

1. Scope: Contractual Language

1.1 These General Terms and Conditions (GTC), German version, shall apply to all purchases and orders. Special conditions in written orders placed by us and special contract terms taken as contractual basis by us shall take precedence over any provisions laid down in these GTC as far as deviating from them, without prejudice to their applicability for the rest. Any terms and conditions of the contractual partner (CP) will not be accepted by us and shall only apply if acknowledged by us in writing. No explicit objection to terms and conditions of the CP shall therefore be required from us. Any agreements deviating from or supplementing these GTC shall only apply if confirmed by us in writing. Oral ancillary agreements shall not be effective.

The prevailing language for the contractual relationship with the CP is German. This translation of our GTC in the English language, in addition to the German language (www.messer.at), is merely done for partner's convenience (sec. 11).

1.2 The CP accepts these GTC by accepting our order in writing, in any case by executing our order.

If individual provisions of these Terms and Conditions are invalid, the validity of the remaining provisions and the contracts concluded on their basis shall not be affected thereby.

2. Conclusion of contract

2.1 Offers by the CP shall made at no cost to us and not be binding on us, even if made in response to our request. The CP shall exactly comply with our request when making his offer and make explicit reference to any deviations. Cost estimates shall be provided at no cost to us.

Our orders shall not be valid unless placed in writing by us and signed by employees authorised to sign on our behalf. The CP shall accept our order within 14 days of the order date by returning a legally signed copy of the order; otherwise, our order shall cease to be binding.

2.2 Neither the entire order nor parts thereof may be subcontracted to third parties (subcontractors or others) without our written consent. In the event of an admissible subcontracting of the order to third parties, the CP shall be liable for the conduct of these third parties as for his own conduct.

3. Prices

The order shall be placed on the basis of the CP's prices and discounts applicable on the order date. The agreed prices, which are set out in our order, shall be fixed prices; we do not accept cost escalation and indexation clauses, unless they have been negotiated and agreed in writing. All costs and services related to proper performance and delivery, including all costs of installation, packing, dispatch, carriage and insurance, shall be deemed covered by the agreed prices. The price shall include any plans, models, matrices etc. required for performing our order.

4. Terms of delivery

4.1 Our registered office in 2352 Gumpoldskirchen shall be the place of performance, unless another place of performance has been agreed in individual cases. Deliveries by the CP shall be performed carriage paid, at the CP's cost and risk, at no cost to us, export and import duties paid, packaged and insured. Each delivery shall be accompanied by a delivery note issued in accordance with the order indicating the order number, product number and quantity to be delivered. Each order shall be treated separately in the consignment documents.

4.2 If we have reasonable doubts as to the completeness/accordance of the delivery/performance with the contract, the CP shall obtain and submit inspections, samples or material test certificates at the CP's cost upon our request to prove the due performance (of his delivery). Deliveries shall not be deemed performed before the above proof is furnished.

We shall be entitled to reject partial deliveries/partial performance. Deliveries shall not be deemed fully performed before they have been duly performed in compliance with all agreed ancillary obligations, including complete and proper documentation (invoices, transport documents, certificates of origin, letters of guarantee etc.), training etc.

If we require a notification of readiness for dispatch, the CP shall notify us in writing of the readiness for dispatch of the goods no later than 10 days before each delivery or admissible partial delivery. We will then designate the person authorised to take delivery and the exact place of delivery to the CP. Deliveries shall be deemed performed if confirmed by the signature of the person entitled to take delivery.

5. Delivery date

5.1 Delivery and performance dates and periods are binding and must be complied with. The delivery and performance periods agreed with us shall begin on the date of our order. The dates and/or periods agreed with us shall be deemed complied with if we receive the deliveries are performed on these dates or within these periods. In the event of a (partial) delay in delivery, we shall be entitled to either demand further delivery or to rescind the contract with respect to the entire scope of delivery agreed or a part thereof, with or without granting a grace period, and to claim damages.

As soon as the CP becomes aware that delivery as a whole or parts thereof cannot be performed within the agreed time limits, he shall notify us without delay thereof stating the reasons for the delay and the expected duration of the delay. Our rights shall not be affected thereby.

5.2 Without prejudice to our other claims, in particular claims for damages, the CP shall pay us a penalty, regardless of fault, if he exceeds the period for performing delivery and/or the service, provided this has been agreed in writing. CP's obligation to pay the agreed penalty shall only cease to apply if the non-adherence to delivery dates is due to force majeure. Events of force majeure shall be limited to war, natural disasters and strikes.

6. Retention of title

All deliveries to us shall be free from any retention of title and other legal restrictions. References to any such reservations or limitations on notices of confirmation or invoices shall not apply even if we have not explicitly objected them.

7. Invoicing, terms of payment

7.1 Invoicing may not occur before acceptance of delivery/service by us, including the submission of the entire documentation and data sheets to us.

Payments shall be made at our choice within 14 days of receipt of invoice as required by law or agreed with us less a 3% discount or within 60 days of receipt of invoice without discount deduction. The payment and discount periods shall not start before acceptance of the entire and faultless delivery/service. Should we be in default of payment, default interest at a rate of 4% above the current base rate shall be deemed agreed upon.

7.2 We shall be entitled to pay by bank transfer, cheque or a three months' bill of exchange. The payment period shall be deemed complied with if the payment order is made within this period or the payment documents have been delivered to the bank or post in lieu of payment. Our right to claim a discount shall not be affected thereby.

If notice of defect has been given, we shall be entitled to withhold the entire payment until due performance by CP, our right to claim a discount not being affected thereby.

8. Warranty, guarantee and damages

8.1 We do not accept delivery/service before having performed an inspection at the place of performance. Reference is made to Clause 4. Admissible partial deliveries shall not be deemed accepted before inspection of the entire delivery and a final inspection, irrespective of any partial acceptances. Acceptance of delivery/service and its payment shall not be considered as acceptance of due performance of the same. An immediate inspection and notification obligation pursuant to Sect. 377 et seq. shall be excluded.

8.2 The CP guarantees for a period of 2 years or, in the case of immovable property and works on immovable property, for a period of 3 years (= guarantee period) of acceptance of delivery/service the absence of defects in the delivery/service, the proper functioning and the agreed, explicitly warranted or tacitly assumed characteristics of the delivered products or other specifications indicated by us as well as compliance with all laws and other standards, namely that these defects will not occur within the guarantee period, i.e. irrespective of whether they already existed at the time of delivery.

The statutory warranty provisions shall not be affected thereby. The warranty period, however, shall be extended in so far as the statutory warranty period shall not begin before expiry of the agreed guarantee period.

Limitations or our warranty and guarantee claims as well as of our claims for damages in favour of the CP shall be null and void.

8.3 The CP shall immediately remedy – also without notice of defect – any defects occurring or arising within the guarantee period at our choice either by replacing defective products or repairing them at his own cost. The CP shall undertake all measures necessary to remedy defects without interfering with our operational processes, where possible; additional costs caused by any interference with our operation, shall be reimbursed to us by the CP, even if he has acted without fault. After the defects have been repaired, both the guarantee and the warranty pursuant to Clause 8.5 shall start afresh for the delivery/service to be performed.

8.4 If defects are not fully repaired within a maximum period of four weeks of their notification, or if an attempt to repair the defects remains unsuccessful, we shall be entitled, at our choice, to either demand repair/replacement furthermore or to demand a price reduction or cancellation of agreement. We are also entitled, at our choice, to repair the defect – in urgent cases already upon the first occurrence of a defect – either ourselves or to entrust third parties with its repair at the CP's cost.

8.5 The CP shall be liable, without regard to fault, for any damage incurred by us due to non-contractual delivery or performance. The CP shall indemnify and hold us harmless from any claims third parties may raise against us due to non-contractual delivery or performance. This shall apply in particular to compensation which we are liable to pay according to the Product Liability Act.

9. Setoff

The CP may only set off claims he might have against us against our claims or exercise a right of retention in respect of such claims if these claims have been recognised by us in writing or legally established.

10. Documents and intellectual property rights

10.1 Models, tools, designs, drawings and other means of production or documents that we make available to the CP in order to enable him to perform delivery, or that have been financed by us, shall remain or become our property already with their manufacture and shall be returned to us upon request at any time. The CP shall keep all such documents and items strictly confidential.

10.2 The CP shall ensure that no patent, trademark, industrial design, copyright or other proprietary right of a third party is infringed by his delivery/performance. The CP shall indemnify and hold us harmless from any claims of third parties based on the infringement of such rights.

10.3 The acquisition of worldwide exploitation rights and rights of use shall be deemed covered by the agreed remuneration in so far as their acquisition is necessary for us to use and resell the object of purchase at issue in accordance with the contract.

11. Governing law

This contract and any claims derived from it shall be governed by Austrian substantive law without regard to the UN Sales Convention. In case of any dispute regarding the interpretation of this GTC, the German version (www.messer.at) shall prevail.

12. Jurisdiction

Any disputes arising in connection with this contract shall be exclusively settled by the court having subject matter jurisdiction in the first district of Vienna. Apart from that, we shall be entitled to sue the CP at his place of general jurisdiction.