

### § 1 Scope and form

- (1) These General Terms and Conditions (T&Cs) apply to all our business relationships with our customers ("buyers"). The T&Cs only apply if the buyer is an entrepreneur (§ 14 of the German Civil Code, or BGB), a legal entity under public law, or a special fund under public law.
- (2) The T&Cs apply in particular to contracts for the sale and/or delivery of movable items ("goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433 and 650 of the BGB). Unless otherwise agreed, the T&Cs in the version valid at the time of the buyer's order or in any case in the version last communicated to it in text form also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.
- (3) Our T&Cs apply exclusively. Deviating, conflicting, or supplementary general terms and conditions of the buyer will only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent applies in any case, for example even if the buyer refers to its T&Cs in the context of the order and we do not expressly object to this.
- (4) Individual agreements and information in our order confirmation take precedence over the T&Cs.
- (5) Legally relevant declarations and notifications by the buyer in relation to the contract (e.g. setting a deadline, notification of defects, withdrawal, or reduction) must be made in writing. The "written form" within the meaning of these T&Cs includes written and text form (e.g. letters, e-mails, faxes). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declarant, remain unaffected.
- (6) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions therefore apply unless they are directly amended or expressly excluded in these T&Cs.

### § 2 Conclusion of contract

- (1) Our offers are subject to confirmation and nonbinding. This also applies if we have provided the buyer with catalogs, technical documentation (for example drawings, plans, calculations, references to DIN standards), other product descriptions, or documentation – also in electronic form – to which we reserve ownership rights and copyrights.
- (2) The order of the goods by the buyer is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 14 days of its receipt by us.
- (3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.
- (4) If changes to the product or the performance obligations of the contracting parties are mutually agreed in the course of the contract execution – e.g. new delivery deadlines – no new order confirmation is generally required.

### § 3 Delivery period and arrears

- (1) The delivery period is to be agreed individually or specified by us upon acceptance of the order. Your compliance with the delivery period assumes that all business and technical questions between the contracting parties have been clarified and that the buyer has fulfilled all of its obligations, such as for example the provision of the documentation, approvals, required official certifications or authorizations, and other performance and delivery components, as well as any agreed down payment.
- (2) The delivery period shall be deemed to have been adhered to if the delivery item has left our factory by the time it expires or readiness for dispatch has been notified. If acceptance is to take place, the acceptance date is decisive – except in the case of justified refusal of acceptance – or alternatively the notification of readiness for acceptance.

- (3) MS is entitled to make partial deliveries, insofar as those are reasonable for the buyer.
- (4) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (nonavailability of the service), we will inform the buyer of this immediately and at the same time inform it of the expected new delivery time. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately reimburse any consideration already provided by the buyer. Nonavailability of the service exists, for example, in the event of our suppliers being late in delivering to us if we have agreed a corresponding covering transaction; in the event of other disruptions in the supply chain, for example due to force majeure; or if we are not obliged to procure in individual cases.
- (5) Our entering into arrears in delivery will be determined in accordance with the statutory provisions. In any case, however, a reminder from the buyer is required.
- (6) The rights of the buyer pursuant to § 10 of these T&Cs (other liability) and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), will remain unaffected.

### § 4 Delivery, transfer of risk, acceptance, and default of acceptance

- (1) Unless otherwise agreed, delivery will be ex works Spaichingen (Incoterms 2020), which will also be the place of performance for the delivery and any subsequent performance. At the request and expense of the buyer, the goods will be shipped to another destination (sale by dispatch). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, and packaging) ourselves.
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the latest upon handover. In the case of sale by dispatch, however, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay, will be transferred as early as upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the shipment. Insofar as an acceptance has been agreed to, the acceptance is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services also apply accordingly to an agreed acceptance. If the buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.
- (3) If the buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this we charge compensation amounting to 0.5% of the net price (delivery value) for each completed calendar week up to a maximum total of 5% or 10% in the event of final nonacceptance, beginning with the delivery deadline or, in the absence of a delivery deadline, with the notification that the goods are ready for dispatch.
- (4) Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum is to be added to further monetary claims. The buyer shall be entitled to prove that we have not incurred any damage at all or only significantly less damage than the above lump sum.

### § 5 Prices and terms of payment

- (1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply ex warehouse and do not include the costs of packaging, freight, loading and unloading, transportation, insurance, installation, assembly, and commissioning as well as operating instructions, plus statutory VAT.

- (2) In the case of sale by dispatch (§ 4, para. 1), the buyer bears the transport costs ex warehouse and the costs of any transport insurance requested by the buyer.
- (3) Unless otherwise agreed, the purchase price is due immediately without deduction upon invoicing and delivery or acceptance of the goods. However, we are entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We will declare such a reservation with the order confirmation at the latest.
- (4) The buyer will be in default upon expiry of the above payment deadline. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to assert further claims for damages caused by delay. Our claim to commercial default interest (pursuant to § 353 of the German Commercial Code, or HGB) against merchants remains unaffected.
- (5) The buyer is only entitled to rights of set-off or retention to the extent that its claim has been legally established or is undisputed. In the event of defects in the delivery, the buyer's counter-rights remain unaffected, in particular in accordance with § 8, para. 6, sentence 2 of these T&Cs (claims for defects of the buyer).
- (6) If it becomes apparent after conclusion of the contract (e.g. through an application for the opening of insolvency proceedings) that our claim to the purchase price is jeopardized by the buyer's inability to pay, we are entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the contract (§ 321 of the German Civil Code, or BGB). In the case of contracts for the manufacture of nonfungible goods (custom-made products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

#### § 6 Retention of title

- (1) We reserve title to the goods sold until full payment of all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims).
- (2) The goods subject to retention of title may not be pledged to third parties or assigned as security until the secured claims have been paid in full. The buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties seize the goods belonging to us (e.g. seizures).
- (3) If the buyer acts in breach of contract, in particular in the event of nonpayment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for surrender does not at the same time include a declaration of withdrawal; rather, we are entitled to demand only the return of the goods and reserve the right to withdraw from the contract. If the buyer does not pay the purchase price due, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment without success or if such a deadline is dispensable according to the statutory provisions.
- (4) At our request, the buyer must provide us with comprehensive support in our efforts to protect the title to the delivery item in the country concerned or otherwise ensure that our interests are adequately secured.
- (5) We are entitled to insure the delivery item at the buyer's expense against theft, breakage, fire, water, or other damage, unless the buyer has verifiably taken out the insurance itself.

#### § 7 Installation and commissioning

- (1) If agreed in writing, the machine/system will be installed and put into operation by our service technicians. Seamless installation and commissioning assumes that the machine/system was unloaded by the buyer, completely unpacked and moved to its final installation site. Furthermore, all requirements must be met

by the buyer in accordance with the operating instructions and machine drawing (supply connections, etc.).

- (2) Our offer price also assumes that the service technician responsible for the installation will be provided with appropriate support personnel and any necessary lifting equipment free of charge.
- (3) The costs for installation, commissioning, and instruction are included in the offer in accordance with the separately stated specification. Costs for work on weekends and on work-free business days are not included. Any expenses incurred for this will be charged in accordance with our current MS Standard Service Conditions.
- (4) Interruptions for which we are not responsible will be invoiced separately in accordance with our current MS Standard Service Conditions.

#### § 8 Claims for defects by the buyer

- (1) The statutory provisions shall apply to the rights of the buyer in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise specified below. In all cases, the statutory provisions on the sale of consumer goods (§§ 474 ff. of the BGB) and the rights of the buyer from separately issued guarantees, in particular on the part of the manufacturer, remain unaffected.
- (2) The basis of our liability for defects is above all the agreement reached on the quality and intended use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications that are the subject of the individual contract or were made public by us (in particular in catalogs or on our website) at the time the contract was concluded are deemed to be a quality agreement in this sense. If the quality has not been agreed, it is to be assessed in accordance with the statutory provisions whether a defect is present or not (§ 434, para. 3 of the BGB). Public statements made by the manufacturer or on its behalf, in particular in advertising or on the label of the goods, take precedence over statements made by other third parties.
- (3) In the case of goods with digital elements or other digital content, we are only obliged to provide and, if applicable, update the digital content if this is expressly stated in a quality agreement in accordance with para. 2. In this respect, we accept no liability for public statements made by the manufacturer or other third parties.
- (4) In principle, we are not liable for defects that the buyer is aware of or is grossly negligent in not being aware of when the contract is concluded (§ 442 of the BGB). Furthermore, the buyer's claims for defects presuppose that it has complied with its statutory inspection and notification obligations (§§ 377 and 381 of the HGB). In the case of building materials and other goods intended for installation or other further processing, an inspection must always be carried out immediately before processing. If a defect is discovered during delivery, inspection, or at any later time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 5 working days of delivery, and defects not recognizable during the inspection within the same time period from their discovery. If the buyer fails to properly inspect the goods and/or report defects, our liability for the defect not reported or not reported on time or not reported properly will be excluded in accordance with the statutory provisions. In the case of goods intended for integration, fitting, or installation, this also applies if the defect only became apparent after the corresponding processing as a result of the breach of one of these obligations; in this case, in particular, the buyer will not be entitled to claim compensation for the ensuing costs ("removal and installation costs").
- (5) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). If the type of subsequent performance chosen by us is unreasonable for the buyer in individual cases, the buyer may refuse it. Our right to refuse subsequent performance under the statutory provisions remains unaffected.

- (6) We are entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. However, the buyer is entitled to retain a reasonable part of the purchase price in proportion to the defect.
- (7) The buyer must give us the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the buyer must return the defective item to us at our request in accordance with the statutory provisions; however, the buyer has no return claim. Subsequent performance does not include the dismantling, removal, or disassembly of the defective item, nor the integration, fitting, or installation of a defect-free item if we were not originally obliged to perform these services; the buyer's claims for reimbursement of corresponding costs ("removal and installation costs") remain unaffected.
- (8) We will bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor, and material costs, as well as any removal and installation costs, in accordance with the statutory provisions and these T&Cs, if a defect actually exists. Otherwise, we may demand compensation from the buyer for the costs arising from the unjustified request to remedy the defect if the buyer knew or could have recognized that there was actually no defect.
- (9) If a reasonable deadline to be set by the buyer for subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. However, there is no right of withdrawal in the event of an insignificant defect.
- (10) Claims by the buyer for reimbursement of expenses pursuant to § 445a, para. 1 of the BGB are excluded unless the last contract in the supply chain is a consumer goods purchase (§§ 478 and 474 of the BGB) or a consumer contract for the provision of digital products (§§ 445c, sentence 2 and 327, para. 5 and 327u of the BGB). Claims of the buyer for damages or reimbursement of futile expenses (§ 284 of the BGB) only exist in accordance with the following §§ 10 and 11, even if the goods are defective.
- (11) No liability is assumed in particular in the following cases:
  - a. Unsuitable or incorrect use, incorrect assembly, or incorrect commissioning by the buyer or any third party, ordinary wear and tear, incorrect or careless handling, improper maintenance, unsuitable operating fluids, inadequate construction work, unsuitable building foundations, chemical, electromechanical, or electrical influences – insofar as we are not responsible for them.
  - b. If the buyer or a third party carries out improper repairs, we will not be liable for the resulting consequences. The same applies to any modifications to the delivery item made without MS' prior approval.

#### § 9 Defects of title

- (1) If the use of the delivery item leads to an infringement of industrial property rights or copyrights in Germany, we will, at our expense, procure the right for the buyer to continue using the delivery item or modify the delivery item in a way that is reasonable for the buyer so that the infringement of property rights no longer exists.
- (2) If this is impossible under economically reasonable conditions or within a reasonable time period, the buyer is entitled to withdraw from the contract. We are also entitled to withdraw from the contract under the conditions cited.
- (3) Moreover, we will indemnify the buyer against undisputed or legally established claims of the respective owners of the property rights.
- (4) Subject to § 10, the obligations incumbent upon us stated in para. 1 are conclusive in the event of an infringement of intellectual property rights or copyright. They only exist if
  - a. the buyer informs us immediately of any asserted infringements of industrial property rights or copyrights,

- b. the buyer supports us to a reasonable extent in the defense against the asserted claims or enables us to carry out the modification measures in accordance with paragraph 1,
- c. all defensive measures including out-of-court settlements are at our discretion,
- d. the defect of title is not based on an instruction of the buyer, and
- e. the infringement was not caused by the buyer modifying the delivery item without authorization or using it in a manner not in accordance with the contract.

#### § 10 Other liability

- (1) Unless otherwise stated in these T&Cs, including the following provisions, we are liable in the event of a breach of contractual and non-contractual obligations in accordance with statutory provisions.
- (2) We are liable for damages – irrespective of the legal grounds – within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we will only be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty),
  - a. for damages resulting from injury to life, limb or health,
  - b. for damages arising from the breach of an essential contractual obligation (an obligation whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
- (3) The limitations of liability resulting from para. 2 also apply to third parties and in the event of breaches of duty by persons (including in their favor) whose fault we are responsible for in accordance with statutory provisions. They do not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the buyer under the German Product Liability Act.
- (4) The buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 650 and 648 of the BGB) is excluded. Otherwise, the statutory requirements and legal consequences apply.

#### § 11 Statute of limitations

- (1) As an exception to § 438, para. 1, no. 3 of the German Civil Code, or BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the general limitation period for claims arising from material defects and defects of title shall be one year from acceptance or one year from the start of the statutory limitation period (e.g. in the event of unjustified or final refusal of acceptance).
- (2) The above limitation periods of sales law also apply to contractual and non-contractual claims for damages of the buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195 and 199 of the BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the buyer pursuant to § 10, para. 2, sentence 1 and sentence 2 (a), as well as under the German Product Liability Act, become time-barred exclusively in accordance with the statutory limitation periods.

#### § 12 Software usage

- (1) If software is included in the scope of supply, the buyer is granted a non-exclusive right to use the delivered software including its documentation. It is provided for the use on the delivery item

intended for it. The use of the software on more than one system is not permitted.

- (2) The buyer may only duplicate, revise, translate, or change the object code into the source code to the extent permitted by law (§§ 69 a ff. of the German Copyright Act, or UrhG). The buyer undertakes not to remove or change manufacturer's specifications – in particular copyright notices – without our explicit approval.
- (3) All other rights to the software and the documentation, including copies, remain with us or the software supplier. The granting of sub-licenses is not permitted.
- (4) We provide updates for the use of the software included in the scope of supply at our own discretion and at appropriate intervals. The customer is recommended to carry out updates immediately or have them carried out, as effective support and rectification of defects can only be guaranteed with the current software version.
- (5) Depending on the software, we may, at our own discretion, also supply improved or modified functions within the scope of updates, but the customer is not entitled to this. We are free to design the software and can change the appearance and type of operation as long as the essential functionality of the software is retained; we can change, add, or remove functions as long as it is ensured that the subsequent versions will at least provide the essential services of the original versions.
- (6) It is recommended that you commission us to carry out the updates. However, the buyer also has the option of carrying out updates itself. However, the installation of an update is then at one's own risk. In case of a faulty installation, the original system cannot be restored. If the system no longer functions correctly after an update, we accept no responsibility for this. Our liability for claims for damages and reimbursement of expenses is excluded in this respect.
- (7) The buyer is obliged to examine the updates provided or carried out immediately. We must be notified immediately in writing of any defects that are discovered. Defects that could not be detected during the proper inspection described above, as well as defects that occur later, must be reported in writing immediately after their discovery.

### § 13 Choice of law and place of jurisdiction

- (1) These T&Cs and the contractual relationship between us and the buyer is governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
- (2) If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law, or a special fund under public law, the exclusive, including international, place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Spaichingen. The same applies if the buyer is an entrepreneur within the meaning of § 14 of the BGB. In all cases, however, we are also entitled to bring an action at the place of performance of the delivery obligation in accordance with these T&Cs or an overriding individual agreement or at the buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive responsibilities, remain unaffected.