

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF Messer Cutting Systems GmbH

§ 1 Scope of Application

- 1.1 These General Terms and Conditions of Sale and Delivery (hereinafter "GTC") of Messer Cutting Systems GmbH (hereinafter "MCS") shall apply to all business relationships between MCS and its customers (hereinafter "Buyer"). They apply exclusively when the Buyer is an entrepreneur (Section 14 of the German Civil Code – BGB), a legal entity under public law, or a special fund under public law.
- 1.2 These GTC apply, in particular, to contracts for the sale and/or delivery of movable items (whether tangible or digital; hereinafter "Goods"), irrespective of whether MCS manufactures the Goods itself or procures them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, these GTC, as valid at the time of the Buyer's order, shall also apply as a framework agreement to future contracts, performances, or offers, without MCS being required to refer to them on each individual occasion.
- 1.3 These GTC shall apply exclusively. Divergent, conflicting, or supplementary terms and conditions of the Buyer shall only become part of the contract if and to the extent that MCS has expressly agreed to their validity in writing. This requirement of express written consent applies in all cases, including if the Buyer refers to its own general terms and conditions and MCS does not expressly object to them.
- 1.4 Individual agreements made in specific cases and the information contained in the order confirmation shall take precedence over these GTC. In cases of doubt, trade terms shall be interpreted according to the Incoterms of the International Chamber of Commerce in Paris as in force at the time the contract is concluded.
- 1.5 Legally relevant declarations and notifications by the Buyer in relation to the contract (e.g., setting deadlines, notification of defects, rescission, or reduction), must be made in text form in order to be effective. Statutory form requirements and further evidentiary requirements – e.g., in case of doubt as to the authority of the person making the declaration – remain unaffected.
- 1.6 References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, statutory provisions apply unless they are directly amended or expressly excluded in these GTC.

§ 2 Conclusion of the Contractual Relationship

- 2.1 Offers submitted by MCS are non-binding and subject to change without notice. This also applies if MCS has provided the Buyer with catalogues, technical documentation (such as drawings, plans, calculations, weights, dimensions, utility values, load capacities, tolerances, technical data, references to DIN standards),

other product descriptions or documentation (including electronic form). Such documents do not constitute guaranteed characteristics but rather descriptions or identifiers of the delivery or performance. Deviations customary in the trade, as well as those resulting from legal requirements or technical improvements, and the substitution of components by equivalent parts, shall be permitted, provided that their usability for the contractually intended purpose is not adversely affected.

- 2.2 MCS reserves title and copyright to all offers submitted and to all documents and resources made available to the Buyer (including but not limited to drawings, illustrations, calculations, brochures, catalogues, models, tools, and other documents). The Buyer is not permitted to use these documents or resources for its own purposes or make them accessible to third parties without the express consent of MCS. Upon request, the Buyer must return these materials and documents to MCS in full and must destroy any copies or other reproductions that have been made, provided and insofar as they are no longer required in the ordinary course of business. Excluded from this obligation is the storage of electronic data for the purpose of customary data back-up.
- 2.3 An order for Goods placed by the Buyer shall be deemed a binding offer to enter into a contract (Offer). Unless otherwise stated in the order, MCS shall be entitled to accept such offer within fourteen (14) days of its receipt (Acceptance).
- 2.4 Acceptance may be declared either in writing (e.g., by written order confirmation) or by delivery of the Goods to the Buyer.
- 2.5 The purchase agreement thus concluded, including these GTC, constitutes the entire agreement between the parties with respect to the subject matter of the contract. Oral statements or undertakings made by MCS prior to the conclusion of the contract are not legally binding. Any oral agreements made between the parties shall be superseded by the execution of the contract, unless it is expressly agreed otherwise.
- 2.6 Any amendments or supplements to the agreements concluded, including these GTC, shall require written form to be valid.

§ 3 Delivery Period and Delay in Delivery

- 3.1 Delivery periods shall be individually agreed or specified by MCS upon acceptance of the order.
- 3.2 If MCS is unable to meet binding delivery periods for reasons for which it is not responsible (non-availability of performance), MCS shall inform the Buyer of this without undue delay and shall at the same time notify the Buyer of the anticipated new delivery period. If the service remains unavailable even within the new delivery period, MCS shall be entitled to withdraw from the contract, either

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF Messer Cutting Systems GmbH

in whole or in part. Any consideration already provided by the Buyer shall be refunded by MCS without undue delay. Non-availability of performance shall include, for example, failure of timely self-supply by MCS's own suppliers, provided MCS has concluded a congruent covering transaction, or any other disruptions in the supply chain (e.g., force majeure, operational disruptions of any kind, difficulties in procuring materials, transport delays, strikes, difficulties in obtaining official permits, pandemics, epidemics) or in cases where MCS is not obliged to procure in the individual case.

- 3.3** The occurrence of a delay in delivery shall be determined in accordance with statutory provisions. In any case, a reminder by the Buyer is required for the occurrence of a delay in delivery. In the event of a delay in delivery, the Buyer may claim liquidated damages for delay. Unless otherwise agreed by contract, the amount of the liquidated damages shall be 0.5% of the net value of the delayed Goods for each full calendar week of delay, but in total not exceeding 5% of the net value of the Goods delivered late. MCS reserves the right to prove that the Buyer has suffered no damage or substantially less damage than the above liquidated amount.
- 3.4** The Buyer's rights under Section 8 of these GTC and the statutory rights of MCS, in particular in the event of an exclusion of its obligation to perform (e.g., due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

§ 4 Performance, Partial Delivery, Passing of Risk, Acceptance, Default of Acceptance

- 4.1** Deliveries are made ex works. This shall also constitute the place of performance for the delivery and for any subsequent performance. At the Buyer's request and expense, the Goods will be shipped to another destination (sales shipment). The Buyer undertakes to comply with all applicable customs and export control regulations, including obtaining necessary permits and fulfilling notification obligations. The Buyer shall bear all costs associated with compliance with these provisions, including, but not limited to, customs duties, taxes, and fees. Unless otherwise expressly agreed, MCS shall be entitled to determine, in its reasonable discretion, the method of shipment (e.g., the transport company, shipping route, packaging).
- 4.2** MCS shall be entitled to make partial deliveries if the partial delivery is usable for the Buyer within the scope of the contractual purpose and the delivery of the remaining Goods ordered is ensured. However, MCS is not obliged to make partial deliveries.
- 4.3** The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer at the latest upon handover. In the case of a sales shipment, the risk of

accidental loss, accidental deterioration, as well as the risk of delay, shall already pass to the Buyer upon delivery of the Goods to the carrier or other person designated to carry out the shipment. If acceptance has been agreed, acceptance is decisive for the passing of risk. In all other respects, the statutory provisions on contract for work and services shall apply to an agreed acceptance. Handover or acceptance shall be deemed to have taken place if the Buyer is in default of acceptance.

- 4.4** If the Buyer is in default of acceptance, fails to cooperate, or if delivery is delayed for other reasons attributable to the Buyer, MCS shall be entitled to claim compensation for any resulting damage, including additional expenses (e.g., storage costs). For this purpose, a lump-sum compensation amounting to 0.5% of the net value of the Goods per completed calendar week shall be charged, but not more than a total of 5% of the net value of the Goods or, in the event of final non-acceptance, not more than an additional 10% of the net value of the Goods. The calculation period begins with the delivery period or with notification of the Goods' readiness for dispatch.
- 4.5** Proof of greater damage and the statutory claims of MCS (e.g., compensation for additional expenses, reasonable compensation, termination) shall remain unaffected. The lump-sum compensation shall be credited against any further monetary claims. The Buyer shall be entitled to prove that MCS has suffered no damage or substantially less damage than the above lump sum.

§ 5 Prices and Terms of Payment

- 5.1** Unless otherwise individually agreed, the current list prices of MCS at the time of conclusion of the contract shall apply. All prices are in EUR, ex works, plus packaging and statutory value-added tax. The prices apply to the scope of delivery and performance specified in the order confirmation. Additional or special services will be invoiced separately. Any customs duties, fees, taxes, and other public charges shall be borne by the Buyer.
- 5.2** In the case of a sales shipment (Section 4.1), the Buyer shall bear transport costs ex works as well as the costs of any transport insurance or other insurance (e.g., against theft, breakage, water or fire damage, or other insurable risks) requested by the Buyer.
- 5.3** If the agreed prices are based on MCS's list prices and the delivery is to take place more than seven months after conclusion of the contract, the list prices of MCS in force at the time of delivery shall apply. Any agreed discount (fixed or percentage) shall remain in effect.
- 5.4** The purchase price is payable in full, without deduction, and is due within fourteen (14) days from the date of invoice and delivery or acceptance of the Goods. For timely payment, receipt of funds by MCS shall be

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF Messer Cutting Systems GmbH

decisive. MCS is entitled to make delivery, either wholly or in part, only against advance payment or provision of security. This applies also within the framework of an ongoing business relationship with the Buyer. MCS shall declare any such reservation at the latest in the order confirmation.

- 5.5** Upon expiry of the above payment period, the Buyer shall be in default. During the period of default, the purchase price shall bear interest at the statutory default interest rate applicable at the time. MCS reserves the right to claim further damages for delay. In relation to merchants, the right to claim the commercial maturity interest (Section 353 of the German Commercial Code – HGB) remains unaffected.
- 5.6** The Buyer may set off or assert a right of retention only if its counterclaim has been established by a final and binding court decision or is undisputed. In case of defects in delivery, the Buyer's opposing rights – in particular the right to retain a portion of the purchase price appropriate in proportion to the defect – shall remain unaffected.
- 5.7** If, after conclusion of the contract, it becomes apparent that MCS's claim to the purchase price is endangered by the Buyer's inability to perform (for example, due to the filing of an application to open insolvency proceedings), MCS shall be entitled, in accordance with the statutory provisions, to withhold performance and to withdraw from the contract (Section 321 BGB). In the case of the manufacture of non-fungible items, MCS may declare withdrawal without delay. The statutory provisions regarding the dispensability of setting a deadline remain unaffected.

§ 6 Retention of Title

- 6.1** MCS retains title to the goods sold until full payment of all present and future claims of MCS arising from the purchase contract and from the ongoing business relationship (secured claims) has been made.
- 6.2** The goods subject to retention of title may not be pledged to third parties or transferred by way of security prior to full payment of the secured claims. The Buyer shall notify MCS immediately in writing if an application is made for the opening of insolvency proceedings or if third parties gain or threaten to gain access to goods belonging to MCS (e.g., by way of attachment).
- 6.3** In the event of any conduct by the Buyer in breach of contract (e.g., non-payment of the due purchase price), MCS shall be entitled, in accordance with statutory provisions, to withdraw from the contract and/or to demand the return of the goods on the basis of the retention of title. A demand for return does not at the same time constitute a declaration of withdrawal. MCS is rather entitled to demand only the return of the goods while reserving the right to withdraw. If the Buyer fails to

pay the due purchase price, MCS may only assert these rights if it has previously set the Buyer a reasonable deadline for payment without success or if the setting of such a deadline is dispensable under the statutory provisions.

- 6.4** The Buyer is, until revoked, authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition:
- a** The retention of title shall extend to products resulting from the processing, mixing, or combining of MCS's goods at their full value; in such cases, MCS shall be deemed the manufacturer. If, in the case of processing, mixing, or combining with goods of third parties, their ownership rights remain, MCS shall acquire co-ownership in proportion to the invoice values of the processed, mixed, or combined goods. The same shall otherwise apply to the resulting product as to the goods delivered under retention of title.
 - b** The Buyer hereby assigns to MCS by way of security all claims against third parties arising from the resale of the goods or the product, in total or in the amount of any co-ownership share, as applicable. MCS hereby accepts the assignment. The obligations of the Buyer specified in these GTC shall also apply with respect to the assigned claims.
 - c** The Buyer is authorised to collect the assigned claims, alongside MCS. MCS undertakes not to collect the claims as long as the Buyer meets its payment obligations to MCS, is not subject to any lack of capacity to perform, and MCS does not assert retention of title by exercising a right pursuant to paragraph 6.3. If any of these conditions are not met, MCS may require the Buyer to disclose the assigned claims and their debtors, to provide all information necessary for collection, to hand over the relevant documents, and to notify the debtors (third parties) of the assignment. In addition, MCS shall be entitled to revoke the Buyer's authorisation to resell and/or process the goods subject to retention of title.
 - d** If the realisable value of the securities exceeds MCS's claims by more than 10%, MCS shall, at the Buyer's request, release securities of its own choosing.

§ 7 Buyer's Claims for Defects

- 7.1** The rights of the Buyer in respect of material and legal defects (including incorrect or short delivery, improper assembly/installation, or inadequate instructions) shall, unless otherwise provided below, be governed by the statutory provisions. The statutory provisions on the sale of consumer goods (§§ 474 et seq. BGB) as well as any rights arising from guarantees given separately by MCS shall remain unaffected.

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF Messer Cutting Systems GmbH

- 7.2** The basis for any liability for defects on the part of MCS is, above all, the agreement reached regarding the quality and the intended use of the Goods. Agreements as to quality in this sense include all product descriptions and specifications that form part of the individual contract or that have been made publicly available by MCS at the time of conclusion of the contract (e.g., in catalogues or on its website). To the extent that the quality has not been agreed, the existence of a defect shall be determined in accordance with the statutory provision (§ 434 (3) BGB). In this context, public statements made by the manufacturer take precedence over statements made by other third parties.
- 7.3** In the case of Goods with digital elements, MCS is only obliged to provide and, if applicable, update digital content to the extent that this is expressly provided for in a quality agreement. In this respect, MCS assumes no liability for public statements by the manufacturer or by third parties.
- 7.4** MCS shall not be liable for defects that the Buyer was aware of at the time of conclusion of the contract or failed to notice due to gross negligence (§ 442 BGB). Furthermore, claims for defects require that the Buyer has duly fulfilled its statutory duties of inspection and notification of defects (§§ 377, 381 HGB). In the case of Goods intended for installation or further processing, the inspection must take place immediately before installation or further processing.
- 7.5** If a defect becomes apparent upon delivery, inspection, or at any later point in time, the Buyer must notify MCS of this promptly in writing. In any case, obvious defects must be notified in writing within five business days of delivery, and defects not detectable upon inspection must be notified in writing within the same period from their discovery. If the Buyer fails to carry out proper inspection and/or notification of defects, MCS's liability for the defect not notified, not notified in time, or not notified properly, is excluded in accordance with the statutory provisions. In the case of Goods intended for installation or further processing, this also applies if the defect only became obvious after installation or further processing as a result of a breach of one of these obligations. In such cases, in particular, the Buyer's claims for reimbursement of related costs (e.g., removal and installation costs) are excluded.
- 7.6** If the delivered item is defective, MCS may choose whether to provide subsequent performance by rectifying the defect (remedy) or by delivering a defect-free item (replacement delivery). The Buyer may only refuse the type of supplementary performance chosen by MCS if it is unreasonable for it in the individual case. MCS's right to refuse supplementary performance under the statutory requirements remains unaffected.
- 7.7** MCS is entitled to make the owed supplementary performance conditional upon payment of the due purchase price by the Buyer. However, the Buyer is entitled to retain a portion of the purchase price appropriate in proportion to the defect.
- 7.8** The Buyer shall give MCS the time and opportunity necessary for supplementary performance, in particular by handing over the defective Goods for inspection purposes. The supplementary performance does not include the removal or any other type of detachment of the defective item, or the installation or any other re-installation of a defect-free item, where MCS was not originally obliged to provide such services. The Buyer's claims for reimbursement of corresponding expenses (removal and installation costs) remain unaffected. In the case of a replacement delivery, the Buyer must return the defective item to MCS in accordance with statutory provisions. The Buyer does not, however, have a right of return.
- 7.9** The expenses required for the purpose of inspection and subsequent performance (e.g., transport, travel, labour, and material costs and, where applicable, removal and installation costs) shall be borne and reimbursed by MCS in accordance with statutory provisions and these GTC, if and to the extent that a defect actually exists. Otherwise, if the Buyer's request for the elimination of a defect turns out to be unjustified, MCS may demand reimbursement of the resulting costs if the Buyer knew or could have known that no defect existed.
- 7.10** In urgent cases (e.g., where operational safety is at risk or to prevent disproportionate damage), the Buyer has the right to remedy the defect itself and to demand reimbursement from MCS of the objectively necessary expenses. MCS is to be notified of such action without undue delay, and, where possible, in advance. The right of self-remedy is excluded if MCS would have been entitled to refuse corresponding supplementary performance under statutory provisions.
- 7.11** If a reasonable deadline for supplementary performance set by the Buyer has expired unsuccessfully or is not required by law, the Buyer may, in accordance with statutory provisions, withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.
- 7.12** The Buyer's claims for reimbursement of expenses under § 445a (1) BGB are excluded unless the last contract in a supply chain is a consumer goods sale (§§ 478, 474 BGB) or a consumer contract for the provision of digital products (§§ 445c sentence 2, 327 (5), 327u BGB). Claims of the Buyer for damages or reimbursement of futile expenses (§ 284 BGB) shall only exist, even in case of defects in the Goods, in accordance with these GTC.
- 7.13** Warranty shall be excluded if the Buyer modifies or

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF Messer Cutting Systems GmbH

causes modifications to the delivered item without the consent of MCS and if the rectification of defects thereby becomes impossible or unreasonably difficult. In all cases, the Buyer shall bear the additional costs arising from such modifications.

7.14 Any agreement to supply used Goods in an individual case shall be effected under exclusion of any warranty for material defects.

7.15 In the event of defects in products from other manufacturers that MCS cannot remedy for legal or factual reasons, MCS shall be entitled, at its discretion, to assign its warranty claims against the manufacturer or supplier to the Buyer or to pursue such claims for the Buyer's account. Warranty claims against MCS in respect of such defects exist only under the other terms and conditions and requirements of these GTC if legal enforcement of the aforementioned claims against the manufacturer or supplier has failed or is futile (e.g., due to insolvency). During the pendency of such litigation, any limitation period for the Buyer's relevant warranty claims against MCS shall be suspended.

7.16 MCS shall have no liability for consulting services or the provision of technical or other information, unless and to the extent that such services/information are expressly part of the contractually owed scope of performance.

§ 8 Other Liability

8.1 Unless otherwise provided in these GTC, MCS shall be liable for breaches of contractual and non-contractual obligations in accordance with statutory provisions.

8.2 MCS shall be liable for damages—regardless of the legal grounds—within the scope of fault-based liability in cases of intent and gross negligence. In cases of simple negligence, and subject to statutory limitations of liability (e.g., duty of care in own affairs, insignificant breach of duty), MCS shall be liable only:

- a** for damages resulting from injury to life, body, or health.
- b** for damages arising from the breach of an essential contractual obligation (an obligation, the fulfillment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and is entitled to rely); in such cases, however, liability is limited to compensation for foreseeable, typically occurring damage.

8.3 These limitations of liability shall also apply in favor of third parties as well as in the event of breaches of duty by persons (including for their benefit) whose fault MCS is responsible for under statutory provisions. The limitations shall not apply where MCS has fraudulently concealed a defect or has assumed a guarantee as to the quality of the Goods. Nor shall they apply to claims of the Buyer

under the German Product Liability Act (Produkthaftungsgesetz).

8.4 The Buyer may only withdraw from or terminate the contract on account of a breach of duty not consisting in a defect if MCS is responsible for the breach of duty. Any unrestricted right of termination by the Buyer (e.g., under §§ 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

§ 9 Limitation Period

9.1 By way of derogation from Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material and legal defects shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

9.2 If the Goods constitute an item which, according to its customary use, has been used for a building and has caused such building's defectiveness, the limitation period shall be five years from delivery in accordance with the statutory provision (Section 438 (1) No. 2 BGB). Other statutory special provisions on limitation shall also remain unaffected (e.g., Section 438 (1) No. 1, (3), Sections 444, 445b BGB).

9.3 The foregoing limitation periods under the law of sales shall also apply to contractual and non-contractual claims of the Buyer for damages based on a defect in the Goods. They shall not apply, however, if applying the statutory provisions (§§ 195, 199 BGB) would result in a shorter limitation period in an individual case. Claims for damages by the Buyer under Section 8 (2) sentences 1 and 2(a) as well as under the German Product Liability Act (Produkthaftungsgesetz) shall be subject to the statutory limitation periods.

§ 10 Data Protection

MCS processes the customer's data necessary for the execution of business transactions in compliance with applicable data protection regulations. The customer acknowledges that MCS stores data arising from the contractual relationship in accordance with the provisions of the General Data Protection Regulation (GDPR) for the purpose of contract performance, where consent has been given, or where overriding legitimate interests exist. MCS reserves the right to transmit such data to third parties (e.g., insurers), insofar as this is necessary for the performance of the contract.

§ 11 Choice of Law, Place of Jurisdiction, Severability Clause

11.1 These GTC and the contractual relationship between the Buyer and MCS shall be governed by the laws of the Federal Republic of Germany, to the exclusion of the

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF Messer Cutting Systems GmbH

United Nations Convention on Contracts for the International Sale of Goods (CISG).

- 11.2** If the Buyer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law, or a special fund under public law, the exclusive—also international—place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of MCS in Darmstadt. The same applies if the Buyer is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB). MCS shall, however, also be entitled to bring an action at the place of performance of the delivery obligation under these GTC, any overriding individual agreement, or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdictions, remain unaffected.
- 11.3** Should individual provisions of the contract between the Buyer and MCS or of these GTC be or become wholly or partially invalid or should the contract or these GTC contain a gap, the validity of the remainder of the contract or of the other provisions of these GTC shall not be affected thereby. The wholly or partially invalid or incomplete provision shall be replaced by a provision whose economic effect most closely approximates that of the invalid provision.
- 11.4** The German version of these General Terms and Conditions of Sale and Delivery is binding. Translations are provided for information purposes only. In case of discrepancies, the German version shall prevail.
