot be cashed and/or
- we would be entitled to a right to refuse performance and/or
- the customer is in delay with a payment.

If the customer eliminates the reasons that would entitle us to revocation within an appropriate period, we shall have the right to withdraw from the revocation or to issue a new corresponding authorisation.

In case of revocation, the customer is obliged to return the goods that are subject to retention of title to us. In case of indirect possession, the return shall be replaced by assignment of the return claims against the respective owner. The customer shall be obliged to provide details regarding the corresponding addresses of the owners.



MA Lighting International GmbH  
An der Talle 24-28  
33102 Paderborn · Germany

+49 52 51 68 88 65 10  
sales@malighting.com  
www.malighting.com

The customer does not have the right to dispose of the claims assigned to us in advance. The goods that are subject to retention of title and the assigned claims must not be pledged in favour of third parties or assigned or transferred as security or sold under a sale-and-lease-back transaction without our permission.

The customer shall notify any enforcing body and any third party immediately of the ownership and other rights we are entitled to should enforcement measures against the goods that are subject to retention of title in our favour or against the claims assigned to us in advance under a resale of those goods become known. We as well shall be informed hereof and shall be sent all required enforcement documents associated with the case.

The customer is obliged to treat the goods that are subject to retention of title with care at all times and to insure them to the required amount and at own costs against theft, water and fire damage at their reinstatement value and to maintain such insurance. On our request, the customer shall prove conclusion of such insurance contract and payment of the premiums by providing suitable documents.

The customer shall assign damage claims the customer is entitled to towards the insurer due to damage to or destruction or loss of the goods that are subject to retention of title to us in advance; we accept this assignment. The customer shall notify the insurer of the assignment immediately.

The customer shall at all times carry out maintenance and inspection tasks in a timely manner and at own costs.

Any editing, processing or transformation of the goods that are subject to retention of title by the customer always takes place on our behalf and order. In this case, the inchoate title of the customer to the goods that are subject to retention of title continues in the transformed item. If the goods that are subject to retention of title are processed together with items that do not belong to us, we acquire co-ownership in the new item in proportion of the objective value of our goods to the value of the other modified items at the time of processing. The same shall apply in case of mixing. In case of mixing in a manner that makes the goods of the customer the main item, it is deemed agreed that the customer transfers co-ownership to us in proportion and that they have custody of the sole ownership or co-ownership so created on our behalf. In order to secure our claims against the customer, they shall assign also such claims against third parties to us that they become entitled to by combining the goods that are subject to retention of title with a property. We accept this assignment already now.



MA Lighting International GmbH  
An der Talle 24-28  
33102 Paderborn · Germany

+49 52 51 68 88 65 10  
sales@malighting.com  
www.malighting.com

We guarantee to release the securities we are entitled to on request of the customer if their value exceeds the claims that are to be secured by more than twenty per cent.

## **10. Data protection**

In application of the General Data Protection Regulation (EU GDPR), we only store data concerning our business partners for the contractually agreed fulfilment of the business relationship. This means that these data will only be processed in the form as is required.

## **11. Final provisions**

This contract and all legal relationships of the parties are exclusively subject to the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Unless stated otherwise in the order confirmation, the place of performance and exclusive place of jurisdiction for any and all disputes under this contract is our registered place of business. We do, however, have the right to bring action against the customer at any other place of jurisdiction.

All agreements concluded between us and the customer for the purpose of fulfilment of this contract are recorded in writing in these Terms and Conditions.

If one or more of the provisions of these T&C is/are or become(s) void or in case of a regulatory gap, the parties to the contract agree to engage in negotiations with the objective to replace or supplement the void or incomplete provision with that appropriate agreement that largely corresponds to the economic purpose of the intended regulation. The validity of the remaining provisions shall remain unaffected by the above.