

**1. Conclusion of contract, Contractual Language**

**1.1.** All deliveries by Messer Austria GmbH (MAT) shall be governed exclusively by the German version of the following General Terms and Conditions (GTC). Deviations from them as well as any supplementary agreements with the customer shall only be valid if confirmed in writing by MAT. Declarations made to MAT must be in writing (also by fax) to be legally binding. Upon placement of an order with MAT, however latest upon acceptance of our delivery, our Terms and Conditions shall be deemed accepted by the customer. The prevailing language for the contractual relationship with the customer is German. This translation of our GTC into the English language, in addition to the German language (www.messer.at), is merely done for customer's convenience (11.2.).

**1.2.** Terms and Conditions of the customer will not be accepted, unless otherwise expressly agreed in writing. No special objection to the GTC of the customer by MAT is required.

**2. Prices, terms of payment**

**2.1.** Unless otherwise agreed in writing in individual cases, prices are ex works and exclude packaging. Goods are dispatched ex works at the customer's cost and risk.

**2.2.** Our prices are net prices ex works plus the statutory VAT. The purchase price is payable without deduction immediately upon delivery of the goods or services, unless otherwise agreed upon in writing in individual cases. The customer may set off his claims against claims MAT has against the customer only if these counterclaims have been accepted in writing by MAT or if they have been established by a court judgement.

**2.3.** By way of derogation from Clause 2.2, the purchase price for plant, equipment and other movable property of any kind shall be due for payment already before delivery of the goods upon receipt of invoice by the customer. In all cases, MAT shall be entitled to make the dispatch or the delivery of unpaid goods dependent on the provision of a security by the customer, such as the submission of an irrevocable and confirmed letter of credit or a bank guarantee issued by an internationally recognised bank.

**2.4.** For machinery and equipment from an individual value of EUR 25,000.00 up and in the event of a delivery period of more than 2 months, the following terms of payment shall apply, unless otherwise agreed in writing: 50% of the agreed price shall be payable upon placement of the order, 40% upon notification of readiness for dispatch to the customer, the rest 30 days after delivery. In the case of delivery periods exceeding 6 months, we reserve the right to agree additional terms payments with the customer.

**2.5.** The fees for support services are payable after completion of the commissioned works. Support services are being invoiced at the agreed daily rate. In addition, the customer shall adequately reimburse MAT for any cash expenses, travel expenses, costs of accommodation and continental meals, costs of transport as well as all ancillary costs incurred at or during the travel to or from the place of destination.

**2.6.** Without prejudice to any other term of payment granted, MAT shall be entitled to perform all deliveries still outstanding only in return for immediate cash payment if the customer defaults in payment of any amount due or MAT becomes aware of circumstances which suggest that the customer's financial situation has materially deteriorated after conclusion of the contract. Furthermore, the terms of payment stated in the invoice shall apply.

**2.7.** If the customer defaults in payment of any indebtedness to MAT when due, default interest of 10% p.a. or higher statutory default interest will be charged. In addition, the customer shall reimburse MAT for any reminder fees and collection costs incurred in so far as they are necessary for bringing appropriate legal action, including -for the purposes of Sect. 1333 ABGB- in particular the costs of reminders as set according to §458 UGB and the costs of a reminder drawn up by a lawyer entrusted with the collection of the outstanding amount pursuant to the Independent Fee Guidelines (Autonome Honorar-Kriterien) (AHK 2005 or similar fee regulations). MAT reserves further rights and claims. If payment by instalments has been agreed, MAT shall be entitled to demand immediate payment of the entire debt outstanding (loss of right to pay by instalments) if the customer fails to pay instalments or ancillary claims in time.

**2.8.** The customer agrees to pay MAT a respective fee should he request copies of invoices and/or advice notes. Exempt from this payment is the use of the Online Portal.

**3. Delivery**

**3.1.** Stated delivery periods are approximate and not binding, unless they have been expressly agreed upon as having binding force. Partial deliveries shall be permissible.

**3.2.** If MAT has committed itself to adhere to a specific deadline and failed to comply, the customer may only withdraw from the contract if it has granted MAT a grace period of at least 14 days in writing and that period has expired with no action having been taken by MAT. The customer shall not be entitled to claim damages for non-performance or default if the ensuing damage has not been caused intentionally or gross negligently by MAT and/or a point of delivery.

**3.3.** If delivery/performance by MAT (or its sub-suppliers) is delayed for reasons not attributable to MAT, and in the event of force majeure and other unforeseeable events that cannot be avoided by reasonable measures, such as strikes, breakdowns, disruption to traffic and acts of government authorities, the obligations of delivery and acceptance shall be suspended for the time and to the extent the cause of non-compliance continues and the delivery period shall be extended accordingly. Where such delays last for more than 3 months, the customer and MAT shall be entitled to withdraw from the contract.

**4. Transfer of risk**

Unless otherwise agreed upon in writing, the risk shall pass to the customer upon transfer of the goods to the forwarder or other carrier. If, upon request of the customer, the goods are shipped late or in the event of a delay due to circumstances for which the customer is responsible, the risk of accidental loss shall pass to the customer from the time originally envisaged for dispatch of the goods. From that time, the goods shall be deemed stored at the customer's risk and costs.

**5. Dispatch and packing**

**5.1.** In any case, the goods are dispatched at customer's cost and risk. Insurance of our consignments must be taken out and paid by the customer. Unless shipment requirements are notified in writing by the customer upon conclusion of contract at the latest, we shall be free to determine the type and route of shipment, without liability for the most expeditious and/or cheapest mode of transportation.

**5.2.** Where MAT has agreed to ship the goods abroad, MAT shall ensure compliance with the statutory export regulations. Compliance with import and transit regulations is the customer's responsibility. Where machinery is unsuitable for shipment due to its size, MAT shall be entitled to dispatch machinery by individual components.

**6. Warranty**

**6.1.** Drawings, illustrations, measures and weights are only approximate, unless they have been expressly designated as binding. Production-related deviations must be accepted by the customer if the underlying template has been approved or the deviations are not significant.

**6.2.** The customer shall notify us in writing of any defects immediately upon receipt of delivery, at least within 7 days; hidden defects shall be notified immediately after they have been identified, and shall specify the defects; otherwise, the goods shall be deemed accepted and free from defects. In that case, the customer shall not be entitled to pursue any claims, including the claim to avoid the contract on account of error. In each case of a notice of defect, we shall be entitled to inspect the faulty goods.

**6.3.** Where the customer proves that goods delivered by us are defective, or work performed by us lacks quality, or we used substandard material, we shall be free to meet our warranty obligations by either repairing or replacing any such faulty goods by new faultless goods. In the event of repair, we shall bear all expenses necessary to remove the defect, in particular transportation costs as well as infrastructure costs, labour costs and costs of material. The customer shall send defective parts to our point of delivery at our cost.

**6.4.** If the repair fails, the customer shall be free to either demand the cancellation of the contract or a price reduction.

**6.5.** The warranty period shall be generally 12 months of delivery and 6 months of delivery for wear parts. For custom-made equipment and deliveries of pipes/hose lines, excess or short deliveries of 10% shall be admissible. The right to charge MAT retrospectively for damage pursuant to Sect. 933b (1) ABGB shall expire six months after delivery by MAT, after which MAT shall cease to be liable under any duty to provide compensation retrospectively. Complaints shall not entitle the customer to withhold the entire, but only half of, the purchase price for the defective delivery but only until the defective delivery has been replaced.

**6.6.** We provide warranty for repairs undertaken by us only with respect to parts replaced by us and/or the proper performance of works. Warranty by MAT requires that the customer has accomplished all his contractual obligations. Our warranty does not dispense the customer from his duty to cooperate and other obligations. Warranty obligations of MAT shall be excluded if the goods were modified by third parties or by third-party installations, or if defects were removed without our approval, and if the customer fails to comply with the supplier's or manufacturer's requirements regarding installation, commissioning, use and handling/maintenance of the object of purchase. Defective parts that are replaced under warranty shall become the property of MAT.

**7. Liability**

**7.1.** Any liability of MAT for property damage and pecuniary losses of the customer, no matter whether direct or indirect damage, lost profit, damage resulting from the defect itself or consequential damage, are excluded in cases of minor negligence. This exclusion of liability also applies to MAT's staff, legal and other representatives. It shall not apply to personal injuries and in the event of any liability under the PHG (Produkthaftpflichtgesetz - Product Liability Act). Any claims for damages customers or third parties may raise under the PHG against MAT shall be excluded, unless the party claiming compensation for such damages proves that the defect was caused by MAT acting at least grossly negligent.

**7.2.** In cases of gross negligence, MAT shall be liable for property damage and financial losses incurred by the customer only in so far as such damage is covered under its public liability and product liability insurance policies, limited up to the insured sum paid out. It is up to the injured party to prove that MAT has acted with gross negligence. Liability for purely financial losses is excluded, unless intent on the part of MAT is proven.

**7.3.** Damages for delay in delivery are limited to 5% of the contract value.

**7.4.** MAT's liability in the event of use of the object of purchase or other services in areas related to the aeronautical and aerospace industries shall be excluded, unless MAT is proven to have acted intentionally. The customer is aware of the risks typically related to the use of the goods at issue and/or devices and agrees to use them at his own risk. He is also aware that property damage may occur as a result of unforeseeable and atypical risks, in particular misuse by third parties.

**7.5.** The customer shall claim damages within 12 months after the occurrence of the damage, failing which any such claims shall be precluded.

**8. Retention of title, resale**

**8.1.** The goods delivered by MAT shall remain the property of MAT until the purchase price and all ancillary claims have been fully paid.

**8.2.** Collateral securities provided by the customer shall be released upon the customer's request in so far as the realisable value of the remaining collateral securities exceeds the claims to be secured by more than 10%; we shall be free to choose the collateral securities to be released.

**8.3.** As long as the retention of title is in force, the goods may only be sold if this and the name/corporate name and business address of the buyer/beneficiary have been notified to us in advance and if we have given our consent thereto. In the event of resale of the retained goods, the claim to the selling price shall be deemed assigned to us already at this stage and we shall be entitled at any time to inform the third party about this assignment. In that case, the Customer shall concurrently include a corresponding note in his books or on his invoices. After the assignment, the Customer shall be authorised to recover the debt; we however reserve the right to recover the debt ourselves as soon as the Customer fails to fulfil its payment obligations.

**8.4.** If the object of purchase is processed, transformed or combined with other objects by the customer, we shall become co-owners of the new object in proportion to the value of the object of purchase (final invoice amount, including VAT) in relation to the value of the other objects at the time of processing.

**8.5.** In order to secure our claims against him, the customer shall assign the claims arising against third parties from the combination of the object of purchase with real property.

**8.6.** Any transfer of title and pledging of the retained goods to third parties shall be excluded.

**9. Assembly, installation and commissioning of plants**

**9.1.** Unless included in the offer for sale, the assembly and installation of plant and equipment on the customer's premises are not part of the scope of services. Damage to and/or defects of plant and equipment brought about by improper installation or non-compliance with installation instructions shall lead to the exclusion of warranty claims and/or claims for damages.

**9.2.** Where MAT is entrusted to supervise the commissioning of plant and equipment on the customer's premises, MAT's areas of responsibility shall cover the following activities:

- a) inspection of obvious assembly and installation mistakes;
- b) check of compliance of supply connections with the minimum specifications of the plant;
- c) monitoring of start-up of plants; and
- d) initial training of the customer's staff concerned with the use of the plants, regular upkeep and maintenance as well as regular checks of the plants' functions.

**10. Intellectual property rights and tools**

**10.1.** We reserve all titles and rights, including copyrights, rights of use and exploitation rights, to proposals for applications, designs, drawings and other documentation provided to the customer during the offer-making or order-processing process. They may therefore be made available to third parties only with our consent and must be returned at any time upon our request.

**10.2.** Where we have delivered products on the basis of drawings, samples or other documents and requirements provided by the customer, the customer shall be responsible for ensuring that intellectual property rights of third parties are not infringed and shall indemnify and hold MAT harmless from any rights of recourse third parties may raise against MAT.

**10.3.** Tools used to produce the object of delivery, in particular gaskets, bellows, nozzles and other moulded parts supplied by us, shall remain our property even if pro rata costs have been charged to the customer for them.

**11. Jurisdiction, place of performance, governing law**

**11.1.** 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, MAT shall be entitled to sue the customer at his place of general jurisdiction. The contract and any claims derived from it shall be governed by Austrian substantive law without regard to the UN Sales Convention. Our registered office in 2353 Gumpoldskirchen shall be the place of performance for all services to be performed under this contract.

**11.2.** In case of any dispute regarding the interpretation of this GTC, the German version (www.messer.at) shall prevail.

**12. Consumers**

The loss of the right to pay by instalments pursuant to Clause 2.7 and the restriction on the right to setoff pursuant to Clause 2.2 shall apply to contracts with consumers governed by the Consumer Protection Act only in accordance with the provisions contained therein. Clause 6.2 first and second sentences, Clause 6.3, Clause 6.5, Clause 6.6, Clauses 7.2 to 7.5 and Clause 11 first sentence shall not apply to contracts with consumers.

**13. Data Protection**

Provided Data will be processed by MAT according to the data protection directive (Datenschutzgrundverordnung). The Data Protection Declaration of MAT can be downloaded from its website (www.messer.at).