

§ 1 Application of GTC, hierarchy

1. The following General Delivery Conditions ("GTC") apply to all business transactions between MESSRING GmbH ("MESSRING") and the Client, especially to all supplies and services by MESSRING (hereinafter together called "Services") and to all payments and other Client obligations. MESSRING does not acknowledge any of the Client's trading conditions that differ from or supplement these GTC unless MESSRING should have confirmed same in writing. Nor do any unconditional Services or acceptance of payments by MESSRING imply acknowledgement of the Client's trading conditions even in the absence of objection.
2. If any other contractual provisions in a quotation, order confirmation or signed supply contracts should conflict with these GTC the other contractual provisions shall have priority. Otherwise the various provisions shall apply on an equal footing.

§ 2 Conclusion of a contract

Quotations by MESSRING are generally not binding. Only once a Client's job has been accepted by MESSRING by way of an order confirmation will a contract generally be concluded according to the content thereof.

§ 3 Client's duty of cooperation

1. The Client is responsible for flawless technical condition, for the functional capability and compatibility of its equipment or plant with the Services. This also applies to any third party's equipment which is deployed.
2. Where MESSRING is responsible for installation the Client shall provide items and materials required for assembly and commissioning, such as scaffolding, lifting gear and other devices, fuel and lubricants, power and water, at the installation site free of charge and in perfect working order. This includes the provision of essential connections, heating and lighting as well as the provision of suitable lockable premises on which to keep machine parts, apparatus, materials, tools etc. plus the provision of reasonable sanitary facilities for MESSRING's assembly workers. The Client must also take all necessary measures to protect MESSRING's assembly materials and assembly workers, especially all occupational safety measures.
3. Any damage resulting from breach of the aforementioned duties shall be borne by the Client, unless the Client should not have been responsible for such breach.
4. The Client must use the Services solely in accordance with the contract and legislation. The Client must observe the safety regulations that are generally applicable or derive from indications given by MESSRING, particularly in its operating manuals and assembly instructions.

§ 4 Services and Substance of Services, subcontractors

1. The Services for which MESSRING is responsible are determined exclusively by the specifications expressly agreed. Any more extensive warranty, especially for a particular purpose or specific suitability of the Services, duration of use or durability, will only be given by MESSRING if expressly agreed; otherwise the risk of suitability and usage shall be borne exclusively by the Client.
2. Guarantees (§ 443 BGB [German Civil Code]) only apply if explicitly stated by MESSRING.
3. The Client agrees that MESSRING may also provide services through subcontractors. The subcontractor has to adhere to the agreements between MESSRING and the Client and the law, such as MESSING.

§ 5 Prices

The prices agreed are euro prices and are generally quoted EX WORKS as per Incoterms 2020; VAT and costs such as transportation, packaging and insurance are not included in prices unless agreed to the contrary. If no price should be agreed on the conclusion of a contract the price applicable at MESSRING on that date shall apply.

§ 6 Invoicing, payments and offsetting

1. MESSRING's invoices are payable immediately without any deduction. No discount is generally granted.
2. Default arises if the Client fails to pay a presented invoice within 10 days of the invoice date unless the presented invoice has not been submitted by that date, is erroneous, not due for payment or unenforceable. Default can also arise by operation of law. In the event of default MESSRING may demand statutory default interest and even claim higher damages for default, if appropriate.
3. MESSRING has the technical means to shut down individual machines supplied, plant or even other Services by remote control, if necessary, so that the Client is unable to continue to use them ("shutdown"). If during the period of default MESSRING gives the Client written notice (e.g. by post, email or fax) that payment is required, sets a deadline by which payment is to be made and states that it will effect a shutdown if payment is not forthcoming MESSRING will be entitled to effect a shutdown from the expiry of that deadline without result until such time as payment is made in full. In such an eventuality a shutdown will not constitute a breach of duty.
4. The offsetting of a Client's claims against any debts due to MESSRING or the exercise of a right of retention will not be permitted unless the Client's claim or counterclaim is uncontested, established by way of a final court order or at least ready for a decision. Offsetting or the exercise of a right of retention will similarly be possible where the Client's claim and the debt due to MESSRING are based in law on a relationship of mutuality.

§ 7 Costs if defect complaints are unjustified

If a defect complaint by the Client should be unjustified, MESSRING may invoice the Client for Services which MESSRING provides at the request of or on demand by the Client as a result of such complaint at the prices applicable at MESSRING plus additional effort (e.g. travelling expenses).

§ 8 Partial performance, delay in performance

1. Reasonable partial performance shall be permissible. Partial performance will be deemed unreasonable, for example, if the Client has no interest in same or if only a small quota (still) has to be provided prior to partial performance or remains to be provided as a result of such partial performance.
2. In the event of delay in performance MESSRING's liability in damages shall be governed exclusively by § 13 of these GTC.

§ 9 Acceptance, rejection, passage of risk, delay in acceptance

1. The Client shall accept contractual Services as agreed or reject same where required by law or contract. Unless agreed to the contrary or provided for by statute the risk shall also pass on that date.
2. In the event of delay in acceptance by the Client or if there should be a delay in performance for any other reason MESSRING may claim damages for loss sustained as a result thereof unless the Client should not have been responsible for such breach of duty. MESSRING shall charge lump sum compensation for this in the sum of 0.5% of the net value of the Services per calendar week or part thereof subject to a maximum of 5% of the net value of the Services. Proof of higher loss or statutory entitlements shall not be prejudiced. The Client remains entitled to adduce evidence to show that MESSRING has not sustained any loss at all or that the loss sustained is lower than the aforementioned lump sum compensation.

§ 10 Retention of title

1. MESSRING retains title to all items to be transferred to the Client until such time as all debts arising from their business relationship have been settled in full ("retention goods"). The Client is obliged to treat retention goods carefully and to adequately insure them against theft, fire and water damage at replacement value at its own expense. The Client must release the retention goods in the event of payment default.
2. The Client must identify retention goods as belonging to MESSRING and promptly inform MESSRING of any liens or other intervention by third parties. The Client shall bear the cost of repelling such intervention.

§ 11 Warranty

1. In statutory warranty claims (§§ 437, 634 BGB [German Civil Code]) the following provisions shall take priority over statute. No statutory warranty claim will arise in the case of normal wear and tear or if the Client or a third party should treat an item incorrectly, improperly, wrongly or negligently, install it incorrectly, overload it or deploy inappropriate equipment.
2. The Client shall inspect items immediately on delivery. If inspection should reveal a defect the Client must notify MESSRING thereof at once and in any event within 8 working days of receiving the item. If a defect should be revealed later on the Client must again notify MESSRING thereof at once and in any event within 3 working days of its discovery. Otherwise an item will be deemed approved. § 377 HGB [German Commercial Code] shall otherwise apply. This sub-paragraph 2 shall not apply if acceptance is due under the law.
3. In warranty claims (§§ 437, 634 BGB [German Civil Code]) MESSRING shall be obliged to either remedy the defect or supply a flawless item, as it may choose (rectification). MESSRING shall bear the essential costs of such rectification, especially transportation, travel, labour and material costs. It shall not bear the extra costs incurred in taking an item to a place other than the place of performance.
4. If rectification should prove unnecessary or impossible or if it should fail or be wrongly refused or delayed by MESSRING the Client may either reduce the price accordingly or cancel the contract provided that the statutory requirements are satisfied. Damages shall be governed exclusively by § 13 of these GTC.
5. The limitation period shall be one year from delivery of an item or – where required by law – one year from acceptance. The statutory limitation period shall apply to items which have been used for their intended purpose in construction work and have caused its defectiveness, in construction work and jobs the success of which comprises rendering planning or supervisory services, or in the event of fraudulent concealment of a defect. As far as MESSRING is liable in damages for a warranty claim under § 13 of these GTC the warranty period for such damages shall be governed by statute.

§ 12 Absence of warranty for just rendering services

Where MESSRING provides the Client with just services (especially customer service, training etc.) there will be no question of a statutory warranty.

§ 13 MESSRING's limited liability in damages

1. If MESSRING, its statutory representatives, employees or agents should, due to intent or gross negligence, be in breach of duty of any kind whatsoever and based on any legal grounds, particularly deriving from the contractual relationship or from the intentional or grossly negligent commission of a tortious act, MESSRING shall be liable for the resultant loss to the Client in accordance with the law.
2. If MESSRING, its statutory representatives, employees or agents should, just due to simple carelessness, be in breach of duty of any kind whatsoever and based on any legal grounds, particularly deriving from the contractual relationship or from the simply careless commission of a tortious act any claim in damages against MESSRING on the part of the Client shall be excluded unless it should be a case of a simple careless breach of a material contractual obligation. In such an eventuality MESSRING's liability shall be limited to the foreseeable damage typical of the contract concerned. A material contractual obligation for this purpose shall be one the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the Client regularly relies and is entitled to rely.
3. The above exclusions from liability and/or limits on liability shall not apply to liability for culpable harm to life, limb or health, nor to liability for fraudulent concealment of a defect, to liability for non-fulfilment of a guarantee of quality (§ 444 BGB [German Civil Code]), nor to liability under the *Produkthaftungsgesetz* [German Product Liability Act].
4. The statutory rules on burden of proof are not prejudiced.

§ 14 Intellectual property rights

All industrial property rights, especially trademarks, patents, registered designs and other design rights to documentation, concepts, texts, drawings and drafts developed by MESSRING as well as to the Services, are retained exclusively by MESSRING. The Client may not make any intellectual property right applications in this respect either for itself or for a third party and may not grant any licences.

§ 15 Place of performance, forum, law applicable

1. Unless otherwise agreed the place of performance for all of the Parties' duties shall be MESSRING's registered office.
2. The exclusive place of international jurisdiction for all disputes arising from the business relationship shall be the FRG. The exclusive local forum shall be the place of jurisdiction at MESSRING's registered office where the Client is a business, a legal person governed by public law or a special fund governed by public law. MESSRING may also have recourse to another court having lawful jurisdiction.
3. The entire business relationship between MESSRING and the Client shall be governed solely by German law to the exclusion of the UN Convention on the International Sale of Goods and private international law.