

Messer Austria GmbH (MGA)

General Terms and Conditions of Purchase and Ordering

1. Scope of application

1.1 These general terms and conditions apply to all our purchases and orders. Special terms and conditions in written orders placed by us as well as special contractual terms and conditions on which we base individual orders shall take precedence over any deviating provisions of these General Terms and Conditions of Purchase, irrespective of their other validity. Any terms and conditions of the contractual partner (CP) shall not be accepted and shall only be effective in exceptional cases if they have been recognized by us in writing. An express objection to the CP's terms and conditions by us is therefore not required. Agreements deviating from or supplementing these terms and conditions shall only be effective if they are confirmed by us in writing. Verbal collateral agreements shall not be effective.

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

Should individual provisions of these Terms and Conditions of Purchase and Ordering be invalid, this shall not affect the validity of the remaining provisions and the contracts concluded on the basis thereof.

2. Conclusion of contract

2.1 Offers made by the CP shall be free of charge and non-binding for us, even if they are made in response to our inquiry. When submitting its offer, the CP must adhere exactly to our inquiry and expressly point out any deviations. Cost estimates shall be provided free of charge.

Our orders shall only be valid if they have been placed by us in writing and been signed by authorized signatories. The CP must accept our order within 7 days of the order date at the latest by returning the legally binding copy of the order; otherwise our order shall no longer be legally binding.

2.2 Neither parts nor the entire scope of the order may be passed on to third parties (subcontractors or others) without our written consent. In the event of a permissible transfer to third parties, the CP shall be liable for these as for its own conduct (§ 1313a ABGB).

3. Prices

Orders shall be placed at the CP's prices and discounts applicable on the date of the order. The agreed prices stated in our order are unchangeable fixed prices; in particular, we do not accept price escalation and index clauses unless they have been negotiated and agreed in writing. The agreed prices cover all costs and services associated with the proper fulfillment and delivery, including all costs for assembly, packaging, shipping, transport and insurance. The price also includes any plans, models, matrices required to fulfill our order.

4. Terms of delivery

4.1 The place of performance shall be our registered office in 2352 Gumpoldskirchen, unless a different place of performance is agreed in individual cases. Delivery/service by the CP shall be free domicile at the cost and risk of the CP, free of charge, customs cleared for export and import, packed and insured.

Each delivery must be accompanied by a delivery bill corresponding to the order, stating the order number, article number and delivery quantity. Each order must be treated separately in the delivery documents.

4.2 If there are reasonable doubts on our part as to the completeness/conformity with the contract of the delivery/service provided by the CP, the CP shall, at our request, obtain and submit appropriate tests, samples, specimens or material test certificates at its own expense in order to prove the correctness of its delivery/service. Until such proof is provided, the delivery/service shall be deemed not to have been provided.

We are entitled to reject partial deliveries/partial services. The delivery/service is only complete when it is provided in accordance with the contract with all agreed ancillary obligations, including complete and correct documentation (invoices, freight documents, products of origin, letters of guarantee, etc.), training, etc.

If we require a notification of readiness for dispatch, the CP must us of this in writing at least 10 days before each delivery or permissible partial delivery. We shall then inform the CP of the person authorized to receive the goods and the exact location of the delivery. The delivery shall be deemed to have been made when this is confirmed by the signature of the person authorized to receive the goods.

5. Delivery date

5.1 Delivery and performance dates and deadlines are binding. The delivery or service deadlines agreed with us shall be calculated from the date of our order. The date of receipt by us shall be decisive for compliance with the dates or deadlines. In the event of delay, even if only partial, we shall be entitled, at our discretion, either to continue to demand delivery or to withdraw from the contract for the entire agreed scope of delivery or only for parts thereof - with or without a grace period - and furthermore to demand compensation.

As soon as the CP realizes that it will not be possible to deliver on time, in whole or in part, it must notify us immediately, stating the reasons and the probable duration of the delay. This shall not affect our rights.

5.2 Notwithstanding our other claims, in particular claims for damages, the CP shall - if this has been agreed in writing - also be obliged to pay a contractual penalty (penalty) irrespective of fault if the delivery date/performance date is exceeded. The obligation of the CP to pay this agreed contractual penalty shall only be waived if and to the extent that the missed deadline is due to force majeure. Only war, natural disasters and strikes are considered force majeure.

6. Retention of title

All deliveries to us shall be made free of reservations of title and other legal restrictions. Any reference to such reservations or restrictions on letters of confirmation or invoices shall be ineffective even without our express objection.

7. Invoicing, terms of payment

7.1 Invoicing can take place at the earliest from acceptance of the delivery/service by us,

including handover of the complete documentation and data sheets to us.

Payment by us shall be made at our discretion within 14 days of receipt of an invoice in accordance with the law and the agreement less 3% discount or within 60 days of receipt of the invoice without deduction of discount. Under no circumstances shall the payment and discount period commence prior to acceptance of the complete and defect-free delivery/service. If we are in default of payment, an interest rate of 4 percentage points above the applicable prime rate shall be deemed agreed.

7.2 We are entitled to pay by bank transfer, check or a three-month bill of exchange, whereby the payment deadline is met if the payment order is issued within the deadline or the payment documents are submitted to the bank or post office in lieu of payment. The cash discount shall be retained in any case.

In the event of a notice of defects, we shall be entitled to withhold the entire payment while maintaining the right to deduct a discount until proper fulfillment.

8. Warranty, guarantee and compensation

8.1 Acceptance of the delivery/service by us shall only take place after inspection at the place of performance. Reference is made to point 4. Irrespective partial acceptances, permissible partial deliveries shall only be deemed accepted after inspection of the entire delivery with a final acceptance. Acceptance of the delivery/service and payment for it shall not constitute recognition of the correctness of the same. An immediate obligation to inspect and give notice of defects pursuant to § 377f UGB is excluded.

8.2 The CP shall assume the warranty for a period of 2 years or in the case of immovable property and work on immovable property for a period of 3 years (= guarantee period) from the date of acceptance of the delivery/service, the CP shall guarantee that the delivery/service is free of defects, that it functions perfectly and that it has the stipulated, expressly warranted or tacitly assumed properties or other specifications stated by us, and that it complies with all statutory regulations and other standards, to the extent that these defects do not occur within the guarantee period, irrespective of whether they already present at the time of handover.

The statutory warranty provisions remain unaffected. However, the warranty periods shall be extended insofar as the statutory warranty only begins to run after the agreed warranty period has expired.

Limitations of our warranty and guarantee claims as well as our claims for damages in favor of the CP are ineffective.

8.3 The CP shall be obliged - even without notice of defects - to remedy all defects occurring or arising within the warranty period at our discretion either by replacement delivery or repair without delay at its own expense. The CP shall all measures to remedy the defect while avoiding hindrances to our operations as far as possible; the CP shall reimburse us for any additional costs arising from any impairment of our operations, even if we are not at fault. Once the defect has been rectified, both the guarantee and the warranty pursuant to Section 8.5 for the delivery/service owed shall begin.

8.4 If defects are not fully remedied within a maximum of four weeks from the date of notification or if an attempt at improvement is unsuccessful, we shall be entitled, at our discretion, to demand further improvement/replacement (replacement delivery) or a price reduction or rescission. Furthermore, we shall also be entitled at our discretion to rectify the defect ourselves or have it rectified by a third party at the CP's expense - in urgent cases as soon as a defect occurs for the first time.

8.5 The CP shall be liable, regardless of fault, for any damage incurred by us as a result of delivery or performance not in accordance with the contract. The CP shall be obliged to indemnify and hold us harmless from and against any claims by third parties resulting from delivery or performance not in accordance with the contract. This shall also apply in particular to compensation payments which we are required to make under the Product Liability Act.

9. Offsetting

The CP may only offset claims that have been recognized by us in writing or have been legally established, or assert a right of retention with regard to such claims.

10. Documents and property rights

10.1 Models, tools, molds, drawings and other means of production or documents which we make available to the CP for the execution of the delivery/service or which have been financed by us shall remain or become our property upon their creation and shall be returned to us at any time upon request. The CP treat all such documents and objects as strictly confidential.

10.2 The CP shall be liable for ensuring that no patent, trademark, design, copyright or other industrial property rights of third parties are infringed by its delivery/service. The CP shall indemnify and hold us harmless against any third-party claims resulting from the infringement of such rights.

10.3 The agreed remuneration shall cover the acquisition of the worldwide exploitation and usage rights to the extent that their acquisition is necessary for us to use and resell the contractual object in accordance with the contract

11. Applicable law

The contract and all claims derived from it are subject to Austrian substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

12. Place of jurisdiction

The place of jurisdiction for all legal disputes in connection with this contractual relationship shall be exclusively the competent court for Vienna-Innere Stadt. Notwithstanding this, we are also entitled to sue the customer at his general place of jurisdiction.