

§ 1 Application of GTC, hierarchy

1. The following General Terms and Conditions for Services (“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 even where the contract is concluded via MESSRING’s online shop. 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 contract should conflict with these GTC those other contractual provisions shall have priority. Otherwise the various provisions shall apply on an equal footing.

§ 2 Conclusion of a contract

1. 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.
2. Where the Client places an order via MESSRING’s online shop the contract will be concluded according to the procedure stipulated therein.

§ 3 Client’s duty of cooperation

1. The Client is responsible for the flawless technical condition, 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 the 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 incurred by MESSRING as a result of breach of the aforementioned duties of care 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 Guarantees, subcontractors

1. Guarantees (§ 443 BGB [German Civil Code]) only apply if explicitly stated and stipulated by MESSRING.
2. 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, just like MESSRING.

§ 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 costs (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..
3. Force majeure, especially unforeseen, unavoidable circumstances for which MESSRING is not responsible (e.g. pandemics, strikes or lawful lockouts, stoppages, unforeseeable problems in the procurement of supplies of materials and power, difficulties at MESSRING’s sub-suppliers in the absence of fault, transport delays, shortages of labour, power or raw materials, or official measures) will result in a reasonable extension to the period of performance. In such an eventuality even agreed performance dates will be reasonably extended. If the force majeure should not be merely temporary both parties will have the right to rescind the contract. In such an eventuality claims in damages are precluded in the absence of fault. MESSRING will notify the Client of the commencement and ending of force majeure as soon as possible.

Notwithstanding the above provisions the parties are agreed, in light of the coronavirus crisis in the year 2020, that it is always possible for a situation to suddenly arise in which due to no fault of its own MESSRING, whilst still able to fulfil its contractual obligations, might only be able to do so with a

degree of difficulty that is not purely insignificant, so that MESSRING is justified in postponing performance for the duration of that impediment and then resuming same after the impediment has been eliminated. The parties are agreed that in such a case MESSRING is entitled to temporarily suspend its performance.

§ 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 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. If the client has not used original spare parts of MESSRING in the past or has not had original spare parts of MESSRING installed by MESSRING or a specialist appointed by MESSRING, MESSRING shall reject a warranty claim. In case of proper use of original spare parts from MESSRING the statutory warranty period and also a possibly relevant guarantee period shall not start again.
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. The issue of whether or not there is a defect in the legal sense is governed in principle by statute having regard to the following provisions.

The agreed characteristics are governed exclusively by the expressly agreed performance features and specifications. MESSRING only gives any further warranty, especially as to a particular purpose or for the specific suitability of Services, duration of use or durability, if this is expressly agreed; otherwise the risk of fitness for use and application lies exclusively with the Client. In the case of a contract of sale or contract to which the law on sales applies there is only a use provided for in the contract (§ 434 (2) subsection 2 BGB [German Civil Code]) if this is expressly derived from the contract unless the use provided for in the contract is apparent to both parties.

4. In warranty claims 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.
5. 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 and claim damages in accordance with statute plus the terms laid down in § 13 of these GTC.
6. The limitation period shall be one year from delivery of an item or – where required by law – one year from acceptance.

In cases governed by §§ 438(1) subsections 1 and 2, 438(3), 634a(1) subsections 2 and 3, and 634a(3) BGB [German Civil Code] the limitation periods provided for therein will apply. In the event of MESSRING being liable in damages under a warranty pursuant to § 13 of these GTC the warranty period with regard to a claim in damages will be governed by statute. The provisions on recourse against suppliers under § 445a BGB do not apply.

§ 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, nor to liability under the 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.

General Terms and Conditions for Services („GTCS“)
by MESSRING GmbH
Friedrichshafener Straße 4c, 82205 Gilching



§ 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.

MESSRING GmbH, February 2022 version