

# **General Terms and Conditions of Delivery and Payment (GTCDP) of the company MTS Systemtechnik GmbH**

Status: May 2024

## **1. Scope of application**

1.1 These General Terms and Conditions (GTC) apply to all contracts, deliveries and other services concluded between MTS Systemtechnik GmbH, hereinafter referred to as "Seller", and our customers, hereinafter referred to as "Buyer".

1.2 We do not recognise any deviating terms and conditions of the customer unless we have expressly agreed to their validity in writing.

## **2. Conclusion of contract**

2.1 Our offers are subject to change and non-binding.

2.2 Contracts and other agreements shall only become binding upon written confirmation by the Seller. Over-deliveries or under-deliveries of 10% or at least one piece of the ordered quantity are permissible insofar as customer-specified mechanical parts are concerned. The written contract or the order confirmation as well as other agreements confirmed in writing by the Seller shall be decisive for the content of the contract.

2.3 Insofar as sales employees or commercial agents make verbal collateral agreements or give assurances that go beyond the written purchase contract, these always require the written confirmation of the seller.

2.4 The documents belonging to the offer, such as illustrations, drawings, weights and dimensions, are only approximate.

2.5 If, after conclusion of the contract, the Seller becomes aware of facts which cast doubt on the creditworthiness of the Buyer, the Seller shall be entitled to demand advance payment and corresponding securities and, in the event of refusal, to withdraw from the contract.

2.6 Company changes or changes in the person of the buyer authorise the seller to withdraw from the contract.

## **3. Prices and terms of payment**

3.1 Prices are ex works, plus VAT at the applicable statutory rate, excluding packaging, freight, insurance and other shipping costs, unless otherwise agreed.

3.2 Unless otherwise agreed, our invoices are payable within 30 days of the invoice date without deduction, or within 10 days less a 2% discount.

3.3 Discounts shall not be granted if the Buyer is in arrears with the payment of earlier deliveries. For each invoice issued by the seller, starting at the earliest 2 weeks after default of payment, a reminder fee of € 40.00 will be charged. Offsetting against any counterclaims of the buyer disputed by the seller is not permitted unless the claim has been legally established. If a notice of defects is asserted, payments by the Buyer may be withheld to an extent that is in reasonable proportion to the defects that have occurred. However, if the contract is part of the buyer's commercial business, the buyer may only withhold payments if a notice of defects is asserted, the justification of which is beyond doubt.

3.4 If the customer is in default of payment, we shall be entitled to demand default interest in the amount of 9 percentage points above the respective base interest rate.

## **4. Delivery**

4.1 Delivery dates or deadlines are binding if they have been agreed in writing.

4.2 Dispatch shall be at the best discretion of the seller, but without guarantee of the cheapest possible transport. All shipments, including any returns, shall be at the expense and risk of the Buyer. Insurance shall be taken out at the Buyer's request and at the Buyer's expense. Unless otherwise agreed, the route and means of despatch shall be at the seller's discretion. If dispatch is delayed through no fault of the seller, the goods shall be at the expense and risk of the buyer. In this case, notification of readiness for dispatch shall be equivalent to dispatch.

4.3 Delivery shall be ex works. The risk shall pass to the customer upon handover to the forwarder, carrier or collector.

4.4 Partial deliveries are permissible insofar as they are reasonable for the customer.

4.5 The delivery period shall be extended appropriately - even within a delay - in the event of force majeure and all unforeseen obstacles that are beyond the control of the seller, insofar as such obstacles demonstrably have a significant influence on the delivery of the sold item. This shall also apply if these circumstances occur at the Seller's suppliers and their subcontractors. In important cases, the Seller shall inform the Buyer of the beginning and end of such hindrances as soon as possible. Delivery periods shall be extended by the period by which the Seller is in default with its contractual obligations - also from other contracts.

4.6 The Buyer's right to withdraw from the contract after the fruitless expiry of a grace period granted to the Seller shall remain unaffected.

## **5. Packaging**

5.1 Packaging is charged separately.

5.2 Light packaging, such as cartons, will not be taken back.

5.3 The seller fulfils the requirements of the Packaging Directive (94/62/EC) and ensures that all packaging materials are recyclable and environmentally friendly.

## **6. Warranty and liability**

6.1 The buyer must inspect the goods received for quantity and condition immediately upon arrival. Obvious defects must be reported to the seller in writing immediately, at the latest within one week. Hidden defects must be reported to us immediately after their discovery.

6.2 In the event of justified complaints, we shall be obliged, at our discretion, to rectify the defect or supply a replacement. If the repair or replacement delivery fails, the customer may demand a reduction in the purchase price or cancellation of the contract.

6.3 The Buyer shall grant the Seller the time and opportunity required at the Seller's reasonable discretion to remedy the defect, in particular to make available the item complained of or samples thereof. If he refuses to do so, the seller shall be released from liability for defects.

6.4 Rejected parts must be returned to the Seller immediately upon request and at the Buyer's expense. The delivery note (packing slip) must be returned with all consignments and returns. If, in the case of a return of goods for the purpose of a complaint, it transpires that the complaint was unjustified, the Seller shall also be entitled to charge a reasonable fee for the inspection of the goods.

6.5 Liability for any consequences arising from improper modifications and repair work carried out by the purchaser or third parties shall be cancelled.

6.6 Further claims of the Buyer against the Seller and its vicarious agents are excluded, in particular a claim for compensation for damage that has not occurred to the delivery item itself. This shall not apply in cases of mandatory liability based on intent, gross negligence or the absence of warranted characteristics.

6.7 The seller accepts no liability for the failure of parts provided. All resulting repair costs will be charged to the buyer.

## **7. General limitation of liability**

7.1 The Seller's liability shall be governed exclusively by the agreements made in the above section. Claims for damages by the Buyer arising from culpa in contrahendo, breach of contractual secondary obligations and tort are excluded unless they are based on intent, gross negligence on the part of the Seller or one of its vicarious agents. These claims expire six months after receipt of the goods by the buyer. However, the damages may not exceed the loss and loss of profit which the party in breach of contract should have foreseen as a possible consequence of the breach of contract at the time of conclusion of the contract, taking into account the circumstances which it knew or should have known.

## **8. Repairs**

8.1 If a cost estimate is requested before repairs are carried out, this must be expressly stated. The costs for the estimate shall be reimbursed.

8.2 Repairs are carried out without guarantee if no defect report is available. Whether a repair is carried out in the seller's own workshop or by a third party is at the discretion of the seller. Costs for shipping and packaging shall be borne by the buyer.

8.3 Reference is made to sections 4 and 5 of the terms and conditions.

8.4 Repair devices will only be delivered against immediate payment.

## **9. Retention of title**

9.1 The Seller shall retain title to the goods until all claims of the Seller against the Buyer arising from the business relationship, including future claims arising from contracts concluded at the same time or later, have been settled. This shall also apply if individual or all claims of the seller have been included in a current account and the balance has been struck and recognised.

9.2 The Buyer shall only be entitled to resell the goods subject to retention of title in the ordinary course of business if he hereby assigns to the Seller all claims arising from the resale against customers or third parties. If goods subject to retention of title are sold unprocessed or after processing or combination with items that are the exclusive property of the Buyer, the Buyer hereby assigns to the Seller the claims arising from the resale in full. If goods subject to retention of title are sold by the Buyer after processing/combination together with goods not belonging to the Seller, the Buyer hereby assigns to the Seller the claims arising from the resale in the amount of the value of the goods subject to retention of title with all ancillary rights and priority over the rest. The seller accepts the assignment. The buyer is authorised to collect these claims even after assignment. The seller's authorisation to collect the claims himself shall remain unaffected by this; however, the seller undertakes not to collect the claims as long as the buyer duly fulfils his payment and other obligations. The Seller may demand that the Buyer informs him of the assigned claims and their debtors, hands over the relevant documents and informs the debtors of the assignment.

9.3 Any processing of the reserved goods shall be carried out by the Buyer on behalf of the Seller, without any obligations arising for the latter. If the reserved goods are processed, combined, mixed or blended with other goods not belonging to the seller, the seller shall be entitled to the resulting co-ownership share in the new item in the ratio of the value of the reserved goods to the other processed goods at the time of processing, combining, mixing or blending. If the Buyer acquires sole ownership of the new item, the contracting parties agree that the Buyer shall grant the Seller co-ownership of the new item in proportion to the value of the

processed or combined, mixed or blended goods subject to retention of title and shall store it for the Seller free of charge.

9.4 If, in connection with the payment of the purchase price by the buyer, a reciprocal liability of the seller is established, the retention of title and the underlying claim from the delivery of goods shall not expire before the bill of exchange has been honoured by the buyer as drawee.

9.5 If the value of the existing securities exceeds the claims to be secured by more than 20%, the seller shall be obliged to release them at the buyer's request.

## **10. Withdrawal and cancellation**

10.1 Both parties may terminate the contract for good cause. Good cause shall be deemed to exist in particular if the customer suspends payments or if insolvency proceedings are applied for against the customer's assets.

10.2 In the event of termination of the contract, partial services already rendered shall be invoiced appropriately.

## **11. Sales commitment**

11.1 When purchasing products for which a sales commitment exists, the special conditions of the manufacturer concerned shall apply in addition to these delivery conditions.

11.2 The buyer is obliged to familiarise himself with the content of these conditions. He cannot claim ignorance of these conditions.

## **12. Data protection**

12.1 The customer agrees to the collection, processing and utilisation of personal data insofar as this is necessary for the establishment, execution or termination of the contract.

12.2 Further information on data protection can be found in our privacy policy, which can be viewed on our website.

## **13. Place of jurisdiction and applicable law**

13.1 The place of fulfilment and exclusive place of jurisdiction for deliveries and payments, as well as for all disputes arising between the parties, is the headquarters of the seller, insofar as the buyer is a registered trader, a legal entity under public law or a special fund under public law.

13.2 The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

## **14. Others**

14.1 Amendments and supplements to these GTC must be made in writing. This also applies to the cancellation of the written form requirement.

14.2 Should individually provisions of these GTC be or become invalid, the validity of the remaining provisions shall remain unaffected.