

General Terms and Conditions

MTS MessTechnik Sauerland GmbH

1. Validity of the Terms and Conditions for Sales, Deliveries, and Repairs

The following Terms and Conditions shall apply exclusively to entrepreneurs, legal entities governed by public law or public special funds in the meaning of § 310 paragraph 1 BGB (German Civil Code).

These Terms and Conditions shall exclusively apply to all our offerings, sales, deliveries and repairs. Terms and conditions of the customer that differ from these shall apply neither in part nor whole, even if we did not expressly contradict their contents. These Terms and Conditions shall also apply to all future business dealings, even if not yet expressly agreed upon. Subsidiary agreements and other additions shall require our written confirmation.

2. Conclusion of contract

If an order is to be considered an offer pursuant to § 145 of the German Civil Code (BGB), we can accept it within two weeks.

3. Prices, Terms of payment

3.1 Our prices are quoted exclusive of taxes (especially the value added tax as applicable at any given point of time) public charges (customs duties in particular) as well as costs of transport, packing and insurance.

3.2 For contracts with an agreed lead time of more than 4 (four) months, we shall be entitled to adapt the prices according to the increase in costs that has taken place in the meantime on account of collective agreements and increases in material prices. In the event that any such increase exceeds 5 (five) % of the agreed price, the customer shall have the right of withdrawal of the contract.

3.3 Unless otherwise contractually agreed, all payments shall be made within 8 (eight) days with a 2 (two) % discount or in cash without deduction within 30 (thirty) days.

3.4 Payment using bills of exchange requires an explicit written consent. In any case, bills of exchange and cheques are only accepted on account of performance. Discount charges as well as incidental charges customary in banking shall be paid by the customer. Payments shall be considered to be made when we have the total amount at our disposal.

3.5 The customer shall only be entitled to a right of offset provided that their counter claims have been judicially determined, or are uncontested or acknowledged by us or are in a synallagmatic relationship to our claim.

The customer shall only be allowed to exercise any rights of retention if their counterclaim is based on the same contractual relationship.

3.6 If the customer defaults in payment, we shall be entitled to charge default interest at a rate of 8 (eight) % above the base rate of the German Central Bank, pursuant to § 247 German Civil Code (BGB). Our right to claim further damages shall expressly remain unaffected.

3.7 If, after conclusion of the contract, we get knowledge of facts that give cause for justified doubts about the customer's ability to pay, we shall be entitled to carry out outstanding deliveries or repairs only against advance payment or a security deposit. What gives cause to justified doubts are particularly cheque and bill of exchange protests as well as default of payment by the customer. In the event of advance payments or security deposits still not being provided by the customer after the expiry of an appropriate period of grace, we shall be entitled to withdraw from the contract. Our right to claim further rights shall expressly remain unaffected.

4. Delivery

4.1 All agreements regarding binding delivery dates and periods shall be in the form of text. Delivery periods shall begin with the conclusion of the purchase contract, but in no event before the customer has provided information and documents required to carry out the service. Delivery dates and periods shall have been complied with if the goods have left our plant and we have informed the customer of the readiness for dispatch.

4.2 In the event of force majeure or other unforeseeable circumstances which are not caused by us - e.g. material procurement difficulties, operational disruptions, labour disputes, delivery stops or other official orders – we shall be exempted from the duty to deliver on time for the duration of the hindrance; current delivery periods shall be extended to an adequate extent. Should the disruptive events last longer than four months, both parties shall be entitled to withdraw from the contract. In this case, compensation claims of the customer shall be excluded. Other rights to withdraw shall remain unaffected by this.

5. Dispatch, transfer of risks, acceptance

5.1 If, at the request of the customer, the goods are dispatched to their address, also if part deliveries are made, the risk of accidental loss or accidental deterioration of the goods shall be transferred to the customer at the moment of dispatch, or at the latest, at the time the goods leave the warehouse or plant. This shall apply regardless of whether dispatch is made from the place of performance or regardless of whoever bears the freight costs.

5.2 A transport insurance will only be made by us on specific request of the buyer and shall be at their expense.

5.3 If the delivery is delayed due to reasons which are caused by the customer, we shall be entitled to store the goods in a warehouse at the cost and risk of the customer. When storing the goods in our plant, we shall be able to charge at least 0.5 % of the invoice amount for every commenced month of storage at our plant, beginning one month after notification of readiness for dispatch. The proof of a lower or higher damage by the customer or us shall remain reserved.

5.4 If the customer does not finally accept the goods, the customer shall be charged 30 (thirty) % of the invoice amount as minimum damage. The proof of a lower or higher damage by the customer or us shall remain reserved.

5.5 We shall be entitled to make part deliveries.

6. Customer's duty of cooperation

Before commissioning the goods, the customer shall check that the specifications stated by us in the operating instructions are not exceeded; furthermore, the customer shall undertake to make sure that the currently applying legal safety regulations for operating the goods are complied with.

7. Liability for defects

7.1 Unless expressly agreed otherwise, warranty claims shall be in accordance with the statutory provisions, with the following modifications:

- The customer shall be obliged to immediately examine the goods with all due care for deviations of quality and quantity and to inform us in writing of any obvious deficiencies within 7 (seven) days from receipt of goods. The timely despatch of the report shall be sufficient. This shall also apply to concealed defects from the time when they are identified later. The assertion of warranty claims is excluded upon violation of the examination and reprimand duty.
- In case of defects we provide warranty at our choice through rework or replacement delivery (rectification). In the event of a rework, we shall not bear the increased costs occurring due to the transport of the goods to a location other than the place of performance if the transport does not correspond to the intended use of the goods.

- If the rectification fails twice, the customer shall be able to claim a discount or withdraw from the contract at their choice.
- The guarantee period shall amount to one year starting from delivery of the goods.

8. Installation services

8.1 Requesting one of our service technicians shall be considered as an order for checking the required measures at the expense of the customer. The findings of the review and the works expected to be carried out shall be recorded in the installation order. Our time-related statements with regard to the start, duration and completion of the works as well as spare part deliveries shall be binding to us only if they have been confirmed by us in writing. Our service technicians do not have power of representation.

8.2 The customer shall undertake all necessary and reasonable preparations for the installation and support us diligently in carrying it out. The customer shall be particularly obliged to enable us to carry out the installation services and, in case of an installation outside our workshops, to provide the required means, rooms as well as auxiliary personnel free of charge and to take the necessary safety precautions.

8.3 If no fixed price has been agreed, the customer shall be charged the relevant time, material and travelling expenses for the installation on account of the valid hourly rates and price lists at the time of performance. If not otherwise contractually agreed, our company headquarters or, at our discretion, the last deployment location of the service technician used shall be considered as the starting point and, when a return to that place actually takes place, it shall be considered as the return destination. The customer shall bear any additional costs that occur due to a premature request for one of our service technicians by the customer or which occur due to interruptions of the works for which we cannot be held responsible. This shall also apply if special tools become necessary beyond the usual scope or the repair or installation cannot be carried out on the spot, but only in our workshops or the works have already been performed otherwise when our service technician arrives.

8.4 We shall be entitled to commission any third party with the repair and installation of the goods.

9. Liability

We shall assume unlimited liability for wilful misconduct and gross negligence as well as under the terms of the German Product Liability Act. We shall be liable for slight negligence in case of damages arising from injury to life, body and health of persons and in case of breaching an essential contractual duty, the fulfilment of which is essential for due implementation of the contract at all and whose fulfilment the customer may ordinarily rely (cardinal obligation). In such a case, the liability for slight negligence shall be limited to the amount of loss that can be typically foreseen on conclusion of the contract. This limitation of liability shall also apply to the benefit of our vicarious agents.

10. Industrial property rights and copyrights

Industrial property rights and copyrights in the goods, particularly in the software contained therein, shall remain with us. We grant the customer a simple license to use the software installed in the goods. The customer shall be allowed to pass on the software to any third party only together with the complete goods delivered by us. The customer shall undertake to provide the third party with the text of this clause number 10 and to impose them the same obligations which the customer has undertaken in this respect. The customer's right of use shall expire as a result of the transfer. Apart from that, the customer shall not be entitled to duplicate, distribute, edit or otherwise use the software.

11. Retention of title

11.1 We retain title of the goods until all outstanding accounts arising from the business connection with the customer have been settled.

11.2 During the duration of retention of title, the customer shall be only entitled to sell the delivered goods

in the normal course of business. Other dispositions which endanger our property shall be excluded. Already now, the customer shall assign as security to us all receivables to which they are entitled from the resale of the goods. The customer is authorised to collect the receivables which have been assigned to us. We shall be able to revoke this authorisation as well as the entitlement to resell the delivered goods whenever the customer fails to fulfil his obligations towards us.

11.3 The customer shall perform any processing or amendment for us without any obligations arising for us from this. If a connection, mixing or treatment with items that do not belong to us occur, then we shall have joint ownership of the new item, at the ratio of the purchase price agreed between us and the customer and the purchase price of the other processed items.

11.4 The customer shall provide at any time all information requested by us regarding the goods or claims assigned to us under this agreement. In case of any third party access to or claims of the delivery object, the customer shall immediately inform us about this by indicating the necessary documents. The customer shall, at the same time, refer the third party to our retention of title. The customer shall bear the costs of defending against this type of access and claims.

11.5 If the value of the securities exceeds our entire claims by more than 20 (twenty) %, they shall be released by us upon request by the customer.

11.6 In case of a breach of the contract by the customer, in particular default in payment, we shall be entitled to repossess the delivered goods subsequent to a reminder and the customer shall be obliged to hand over the goods. The assertion of the retention of title as well as the seizure of the delivery item by us shall not be deemed as withdrawal from the contract.

11.7 In case of deliveries to other jurisdictions in which the foregoing provisions governing the retention of title do not have the same security effect as in Germany, the customer shall immediately take any possible steps to create equivalent security rights for us. The customer shall cooperate in all measures such as registration, publication, et cetera, which are necessary and beneficial to the effectiveness and enforceability of such security rights.

11.8 At our request, the customer shall be obligated to appropriately insure items that are subject to retention of title and to assign to us all entitlements arising from the insurance policy.

12. Miscellaneous

12.1 The customer shall be obliged to not pass on any under the contractual relationship obtained knowledge about fabrication and trade secrets or other confidential information to third parties or to utilize such secrets otherwise.

12.2 If individual points of these provisions are ineffective, the effectiveness of the other provisions shall remain unaffected. In this event, the parties shall undertake to replace the invalid provision with a valid provision that most closely approximates the economic intent of the invalid provision.

12.3 If the customer is a general merchant, a legal person under public law or a public special fund, the exclusive court of jurisdiction for all disputes arising from the contractual relations between us and the customer shall be Brilon. However, we shall also be entitled to pursue legal action against the customer at any other court of jurisdiction.

12.4 The contractual relationship between the customer and us shall be subject to the law of the Federal Republic of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

If the customer is headquartered or resident abroad, the mandatory provisions of the country shall remain unaffected by the choice of law.

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