

## **MAVINCI GmbH**

#### **General Terms and Conditions of Sale and Services**

Date: February 2014

# A. General Terms and Conditions for the Sale of Products and Services of MAVINCI GmbH

#### Section 1 Scope of Application

- (1) All offers, deliveries, sales and services of MAVinci GmbH (hereinafter referred to as "MAVinci") shall be subject to this General Terms and Conditions of Sale and Services (hereinafter referred to as "Terms & Conditions"). These Terms & Conditions are part of all contracts concluded between MAVinci and any business partner, governmental entity or any public separate estate (hereinafter referred to as "Customer") regarding the sales and/or services provided and/or offered by MAVinci, whereas these Terms & Conditions shall also apply with respect to any future offers, deliveries, sales and services to the Customer, even though their application is not specifically agreed upon again.
- (2) Terms and conditions of the Customer or any other third party shall not apply, even though MAVinci has not rejected their application in each case. This shall also apply in particular in the event that an order is placed with reference to the Customer's general terms and conditions.
- (3) Conflicting terms and conditions or terms and conditions deviating from these Terms & Conditions or which change the contract are herewith rejected; they shall only be valid vis-à-vis MAVinci if MAVinci agrees to such changes in writing.

#### Section 2 Offer and Conclusion of a Contract

- (1) All offers made by MAVinci, in particular but not limited to offers in ads or other advertising materials are not binding and without obligation, as long as they are not expressly denoted as binding or include a determined term of acceptance. If a Customer accepts an offer after expiry of the term of acceptance such an acceptance shall be considered as a new offer of the Customer. Orders or assignments of the Customer shall be subject to a fourteen (14) days acceptance period of MAVinci, starting with the receipt of the offer or assignment of the Customer by MAVinci.
- (2) The sole authoritative document for the legal relations between MAVinci and the Customer (hereinafter referred to as "Parties") shall be the contract concluded in writing, including these Terms & Conditions. If nothing else has been agreed upon, the written contract provides the whole understanding between the Parties regarding the subject matter of the contract. Oral promises from MAVinci before the conclusion of the written contract shall not be legally binding and shall be substituted by the written contract, unless it is expressly stated, that such oral promises shall continue to be binding in each case.
- (3) Data made by MAVinic regarding the object of delivery or service (hereinafter referred to as the "Product") (i. e. weight, dimension, utility value, resilience, tolerances and technical data) as well as depictions (i. e. drawings and images) shall not be deemed as guaranteed characteristics of the same, rather being descriptions or labels. Deviations that are customary and deviations which become necessary due to mandatory legal provisions or which represent technical improvements as well as the replacement of components by equivalent parts are admissible.
- (4) MAVinci does not assume any guarantee or representation that the Product can be used for the intended purpose of the Customer. It is solely incumbent on the Customer, to examine and clarify if the Product can be used for his intended purpose. The aforementioned does not apply to the driver software recommended by MAVinci regarding the possibility to use the Product itself.
- (5) MAVinci unrestrictedly reserves all intellectual property rights or copyrights on all offers and cost estimates made by MAVinci as well as all drawings, images, calculations, prospects, catalogues, models, tools and other documents and auxiliaries (hereinafter referred to as "Items"). Without the prior written consent of MAVinci, the Customer is not allowed (i) to grant any third party access to such Items nor to the contents contained herein, (ii) to provide such Items to third parties or (iii) to exploit or duplicate such Items, neither by itself nor by any third party. By request of MAVinci, the Customer is obliged to completely and promptly return the Items and to destroy any possible copies thereof, if the Items are not necessary for the orderly business operations of the Customer or if negotiations between the Parties do not lead to the conclusion of a contract. Items from the Customer may be disclosed and conveyed to such third parties to whom MAVinci permissibly subcontracts or assigns part or in full deliveries of the Product or services connected herewith or to the extent MAVinci is mandatory obliged to do so, i. e. towards the German Federal Office for Economy and Export Control (hereinafter referred to as "BAFA").
- (6) Any individual order hereunder may be cancelled by the Customer only with MAVinci's prior written consent, whereas this stipulation is without prejudice to the rights of cancellation for good cause. Insofar as MAVinci grants the required consent to the cancellation of an order in writing on an individual basis whereas such consent does not incur any additional obligation upon MAVinci –, the Customer shall be obliged to pay to MAVinci 20 % of the agreed purchase price, plus any value added tax or sales tax, as the case may be. This shall not apply if MAVinci proves that its loss is higher or the Customer proves that the loss is lower in individual cases.

#### Section 3 Price and Payment

- (1) Quotations by MAVinci are non-binding and subject to changes, unless they are concrete, customized, approved by MAVinci's manager responsible and in writing (e-mail sufficient). All given prices are for the scope of service and delivery contemplated in the final offer of MAVinci. All prices are in Euro, plus the respectively applicable rate of value added tax. MAVinci shall be bound by such final offer for a period of fourteen (14) days from the date of its preparation. Additional or extra services (i. e. flight training) are to be remunerated separately. As requested by the Customer, the Parties may agree that the place of delivery of the Product shall be another place as the place of delivery mentioned in the following Section 4 para. (1) of these Terms & Conditions. All costs arising from or in connection with such a delivery shall be borne by the Customer. This shall also apply in case of the delivery of spare parts.
- (2) Unless otherwise agreed in writing, invoice amounts become due and payable after receiving the invoice from MAVinci and prior to the delivery of the Product, whereas the Customer shall be obliged to pay the invoice amount at least one (1) week prior to the envisaged delivery of the Product. Cheques count as payment only after they have been cashed. The date on which MAVinci has finally and unconditionally received the payment (in particular, a final and unconditional credit of the payment to the account of MAVinci in case of stipulation of a bank wire transfer) shall be decisive for the compliance of the Customer regarding the term of payment. In case the Customer fails to pay payments which are due, the outstanding amounts shall bear interest at eight (8) per cent p.a. in excess of the base rate since the due date; the application of a higher interest rate and additional damages in case of late payment remains unaffected.
- (3) The Customer may only offset with counterclaims or withhold payments because of such claims if the Customer's claims have already been found to be final and absolute by the court or if they have already been expressly recognized by MAVinci in writing.
- (4) MAVinci is entitled to fulfil pending deliveries or services only against security deposit of the Customer, when after conclusion of a contract, circumstances become known to MAVinci, that are appropriate in reducing the creditworthiness of the Customer and by which the payment of the out-

standing claims of MAVinci within the framework of the existing contractual relationship are endangered.

#### Section 4 Delivery and Time of Delivery

- Deliveries shall be made ex works (INCOTERMS 2000), MAVinci GmbH, Opelstraße 8a 68789 St. Leon-Rot, Germany.
- (2) Delivery dates and delivery periods indicated by MAVinci are only approximate, unless a fixed date or period is expressly promised or agreed on in writing in the individual contract. Compliance with fixed delivery dates and delivery periods is subject to the timely receipt of all required documents to be furnished by the Customer, as well as required governmental approvals, in particular export licenses by the BAFA and compliance with the agreed terms of payment and other obligations of the Customer. For deliveries, a deadline shall be deemed complied with if the ready-to-use shipment is dispatched within the agreed delivery period or has been passed to a carrier, freight carrier or any other third person commissioned with the transportation and delivery of the Product.
- (3) MAVinci is entitled irrespective of any rights arising as a result of default by the Customer to demand an extension of delivery and/or service periods or a postponement of delivery and/or service deadlines for the period in which the Customer does not comply with its contractual obligations
- (4) MAVinci shall not be liable for any delay in delivery caused by force majeure or other circumstances, which could not be foreseen at the time of the conclusion of the contract and which are beyond the control of MAVinci (i. e. interruption of operations of all kind, in particular fire damages and floods, difficulties in obtaining material and energy, delay in transportation, strike, lock-outs, lack of labour force, energy or raw materials, difficulties in obtaining necessary governmental permits, government regulation measures or lack of, delayed or wrong delivery of suppliers). MAVinci shall be obliged to inform the Customer immediately after such a force majeure occurred leading to a delay in delivery or services. In the event such occurrences considerably complicate the delivery or conducting the services or even make them impossible and such occurrences are not of temporarily nature, MAVinci shall be entitled to withdraw from the contract. In case the occurrences are of temporarily nature the delivery and/or service shall be extended or the delivery and/or services deadlines shall be postponed according to the duration of such impediments plus an additional appropriate lead time, as the case may be. If possible, MAVinci shall inform the Customer about the expected duration of the delay in delivery and/or services. If the Customer can not be expected to accept the delivery and/or services due to the delay, he may withdraw from the contract by immediately submitting a written notice to MAVinci.
- (5) If MAVinci falls behind with a delivery or service or if such delivery or service becomes impossible, irrespective of the reason, then the liability of MAVinci shall be limited to compensation according to the provisions in the following Section 8 of these Terms & Conditions. The aforementioned Section 4 para. (4) of these Terms & Conditions remains unaffected.
- (6) MAVinci is entitled to make partial deliveries and render partial services at any time

#### Section 5 Place of Performance, Shipment, Package, Transfer of Risk

- (1) Place of performance for all obligations of MAVinci resulting from the contract shall be its registered office. In the event the Parties have agreed on the delivery of the Product, place of performance shall be the delivery address specified by the Customer. On a delivery abroad at the Customer's arranging, place of performance shall be the place where MAVinci passes the Product to the carrier, freight carrier or any other third person commissioned with the transportation and delivery of the Product. The aforementioned sentences 2 and 3 shall also apply to partial deliveries and the delivery of spare parts.
- (2) Unless agreed otherwise, mode of shipment and package shall be in the sole discretion of MAVinci. At the Customers written request and expense, MAVinci will insure the shipment against damage due to breakage, transport and fire.
- The risk of accidental loss and/or destruction of the Product shall pass from MAVinci to the Customer upon notification and allocation of the Product on the premises of MAVinci. In case of the Customer's arrangement of the delivery of the Product and/or spare parts the aforementioned risk shall pass from MAVinci to the Customer upon handing over the Product to the Customer or any other third party authorised to receive the Product at the delivery address specified by the Customer, respectively the carrier, fright carrier or any other third party commissioned with the delivery of the Product (whereas the beginning of loading shall be decisive), at the latest. If the delivery is delayed due to reasons for which the Customer is responsible, the aforementioned risk shall pass from MAVinci to the Customer at the time MAVinci notified the Customer about the delivery readiness of the Product and/or spare parts.
- (4) Warehouse charges after the transfer of the risk shall be borne by the Customer and amount up to 0.25 % of the total gross invoice amount of the Product stored for every month of storage commenced or the actual additional costs to MAVinci, whichever is higher. MAVinci reserves the right of assertion and verification of warehouse costs that go beyond. The aforementioned stipulations are without prejudice to the right of the Customer to prove that the damages incurred to MAVinci have not occurred or are substantially lower than the lump sum fee demanded by MAVinci according to the regulations of the foregoing sentence 1.

#### Section 6 Representations

- $(1) \quad \text{The representation period shall be one (1) year starting with the delivery of the Product.}$
- (2) Immediately after delivery of the Product, the Customer or any other third party, specified by the Customer, shall be obliged to thoroughly examine the Product. It shall be considered accepted if MAVinci does not receive a written notice of defects pertaining to visible defects or other defects visible in the course of a prompt thorough examination within seven (7) days following the delivery of the Product or, as the case may be, within seven (7) days after discovery of the defect or at the time at which the defect became evident to the Customer in course of the normal utilisation of the Product. At MAVinci's request the Product, subject to the Customer's complaint, has to be delivered to the premises of MAVinci for inspection purposes. If the notice of defects is justified, MAVinci will reimburse the expenses for the delivery.
- (3) In case of a material defect of the Product, MAVinci reserves the right to first attempt to rectify the defect, either by improvement or subsequent delivery (hereinafter referred to as "Subsequent Performance") within an appropriate period of time, at its discretion. In the event of Subsequent Performance, MAVinci is obliged to bear all of the expenses for this purpose. The succeeding paragraph (6) remains unaffected. In case the Subsequent Performance fails, meaning impossibility, unreasonableness, refusal or inappropriate delay of the Subsequent Performance by MAVinci, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price by a suitable measure.
- (4) Conditional to any eventual existing title retentions of suppliers at the time of concluding the contract, MAVinci warrants and represents that it is the sole owner of the Product and may freely dipose of such.

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- (5) In case the defect is based on any fault of MAVinci the Customer shall also be entitled to claim compensation according to the provisions in Section 8 of these Terms & Conditions. This does not apply if the Customer chooses to cancel the contract due to a defect after a failed Subsequent Performance.
- (6) The representation ceases to apply to the extent the Customer modifies the Product or has it modified by third parties without the prior written approval of MAVinci and therefore the correction of defects becomes impossible or unreasonably complicated. The same shall apply if the Customer does not comply with MAVinci's manuals, specifications or statements pertaining to suitability, processing and application regarding the Product as well as by using spare parts, which do not correspond to the original specifications. The Customer shall be obliged to bear any eventual additional expenses arising from or in connection with the correction of defects due to such modifications or defaults of compliance.
- (7) If, on an individual basis, MAVinci and the Customer have agreed upon the delivery of a used Product, MAVinci does not assume any representation.
- (8) The Customer shall apply with all statutory and/or governmental regulations, laws, instructions, decisions and/or statutes that affect the Customer as well as the sale and service of the Product. The Customer will pay all taxes, license/permit/registration fees and all other costs and charges connected with the establishment and/or operation of the Customer's business as well as the sale and service of the Product. insofar such exist.

#### Section 7 Porperty Rights

- (1) Within the scope of this Section 7, MAVinci warrants that the Product is free from intellectual property rights or copyrights of any third party (hereinafter referred to as "Third Party Rights"). Every Party shall be obliged to immediately inform the respective other Party by written notice in case any third party asserts claims against the informing Party based on the allegation of the infringement of Third Party Rights.
- (2) MAVinci shall defend the Customer at MAVinci's own expense against all claims asserted against the Customer for an alleged infringement of Third Party Rights regarding the Product to the extent MAVinci is liable and reimburse the Customer for all reasonable costs and amounts of damages finally adjudicated, insofar as (i) the Customer has notified MAVinci without undue delay of such claims in writing, (ii) furnishes all of the requisite information and provides other reasonable support and (iii) MAVinci retains the sole right to decide whether or not to take legal action against the claim or to make a settlement.
- (3) In the event, the Product infringes a Third Party Right, MAVinci after its choice and on its own expense shall be obliged to (i) modify or substitute the Product to the extent that no Third Party Rights are infringed anymore, whereas the Product continues to fulfil its contractual agreed upon function or (ii) procure the Customer with the right of use by concluding a respective licence agreement with the respective third party. If MAVinci fails to accomplish one of the aforementioned alternatives within an appropriate period of time, the Customer shall be entitled to withdraw from or to terminate the contract or to reduce the purchase price by a suitable measure. Section 8 of these Terms & Conditions remains unaffected.
- (4) MAVinci is not liable for any infringement of Third Party Rights if such infringement is based on a modification of the Product that were not executed or authorized by MAVinci, either wholly or in part or resulting from a use of the Product that was not contractually provided for.

## Section 8 Liability

- (1) In all cases of liability to pay compensation of MAVinci, irrespective of the legal basis, in particular due to impossibility of performance, default, defective or incorrect deliveries, violation of obligations during contract negotiations and unlawful action, insofar as it is at fault in all cases, shall be limited in accordance to this Section 8.
- (2) Any liability of MAVinci in case of force majeure in the sense of the preceding Section 4 para. (4) of these Terms & Conditions, shall be excluded. The same shall apply in case of ordinary negligence, unless this does not result in a violation of essential contractual obligations. Essential shall be such contractual obligations whose fulfilment is a prerequisite for enabling the proper fulfilment of the contract in the first place and in which the Customer may normally trust, in particular faultfree performance.
- (3) Insofar as according to the preceding para. (2) MAVinci bears liability to pay compensation in principle, the liability shall be limited to such damages which MAVinci has been able to foresee as a result of a breach of contractual obligations or under the circumstances, which have been known or should have been known to MAVinci, applying due diligence. In addition, indirect damages and consequential damages (including, without limitation, lost profits, loss of goodwill, losses arising out of a business interruption and frustrated expenses), which result from deficiencies of the Product, shall only be eligible for compensation in so far as such damages are to be typically expected when the Product is used for the purpose intended.
- (4) The liability of delay of MAVinci (Sec. 286 German Civil Code (BGB)) shall be limited to 0.5 % of the net purchase price of the Product per week of delay completed, however, maximally 5 % of the net purchase price of the Product.
- (5) The above exemptions or limitations from liability shall to the same extent also apply to institutions, legal representatives, employees and other vicarious agents of MAVinci.
- (6) Insofar as MAVinci provides technical advice or performs consulting work and such advice or consulting work does not belong to the contractual obligations of MAVinci, such advice and consulting work shall be provided free of charge and under exclusion of any liability. Section 11 para. (1) and (2) of these Terms & Conditions remains unaffected.
- (7) The exemptions or limitations from liability according to this Section 8 shall not apply to the liability of MAVinci due to wilful misconduct or gross negligence, guarantee of constituent elements (if any), damage to life, limb or health or MAVinci's liability according to the provisions of the German Product Liability Act (Produkthaftungsgesetz).
- (8) Claims to compensation, if not based on wilful misconduct or gross negligence of MAVinci or the provisions of the German Product Liability Act, shall lapse within two (2) years after the origination of the claim and the Customer's acknowledgement of the existence of such claim. Section 6 para. (1) of these Terms & Conditions remains unaffected.

## Section 9 Reservation of Ownership

- (1) The following agreed reservation of ownership serves as security for all and any demands of MAVinci against the Customer, existing now and in the future arising out of the business relationship existing between the Parties regarding the delivery of the Product and services connected herewith (i. e. flight training).
- (2) The delivered Product remains the sole property of MAVinci until complete satisfaction of all secured payment claims (including interest if any). The Product, subject to the reservation of ownership as well as the substitute hereof replacing the Product and also subject to the reservation of ownership are hereinafter referred to as "Reservation Goods".

- (3) The Customer is obliged to detain the Reservation Goods free of charge for MAVinci. Insofar as maintenance services become necessary, the Customer shall be obliged to render such services on its own cost and expense and on a regular basis.
- (4) The Customer shall be entitled to resell the Reservation Goods within the course of its ordinary business up to the point of the Event of Enforcement (succeeding para. (7)). Any pledge or chattel mortgage of the Reservation Goods shall be inadmissible.
- (5) In the event of a subsequent sale of the Reservation Goods, the Customer as security hereby assigns to MAVinci all of its claims with respect to its contract partner arising from the resale of the Reservation Goods. The same shall apply to claims, which replace the Reservation Goods or in any other way arises from or are in connection with the Reservation Goods, in particular but not limited to insurance claims or claims arising from unlawful acts resulting in loss or destruction. MAVinci hereby accepts the assignment. Furthermore, MAVinci hereby revocably entitles the Customer to collect the assigned claims on its own behalf and on the account of MAVinci.
- (6) If third parties seize the Reservation Goods, in particular by way of seizure, the Customer shall be obliged to immediately inform such third party about the property of MAVinci and inform MAVinci about such seizure in order to allow MAVinci to enforce its property rights. Insofar that the third party is not able to reimburse MAVinci the costs arising from or in connection with the judicial and/or extrajudicial enforcement of its property rights, the Customer shall be liable for such costs.
- (7) In case, MAVinci withdraws from the contract, in particular in case of default in payment, MAVinci shall be entitled to reclaim the Reservation Goods (the "Event of Enforcement").

#### В.

## Special Supplementary Terms and Conditions for Services provided by MAVINCI GmbH as well as the use of the Operation Software

#### Section 10 Service Provision / Flight Training

- (1) MAVinci shall provide its services (i. e. over flights or demonstration flights) at its own discretion through its officials, employees or sub-contractors (hereinafter referred to as "Service Providers").
- (2) As a matter of principle, MAVinci shall render its services at its registered office. When necessary, the Parties shall reach an agreement concerning the provision of services at the Customer's registered office or any other place, designated by the Customer. If this will be the case, the Customer shall be obliged to bear all travelling expenses and other costs in connection herewith arising MAVinci and/or its Service Providers.
- (3) All rights and duties of the Parties arising from or in connection with the services rendered by MAVinci, i. e. remuneration and liability, will be settled within a contract concluded between the Parties before rendering the services.
- (4) If MAVinci provides Flight Training for its Customers it will be performed with the Products purchased by the Customers to assure functionality of the Customer's Product. At the end of the Flight Training the Customer will confirm the functionality and its acceptance of the Product.

#### Section 11 Verification

- (1) All the services will be properly rendered by suitable qualified personnel acting with reasonable care.
- (2) The Customer or the third party designated by the Customer is obliged to support MAVinci in the elimination of impediments, obstacles or shortcomings of the services. MAVinci will make every effort to eliminate such impediments, obstacles or shortcomings within a suitable period of time.

#### Section 12 Operation Software

The Customer acknowledges that the operation of the Products requires the application of specific embedded as well as driver software (hereinafter referred to as "Operation Software"). Details concerning the use of the Operation Software are laid down in the Terms of Use, which have to be accepted while downloading the Operation Software. The Customer hereby acknowledges that the operation of the Product will no be possible if the Customer does not accept the Terms of Use of the Operation Software. MAVinci hereby informs the Customer that the price for the Operation Software will be part of the purchase price of the Product itself. On the Customer's request, MAVinci will send to the Customer the Terms of Use in advance before entering into a contract regarding the acquisition of the Product.

#### C. Final Provision

#### Section 13 Place of Jurisdiction

Unless mandatory statutory provisions provide otherwise, all disputes arising from or in connection with the business relation between the Parties shall be resolved before the courts of Germany, whereas the courts of St. Leon-Rot shall have the exclusive jurisdiction.

#### Section 14 Governing Law

The relationship between MAVinci and its Customer shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the UN Sales Convention.

#### Section 15 Severability Clause

If one or several provisions of these Terms & Conditions should be or become invalid or unenforceable or if these Terms & Conditions contain a gap, the validity of the remaining provisions as well as these Terms & Conditions shall remain unaffected. The Parties are obliged to agree upon a provision which comes closest to what was intended by the Parties, instead of the invalid and unenforceable provision, considering the meaning of the invalid and void provision.

## Section 16 Written Form Requirement

Changes and amendments to the contract or these Terms & Conditions as well as supplementary agreements are to be made in writing pursuant to Sec. 126 para. 2 German Civil Code (*BGB*). The same applies for a waiver of the requirement of the written form.

Note: The Customer hereby acknowledges that MAVinci records the customer-related data provided by the Customer in the context of the business relation in accordance with Sec. 28 German Federal Data Protection Act (Bundesdatenschutzgesetz) for the purpose of data processing and reserves the right to transfer such data to third parties (i. e. insurances or freight carriers), to the extent necessary to fulfil its contractual obligations or to enforce its contractual claims