

## **General Conditions of Sale, Service and Delivery of MEZGER Heftsysteme GmbH (Last updated: May 2022)**

### **§ 1 General, Scope**

- (1) These General Conditions of Sale, Service and Delivery (GTCs) shall apply to all our business relationships with our customers ("**Buyers**"); however limited to companies pursuant to Sec. 14 para. 1 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) and legal entities under public law and special funds under public law within the meaning of Sec. 310 para. 1 BGB.
- (2) The GTCs shall apply in particular to contracts for the sale and/or delivery of goods ("**Goods**"), regardless of whether we produce the goods ourselves or buy them from suppliers. Unless otherwise agreed, the GTCs shall apply in the version valid at the time of ordering by the Buyer and/or in any case in the last text form the Buyer received as a framework agreement, including for future contracts of the same type, without our needing to refer to them again in every instance. The GTCs shall also apply to the provision of services.
- (3) Our GTCs shall apply exclusively. Differing, conflicting or additional GTCs of the Buyer shall only become part of the contract when we have given our express consent. This consent requirement shall apply in every case, including in cases where we carry out the delivery to the Buyer without reservation with knowledge of their GTCs.
- (4) Legally relevant declarations and notifications, which are to be delivered to us by the Buyer upon conclusion of the contract (e.g. setting deadlines, informing of defects, notice of withdrawal or reduction), shall require the written form to be effective.

### **§ 2 Conclusion**

- (1) Our offers are non-binding and subject to change. This shall also apply if we hand over catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - including in electronic form - for which we hold ownership and copyrights.
- (2) The ordering of goods by the Buyer shall be considered a binding contract offer. Provided that nothing else arises from the order, we shall be entitled to accept this contract offer within a reasonable period of time, whereby four weeks after receipt by us of the contract offer are generally deemed to be reasonable.
- (3) Acceptance can take place either in text form (e.g. order confirmation by e-mail) or by delivering the goods to the Buyer within the period stated in § 2 (2).

### **§ 3 Delivery Period and Delivery Delay**

- (1) The delivery period shall be agreed individually, or stated by us upon acceptance of the order. Delivery dates or periods which have not been expressly agreed upon as being binding shall be exclusively non-binding.
- (2) The delivery period shall commence with the dispatch of our order confirmation, but not before all details and documents to be produced by the Buyer and/or approvals to be ensured by the Buyer have been procured, and in particular not before an agreed deposit or proof of an agreed payment security has been received. A further requirement shall be the timely provision of any preliminary construction and assembly work on the part of the buyer and the demonstration of such, as well as the provision of electricity, gas, water, etc.
- (3) If non-compliance with delivery deadlines is due to force majeure or similar disruptions, e.g., if unforeseeable, unavoidable and extraordinary, non-availability of service, such as operational disruptions of all kinds, transport delays, labour disputes, strikes, legal lockouts, shortages of or difficulties in connection with the procurement of labour, energy or raw materials, difficulties in obtaining necessary regulatory approvals, official measures or missing, incorrect or untimely delivery by suppliers, epidemics or pandemics, or if due to prohibitions and restrictions imposed by governmental or other official acts or decrees or other acts or omissions of civil or military authorities, such as currency restrictions, withdrawal/non-issuance/restriction of export or import licenses, embargo or other sanctions, limitation of the use or import of resources or labour, including the refusal to grant visas or work permits, and where a violation could result in sanctions, fines, the imposition of administrative offenses, criminal prosecution or similar for the supplier and its

employees), we shall immediately inform the Buyer thereof and the agreed delivery periods shall be extended in a reasonable manner, but in no case longer than 6 months. If performance continues to be impossible within this new reasonable delivery period, we as well as the Buyer shall each be entitled to withdraw in whole or in part from the contract or in case of a contract for continuing obligations to declare extraordinary termination; we shall immediately refund any consideration already paid by the buyer. In the event of non-availability of the service due to late delivery on our part by our supplier, this shall only apply if we have concluded a congruent cover transaction, if neither we nor our supplier is at fault, or if we are not obliged to procure the service in individual cases (such as in the case of the individual exclusion of the procurement of raw materials).

- (4) The commencement of our delivery default shall be determined by statutory provisions.
- (5) Section 8 shall apply accordingly to claims for damages by the Buyer owing to default of the service as well as claims for damages instead of the service. A change in the burden of proof to the detriment of the Buyer shall not be tied to the aforementioned rules. Our statutory rights shall remain unaffected, particularly in the case of an exclusion of liability (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance).

#### **§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

- (1) The delivery shall be carried out from our warehouse (FCA Incoterms 2020), which is also the place of performance for the delivery and for any subsequent performance. At the request and expense of the buyer, the goods shall be sent to another destination (dispatch sale) and, if agreed, added to the Buyer's costs. Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular the transport company, shipping, packaging).
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest with the transfer of the goods. In case of dispatch sales, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of default shall be transferred as soon as the goods are delivered to the shipper, carrier or other person or institution assigned to carry out the dispatch. This shall also apply if partial deliveries are made or if we have taken on other services (e.g. shipment or installation).
- (3) If acceptance has been agreed, this shall be decisive for the transfer of risk. The goods shall be deemed to be accepted when (i) the delivery and, in cases where we also owe the installation, the installation is completed; (ii) we have informed the Buyer with regard to the assumed acceptance in accordance with this Section; (iii) a reasonable time has passed since the delivery or installation or the Buyer has begun to use the goods (e.g. the delivered equipment is in use) and in this case a reasonable time has passed since delivery or installation and (iv) the Buyer has refrained from giving their acceptance within this period for at least one reason. The handover/acceptance shall remain the same even if the Buyer is in default of acceptance.
- (4) If the Buyer is in default of acceptance, refrains from cooperating or our delivery is delayed for reasons attributable to the Buyer, we shall be entitled to demand compensation for the damage resulting from this, including additional expenses (e.g. warehousing costs).
- (5) We shall be entitled to partial deliveries to an extent reasonable for the Buyer in cases where (i) partial delivery is suitable for the Buyer within the context of the contractual intended purpose, (ii) the delivery of the remaining ordered goods is ensured and (iii) the Buyer will not thereby incur any considerable additional effort or costs (unless we declare that we are prepared to assume these costs).

#### **§ 5 Prices and Payment Conditions**

- (1) Unless otherwise agreed in individual cases, our prices are valid at the time the contract is concluded our warehouse (FCA, Incoterms 2020), plus statutory VAT, if applicable.
- (2) For dispatch sales pursuant to § 4(1), the Buyer shall bear the costs of transport and packaging ex-warehouse, unless otherwise agreed, as well as the costs of transport insurance, if so desired by the Buyer. Any duties, fees, taxes and other public charges shall be paid by the Buyer.
- (3) We shall adjust the prices accordingly if unforeseeable material cost increases or decreases occur between the conclusion of the contract and delivery with regard to price-relevant components for which we are not responsible and which were part of the original price calculation. Such substantial cost increases or decreases may be based in particular on newly levied charges, additional or changed duties or taxes, changes in statutory provisions, changes in material or manufacturing costs, in particular energy costs, transport/freight costs including customs duties, import and export

charges as well as changes due to exchange rate fluctuations. The price-relevant components are shown in the respective offer. The price of the goods shall be adjusted depending on the price change of the price-relevant component according to the respective reference point and the share of the price-relevant component in the final goods.

- (4) The purchase price shall be due and payable within 30 days of invoicing and delivery or acceptance of the goods. We shall, however, be entitled at any time, including in the framework of an ongoing business relationship, to carry out delivery in whole or in part only against advance payment. We shall declare a corresponding reservation no later than at the point of order confirmation.
- (5) The Buyer shall be in default upon expiry of the aforementioned payment period. The purchase price shall be subject to interest during the period of default in the amount of the legally valid default interest rate. We shall reserve the right to claim further damages. Our claim to commercial maturity interest vis-à-vis the merchants shall remain unaffected.
- (6) The Buyer shall only be entitled to offsetting or retention rights where their claim is legally justified or uncontested. The reciprocal rights of the Buyer, particularly in accordance with § 7 of these GTCs, shall remain unaffected by delivery defects.
- (7) If, upon conclusion of the contract, it should become apparent (e.g. by an application to open insolvency proceedings) that our claim for the purchase price is at risk owing to the inability of the Buyer to settle the amount, we shall be entitled to withdraw from the contract in accordance with the statutory regulations on refusal of performance and if applicable, after setting a deadline for settlement. For contracts regarding the manufacture of non-substitutable goods (unique products), we can declare the withdrawal immediately; the statutory rules regarding the dispensability of the deadline remain unaffected.

## **§ 6 Retention of Title**

- (1) We shall retain ownership of the purchased goods until complete settlement of all current and future liabilities from the purchase agreement and an ongoing business relationship (secured claims).
- (2) The goods subject to retention of title shall be neither pledged to a third party before complete settlement of the secured claims nor transferred as means of a security. The Buyer shall inform us immediately in writing if an application to open insolvency proceedings has been filed or if third parties have access to goods belonging to us (e.g. pledges).
- (3) In the event of non-contractual behaviour on the part of the Buyer, in particular non-payment of the owed purchase price, we shall be entitled to withdraw from the contract in accordance with statutory provisions and to reclaim the goods on the basis of retention of title and the withdrawal. If the Buyer fails to pay the owed purchase price, we shall only assert these rights if we have set the Buyer an appropriate deadline for payment which has since lapsed, or a deadline of this type is dispensable in accordance with statutory provisions.
- (4) The Buyer shall, until further notice, be entitled to sell on and/or to process the goods held under retention of title in the ordinary course of business in accordance with subsection (c) below. In this case, the following provisions shall also apply.
  - (a) The retention of title shall extend to the processing, mixing or combining of the products resulting from our goods in their full value, whereby we shall be considered the manufacturer. If, in the case of processing, mixing or combining with third party goods, a right of ownership of the third party exists, we shall acquire co-ownership of the processed, mixed or combined goods in proportion to the invoice value. Moreover, the provisions which apply to goods delivered under retention of title shall also apply to the resulting product.
  - (b) The Buyer hereby assigns to us, by way of security, any and all claims from the resale of the goods or the products vis-à-vis third parties in full or to the extent of any co-ownership interest in accordance with the preceding paragraph. We accept the assignment. The obligations of the Buyer stated in Section (2) shall also apply with regard to the assigned claims.
  - (c) The Buyer shall remain authorised to collect the claim in addition to us. We shall be obliged not to collect the claim if the Buyer meets their payment obligations to us, demonstrates no failure in performing their obligations and we do not make use of the retention of title by exercising a right in accordance with paragraph (3). If this is the case, however, we shall be entitled to demand that the Buyer informs us of the assigned claims and their debtors, provides all details required for collection, hands over the associated documents and informs the debtors (third parties) of the

assignment. We shall also be entitled in this case to revoke the authority of the Buyer to sell on and process the goods under retention of title.

- (d) We shall release the goods or claims, if their value exceeds the amount of the secured claims by more than 125%. The selection of the objects to be released shall remain at our discretion.
- (5) The Buyer shall store the goods at no extra cost and shall carry out maintenance and inspection work at their own cost, if required. The Buyer shall provide us with information regarding the location of the goods at any time and provide us with the opportunity to inspect their proper condition. To this end, the Buyer shall provide us access to the location of the goods.
- (6) The buyer shall be obliged to insure the goods at their own cost against theft, breakage, fire and water damage and to prove at our request the existence of this insurance. The insurance claim resulting from damages shall be assigned to us in the amount of the invoiced amount plus a security deposit of 25% of the invoice amount. We hereby accept the assignment.

## **§ 7 Warranty Claims by the Buyer and Inspection and Information Obligations**

- (1) For the rights of the Buyer regarding physical and legal defects (including incorrect and late delivery, as well as incorrect assembly or incorrect assembly instructions) the statutory provisions shall apply unless otherwise agreed in the following. The statutory special provisions regarding final delivery of the goods to the consumer shall remain unaffected in all cases.
- (2) The basis for our liability for defects is chiefly the agreement regarding the quality of the goods. The product descriptions (including those of the manufacturer) shall apply as an agreement regarding the quality of the goods; these are passed on to the Buyer before ordering or are included in the contract in the same manner as these GTCs. Raw material or manufacturing-related deviations in dimensions, weight, quantity or quality as well as technically required changes to the design shall not represent a defect if equal in value to the agreed quality.
- (3) If the quality was not agreed upon, it shall be assessed in accordance with statutory stipulations whether a defect is present or not. We shall not accept liability, however, for public statements by the manufacturer or other third parties (e.g. advertising statements).
- (4) The Buyer's claims regarding defects require that they have satisfied their contractual and statutory assessment and notification obligations. The Buyer shall inspect the product immediately after delivery, insofar as this is feasible in the ordinary course of business. If a defect should be identified during the assessment (in case of an obvious defect) or later (in case of a hidden defect), we must be notified of this immediately and in writing. If the Buyer fails to carry out the proper assessment and/or defect notification, the products are deemed accepted, unless we have fraudulently concealed the defect. Notification shall be considered immediate if it is carried out within two weeks, whereby the timely sending of the notification is sufficient to satisfy the deadline. Regardless of this assessment and notification obligation, the Buyer shall notify us in writing of any obvious defects (including incorrect or late delivery) within two weeks of delivery, whereby the timely sending of the notification is sufficient to satisfy the deadline. If the Buyer fails to carry out the proper assessment and/or defect notification, we will not be liable for any unreported defects.
- (5) If the delivered goods are defective, the Buyer may initially demand, at our discretion, remedy of the defect (repair) or delivery of a flawless good (replacement delivery) as subsequent performance.
- (6) We shall be entitled to make the owed subsequent performance dependant on the Buyer settling the purchase price due. The Buyer is, however, entitled to retain a portion of the purchase price in proportion to the defect.
- (7) The Buyer shall allow us a reasonable time and opportunity to complete the owed subsequent performance, and in particular must handover the rejected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective goods in accordance with statutory regulations. The fulfilment shall include neither the assembly of the defective good nor renewed installation if installation was not originally a contractual obligation.
- (8) Should a request for subsequent performance prove to be unjustified and consequently that there was no defect, we can demand that the costs arising from the incorrect assertion of a defect repair (in particular assessment and transport costs) be reimbursed, unless the Buyer is not at fault regarding the non-recognition of the lack of a defect.

- (9) If the fulfilment fails within a reasonable time after the defect is notified by us or a deadline for the fulfilment set by the Buyer expires without successful rectification, or this deadline is dispensable in accordance with statutory regulations, the Buyer may withdraw from the purchase agreement or reduce the purchase price. No right to withdraw shall exist in the event of a minor defect, however.
- (10) Furthermore, no claims for defects shall exist for deteriorations owing to normal wear and tear or for damages that occur after the transfer of risk owing to improper assembly, treatment or incorrect, incomplete or late maintenance, improper storage, excessive use, unsuitable equipment or use of non-approved consumables, an unsuitable installation site or due to external influences, such as chemical, electro-chemical or electrical influences or extraordinary temperature or weather conditions which were not foreseen in the contract, as well as for non-reproducible software errors. Likewise, no claims for defects exist for improper changes to delivered objects carried out by the Buyer or a third party, e.g. by installing components of unknown origin. Claims for defects arising from the adaptation of software on software associated with the Buyer shall only be valid up to the interface of the delivered object. In any case, the Buyer shall bear the additional costs arising from repairing defects caused by the change.
- (11) The warranty period shall be one year from the date of delivery or, if acceptance is required, from the date of acceptance. Any warranty for material defects is excluded for used delivered objects.
- (12) The Buyer's claims for damages or compensation for wasted effort shall also exist for defects only in accordance with § 8 and are otherwise excluded.

## **§ 8 Other Liability**

- (1) Unless otherwise stipulated in these GTCs, including the following stipulations, we shall be liable in accordance with the statutory provisions for any breach of contractual and non-contractual obligations.
- (2) We shall be liable, regardless of the legal reason, in the context of fault-based liability for intent and gross negligence. In cases of simple negligence, we shall only be held liable, subject to a milder liability scale in accordance with legal stipulations (e.g. to the extent of care that we would employ in our own affairs),
  - a) for damages arising from injury to life, body or health,
  - b) for damages arising from a breach of a key contractual obligation (an obligation, the fulfilment of which enables the proper implementation of the contract overall and the adherence to which the contractual partner regularly relies upon and may rely upon); in this case, our liability is however limited to the replacement of the foreseeable, typical damages.
- (3) Our liability for indirect and consequential damages, and for loss of profit shall be excluded, subject to our liability from Section 8 (2).
- (4) The liability limitations arising from paragraph (2) shall also apply for breaches of duty by/in favour of persons whose debts are to be represented by us in accordance with statutory regulations. They shall not apply if we fraudulently conceal a defect or have accepted a warranty for the quality of the goods and for Buyer's claims in accordance with the Product Liability Act.
- (5) In the event of a breach of obligation that is not part of a defect, the Buyer cannot withdraw or terminate the contract if we are responsible for the breach of duty. A right of termination of the Buyer shall be excluded. The statutory requirements and legal consequences shall also apply.

## **§ 9 Compliance with Safety Regulations, Traceability**

- (1) Our products offer the industry-standard protection against accidents when used properly in conjunction with any security barriers it may be necessary for our customer to install.
- (2) The smooth running of our tools depends on the use of corresponding material (staples) that is subject to constant checks during production in order to ensure that our usual tolerances and material goods can be upheld.
- (3) The Buyer may only transfer operation of the equipment we provide to persons that are appropriately instructed in the technical regulations, public sector safety rules and practical use of the equipment. Possible costs that arise from the instruction and the commissioning of the equipment for demonstration purposes shall be borne by the Buyer.
- (4) The safety regulations of the manufacturer of the application products we use must be strictly observed.

- (5) If the Buyer passes on the delivered goods to third parties, the Buyer shall ensure the traceability of the goods through appropriate measures. The Buyer shall ensure in particular that, in the event of a measure required owing to product liability reasons (e.g. product recall, product warning), the delivered goods shall be traced and their last buyer shall be informed of such measures immediately. If the Buyer does not pass on the delivered goods to a third party, but instead uses/consumes these in their own operation, they shall also ensure that, in the event of a required measure in accordance with Sentence 2, warehouse goods and goods in use shall be sought out.

## **§ 10 Intellectual Property, Reverse Engineering**

- (1) We reserve any property rights and copyrights to samples, cost estimates, illustrations, drawings, calculations, films, templates, slides, repros, tracings and other documents (together "Documents"). The Documents may not be reproduced, made available to third parties or used by the Buyer for himself or for third parties without our written consent. This shall apply regardless of whether the Documents have been marked as confidential. Otherwise, we shall be entitled to claim damages without prejudice to further rights.
- (2) Insofar as the scope of delivery contractually owed by us includes Documents, the Buyer shall be granted a simple, non-exclusive right of use for use in connection with the respective products. Use for other purposes is excluded.
- (3) The Buyer is prohibited from reverse engineering the goods, Documents and other items received from us, for example by observing, examining, dismantling, testing or in any other way. The prohibition of reverse engineering shall not apply to products already placed on the market or to products otherwise publicly available.

## **§ 11 Export regulations and Confidentiality**

- (1) We reserve the right to perform checks of legal export provisions and will supply any necessary regulatory approval (e.g. an export licence) subject to these checks. We shall take all reasonable action to obtain said regulatory approval. We shall not accept a guarantee that the necessary regulatory approval has been granted, however. The Buyer shall be obliged to reasonably support us in obtaining such approval and to provide us with the necessary documents and information within an appropriate period of time.
- (2) The Buyer shall be obliged to obtain any required import licences.
- (3) The Buyer shall be obliged to carry out all required inspection measures (sanction lists, end use, embargo stipulations, etc.) prior to the export of the goods delivered directly or indirectly by us to ensure compliance with national, international and especially US (re-)export control regulations, and to obtain the necessary approvals from the relevant authorities at their own expense as required. The foregoing obligation of Buyer shall only apply to sanction measures against states against which (i) the United Nations Security Council under Chapter VII of the Charter of the United Nations, (ii) the Council of the European Union under Chapter 2 of the Treaty on European Union or (iii) the Federal Republic of Germany has also adopted economic sanction measures.
- (4) The Buyer shall be obliged to maintain confidentiality on all information made known to him as part of the business relationship or on occasion thereof (such as export data), refraining in particular from forwarding said information to non-authorized persons without prior written approval or from making said information accessible in another form.

## **§ 12 Data Protection**

Both parties consider themselves as separate controllers for the processing of personal data within the contractual relationship. They are neither deemed to be joint controllers nor controllers and processors. We as well as the Buyer are therefore independently responsible for complying with the respective applicable data protection laws, including the General Data Protection Regulation. This applies in particular to their compliance with the general principles governing the processing of personal data - lawfulness, transparency, purpose limitation, data minimization, accuracy, storage limitation, data security and accountability. Both parties may assist each other, insofar as this is possible and reasonable, for the fulfilment of their obligations.

## **§ 13 Law and Jurisdiction**



- (1) The laws of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply to these GTCs and the contractual relationship between us and the Buyer.
- (2) The exclusive jurisdiction for all disputes arising from this contractual relationship, whether directly or indirectly, shall be our registered office. We shall, however, be entitled in all cases to file claims at the place of delivery in accordance with these GTCs/an overriding individual agreement or at the general jurisdiction of the Buyer. Preferential legal provisions, in particular those relating to exclusive responsibilities, remain unaffected.
- (3) We shall be entitled to transfer the rights and obligations from the contractual relationship to a third party. This transfer requires the consent of the Buyer. This shall be deemed to be given if the Buyer does not lodge a dispute within a period of four weeks of receipt of a corresponding notification. Reference will be made to this provision in our notification.