

Messer Austria GmbH (MGA)

General terms and conditions of purchase

1. Scope of validity

1.1 These general terms and conditions apply to all our purchases and orders. Special conditions in our written purchase orders and special terms and conditions of contract on which we are based in an individual case take precedence over any stipulations of the subject general terms and conditions of purchase deviating therefrom, irrespective of their other validity. Any terms and conditions of the counterparty are not acceptable and shall only apply in exceptional cases if they are accepted by us in writing. It is therefore not required that we explicitly object to any of the counterparty's terms and conditions of business. Any agreements deviating from the subject general terms and conditions of business or supplementing them shall only be effective if they are confirmed by us in writing. Oral side agreements shall not take effect.

1.2 The counterparty acknowledges the subject general terms and conditions by accepting our purchase order, in any case by performing our purchase order. In case any stipulations of the subject terms and conditions of purchase are ineffective, this shall not affect the binding obligations of the remaining stipulations and of the contracts entered into on which they are based.

2. Entering into the contract

2.1 Quotations on the part of the counterparty are free of charge and without any obligation on our part, even if they have been made upon our inquiry. In submitting a quotation, the counterparty shall comply strictly with our inquiry and shall explicitly draw attention to any deviations. Cost budgets shall be submitted to us free of charge. Our purchase orders shall be effective only if submitted by us in writing and signed by authorized signatories. The counterparty shall accept our purchase order not later than 7 days from the date of the purchase order, by returning a copy of it provided with a legally binding signature; otherwise our purchase order will no more be legally binding.

2.2 Without our written consent, the scope of the purchase order shall neither in part nor in full be passed on to any third parties (sub-contractors or other entities). In case of an admissible sub-contract with a third party, the counterparty is liable for it in the same manner as for its own conduct (sec 1313a General Civil Code ABGB).

3. Prices

Purchase orders will be based on the counterparty's prices and discounts applicable as at the date of the purchase order. The prices agreed as specified in our purchase order are fixed prices not subject to any change, we in particular do not accept sliding price clauses and index clauses, except if negotiated and agreed in writing. The prices as agreed contain all costs and services required for due performance and delivery; including all costs for assembly, packaging, shipment, transportation and insurance. The price contains also any drawings, models, templates, moulds, etc., as required for performance of our purchase order.

4. Terms and conditions of delivery

4.1 Place of performance are the premises at our registered office at 2352 Gumpoldskirchen, Austria, unless in an individual case a different place of performance is agreed. The counterparty's delivery/service shall take place free domicile at counterparty's expense and risk, free of charge, including export and import customs clearance, including packaging and insurance.

Each shipment shall be accompanied by a delivery note/packing slip, specifying the order number, article number and quantity delivered. Each purchase order shall be referred to separately in the delivery notes.

4.2 In case we have justified doubts regarding the completeness/compliance with the contract of the delivery/service as provided by the counterparty, the counterparty shall upon our request obtain and submit any tests, samples, specimens and material test certificates at its own expense in order to evidence the proper condition of its delivery/service in conformity with the purchase order. The delivery/service shall not be deemed rendered until such evidence has been submitted.

We are authorized to reject partial delivery/service. Any delivery/service is deemed fully rendered as soon as it has been rendered in conformity with the contract including all agreed ancillary obligations, which include also the complete and faultless documentation (invoices, freight documents, certificates of origin, guarantee certificates, etc.), training, etc.

Whenever we request a notice of readiness for shipment, the counterparty shall give us information in writing thereof not later than 10 days before each shipment or admissible partial shipment. Following that we will nominate to the counterparty the person authorized to receive the shipment and the exact place of delivery. The delivery shall be deemed effected as soon as this is confirmed by the signature of the person authorized to receive it.

5. Date of delivery

5.1 Dates and deadlines of delivery and/or performance shall be strictly complied with on a compulsory basis. Any period of delivery and/or performance agreed with us shall be counted from the date of our purchase order. The criterion for compliance with dates and deadlines is the date of arrival of the shipment at our premises. In case of, even also only partial, delay we are, at our discretion, authorized to continue requesting delivery or to withdraw from the contract for the agreed full scope of delivery or for only parts thereof - with or without allowing a period of grace - and also to claim damages. As soon as the counterparty becomes aware that all or part of the delivery cannot be effected in due time, the counterparty shall give notice thereof without delay, specify the reasons and the likely duration of the delay. This shall not affect our rights.

5.2 Irrespective of any other claims on our part, in particular claims for damages, the counterparty shall - if this has been agreed upon in writing - in case of exceeding the deadline for delivery/service, pay in addition liquidated damages (penalty) under strict liability. The counterparty's obligation to pay such agreed liquidated damages shall not apply if and to the extent a deadline has been exceeded due to a force majeure event. Events of force majeure are deemed exclusively war, natural disasters and strikes.

6. Retention of title

All deliveries to us are free of any retention of title and other legal restrictions. Any reference to such reservations or restrictions in confirmation letters or invoices shall be ineffective, even in the absence of an explicit objection on our part.

7. Invoicing, terms of payment

7.1 Invoices can be issued to us not earlier than upon takeover of the delivery/service on our part, which is to include handover of complete documentation and specification sheets. Our payment shall take place, at our choice, within 14 days from receipt of an invoice in conformity with the law and the contract, less 3% cash discount, or within 60 days after receipt of the invoice without deduction of any discount. Deadlines for payment and cash discount shall not commence before takeover of the complete delivery/service free of any defects. Should we be in arrears of payment, an interest rate of four percentage points above the basic lending rate as applicable is deemed agreed.

7.2 We are authorized to pay by bank transfer, cheque, or three months acceptance, and the time allowed for payment is complied with if the payment instructions have been issued within such term, or the payment documents in lieu of payment have been delivered to the bank or post office. The cash discount shall remain applicable in any case. In case of any notice of defect we are authorized to withhold the full payment until proper performance of delivery/service, with the right to deduct the cash discount to remain applicable.

8. Warranty, guarantee and damages

8.1 Acceptance of the delivery/service by us shall take place only upon examination at the place of performance. See item 4 to this effect. Admissible partial deliveries shall be deemed accepted only after examination and final acceptance of the full delivery, irrespective of acceptance of partial shipments. Takeover of the delivery/service and its payment shall not be deemed acknowledgement of its proper condition in conformity with the purchase order. Any obligation to examine and give notice of defect immediately pursuant to sec 377f UGB (Business Enterprise Code) is excluded.

8.2 For the duration of 2 years, and/or in case of immovable objects and work performed on immovable objects for the duration of 3 years (= guarantee period) from the date of takeover of the delivery/service, the counterparty assumes the guarantee for the delivery/service to be free of defects, for faultless functioning and the presence of the agreed, explicitly promised or implied properties or other specifications notified by us, as well for compliance with all statutory regulations and other standards; to the effect that such defects shall not occur within the guarantee period, thus irrespective of the fact whether they were already existing upon handover.

The statutory warranty provisions shall remain unaffected. However, the warranty periods shall be extended to the effect that the statutory warranty shall commence to be effective only upon expiry of the agreed guarantee period.

Any restrictions in favour of the counterparty of our warranty claims and guarantee claims as well as of our claims for damages shall be ineffective.

8.3 Even in the absence of a notice of defects the counterparty is obligated to eliminate without delay and at its expense all defects occurring or arising within the guarantee period, at our choice either by substitute delivery or by repairing the defects. The counterparty shall proceed to all steps for elimination of defects with least possible disturbance of our operational workflow; the counterparty shall reimburse us any additional cost, arisen, also without any of its fault, as a result of any adverse effect on our operations thereby. Upon successful elimination of defects, both the guarantee and the warranty period in accordance with item 8.5 shall re-commence for the delivery/service owed.

8.4 If defects will not be fully eliminated within not later than four weeks after having been notified, or if an attempt for improvement remains unsuccessful, we are, at our discretion, authorized to continue to demand improvement/exchange (substitute delivery), reduction of price, or rescission. We are also authorized, at our discretion, to eliminate the defect ourselves - in urgent cases already upon first occurrence of a defect - or to have it eliminated by a third party at the counterparty's expense.

8.5 Irrespective of being at fault, the counterparty is liable for any damage arising to us because of delivery or performance failing to comply with the contract. The counterparty is obligated to indemnify and hold us harmless in case of any claims of third parties due to delivery or performance failing to comply with the contract. This applies, without being limited, also to compensation for damages we have to provide in accordance with the Product Liability Act [Produkthaftungsgesetz].

9. Offsetting

The counterparty is allowed to offset payments only against amounts receivable acknowledged by us in writing or confirmed with legally binding effect, and/or allowed to assert a title of retention only with regard to such amounts receivable.

10. Documentation and industrial property rights

10.1 Models, tools, moulds, drawings and other production instruments or documents we make available to the counterparty for carrying out the delivery/service or which have been financed by us, remain and/or become our property already upon their being prepared and shall be handed over to us at any time upon being requested by us. The counterparty shall handle such materials and objects on a strictly confidential basis.

10.2 The counterparty is liable to ensure that its delivery/service does not violate any patent, trademark or design rights or copyrights or other industrial property rights of third parties. The counterparty shall indemnify and hold us harmless in case of any claims of third parties resulting from violations of such rights.

10.3 With the fee as agreed, acquisition of worldwide rights for exploitation and use are compensated to the extent as their acquisition by us is required for contractual use and possible re-sale of the object of the contract.

11. Applicable law

The contract and all claims derived thereunder are subject to Austrian substantive law, under exclusion of the UN Conditions for the Sale of Goods.

12. Venue

Venue for any litigation in connection with the subject contractual relationship shall exclusively be the court of law having subject matter jurisdiction for Wien-Innere Stadt, Vienna. Notwithstanding that, we also have the right to sue the customer at its general place of jurisdiction.