

TERMS AND CONDITIONS OF PURCHASE OF MERSEN DEUTSCHLAND HOLDING GMBH & CO. KG

1. Scope

- 1.1 Any delivery of goods and services you make to us, also including any future deliveries of goods and services of the supplier, shall be subject exclusively to our Terms and Conditions of Purchase set forth herein to the extent no other agreements have been explicitly made.
- 1.2 General Terms and Conditions of the supplier which contradict our Terms and Conditions are only applicable insofar as we have expressly agreed to them in writing.

2. Orders

- 2.1 Our orders and any changes and additions to the orders must be made in writing or text form. Our order data must always be quoted on all documents, invoices and shipping papers.
- 2.2 We are entitled to cancel our order free of charge if you do not confirm our order in unmodified form within two weeks after receipt.

3. Time limits and consequences of force majeure and failure to meet deadlines

- 3.1 Agreed deadlines for the deliveries of goods and services are binding. If delays are expected or occur you shall provide immediate written notice of those delays to our department which placed the order. The adherence to delivery deadlines and delivery times shall be judged by the date and time of arrival of the goods at our premises.
- 3.2 We must be notified immediately about the occurrence of events involving force majeure (as well as labour disputes, incidents for which the supplier bears no responsibility, unrest or official measures by government authorities and other unavoidable circumstances) if they affect the obligations of the supplier. In these cases we shall be entitled – without prejudice to our other rights – to rescind the contract partly or completely if the events are of significant duration or permanently disrupt our business operations.
- 3.3 If you also fail to deliver the goods or services before the extended deadline set by us expires, we shall be entitled – even without prior warning – to refuse delivery, rescind the contract or demand damage compensation for failure to perform. We shall be entitled to rescind the contract even if the delay was not your fault. You shall bear any additional costs incurred by us because of your delay, especially those resulting from the necessity to purchase from third parties.
- 3.4 The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims to which we are entitled due to the delayed delivery or service; this applies pending full payment of the amounts owed by us for the delivery or service in question.
- 3.5 We reserve the right to demand any agreed contractual penalty on account of improper performance (§ 341 of the German Civil Code [BGB]) until final payment. If you fail to comply with the agreed delivery time we shall have the right to demand payment of a contractual penalty of 0.5% of the amount of the contract per business day up to a maximum of 5% of the amount of the contract. Retention of the contractual penalty upon reception or acceptance of the goods delivered is not required.

4. **Prices**

- 4.1 The agreed prices are fixed prices. They shall include all expenses in connection with the goods and services provided by you.
- 4.2 Unless otherwise agreed, the prices are understood “free at factory gate (frei Werk)” duty paid, packaging included, VAT not included.

5. **Delivery and processing**

- 5.1 Deliveries deviating from our orders are only admissible if given our prior written approval. Partial deliveries are inadmissible in principle unless we expressly agreed to them or can reasonably be expected to accept them.
- 5.2 A packing slip is to be included with each delivery that indicates our order number and the designation of the contents according to kind and amount. The packaging will be invoiced by agreement.
- 5.3 In the case of devices, a technical description and a user's manual shall be included at no charge. In case of software products, the delivery obligation shall only have been met once all the (systems and user) documentation has also been delivered. In the case of programs created specifically for us, the source code must also be provided. Along with the right to use software belonging to the scope of delivery, including the software documentation, to a legally permissible extent (§§ 69 a and onwards of the German Copyright Act [UrhG]) we also have the right to use such software with the agreed performance characteristics and to the extent necessary for the use of the product in accordance with the contract. We also have the right to make a backup copy even without an express agreement.
- 5.4 The reception of incoming goods at our works takes place from Monday through Friday between 7:30 AM and 3:00 PM. Hazardous substances are accepted between 7:00 AM and 2:00 PM. We reserve the right to arrange special reception times on an individual basis according to need. When sending or shipping items to us by postal services, please use pre-paid postage only. We are self-insured.

6. **Invoices and payments**

- 6.1 Invoices must be submitted immediately upon delivery and may not be sent together with the shipment of the goods.
- 6.2 In the absence of any agreement to the contrary, we will make payments within 14 days with a discount of 3%, or within 60 days net. The payment term shall begin as soon as the delivery of goods or services has been completed and the properly issued invoice has been received.
- 6.3 Payments shall not be deemed as acknowledgement that the goods or services provided are in accordance with the contract. In the event that goods or services are defective or incomplete, we shall be entitled, without prejudice to our other rights, to withhold payment of a reasonable amount of receivables arising from the business transaction until you have properly fulfilled your contractual obligations.
- 6.4 The assignment of your claim against us to third parties is excluded.

7. **Passage of risk, acceptance, title, insolvency of the supplier**

- 7.1 Independent of the agreed pricing, in the case of delivery without setup or assembly, the

risk is transferred to us upon arrival of the goods or services at the delivery address indicated by us; in the case of delivery with setup or assembly, the risk is transferred to us upon successful completion of our acceptance. Commissioning or use shall not replace our declaration of acceptance.

- 7.2 The ownership of the delivered goods is transferred to us after payment. Any prolonged or extended retention of title shall be excluded.
- 7.3 If insolvency proceedings have been opened regarding the assets of the supplier or if the opening of such proceedings has been declined for insufficiency of assets or if insolvency proceedings (filed by the supplier itself or by a third party) are in the process of being opened, we shall have the right, at our own discretion, to rescind our order for any goods or services which have yet to be delivered at that point in time. The supplier assigns to us its claims against any upstream suppliers in respect of defects and deficiencies. We have the right to disclose such assignment.

8. **Obligation to examine goods and report defects**

- 8.1 The supplier shall guarantee careful final inspection. An incoming goods inspection is performed with regard to obvious defects (§ 377 German Commercial Code [HGB]). Hidden defects will be reported as soon as they are detected according to the circumstances of the orderly course of business. You waive the objection of delayed notification for all defects notified to you within 14 days after detection
- 8.2 If we return defective goods to you, we are entitled to charge the invoiced amount back plus a lump sum for effort in the amount of 5% of the price of the defective goods. We reserve the right to prove higher expenses. Your right to provide documentary proof of lower or no expenses shall be reserved.

9. **Warranty for defects of material or title**

- 9.1 Defective deliveries are to be replaced without delay by fault-free deliveries and faulty services are to be repeated fault-free. In the event of development or design engineering defects, we shall be entitled to immediately assert the rights provided for under section 9.3.
- 9.2 Subsequent improvement of defective deliveries or services requires our agreement. You shall bear the risk during the time in which the goods or services to be delivered are not in our possession.
- 9.3 If you do not rectify the defects within the reasonable grace period set for you, then at our discretion we can either withdraw from the contract or reduce remuneration and, in each case, demand additional damage compensation.
- 9.4 In urgent cases (especially where operating safety is in jeopardy or for the purposes of preventing an exceptionally high damage or loss), for the removal of insignificant defects and in the event that you are in default of remedying a defect, we shall be entitled, after notifying you and after a reasonably short period of grace has expired, to remedy the defect and any resultant damage or loss ourselves or through third parties at your expense. This shall also apply if you deliver the goods or services late and we have to remedy defects immediately so that we do not miss our own delivery deadlines.
- 9.5 Should we incur expenses as a result of the defective delivery of the Product, in particular transport, carriage, labour and material costs, or costs of incoming goods inspection which exceed the normal scope of incoming goods inspection, also those

costs shall be borne by you.

- 9.6 The limitation period for our claims for material defects is 36 months from transfer of risk pursuant to § 7.1; that limitation period is suspended for the period of time beginning with the transmittal of our notice of defects and ending with the fulfilment of our claim in respect of defects and deficiencies.
- 9.7 If you are to deliver or perform pursuant to our plans, drawings, or other requirements, then the adherence of the corresponding goods or services to those requirements is considered as being expressly guaranteed. If delivery or performance deviates from the demands we shall immediately have the rights under section 9.3.
- 9.8 In all other respects, our statutory rights shall remain unaffected.

10. Repeated default

If, after receipt of a warning letter, you are once again late in supplying essentially identical or similar goods or services, or such goods or services are once again defective, we shall be entitled to rescind the contract immediately. In this case we shall also be entitled to rescind contracts relative to the future delivery of goods and services based on this contractual relationship or on other contractual relationships.

11. Indemnification in the event of defects of material or title, product liability and recalls

- 11.1 You shall release us from all claims made against us by third parties – regardless of the legal reason – on account of defects of material or title or other deficiencies of a product delivered by you, and reimburse us for our necessary legal expenses.
- 11.2 In the event that a product liability claim is asserted against us, you are obliged to hold us harmless from such claims if and to the extent that the damage was caused by a defect in the Product supplied by you. In cases of liability based on fault, this only applies, however, if you are at fault. If the cause of the damage lies within the scope of your responsibility, you bear the corresponding burden of proof. In those cases you assume all costs and expenses, including the costs of any legal action or recall. In all other respects the statutory provisions shall apply.

12. Technical documentation, tools, means of production

- 12.1 The technical documents, tools, plant specifications, manufacturing equipment, etc provided by us remain our property; we retain all trademarks, copyrights, and other intellectual property rights. You must return them, including all duplicates made, after the order has been processed and without being requested to do so; in this respect you are not authorised to claim any rights of retention. You may use the said objects only to process the order. You may not pass them on, or make them otherwise accessible, to unauthorized third parties. The said objects may be duplicated only insofar as required for processing the order.
- 12.2 If you produce the objects named in § 12.1 sentence 1 in whole or in part at our expense, then § 14.1 applies accordingly; in which case, by virtue of providing our share of the production costs, we become a (co-)owner and you shall keep these objects safe for us free of charge; we may, at any time, acquire your rights in respect of the object by compensating for expenses that have not yet been amortised and reclaim the object.
- 12.3 You are obligated to maintain, service, and repair normal wear and tear on the objects named above at no charge. If you, in order to process our order, subcontract the

production of samples and tools to a third party you shall cede to us your claims for cession of property in those tools and samples against the subcontractor.

13. Provision of materials

13.1 Material provided by us remains our property; you must keep it separated from your other items at no charge with the care of a diligent business person and it must be labelled as our property. It may only be used to implement our order. You are to replace any damaged material which has been provided.

13.2 If you process or transform material which is provided, then that activity is performed for us. We shall become the direct owner of the resulting new objects. If the materials provided constitute only a part of the new objects, we shall be entitled to ownership of the new objects on a pro rata basis according to the value of the materials provided and contained therein.

14. Confidentiality, non-disclosure and transmittal of personal data

14.1 You are obligated to treat as confidential all business and technical details of which you become aware on account of the business relationship. To the extent that it is not proven public knowledge, all information made available by us must not be disclosed to third parties, and it may only be made available to those persons in your business who necessarily need to be involved in the use thereof for the purpose of delivery to us and who are likewise subject to non-disclosure obligations.

14.2 Please note that we save only such personal information as relates to our business relationship with you.

15. Safety and environmental protection

15.1 The goods and services you deliver must comply with applicable statutory provisions, in particular with regard to safety and environmental protection, including the German Ordinance on Hazardous Substances (Verordnung über gefährliche Stoffe) and the safety recommendations of the competent German technical committees or associations. The relevant certificates and documents must be supplied free of charge.

15.2 You are obligated to determine and adhere to the latest version of the directives and laws applicable to your components with regard to restrictions on substances. You shall be obliged not to use banned substances. All substances to be avoided and dangerous substances according to the applicable laws and regulations must be listed in the specifications. If applicable you must submit safety data sheets (at least in German or English) already with your offers and with the delivery note of your first delivery. Any indications of having exceeded the limits of substance restrictions or of having delivered banned substances must be reported to us immediately.

15.3 You are solely responsible for complying with all regulations regarding the prevention of accidents for deliveries and during the performance of services. Any necessary safety equipment and manufacturer's instructions must be supplied free of charge.

16. Place of performance, venue and applicable law

16.1 Place of performance is the respective delivery address listed.

16.2 Insofar as admissible, the legal venue shall be the registered office of MERSEN Deutschland Holding GmbH & Co. KG, Frankfurt am Main. However, we may also take legal action against you at your place of business.

16.3 The contractual relationships to our suppliers shall be governed exclusively by German law without regard to the conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).

17. Severability clause

Should a provision of these Terms and Conditions be or become ineffective, this shall not affect the validity of the Terms and Conditions in other respects. The parties hereto undertake to replace the ineffective provision with one that approximates its business intent as closely as possible.

MERSEN Deutschland Holding GmbH & Co. KG

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