

一般商业条款

(General Terms & Conditions)

第 1 条 – 有效性、合同缔结

(Article 1 – Scope, Conclusion of contract)

Mentor 的报价、销售、交付和服务仅受以下条款约束，即使 Mentor 未反对客户的不同商业条款。

(All offers, sales, deliveries and services by Mentor are subject exclusively to the conditions below, even if Mentor has not objected to deviating terms and conditions of the Customer.)

客户方存在冲突，或不同于我们一般商业条款的条款，我们只有在以书面形式同意其有效性的情况下方才承认。这些条款不适用于《商法典》第 13 条意义上的消费者。

(Contradictory conditions of the Customer, or conditions of the Customer that deviate from our General Terms & Conditions, shall be recognised by us only if we explicitly consent to their validity in writing. The conditions shall not apply in the relationship with consumers in the meaning of Article 13 of the German Civil Code.)

这些条款是 Mentor 与合同另一方就自己的交付和服务所达成的全部合同的组成部分；对于预定订单或接受交付的授予将被认为是对本条款的认同。

(These conditions are part of all contracts concluded between Mentor and its contractual partners regarding deliveries and services; the conditions shall be deemed to have been acknowledged upon order placement or acceptance of a delivery.)

Mentor 公司的报价可随时更改，不具有约束力。如果 Mentor 已采用书面形式确认，则视为已接受订单。同时交付和发票也作为订单确认。

(Offers made by Mentor are non-binding and subject to change. Orders shall be deemed to have been accepted if they have been confirmed by Mentor in writing. Delivery and invoicing shall also be considered as order confirmations.)

第 2 条 – 价格

(Article 2 – Prices)

所有价格均为出厂价，不含包装、保险和相应适用的法定增值税。

(All prices are quoted ex works, excluding packaging and insurance plus the respective applicable statutory sales tax.)

除非已签订固定价格协议，否则如果在缔结合同之后成本增加，仍保留合理的价格波动，特别是由于劳动力、材料和销售成本改变，以及明显的货币波动。

(To the extent that no fixed price agreements have been made, we shall reserve the right to make reasonable prices changes if, following completion of the contract, cost increases are incurred due to, in particular, changed wage, material and distribution costs as well as significant currency fluctuations.)

第 3 条 - 产品说明

(Article 3 – Product description)

Mentor 对于交付和服务标的物的说明 (如重量、尺寸、消耗值、负载能力、公差和技术参数等) , 以及目录中的产品图例仅具备相似性。门拓提供的仅为对产品的描述而非对商品属性的绝对承诺或保证。只要不影响合同预期目的的可利用性, 允许存在符合法律规定或因技术改进而呈现的市场普遍性偏差或变更。

(The information provided by Mentor regarding the object of the delivery and service (e.g. weight, dimensions, user value, capacities, tolerance and technical data, etc.) as well as the illustrations of the products in catalogues are only approximate. They are not guaranteed properties, but descriptions. Customary deviations or changes, which occur due to legal regulations or which represent technical improvements, shall be permissible to the extent that they do not impair usability for the contractually intended purpose.)

准许 $\pm 10\%$ 的数量公差。*Mentor* 保留部分交付的权利。

(A quantity tolerance of $\pm 10\%$ shall be deemed permissible. Mentor reserves the right to make partial deliveries.)

第 4 条 - 付款和结算

(Article 4 – Payment and settlement)

除非另有书面约定, 否则应在 7 天内以 2% 的折扣, 或在 30 天内无折扣的情况下支付发票金额。支付日期以 *Mentor* 收到付款的日期为准。支票、汇票和转账仅在兑换或在 *Mentor* 账户上计入贷项之后方才视为已支付。

(The invoice amounts shall be payable within 7 days with a 2% discount, or within 30 days with no discount, unless otherwise agreed in writing. The date of receipt of payment by Mentor shall be decisive for the date of payment. Cheques, bills of exchange and bank transfers shall be considered as payment only once redeemed or credited to Mentor's account.)

在确认反索赔无可争议或具有法律效力的情况下, 才允许暂停支付或与买方的反索赔进行抵销。

(Retention due to counterclaims by the Customer or offsetting with counterclaims by the Customer shall be permissible only if these counterclaims are undisputed or established in law.)

Mentor 保留对最高 75 欧元的小额订单收取 10 欧元手续费的权利。

(Mentor reserves the right to charge a processing fee of EUR 10 for small orders of up to EUR 75.)

除非经过明示授权, 否则 *Mentor* 代表无权收款。

(Representatives of Mentor shall not be entitled to collect payment unless they have been given explicit authorisation to do so.)

如果对客户的信誉度存在合理怀疑，Mentor 有权仅针对预付款或保证金执行待决交付或服务，并要求立即支付未结清的帐款。

(In case of reasonable doubt regarding the Customer's creditworthiness, Mentor shall be entitled to perform any still outstanding deliveries or services only against advance payment or surety and to claim any unpaid invoices immediately.)

第 5 条 - 保留所有权

(Article 5 - Retention of title)

在全额支付因业务关系而产生的所有应收帐款之前，包括从属债权、损害索赔和支票以及汇票兑换，已交付的货物仍归 Mentor 公司所有。

(Until full payment has been received for all receivables from the business relationship, including ancillary claims, claims for compensation and redemption of cheques and bills of exchange, the delivered goods shall remain the property of Mentor.)

订购方有权在撤回之前，在正常的业务往来中转卖保留货物；但未许可其抵押、担保转让或担保让与。

(Until further notice, the Customer shall be entitled to resell the reserved goods in normal business transactions; however, pledging, transfer of security or assignment as collateral shall not be allowed.)

因转卖保留货物而获得的订购方债权，现在便由其转让于 Mentor；Mentor 接受这一转让。只要履行了付款义务，订购方经授权在撤回之前收取所转让的债权。

(The Customer shall already now assign to Mentor its receivables from the resale of reserved goods; Mentor accepts this assignment. Until further notice, provided it meets its payment obligations, the Customer shall be entitled to collect the assigned receivables.)

如果 Mentor 现有保证金的价值超过其应收帐款总额的 20%，Mentor 有义务应订购方要求，由 Mentor 自行选择解除保证金。

(If the value of the receivable exceeds the securities in place for Mentor by a total of more than 20%, Mentor shall, at the Customer's request, be obligated to release securities at the choice of Mentor.)

如果 Mentor 因保留所有权而收回交付标的物，则只有经过 Mentor 的明确声明，才会解除此合同。

(If Mentor takes the delivery object back due to retention of title, withdrawal from the contract shall exist only if Mentor explicitly declares this.)

订购方有义务保护保留货物，使其免受损坏，并自行承担费用。

(The Customer is obligated to insure the reserved goods against damage at its own costs.)

第 6 条 – 交付/风险转移 (Article 6 - Delivery/Transfer of risk)

根据合同订立时有效的国际贸易术语解释通则解释所商定的交货条款。

(Agreed delivery clauses must be designed in accordance with the Incoterms in place at the time of completion of the contract.)

如果合同中没有特殊交货条款，则交付的标的物将视为“工厂交货” (EXW)。

(In the absence of a specific delivery clause in the contract, the delivery object shall be considered as delivered “ex works” (EXW).)

如果在实行 EXW 交付时，Mentor 负责应订购方要求将交付标的物送往指定地点，则最迟在第一个运输代理接收交付标的物时转移风险。

(If, in the case of an EXW delivery at the request of the Customer, Mentor undertakes to ship the delivery object to its destination, the risk shall be transferred at the latest at the time when the first shipping agent accepts the delivery object.)

除非另有约定，否则允许部分交付。

(In the absence of any other agreement, partial deliveries shall be permitted.)

运输方法和包装由 Mentor 自行决定。

(The shipping method and packaging shall be at the discretion of Mentor.)

订购方有义务在收到货物后立即检查货物是否有损坏和无缺陷。必须在收到货物之后 7 天内向 Mentor 通知缺陷、错误交货或交付不足，否则货物将视为已确认。

(The Customer shall be obligated to inspect the goods immediately upon receipt for damage and freedom from defects. Defective, incorrect or short deliveries must be reported to Mentor at the latest within 7 days of receipt, as otherwise the goods shall be deemed to have been approved.)

如果因订购方的原因，在装运准备就绪之后发货延迟超过一个月，Mentor 可针对每个月份或其部分收取货物价格的 0.5% 作为仓储费，但总共不超过 5%。缔约方自愿证明较高或较低的仓储成本。

(If, at the instigation of the Customer, shipping is delayed by more than a month following notification of readiness for shipping, Mentor may charge a storage fee of 0.5% of the price of delivery, but not more than a total of 5%, for every month or part thereof. The Contractual Parties shall be at liberty to provide evidence of higher or lower storage costs.)

Mentor 提出的交付时间不具有约束力。不可抗力、破损或机器损坏、原材料或其他材料交付延迟等事件，免除了 Mentor 遵守规定交付时间的责任，且不解除合同关系。买方仍受合同约束，在任何情况下都有责任验收。无法履行将免除 Mentor 的交付义务。

(The delivery time specified by Mentor is not binding. Events of force majeure, breakage or machine damage, delays in delivery of raw materials or other materials shall release Mentor from compliance with the specified delivery time without affecting the contractual relationship. The Customer shall remain bound by the Contract and shall be obligated to accept in any case. The impossibility of performance shall release Mentor from its delivery obligations.)

如果出现延误，Mentor 的订购方须设定至少 12 周的宽限期。

(In the event of delays, the Customer shall provide Mentor with an extension of at least 12 weeks.)

第 7 条 - 缺陷

(Article 7 – Defects)

在可证实交付不当的情况下，Mentor 有义务根据自己的选择消除缺陷或补偿交货。在未能消除缺陷或补偿交货的情况下，订购方可以自行决定要求解约或降价，排除任何形式和出于任何法律原因的所有进一步索赔。

(If a delivery is proven to be defective, Mentor shall be obligated, at its own choice, to remedy the defect or deliver a replacement. Should the remedy or replacement delivery fail, the Customer can, to the exclusion of all further claims of whatever type or for whatever legal reasons, demand withdrawal or a reduction, at its discretion.)

对于可能发生的任何退货，订购方有义务遵守 Mentor 公司的规定（退货确认/含要求的投诉，在 14 个工作日内发送含所有数据和异常的测试报告，包括退回样品）。

(The Customer shall be obligated to observe Mentor's requirements for any return shipments (return confirmation/complaint with the request to return the test report with all data and anomalies within 14 working days, including specimen.)

任何买方单方面的进一步关于在法律允许范围内的货物质量问题的索赔要求将不被接受，除非相关保证性的数据没有得到实现。

(Further claims by the Customer due to material defects shall – if legally permissible – be excluded, unless relating to the absence of guaranteed attributes.

从第 1 次危险转移开始十二个月后，货物缺欠索赔失效。

(Material defect claims shall expire 12 months after the initial transfer of risk.)

对于货物缺欠的确认需采用书面形式。

(Recognition of material defects shall always require the written form.)

如果品质保证用于保护订购方免于遭受任何瑕疵结果损害的风险，Mentor 将根据要件并根据法律规定承担损害赔偿赔偿责任。但责任仅限于典型和可预见的损害。

(In the case of attribute guarantees, which are intended to protect the Customer against the risk of any consequential damages, Mentor shall be liable to provide compensation under the requirements and specifications of the legal provisions. However, this liability shall be limited to typical and foreseeable damage.)

第 8 条 – 责任 (Article 8 – Liability)

对于瑕疵结果损害的索赔，以及因不可能性、已担保特性的不履行、违约、签约时的过失和侵权行为而产生的损害赔偿要求，只要该损害并不是因为故意或重大过失而造成，则对 *Mentor* 和 *Mentor* 的履行和事务辅助人予以排除。

(Mentor and its vicarious agents shall be excluded from claims for compensation due to consequential damage, as well as claims for compensation due to impossibility of performance, non-performance, the absence of promised properties, culpable breach of contract, culpability when concluding the contract and prohibited actions, to the extent that the damage was not caused intentionally or through gross negligence.)

如果对 *Mentor* 排除或限制损害赔偿责任，则也同样适用于我们职员、雇员、员工、代表和履行辅助人的个人损害赔偿责任。

(To the extent that the liability for compensation is excluded or restricted for Mentor, this shall also apply with respect to the personal liability for compensation of our employees, colleagues, representatives and vicarious agents.)

以下情况下责任限制不适用，a) 特性保证旨在保护客户免于遭受瑕疵结果损害的风险，由此而产生的损害赔偿请求；b) *Mentor* 违反了合同义务，其履行方才能保障合同的适当履行（基本义务）；c) 根据《产品责任法》，因交付标的物的缺陷应对人身伤害和私人物品的财产损失承担责任。如果在这些情况下存在轻微疏忽，*Mentor* 仅对合同中典型且合理可预见的损害承担责任。(This limited liability shall not apply if a) claims for compensation are derived from promises of properties, which are intended to protect the Customer against the risk of consequential damage; b) Mentor violates contractual obligations, the fulfilment of which enable the proper performance of the contract in the first place (cardinal obligations); c) liability is in accordance with the Product Liability Act due to defects in the delivery object for personal and material damage of privately used objects. In the event of minor negligence in these cases, Mentor shall only be liable for the contractually typical, reasonably foreseeable damage.)

第 9 条 – 违约赔偿金 (Article 9 – Flat-rate compensation for damage)

如果订购方不合理地退出合同，或未履行其验收义务或拖欠 30 天以上未付到期款项，则 *Mentor* 有权因其不履行义务而要求赔偿。

(If the Customer withdraws from the contract without authorisation or fails to meet its acceptance obligations or fall more than 30 days behind with due payments, Mentor shall be entitled to claim compensation due to non-fulfilment.)

如果出于其他原因，*Mentor* 具备了解约或异常解除权的法定先决条件，且 *Mentor* 已行使此项权利，该规定同样适用。

(The same applies if, for other reasons, the legal prerequisites for a right of withdrawal or a right of extraordinary termination exist for Mentor and Mentor has made use of this right.)

在这些情况下，Mentor 有权在不影响实际损害赔偿可能更高的情况下，要求将（总）购买价格的 20% 作为损害赔偿，此时无需证明损失。但客户仍可以向 Mentor 证明特殊情况下的较低损失。
(In these cases, Mentor shall be entitled, notwithstanding the possibility of asserting a higher actual claim for compensation, to demand 20% of the (gross) purchase price as compensation, with evidence of damage not being required. However, the Customer shall be at liberty to prove less significant damage to Mentor on a case-by-case basis.)

第 10 条 - 工具 (Article 10 – Tools)

工具和设备在任何情况下归 Mentor 所有，即便它们已按比例收费和支付。

(Tools and equipment shall remain the property of Mentor in all cases, even if they have been calculated and paid for pro rata.)

对于指定用于制作客户定制产品的工具，Mentor 保留向客户转移成本的权利。

(Mentor reserves the right to transfer the costs for production of a tool, which is intended for production of a customer-specific product, to the Customer.)

第 11 条 - 最后条款 (Article 11 – Final provisions)

履行地为杜塞尔多夫。客户和 Mentor 之间的法律关系仅受德意志联邦共和国的法律约束。联合国销售公约 (CISG) 并不适用。

(The place of fulfilment shall be Dusseldorf. The legal relationships between the Customer and Mentor shall be subject to the law of the Federal Republic of Germany alone. This excludes the application of the UN sales law (CISG).)

合同双方的仲裁地为 – 如果客户是商法意义上的商人 – 杜塞尔多夫，或如果需要，根据 Mentor 的决定选择客户住所地。

(The place of jurisdiction for both Parties – unless the Customer is a merchant in the meaning of the German Commercial Code – shall be Dusseldorf or, at Mentor's discretion, the seat of the Customer's headquarters.)

如果上述商业条款中的任何规定无效或失效，则其余规定不受影响。双方有责任通过协议取代无效规定，该协议在经济上最接近于无效条款所追求的目的。

(Should a provision of these GT&Cs be or become ineffective, the remaining provisions shall remain unaffected. The Parties undertake to replace an ineffective regulation with an agreement that most closely approximates the economic purpose pursued by the ineffective regulation.)

在撤回之前，本商业条款适用于以下所有门拓 (MENTOR) 公司组织：

门拓精密部件有限责任两合公司, 德国埃尔克拉特 (MENTOR GmbH & Co. Präzisions-Bauteile KG, D-Erkrath)

门拓电子科技 (上海) 有限公司, 中国上海 (MENTOR Electronics & Technology (Shanghai) Ltd., CN-Shanghai)

门拓部件亚洲有限公司, 泰国邦拉蒙/芭提雅 (MENTOR Components Asia, TH-Banglamung / Pattaya)

门拓突尼斯两合公司, 突尼斯 Zeramdine (MENTOR Tunisie SCS, TN-Zeramdine)

门拓波兰有限责任公司, 波兰 Jelcz-Laskowice (MENTOR Poland Sp. z o.o., PL-Jelcz-Laskowice)

阿尔伯特魏德曼照明电子有限公司, 德国普福尔茨海姆 (Albert Weidmann Licht-Elektronik GmbH, D-Pforzheim)

(These terms and conditions apply until further notice for all companies of the MENTOR Group:

MENTOR GmbH & Co. Präzisions-Bauteile KG, D-Erkrath

MENTOR Electronics & Technology Ltd., CN-Shanghai

MENTOR Components Asia, TH-Banglamung / Pattaya

MENTOR Tunisie SCS, TN-Zeramdine

MENTOR Poland Sp. z o.o., PL-Jelcz-Laskowice

Albert Weidmann Licht-Elektronik GmbH, D-Pforzheim)

MENTOR GmbH & Co. Präzisions-Bauteile KG

Otto-Hahn-Str. 1

40699 Erkrath

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Otto-Hahn-Str. 1

40699 Erkrath, Germany

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