

Terms and Conditions of Sale and Delivery

1. General

The processing of orders is subject solely to the following terms and conditions except where we confirm other agreements in writing. Acceptance of an order alone does not constitute recognition of the ordering party's terms and conditions of purchase which differ from these.

2. Offer and order placement

Our offers are always non-binding. Orders received are not legally binding without our confirmation in writing. For short-term delivery, the invoice can serve as order confirmation.

3. Prices

The prices quoted in our order confirmation shall apply. They are always understood as "ex works, excluding packaging and carriage insurance and excluding statutory value added tax".

4. Delivery

All deliveries shall be made from our works for the account and at the risk of the ordering party. Unless agreed otherwise, the shipping route and type of forwarding shall be left to our discretion. The packaging shall be charged at cost; if necessary it can be returned to us carriage paid and without remuneration in a clean, homogeneous condition and free of foreign materials and hazardous substances. Partial deliveries are permissible and the quantity delivered can deviate by as much as 10% above or below the order quantity.

Agreed delivery dates relate to the date of dispatch. In case of delivery delays for which we are responsible, the ordering party must set a reasonable grace period. Any liability in this case is limited to the delivered value of the goods which we are late in delivering. Our duty to deliver shall be suspended as long as the ordering party is in arrears with overdue payments. The ordering party can assert a claim for damage compensation for delayed delivery only if this was agreed in writing beforehand and the damage is proven. Compensation for damage due to delayed delivery can be asserted in the amount of 0.5% for each full week up to a total value of 5% of the value of the goods which we are late in delivering. In the case of call orders, we shall be entitled to manufacture them in complete production batches. The ordering party shall be obligated to take delivery of the call order quantities within a period of one year. Force majeure, operational incidents, energy or raw material shortages, strikes, lockouts, difficult traffic conditions, or measures implemented by governmental authorities shall release the affected party from their duty to perform/accept delivery for the duration of the disturbance and/or its effects. All other claims shall be excluded.

5. Payments

Our invoices shall be payable net without deduction within 30 days of the date of the invoice. If payment is received within 14 days we grant a 2% discount provided that all previous invoices have been paid. Payments will be used to offset the oldest obligation first. In an exception to that rule, the following payment schedule applies for equipment systems and their spare parts where the total value of the order exceeds EUR 25,000:

- 1/3 upon receipt of our order confirmation
- 1/3 upon notification of readiness for shipment
- 1/3 30 days after delivery without deduction

Bills of exchange shall not be accepted. Cheque amounts apply as payment only after clearance. Setting off with counterclaims and withholding payments due to counterclaims shall be permissible only if the counterclaims are not contested or have been deemed *res judicata*.

If the agreed payment time limits are exceeded, we shall be entitled to charge interest on arrears in the amount of 7% of the respective base rate. It shall be up to the customer to prove that we did not incur any losses whatsoever or that our losses are significantly lower.

6. Retention of ownership

The goods delivered shall remain our property up until payment has been made.

Our property also extends to the new products created through the processing of the goods subject to reservation of title. We shall acquire co-ownership according to §§ 947, 948 of the German Civil Code (BGB).

The ordering party already assigns to us now the receivables arising from the sale of the goods subject to reservation of title, including cheques for securing our claims. In the case of the sale of processed goods, that assignment shall be limited to the share of our co-ownership.

As long as the ordering party continues to fulfil their payment obligations to us properly, they shall be able to access to the goods subject to reservation of title at will within the framework of their business operations; transfers of ownership as security, pledging and the assignment of receivables may not be implemented without our authorisation, however.

7. Warranty

We assume liability for defects and deficiencies in the delivery items as follows:

For a period of 1 year after taking over the delivery item, the ordering party has the right to demand the remediation of defects (repair). We have the right to deliver defect-free goods in lieu of performing the repair. If we are unable to correct an error covered under our warranty obligation (failure to repair) or if it is unreasonable to expect the ordering party to accept further attempts to repair, and if we are also unable to deliver defect-free replacement goods, then the ordering party can, at their discretion, demand the cancellation of the contract or a reduction of the purchase price. We accept liability for further claims and rights only in cases of intent or gross negligence. The ordering party must inspect the delivered goods immediately upon receipt and report any defects or deviations, in particular of dimensions or quantity, without delay. Hidden defects or the lack of guaranteed properties or performance must be reported immediately upon discovery.

Our liability for defects and deficiencies lapses if the goods delivered are modified or improperly handled or if the equipment delivered is disassembled within the warranty period without our written authorisation or if it is used in a manner other than the one for which it was designed. In the case of manufacturing according to the drawings of the ordering party, we shall accept liability only for carrying out production according to the drawings. The determining factor in this regard is our information quoted in the order confirmation. In all other respects the foregoing provisions shall apply.

8. Impossibility of performance

If the service we are obliged to perform is impossible for reasons which are not attributable to our gross negligence, then both parties are entitled to withdraw from the contract to the exclusion of further claims.

9. Tools

The tools that we built in order to produce the parts ordered shall remain our property even if the ordering party reimburses the costs in whole or in part. Unless agreed otherwise, we shall bear the cost of replacing tools which can no longer be used.

10. Intellectual property rights

If, unbeknownst to us, the goods delivered violate third-party intellectual property rights, then we shall have the choice of obtaining the right to continued use of the goods or eliminating the item in violation or taking back the goods and refunding their full value as a credit. Any damage compensation claim of the ordering party shall be excluded unless we are found to have acted with wilful intent or gross negligence.

If goods are produced according to the design documentation or drawings of the ordering party, then the ordering party shall be liable for ensuring the protection of third-party rights. Technical documentation and drawings shall remain our property and may not be passed along to others without our authorisation.

11. Place of performance and venue

Place of performance for our deliveries and services is our respective distribution centre; place of performance for the payments of the ordering party is Frankfurt am Main. Sole venue for all legal disputes arising from the contractual relationship is Frankfurt am Main.

MERSEN Deutschland Holding GmbH & Co. KG