

# **General Terms and Conditions for Supplies and Services of Menk-Schmehmann GmbH & Co. KG**

## **1. Area of Application**

1.1 These general terms and conditions for supplies and services („GTC“) shall apply to all business relationships between Menk-Schmehmann GmbH & Co. KG („MSG“) and the Purchaser of the respective supplies and/or services, („Customer“). These GTC shall only apply to entrepreneurs (as defined in Sec 14 of the German Civil Code), legal entities of public law or special funds under public law.

1.2 These GTC shall apply particularly to contracts for the sale and/or supply of movable goods („Goods“) regardless of whether MSG has manufactured the Goods itself or has procured the Goods from other suppliers. Unless otherwise agreed, the GTC in effect at the time the Customer placed its order or the most recent version of the GTC of which the Customer has been notified in text form (by email or fax) shall apply as a master agreement between MSG and the Customer governing any and all similar contracts made in the future, regardless of whether MSG has expressly referenced this GTC.

1.3 These GTC shall apply exclusively. Any terms or conditions of the Customer which deviate, contradict or supplement the terms or conditions herein shall only become part of this agreement to the extent that MSG has expressly agreed to them. These approval requirements shall also apply when MSG provides good and services to the Customer without reservation in the knowledge of deviating, contrary or supplemental customer conditions.

1.4 On a case-by-case basis, individual agreements made with the Customer (including collateral agreements, warranties, supplements and amendments to the GTC) shall have precedence over the GTC. These agreements must be in writing and shall serve as evidentiary proof.

1.5 Any and all legally relevant declarations and/or notifications made by the Customer to MSG which are required under the terms of the GTC (e.g. setting deadlines, notifications of defects, withdrawal or reduction), shall be in writing or text (e.g. letter, e-mail, fax) in order to be valid. Legal formalities and other matters of proof, particularly in questions of doubt as to the declarer's authority shall remain unchanged.

1.6 References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations apply without such clarification insofar as they are not directly modified or explicitly excluded in these GTC.

## **2. Conclusion of the Contract**

2.1 Offers from MSG are subject to change.

2.2 Details regarding Goods to be delivered or services (i.e. weight, measurements, utility value, resilience, allowances and technical data) as well as any representations (i.e. drawings and images) are only approximate unless the usability for the contractually intended purpose requires exact conformity. They are only binding insofar as it has been expressly stated by MSG. Customary variations and variations that are the result of legal regulations or which show constructive or technical improvements, as well as the replacement of components with parts of equivalent value are always permitted provided that they do not impair the usability for the contractually intended purpose. The Customer shall have no claims for the retrofitting of already delivered equipment when there are design changes in an ongoing series. In all other respects, MSG's factory standards shall apply, unless expressly provided otherwise in the contract.

2.3 The information provided by MSG on the goods and services are exclusively statements of quality (*Beschaffungsangaben*) and shall not be considered as guarantees (*Garantien*) in the legal sense. In particular, technical specifications and product descriptions and information alone do not represent any assurance of certain properties or corresponding guarantees. Guarantees in the legal sense can only be assumed for MSG in individual cases by managing directors and authorised signatories and must be in writing in any case.

2.4 MSG reserves all property rights and copyright to all illustrations, drawings, calculations, quotes, samples and any other information, tangible or intangible, including those in electronic form that are made available to the Customer. This information may only be made available to third parties with the prior approval of MSG in written or text form (e.g. letter, e-mail, or fax) and shall be returned to MSG immediately upon request or in the event a contract has not been concluded.

2.5 Insofar as the fulfilment of contractual obligations by MSG is prohibited or impaired by national or international foreign trade law (e.g. export control and/or customs regulations, embargo restrictions) or requires a license, a permit or a confirmation by a public authority, MSG may refuse the fulfilment of such obligations until the prohibition or restriction ceases to apply or until the official license, permit or confirmation is granted, unless MSG was aware of the existence of the prohibition, restriction or official permit reservation from the beginning. The Customer is obliged to provide MSG before the conclusion of the contract and, if necessary, during the execution of the contract, with all information and documents which are necessary to comply with all applicable foreign trade laws or which are required by any competent authority in this respect, including (but not limited to) information about end customers, country of destination, intended use or existing export restricting regulations. If the Customer does not fulfil the aforementioned obligation and if the prohibition or restriction or the official reservation of permission for the contractual delivery or service continues to exist, MSG is entitled to withdraw from the contract and to demand compensation from the Customer.

2.6 Any assignment of rights and obligations of the Customer under the GTC requires the prior approval of MSG. The assignment by the Customer of any monetary claim against MSG is nonetheless valid; however, MSG can, at its own discretion and in discharge of its obligation, perform its obligations to either the Customer or to the assignee (Sec. 354a German Commercial Code).

### **3. Prices and Terms of Payment**

3.1 Unless otherwise agreed, all prices shall be in Euro. The prices at the time of the conclusion of the contract shall apply, namely "free carrier" (FCA INCOTERMS 2020 or as amended from time to time), excluding packaging, plus VAT at the statutory rate.

3.2 Any deduction or discount requires a separate agreement in written or text form (e.g. letter, e-mail, fax).

3.3 Unless otherwise agreed, the purchase price shall be due for payment within 30 days (in cases of Contract Manufacturing Orders (Sec. 10) within 14 days) from the date of the invoice. At the end of the payment period, the Customer shall be in default without any additional notification. If the Customer is a merchant, during the period of default, interest shall be charged at the applicable statutory default interest rate. The right to claim further damages for default is not excluded.

3.4 In cases of the delivery of supplies outside the European Union, MSG may request an irrevocable letter of credit from the Customer in favour of MSG, which has been confirmed by a bank having its registered offices within the European Union. MSG is entitled to suspend performance of its obligations under the GTC until the Customer has provided MSG with the aforementioned letter of credit.

3.5 In cases of legally permitted or contractually agreed upon advance or installment payments, MSG has the right to withdraw from the contract or to request from the Customer payment of the total unpaid purchase price including any accrued interests for delay, if the Customer

- has fallen behind with advance or installment payments for two consecutive fixed payment dates or
- has fallen behind, within a period of time that goes beyond two fixed payment dates, with advance or installment payments equivalent to or exceeding the amount due for two fixed payment dates.

3.6 The Customer may set off claims or exercise rights of retention only to the extent that its claim is undisputed or final judgment has been rendered for it. In cases of defects, the Customer remains entitled to retain an appropriate amount of the purchase price, depending on the extent and manner of the defect, until the defect has been rectified.

#### **4. Deadlines for Supplies and Services; Delay**

4.1 Binding deadlines for supplies or services shall be determined by MSG at the time of the acceptance of the order or expressly confirmed in written or text form (e.g. letter, e-mail, fax) by MSG.

4.2 Insofar as MSG cannot observe binding delivery deadlines for reasons for which MSG is not responsible ("Non-availability of the Service"), MSG shall inform the Customer hereof immediately and at the same time, inform the Customer of the expected, new delivery deadline. If the service is still not available within the new delivery deadline, MSG shall be entitled to withdraw from the contract in full or in part; MSG shall reimburse the Customer immediately for any already provided consideration. A case of non-availability of the Service, within this meaning of this clause is, in particular, the non-timely self-delivery of components to MSG from the sub-suppliers if (i) MSG has concluded a congruent covering

transaction; or (ii) neither MSG nor its sub-supplier are at default; or (iii) MSG is under no obligation to place orders with sub-suppliers.

4.3 The occurrence of MSG's delay in delivery is determined according to the statutory regulations. However, in any case, an overdue notice from the Customer is required.

## **5. Delivery, Passing of Risk, Acceptance, Delay in Acceptance**

5.1 The Delivery shall be made "free carrier (FCA INCOTERMS 2020 or as amended from time to time), which is also the place of performance for the delivery and any subsequent performance. At the customer's request and expense, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, the customer shall be obliged to determine the type of shipment (in particular transport company, shipping route, packaging).

5.2 The risk of accidental loss and accidental deterioration of the Goods and the risk of delay shall pass to the Customer upon receipt of the notification that the Goods are ready for dispatch.

5.3 If the Customer is in default of acceptance, if it fails to provide an act of assistance or if MSG's delivery is delayed for any other reasons for which the Customer is responsible, then MSG is entitled to charge a lump-sum compensation for the resulting damages including additional expenses (e.g. storage costs) in the amount of 0.5% of the invoice amount per calendar week, but not exceeding 5% of the invoice amount, beginning with the delivery deadline or – in the absence of a delivery deadline – with the notification that the Goods are ready for dispatch. The proof of higher damages and the MSG's statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; the lump-sum is however to be offset against further monetary claims. The Customer reserves the right to prove that MSG did not suffer any damages or that the amount of damages was substantially less than the aforementioned lump-sum compensation.

5.4 If supplies or services provided by MSG are subject to acceptance, such acceptance shall be deemed to be given if, and to the extent

- after delivery, the Goods supplied by MSG have been sold to or made available for use by any third party,
- the Goods supplied by MSG have been processed, mixed or combined with other items with the Customer's consent,
- the Goods supplied by MSG are, beyond trials or tests, used by the Customer or by any third party with the express or implied agreement of the Customer or
- the Goods supplied by MSG to the Customer or any related services are accepted by a customer of the Customer (so called "end-customer").

## **6. Force Majeure**

6.1 In cases of force majeure, the party affected thereby is released from its contractual obligations as well as from any liability for damages or other contractual remedies resulting from any infringement of contract, from the point at which the occurrence took place and for its full duration and extent.

6.2 “Force Majeure” are events that occur that are not in the party’s control which would cause the invoking party to be unable to perform its obligations either in whole or in part. Force Majeure shall include (but is not limited to):

- War, armed conflicts and animosity or the serious threat of such, as well as civil war, rioting, revolution, military or power struggles and mob violence;
- Acts of terrorism, sabotage or piracy;
- Lawful or unlawful administrative acts, administrative orders, regulations, rules, or instructions which would cause the supplier to be unable to perform its obligations either whole or in part;
- Natural catastrophes such as flooding, earthquakes, wildfires;
- Epidemics, pandemics, endemics;
- Explosions, fire or destruction of machinery, facilities or manufacturing plants, sustained outages in ways or means of transportation, telecommunications or electrical systems;
- Strikes and lawful lockouts.

Supply problems and other defaults by MSG’s suppliers shall be considered Force Majeure insofar as MSG’s supplier was unable to perform an obligation on its part as a result Force Majeure as described in sentence 2 above.

6.3 Each party shall show the respective other party without delay the occurrence as well as the duration and extent of the condition caused by Force Majeure and shall make its best efforts to limit its impact.

6.4 At the time that condition constituting Force Majeure occurs, both parties to the contract shall coordinate how they shall proceed after the Force Majeure has ended and shall determine whether the Good that was not delivered during that time should still be delivered.

6.5 Each contracting party is entitled to withdraw from the contract that was impacted by Force Majeure if it lasts more than six (6) months or when it is proven that it will last for such a period of time. The right of each party to terminate the contract for good cause in the case of a lengthy Force Majeure shall remain unaffected.

If a party to the contract withdraws as a result of another instance of Force Majeure or terminates for cause, the claims for compensation for services already rendered shall remain unaffected. For remaining services, the claims for remuneration shall be reduced proportionally when comparing the value of the total performance with that of the services not yet rendered (§ 441 para. 3 German Civil Code).

## **7. Retention of Title**

7.1 MSG holds title to the sold Goods until the full payment of all of current and future claims from the purchase contract and from any current business relationship between MSG and the Customer (secured claims).

7.2 The Goods subject to retention of title may neither be pledged to third parties nor assigned as collateral before the full payment of the secured claims. The Customer must inform MSG immediately in writing if an application for the initiation of insolvency proceedings is filed or insofar as there are any claims of third parties to the Goods which belong to MSG (e.g. seizures; attachments; liens).

7.3 In the event the Customer is in breach of contract, in particular with nonpayment of the due purchase price, MSG reserves the right to withdraw from the contract according to the statutory regulations and to claim the return of Goods subject to the retention of title.

7.4 The Customer is authorised to resell and/or to process the Goods which are subject to retention of title in proper business transactions. In this case the following provisions shall apply in addition.

7.4.1 The retention of title covers the products which are produced by processing, mixing or combination of MSG's Goods at their full value, whereby MSG is deemed the manufacturer. If the ownership right of third parties continues to exist with a processing, mixing or combination with goods of third parties then MSG shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined Goods. Incidentally the same shall apply to the produced product as to the Goods delivered under reservation of title.

7.4.2 The Customer hereby now already assigns the claims against third parties, which are established from the resale of the Goods or product in total or in the amount of MSG's possible co-ownership share, to MSG as collateral according to the aforementioned paragraph 7.4.1. MSG hereby accepts the assignment. The obligations of the Customer stated in paragraph 7.2 herein above shall also apply in view of the assigned claims.

7.4.3 The Customer shall remain authorised to collect the claim in addition to MSG. MSG undertakes not to collect the claim as long as the Customer meets its payment obligations towards MSG, is not in default of payment, there is no deficiency in its ability to pay and MSG has not requested that the Goods are handed over according to paragraph 7.3 herein above. However, if this is the case, MSG can request that the Customer inform MSG of the assigned claims and their debtors, provide all information which is necessary for the collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.

7.4.4 If the realisable value of the collateral items exceeds MSG's claims by more than ten percent, MSG shall, upon request of the Customer, release collateral items as chosen by MSG.

7.5 The Customer shall treat the Goods that are subject to the retention of title with care and properly keep them in good condition for the duration of the retention of title.

7.6 If the contract is governed by the laws of a country other than the Federal Republic of Germany and such laws do not permit the retention of title but allow similar rights to be reserved, MSG may exercise all such rights. The Customer shall take, at its expense, all measures necessary so as to establish and maintain such rights to the supplied Goods.

## **8. Claims for Defects of the Customer**

8.1 The Customer's claims for defects shall be subject to the condition that the Customer has satisfied its statutory obligations for inspection and reporting of complaints (§§ 377, 381 German Commercial Code). If a defect is determined at the time of delivery, during the inspection or subsequently at any point in time then the Customer must inform MSG immediately hereof. In any case, the Customer must notify MSG about obvious defects within four working days from the delivery, and about hidden defects within four working days from the discovery of the defect. If the delivered Goods are to be installed in another object, the Customer must in any case inspect the delivered Goods before installation. The notification

shall be made in written or text form (e.g. letter, e-mail, fax). If the Customer fails to carry out the proper inspection and/or notification of defects, MSG's liability for the defect which was not reported shall be excluded, in accordance with the statutory provisions.

8.2 In the event that the Goods delivered are defective, it shall be at the discretion of MSG whether subsequent performance shall be made by remedying the defect (subsequent improvement) or by delivering the Goods free of defects (substitute delivery). MSG's right to refuse subsequent performance in accordance with the statutory provisions shall remain unaffected.

8.3 MSG is entitled to make subsequent performance due conditional upon the Customer paying the purchase price due. However, the Customer remains entitled to retain an appropriate part of the purchase price, this depending on extent and manner of the defect.

8.4 The Customer shall give MSG the time and the opportunity which may be needed for due subsequent performance, in particular, the Customer has to hand over the Goods claimed to be defective for inspection purposes. In the event of a substitute delivery, the Customer must return the defective Goods to MSG according to the statutory regulations. Subsequent performance shall not include the removal of the defective Goods nor the installation of new Goods, provided that MSG was not initially obliged to provide installation of the product.

8.5 MSG will bear the expenses necessary for inspection and subsequent performance, in particular transport, route, work and material costs if a defect actually exists. The same applies to costs for removal and installation if the Customer has installed the delivered Goods according to their type and intended use into another object or attached them to another object and subsequent performance by MSG according to the provisions of this Sec. 8 has failed or MSG refuses subsequent performance. Should the Customer's request for subsequent performance turn out to be unjustified, then MSG may claim reimbursement of all costs incurred as a result of the unjustified claim (in particular costs for inspection and transport), unless the lack of defectiveness could not be recognized by the Customer.

8.6 If the Customer or a third party carries out improper remedies or rework, MSG shall not be liable for any consequences resulting therefrom. The same applies in case of changes to the delivered Goods without prior approval of MSG.

8.7 MSG has at least two attempts at subsequent performance to rectify a defect. The Customer can withdraw from the contract or reduce the purchase price if MSG's subsequent performance has failed or if a deadline reasonably set by the Customer has expired without change, or can be dispensed with under the statutory provisions. However, there shall be no right to withdraw from the contract if the defect is negligible.

8.8 Claims of the Customer for damages or reimbursement of futile expenses incurred as a consequence of a defect of the Goods shall be subject to the limitations under Sec. 11 and are, apart from that, excluded.

8.9 The mere subsequent performance carried out by MSG, irrespective of its extent, shall not be considered as an acknowledgement of the defect asserted by the Customer. Only legal representatives and statutory proxyholders of MSG are authorised and empowered to make binding declarations on behalf of MSG and to declare such an acknowledgement.

## **9. Industrial Property Rights**

9.1 MSG is liable for the supplied Goods to be free from industrial property rights and copyrights of third parties within the Federal Republic of Germany. MSG shall have no such liability for any other country, in particular for the country of final destination of the Goods, unless expressly otherwise agreed between MSG and the Customer. Each contracting partner shall be obliged to immediately inform the respective other party by giving notice in written or text form (e.g. letter, e-mail, fax) if claims are made against it due to the asserted infringement of such rights.

9.2 In the event that any Goods supplied by MSG infringe on a third party's industrial property right or copyright, MSG shall be liable to the Customer as follows:

- MSG will, at its own discretion and at its own costs, either grant the Customer a right of use on the grounds of a license agreement or exchange or otherwise modify the Goods supplied so that this no longer breaches third party rights.
- If this turns out to be impossible to achieve under reasonable conditions, the Customer reserves its statutory rights of withdrawal or price reduction.
- The Customer's claims for damages, if any, are subject to Sec. 11.
- Claims for defects of the Customer with respect to an infringement of industrial property rights or of copyrights held by third parties are excluded if such infringement was caused by specific instructions given by the Customer, or by improper handling in violation of the contract, or by the use of the Goods supplied in a way which could not be foreseen by MSG, or by a modification or alteration of the Goods supplied by the Customer or by using the Goods supplied in combination with other items than the Goods supplied by MSG, or if the Customer is responsible for the infringement of third party rights. The Customer will indemnify and hold MSG harmless from any claims made by third parties for the infringement of its industrial property rights or copyrights.

## **10. Special Provisions for Contract Manufacturing Orders**

Contract manufacturing orders are contracts in which the Customer provides certain goods (i.e. raw materials or pre-processed items – hereinafter referred to as “Goods Provided”) to be processed by MSG at their plant. The Goods Provided shall be made available to MSG by the Customer or shall be procured by MSG from third parties at the Customer's expense. The provisions of this Section 10 herein shall prevail for this type of Contract Manufacturing Orders.

10.1 The Customer shall at his own expense bring the Goods Provided to the agreed place on the agreed date and, in the absence of any such agreement, to the place named by MSG.

10.2 To the extent required or agreed, the Customer shall provide MSG in due time with all information relevant for a proper performance of the contract manufacturing owed, such as drafts, drawings, production specifications, models or samples and other technical documents (hereinafter "Documents Provided"). In addition, the Customer shall inform MSG of all safety-relevant characteristics of the Goods Provided and the respective current safety information.

10.3 In the event that the delivery of the Goods Provided or the availability of the Documents Provided is later than agreed, the agreed upon appointments and deadlines shall lose their validity. The completion date shall automatically shift to an appropriate date. The parties shall reach an agreement for a new completion date as quickly as possible.



10.4 The Customer guarantees that the Goods Provided are in perfect condition at the time of delivery, that they are the contractually agreed upon quality and are suitable for the intended purpose. Unless a specific quality has been agreed, the Goods Provided must be of the construction, quality and materials customary for items of the same or comparable type. The Goods Provided must be free of any defects that could affect the workability of the Goods Provided or make the workability more expensive, e.g. blowholes, hard spots or the like. The Goods Provided shall have the necessary dimensions and tolerances in order to ensure the proper processing by MSG and compliance with the dimensions of the end product.

10.5 The Customer guarantees that the Documents Provided and the Goods Provided which will be processed by MSG do not violate any industrial property rights of third parties. If a third party prohibits MSG from making delivery claiming a protected property right, MSG is entitled, without any obligation to first examine the legal position, to stop the deliveries and to demand compensation from the Customer for the costs incurred. If, in such a case, MSG suffers damage due to the infringement of an industrial property right or the assertion of an industrial property right, the Customer is obligated to compensate MSG for the damages incurred.

10.6 MSG is not obligated to examine whether the Goods Provided or the Documents Provided are in order and that they are respectively complete and correct unless, on an individual case basis, MSG had stated otherwise.

10.7 In the event that MSG incurs additional costs or damages (i.e. to tools) due to the fact that Goods Provided were not up to the standard of quality owed (e.g. porosity, inclusions, brittleness, hardness or other costly defect) or the Documents Provided or other information made available by the Customer was inaccurate, erroneous or incomplete, the Customer shall compensate MSG for these additional costs and damages.

10.8 If the Goods Provided prove to be unusable during processing for reasons for which MSG is not responsible, MSG shall nevertheless be entitled to demand the agreed remuneration and expenses not included in the remuneration taking into account the saving of expenses.

10.9 MSG shall only bear the risk of the processing work to be performed. The risk of the accidental loss or accidental deterioration of the Goods Provided shall be borne exclusively by the Customer irrespective of whether the damages occurred during transport of the Goods Provided or at MSG's plant. The transport of the Goods Provided to and from the place of delivery shall be the sole cost and risk of the Customer. Upon the express request of the Customer, MSG shall insure the outward and return transport against insurable transport risks (i.e. theft, breakage, fire) at the expense of the Customer.

10.10 During the contracting period in MSG's plant, there is no insurance coverage for the Goods Provided. The Customer is responsible for insuring the Goods Provided against damage and destruction (including fire, water and storm damage). Upon the express request of the Customer, MSG shall obtain insurance protection for these risks at the expense of the Customer.

10.11 MSG always carries out the processing of the Goods Provided on behalf of the Customer. The Goods Provided remain the property of the Customer at all times. Unless otherwise agreed, all scrap and metal pieces remaining after the processing is complete shall become the property of MSG.

10.12 MSG guarantees the proper, careful and conscientious processing of the Goods Provided in accordance with all contractually agreed upon specifications, otherwise in accordance with generally recognized rules of technology.

10.13 As far as the processing of the Goods Provided is defective and the defect is the responsibility of MSG, MSG shall rectify the Goods Provided by way of reworking or repair. Only insignificant deviations from the quality agreed upon or insignificant impairments in use shall not be deemed to be defects.

10.14 The Customer shall notify MSG immediately in writing of any defects. If the Customer fails to notify MSG of defects properly and in due time, this shall result in the loss of the corresponding rights for defects.

10.15 The warranty shall not include defects in the Goods Provided that arise after their return to the Customer. Therefore, MSG shall not be liable specifically for damages that are the result of natural wear and tear, improper handling, excessive strain, use of unsuitable materials or other outside influences that are not provided for in the contract. The Customer's rights to any claims for defects are excluded insofar as the Customer or third parties made changes to the Goods Provided.

10.16 The Customer shall allow MSG the time and opportunity required to carry out all necessary supplementary performance work. Only in urgent cases of endangerment of the operational safety and to prevent disproportionately large damages, in which case MSG shall be informed immediately, or if MSG has let the reasonable period of time set for the removal of defects pass, the Customer shall have the right to remove the defect himself or have it removed by third parties and to demand compensation for the necessary costs from MSG; such a self-remedy is always carried out at the risk of the Customer.

10.17 MSG can refuse to remedy the defect when it would require a disproportionate effort. If MSG refuses to remove a defect because it would require a disproportionate effort, MSG shall be required, at the choice of the Customer either to credit an amount for the processing of the defective Goods Provided or to carry out the processing of the corresponding Goods Provided a second time at no extra charge, which the Customer shall make available to MSG again free of charge.

10.18 The mere provision of supplementary performance services by MSG does not constitute an acknowledgment of the defect claimed by the Customer. Only MSG's legal representatives are authorized to give such an acknowledgment.

10.19 If MSG - under consideration of the legal exceptions - allows a reasonable period of time set for it for the removal of defects to elapse fruitlessly, the Customer shall also have the right to cancel the contract or to raise a claim for reduction of the agreed compensation within the framework of the statutory regulations. In the event there is only the partial failure of the subsequent performance, the right to rescind the contract shall only exist insofar as its fulfilment is no longer of interest to the Customer. Otherwise the following Paragraph 10.20 shall apply accordingly.

10.20 If one of the Goods Provided by MSG is damaged or destroyed through the fault of MSG, MSG is obliged - if supplementary performance is not possible or nothing else has been agreed upon - at the discretion of the Customer either to credit an amount to the Customer which corresponds to the price for the processing of said Goods Provided or to process said

Goods Provided again free of charge, whereby the corresponding Goods Provided by the Client must be made available to MSG again free of charge. The following Paragraph 10.21 and Section 11.2 shall apply accordingly.

10.21 MSG shall not be liable for damages for which MSG is not responsible, such as damages caused by defective Goods Provided, by faulty Documents Provided or by other faulty information from the Customer. In particular, MSG is not liable for damages caused by deformations during the processing of the Goods Provided as a consequence of previous improper material processing by the Customer or third parties.

## **11. Liability for Damages**

11.1 Insofar as not otherwise derived from these GTC including the following provisions MSG shall be liable according to the relevant statutory regulations in case of a breach of contractual and non-contractual duties.

11.2 MSG shall be liable for damages – no matter for what legal grounds – in case of willful intent and gross negligence. Provided that no lower standard of liability applies (e.g. diligence for one's own affairs; a not inconsiderable breach of duty), MSG shall be liable in case of simple negligence only

- for damages arising from injury to life, body or health,
- for damages from the breach of an essential contractual duty (obligation, the satisfaction of which only enables the proper execution of the contract at all and with which the contractual partner relies and may as a rule rely on its compliance); in this case MSG's liability is however limited to the reimbursement of the foreseeable, typically occurring damages.

11.3 The liability restrictions which can be derived from para. 11.2 herein above shall apply to the breach of a duty by persons whose fault MSG is responsible for according to the statutory provisions. They shall not apply insofar as MSG has maliciously failed to disclose a defect or has assumed a guarantee for the condition of the Goods. The same shall apply to claims of the Customer according to the Product Liability Act.

11.4 The Customer can only withdraw from or terminate the contract owing to the breach of a duty, which does not consist of a defect, if MSG is responsible for the breach of duty. A free right of termination of the Customer (in particular according to §§ 650, 648 a German Civil Code) is excluded. Incidentally the statutory pre-requisites and legal consequences shall apply.

## **12. Statute of Limitations**

12.1 Notwithstanding § 438 para. 1 no. 3 German Civil Code, the general statute-of-limitations for claims from defects of quality and title is one year from delivery.

12.2 If the Goods is a building or an object that, in conformity with its customary manner of utilization, has been used for a building and which has caused the deficiency of the building (building material), the statute-of-limitations is five years from delivery, in accordance with the statutory provisions. Any other special statutory provisions regarding the statute of limitations shall remain unaffected (in particular § 438 para. 1 No. 1, para. 3, §§ 444, 445b German Civil Code).

12.3 The aforementioned statutes-of-limitations of the law governing purchases shall also apply to contractual and non-contractual claims for damages of the Customer which are due to a defect to the Goods, unless the application of the regular legal statute-of-limitations (§§ 195, 199 German Civil Code) would lead to a shorter statute-of-limitations in an individual case. The statutes-of limitations of the Product Liability Law shall remain unaffected in any case. Otherwise the legal statute-of-limitations shall apply exclusively to claims for damages of the Customer according to Sec. 10.2 Sent. 1 and Sent. 2 lit. a).

### **13. Protection of Trade Secrets**

13.1 The Customer may use MSG's trade secrets, which have or will become known during the business relationship with MSG, solely for the contractually intended purpose. The protected trade secrets shall include all written, spoken or in any form electronically stored information, all research and work results, knowledge, data, designs, know-how, analyses, calculations, studies, copies, transcripts and other documents that the Customer has received or will receive from MSG or on their behalf, or which the Customer acquires from MSG or which he has created or will create in connection with such information or which includes such information or which is based on all or part of this information.

13.2 The Customer is prohibited from either using or communicating these trade secrets to third parties for any reason outside the contractually-intended purposes without MSG's express permission and is required to return them to MSG without undue delay on demand or in case of failure to conclude a contract. Information, which was known to the public before the notice or transfer by MSG or which was generally accessible or which will become public at a later date without infringing an obligation to secrecy, shall not be deemed to be trade secrets.

13.3 The aforementioned obligations to secrecy shall also apply after the conclusion of the business relationship between MSG and the Customer.

### **14. Applicable Law and Place of Jurisdiction**

14.1 These GTC and the contractual relationship between MSG and the Customer shall be governed by the laws of the Federal Republic of Germany excluding international and supranational (contractual) legal regulations, in particular the UN Convention on Contracts for the International Sale of Goods.

14.2 If the Customer is a merchant within the meaning of the German Commercial Code, a governmental entity or a special governmental estate, exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the court competent for MSG's business place. The same applies if the Customer is an entrepreneur within the meaning of § 14 German Civil Code. MSG is, however, also entitled to file an action at the place of performance for the delivery obligation pursuant to these GTC or to an individual agreement prevailing these GTC, or at the general place of jurisdiction of the Customer. Imperative legal provisions, in particular with respect to any exclusive venue, shall remain unaffected.

**Status as of: May 2023**