

General Terms and Conditions of Purchase of MESSRING GmbH („GTC“)

Section 1 Applicability

1. These GTC apply to all legal relations between MESSRING and the Supplier, in particular to all deliveries, services and offers obtained by MESSRING. General terms and conditions of the Supplier or a third party apply only to the extent to which MESSRING has explicitly consented to them in writing. The General Terms and Conditions of Business of the Supplier are hereby contested, in particular General Terms and Conditions of Business of the Supplier conflicting with or deviating from these GTC are not recognized. These GTC also apply exclusively when MESSRING has not contradicted the conflicting terms and conditions separately.
2. These GTC are part of all contracts concluded for deliveries or services between MESSRING and the Supplier. Individual agreements concluded on a case-by-case basis, in particular the individual framework agreements prevail over these GTC but only when they are concluded in compliance with the written form requirement.
3. The performance of deliveries and services will take place according to specifications, drawings, descriptions and other documents of MESSRING which are integral parts of the relevant legal relationship.

Section 2 Conclusion of the contract

1. The agreement is concluded by means of a purchase order placed by MESSRING and a confirmation in this respect by the Supplier. The text form (e.g. letter, fax, email) is deemed sufficient. Amendments and additions to the purchase order by the Supplier are not valid unless consented to in writing by MESSRING.
2. If the Supplier does not accept the purchase order within one week after receipt, MESSRING will not be bound by the purchase order any longer. The principles of the so-called "silence following receipt of a commercial letter of confirmation" does not apply in this case. Call-offs, however, are deemed binding at the latest when the Supplier does not contradict them within one week after receipt.
3. Within reasonable limits, MESSRING may perform amendments and adjustments of the object of delivery, in particular regarding the construction and design. The effects of the amendment (e.g. increase or decrease in costs) must be settled subsequently in an amicable manner.

Section 3 Prices, conditions of payment and offsetting

1. The prices specified in the purchase orders of MESSRING are fixed prices and include the packaging, transport costs and the relevant applicable sales tax and any customs duties. The prices are payable to the paying agent of the supplier free of charges.
2. Payment will be effected after receipt of the agreed complete delivery and an invoice in compliance with the legal provisions in which sales tax must be specified separately, if applicable. In the absence of a separate agreement, the price must be paid within 14 days with 2% cash discount or within 30 days without deduction. In case of delivery before the stipulated binding date of delivery, payment will fall due according to the stipulated date of delivery. By effecting payment, the delivery or service is not recognized as in conformity with the contract.
3. In the event of a defective delivery, MESSRING may withhold payment in proportion to the value until proper performance is effected.
4. Claims of the Supplier towards MESSRING may not be assigned to third parties. If such an assignment takes place in violation of the agreement, the payment is deemed effected to the Supplier.

Section 4 Delivery periods, default, passing of risk

1. Stipulated delivery dates are binding and are deemed as fixed dates. Unless otherwise agreed, the receipt of the stipulated complete delivery at MESSRING or the place of receipt specified in the purchase order is relevant. The Supplier must send MESSRING a delivery note on the day of departure of the delivery. Partial deliveries and deliveries before the stipulated date of delivery require the prior consent of MESSRING.
2. The Supplier must inform MESSRING in due time and immediately in case of a foreseeable delay in delivery. In this respect, the grounds and the estimated duration of the delay must be specified and the further procedure must be coordinated with MESSRING. MESSRING may inform themselves about the relevant current state of the purchase order on the spot. The Supplier must grant MESSRING the required access to the Supplier's premises and insight into the required documents.
3. If the Supplier is in default, MESSRING may claim a compensation for each full working day of delay in the amount of 0.2% each but not more than a total of 5% of the gross amount of settlement of the delivery. The contractual penalty does not apply when the Supplier is demonstrably not responsible for the delay. Further claims for damages of MESSRING remain unaffected but the contractual penalty will be offset against the claims for damages. A forfeited contractual penalty can be asserted by MESSRING until the final payment. The contractual parties may provide evidence for higher or lower damage.
4. If the delivery is delayed by three weeks due to force majeure, MESSRING may withdraw from the agreement after fruitless expiry of a grace period of another two weeks. In case of repeated delay in delivery, MESSRING is entitled to extraordinary termination of all other purchase orders which are not yet performed at this time after a prior warning.
5. In any case, the service and price risk only pass to MESSRING upon receipt of the delivery by MESSRING or the place of receipt specified separately and in case of handover free of defects. This applies also when MESSRING has assumed the freight costs based on a separate agreement.

Section 5 Copyrights, retention of title

1. If MESSRING provides materials or other objects, in particular drawings, descriptions, samples or any data to the Supplier, they will remain the property of MESSRING. MESSRING further reserves any commercial industrial property rights and copyrights in this respect. While the retention of title exists, any attachment or transfer by way of security or any other transfer to a third party is not allowed to the Supplier.
2. Inventions, developments and other intellectual property made by the Supplier in the course of the purchase order or in the creation of which the Supplier participates are covered by the property of MESSRING in any case. Furthermore, the Supplier transfers all copyrights, property rights and other rights to the results of the purchase order which the Supplier develops by order of MESSRING or in collaboration in full to MESSRING upon origination thereof.
3. MESSRING accepts only the simple retention of title of the Supplier. All other types of retention of title require a separate written agreement. MESSRING may process the goods subject to retention of title or mix or combine them with other objects.

Section 6 Examination of defects and warranty

1. MESSRING must notify exclusively obvious, recognizable defects or defects arising later on within a period of 2 weeks after transfer of risk in text form (letter, fax, email). In case of complex deliveries, the complaint period will be extended to 6 weeks after transfer of risk. In the event of an investigation of defects exceeding the normal scope (e.g. expert costs, legal prosecution), the Supplier will bear such costs. The risk and costs in connection with the return of a defective delivery are borne by the Supplier. Furthermore, the regulations regarding the obligation to give notification of defects according to Section 377 HGB [Handelsgesetzbuch = German Commercial Code] do not apply.
2. The Supplier assures that the objects of delivery and services will be free of material defects and defects in title and comply with the requirements of MESSRING and the recognized rules of technology, the safety standards and other statutory provisions.
3. For compliance with their own delivery obligations, MESSRING may in particular remedy the defect itself or have it remedied by third parties after fruitless expiry of the reasonable grace period for subsequent performance. The costs in connection with this substitute performance will be borne by the Supplier. This does not apply if the Supplier refuses the subsequent performance for justified reasons. Any claims for damages and other claims remain unaffected. MESSRING may remedy or have remedied minor defects immediately at the Supplier's expense without setting any grace period.
4. The Supplier must exempt MESSRING from any claims for damages, reduction and other third-party claims, in particular by the customers of MESSRING, if the Supplier is responsible for the damage. In these cases, the Supplier must bear all costs and expenses incurring in this connection, in particular any costs of legal prosecution and recall. For securing the claims under Section 6, para 4, MESSRING may demand a security deposit in the amount of 10% of the invoice amount or the presentation of a guaranty of a German bank in the amount of the security deposit for the warranty period.
5. The statute of limitations for the warranty claims against the Supplier is 36 months upon transfer of risk. If a longer period is provided for by law, such longer period will apply. MESSRING does not waive their warranty rights by accepting or approving models and samples.
6. The Supplier must take out a product and employer's liability insurance with reasonable coverage for material damages, personal injury and recalls at his own expense. Evidence for the relevant liability policy must be provided to MESSRING at all times if MESSRING requests so.

Section 7 Property rights

The Supplier assures that the delivery is free from third-party rights in particular patents, licenses, utility models and other industrial property rights and copyrights of third parties. The Supplier exempts MESSRING and their customers from claims of third parties arising out of any violation of such rights. The Supplier bears the costs of defending such claims and for the acquisition or the use of the required property rights from the relevant entitled third-party by MESSRING or their customers, if applicable.

Section 8 Liability

MESSRING is only liable for intention and gross negligence. This does not apply to the violation of obligations which are essential for the performance of the contract and for injuries to life, body and health and under the German Product Liability Act. The claim for damages for the violation of essential contractual obligations, however, is limited to the typical, foreseeable contractual damage. This applies also to the liability of MESSRING for their performing agents and for the compliance with pre- and post-contractual obligations.

Section 9 Confidentiality

The Supplier is obliged to keep all detail of which the Supplier has gained knowledge within the framework of the business relationship and which are not obvious confidential and to publish them only with the written consent of MESSRING. This applies also towards performing agents and sub-suppliers.

Section 10 Final provisions

1. The company seat of MESSRING is the place of performance and place of jurisdiction for all litigations arising directly or indirectly out of the business relationship. MESSRING, however, may also sue at any other competent place of jurisdiction.
2. In cases which are not regulated by these GTC, the German Civil Code and the German Commercial Code shall apply. The business relationships between MESSRING and their suppliers including its interpretation are governed by the laws of the Federal Republic of Germany. International law, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG), and other agreements for the standardization of the law governing purchases do not apply.
3. Should any provision of these GTC be or become completely or partially legally invalid or void, this shall not affect the remaining provisions. Any loophole arising out of the invalidity or nullity of a provision of these GTC must be filled analogously by way of supplementary interpretation of the contract in consideration of the interests of the parties involved.

MESSRING, as of 2015