

General Terms and Conditions, valid as from 1 January 2002

I. Scope and Applicability

1. The following General Terms and Conditions apply to the entire business relationship with our customers. Any divergent terms of the customer shall apply to this agreement only after we have given our express written consent.
2. These terms and conditions shall also apply to any future transactions with the customer even if no new agreement is reached on their applicability.
3. Our General Terms and Conditions shall apply only to business enterprises as defined in Section 310 / Section 14 German Civil Code (BGB).

II. Written Form Requirement, E-Mail, Power of Representation of Employees and Delivery Staff

1. Any additional or other agreements, warranties or amendments must be made in writing or by e-mail with legally acceptable qualified digital signature.
2. When concluding a contract, our employees are not entitled to give any verbal warranties or to reach a verbal agreement with the customer on addenda or amendments to the contract, unless the scope of their powers of authority is specified by law. Any such commitments, addenda or amendment of contracts by our employees must be made in writing or by e-mail with legally acceptable qualified digital signature. Delivery staff or any other persons acting on our behalf in connection with or during performance of contract shall not be entitled to represent us in any way whatsoever.

III. Binding Force of Offers, Particulars stated on Conclusion of Contract, Deviation from Particulars stated on Conclusion of Contract.

1. We are entitled to withdraw from our offers up to the time of acceptance unless an offer has been specified as binding.
2. If the customer's request or order qualifies under law as an offer to contract as defined in § 145 German Civil Code, we are entitled to accept that request or order within 12 working days by sending or handing over a written confirmation of order or by sending an e-mail with legally acceptable qualified digital signature. We shall also be bound for 12 working days by any offers specified by us as binding.
3. Product descriptions in brochures or similar documents are not binding.
4. Deviation from agreed product characteristics shall not affect performance of contracts, provided the customer can reasonably be expected to accept such deviations, and that the deviations do not restrict or do not substantially restrict the product's fitness for use, and we had not guaranteed the existence of such a characteristic, or if it was apparent to us that the agreed characteristic was of special importance for the customer, especially if the deviation jeopardises the object of the contract.

IV. Quotations, Prices, Terms of Payment, Default

1. All prices are quoted net, ex works, exclusive of delivery, packaging, insurance and any other secondary performance, and are payable without any deductions whatsoever.
2. Prices quoted by us are binding only in accordance with the following Clause IV. 3.
3. We are entitled to raise our prices accordingly if our costs increase after conclusion of contract, in particular owing to increases in the price of materials or shortages on the supply market.
4. As a general principle, we shall not accept bills of exchange or cheques. If we do so, they shall be accepted only on account of payment, pending full discharge. The customer shall pay all bill, discount and collecting charges. Such charges shall be due immediately. We shall assume no liability for punctual collection or protest, provided that we are guilty of minor negligence only.
5. Should the customer be in default of full or part payment, we shall charge interest on arrears at a rate of 3 % p.a. above the EURIBOR euro reference rate. We reserve the right to enforce further claims.
6. If the customer is in default for longer than 30 calendar days, if he allows bills or cheques to be protested, or if a petition in bankruptcy is filed against the customer, we shall be entitled to declare all our claims against the customer due immediately, to withhold the delivery of all goods and services and to enforce all our rights under reservation of title.
7. The customer shall be entitled to offset his claims or exercise a retaining lien only against claims which are undisputed or have been established as final by a court of law.

V. Delivery, Delivery Dates, Default in Delivery, Availability of Our Own Deliveries

1. Agreed delivery dates shall be deemed complied with, provided that the goods were handed over to the party responsible for transport on the agreed delivery date. On request, we shall advise the customer that the goods are ready for shipment.
2. Delivery dates are agreed on the basis of our expected capacities and are agreed subject to the occurrence of any circumstances or events beyond our control, which did not exist at the time of conclusion of contract, or which were either unknown to us or could not be known to us, irrespective of whether these circumstances and events refer to our company or to the manufacturer. These circumstances and events shall include in particular acts of God, officially imposed measures, industrial disputes, sabotage, scarcity of raw materials on the relevant raw material markets for the production of the goods to be delivered, and delays in material deliveries. In the case of such events, the delivery date shall be extended accordingly, even if they occur during the course of an already sustained delay. In that case, any extension granted by the customer shall also be extended for the duration of the unforeseen event.

3. Should we be in default of delivery for more than 8 weeks, the customer shall be entitled to withdraw from the contract, after granting us a reasonable, written extension. In that case, any claims for compensation on the part of the customer shall be governed by Clause XI of these General Terms and Conditions.
4. We reserve the right to withdraw from the contract if a delay in delivery due to reasons beyond our control, as defined in Clause V. 2., continues for longer than 8 weeks.
5. We shall be entitled to perform the contract in reasonable part deliveries, bearing in mind that there are frequently supply shortages in our supply markets.
6. If our supplier (finally) fails to supply the goods to us, although our supplier has been chosen with care and our order satisfies the requirements of our delivery obligation, we shall be released from our obligation to perform, provided that we advise our customer that we shall not be able to deliver the goods and, where legally permissible, offer to assign our claims against our supplier to the customer. We shall not accept any responsibility for minor negligence in the selection of our suppliers.

VI. Reservation of Title

1. The goods shall remain our property until full payment of all our claims, including any future claims, against the customer, regardless of the legal grounds (including claims for bills, cheques, assignments, guarantees, compensation etc.). This shall also include conditional claims and claims to which the companies specified in Clause VII. 1. are entitled, provided that the customer's business relationship with these companies is also connected to the customer's relationship with us.
2. The customer is entitled to sell goods to which we reserve title (reserved goods) in the ordinary course of business, either for cash or subject to reservation of title; he is not entitled to dispose of them in any other way, in particular to pledge the goods or assign them as security.
3. As security for our claims – irrespective of the legal grounds (cf. Clause VI.1.) – the customer already assigns to us as of now his claims, including all subsidiary rights, from any deliveries containing goods which are subject to our reservation of title. The assignment shall be for the amount of our invoice price of the reserved goods including turnover tax.
4. If the customer's claim's from resale of the goods are included in a current account, the customer already assigns to us as of now his claims against his customer from the current account, for the amount of the purchase price including turnover tax which was agreed for the resold, reserved goods.
5. The customer is entitled to collect claims which have been assigned to us, until such time as we revoke that right. Should we declare our entire claims to be due immediately, in accordance with Clause IV. 6., the customer is obliged on request by us to give the debtor written notification of the assignment, to provide us with all information, to submit and transfer documents, and to allow us to inspect his accounts to enable us to establish claims assigned in accordance with Clause VI. 3.
6. If we enforce our claims in accordance with Clause IV. 6., the customer shall grant us access to the reserved goods, send us a detailed list of the reserved goods on his premises, segregate the goods for us and hand them over to us on request.
7. Should the value of the total securities to which we are entitled exceed the value of our total claims by more than 30%, we shall release securities at our discretion on request by the customer. If we are obliged to pay turnover tax pursuant to Sections 170 Subs. 2, 171 Subs. 2 3 **InsO**, the foregoing limit shall increase to 40%.
8. The customer is obliged to notify us immediately in writing of any seizure by a third party on the reserved goods or seizure of claims which have been assigned to us and to assist us in any intervention. The customer shall bear the cost of such intervention if the intervention was successful, but attempted execution against the defendant as the party liable for the costs failed.
9. The customer is not entitled to exercise any retaining lien on securities.
10. If the reserved goods supplied by us are combined with other movable goods in such a way that the two parts become essential components of a single object, the customer undertakes to ensure that we have co-ownership in the new object in the proportion of the invoice value of the reserved goods in relation to the invoice value of the other goods.
11. Any working or processing of the reserved goods shall be deemed effected on behalf of our company as manufacturer, as defined in Section 950 German Civil Code, but without any obligation for us. In that case, our ownership shall be determined in accordance with the provisions of the foregoing Clause VI. 10.

VII. Performance of Contract by Subsidiaries / Associated Companies

1. We are entitled to have one of the following associated companies enter into the contract with the customer in our place: MSC Vertriebs GmbH (Germany), MSC Freiburg GmbH (Germany), MSC Tuttlingen GmbH (Germany), MSC Malta (Malta) Ltd., MSC UK Ltd. (UK), MSC Scotland Ltd. (Scotland), MSC France S.A.R.L. (FR), MSC-Vertriebs-CZ s.r.o. (Czech Republic), MSC Netherlands B.V. (NL), MSC Budapest Kft. (Hungary), MSC Suisse SA (Switzerland).
2. Should any of these companies enter into the agreement in our place, these General Terms and Conditions shall continue to apply in full to the contractual relationship.

VIII. Packaging, Shipping and Passing of Risk

1. Our deliveries are delivered in suitable commercial packaging at the customer's expense. The goods are delivered by suitable means of transport, at our due discretion in accordance with our route planning, at the customer's expense.
2. Risk passes to the customer on transfer of the goods to the party responsible for transport, his authorised representative or other persons specified to us, unless we deliver the goods to the customer with our own personnel or our own vehicles. If shipping is delayed or becomes impossible for reasons beyond our control, risk shall pass to the customer on notification that the goods are ready for shipment. These provisions governing the passing of risk shall also apply to any return deliveries to the customer after remedy of defects, provision of services against payment, or replacement deliveries.
3. On request by the customer, the consignment can be insured at the customer's expense against the risks specified by the customer, provided this is possible with only reasonable effort on our part.

IX. Material Defects

We shall be liable for material defects as follows:

- All and any parts or services which exhibit a material defect within the period of limitation, irrespective of the period of operation, shall be repaired free of charge or replacement delivery/ service supplied at our discretion, provided that the cause of the defect already existed at the time of passing of risk.
- Claims for material defects shall become statute-barred after one year. That period shall begin on delivery of the goods.
- The customer is obliged to notify us in writing immediately of any material defects.
- In case of complaints for defects, the customer shall be entitled to withhold payment only to an extent which is in reasonable proportion to the defects which have occurred. The customer shall be entitled to withhold payment only when claiming a defect which is justified beyond doubt. If the complaint proves to be unjustified, we are entitled to demand reimbursement of our expenses from the customer.
- We must first always be given the opportunity to render subsequent performance (repair or replacement delivery) within a reasonable period.
- If the subsequent performance fails, the customer – notwithstanding any claims to compensation in accordance with Clause XI of these General Terms and Conditions – shall be entitled to withdraw from the contract or demand a reduction of the purchase price. The customer shall not be entitled to demand reimbursement of futile expenses.
- The customer shall not be entitled to complain in case of minor deviations from the agreed properties, minor impairment in the goods' fitness for use, natural wear and tear, or in case of damage sustained after passing of risk which is due to incorrect or careless use, excessive strain, use with unsuitable operating supplies or due to exceptional external influences which are not presupposed under the contract, or due to non-reproducible software faults. We shall not be liable for any damage or consequential damage due to improper modifications or repair work performed by the customer or a third party.
- We shall not be liable for any claims filed by the customer for expenses incurred for the purpose of subsequent performance, in particular cost of transport, carriage, labour and material, if these expenses increase because the delivery object has subsequently been taken to a place other than the customer's place of business, unless that transport corresponds to the intended use of the delivery item.
- The customer shall be entitled to recourse against us only inasmuch as the customer has not entered into any agreements with his customer which go beyond the statutory rights for defects.
- Claims for compensation shall otherwise be governed by Clause XI of these General Terms and Condition. We shall not accept any other claims for material defects filed by the customer against us or our agents in performance, other than those specified in this Article IX.

X. Defects in Title

- Unless otherwise agreed, we shall be obliged to ensure that the goods are free of industrial property rights and copyright of third parties (hereinafter referred to as proprietary rights) only in the country of delivery. If a third party files a justified claim against the customer for the infringement of proprietary rights by any deliveries provided by us and used in accordance with the terms of the contract, we shall be liable to the customer, within the period specified in Clause IX No. 2, as follows:
 - We shall at our discretion and at our expense either acquire a licence for use of the goods concerned, or modify the delivered goods so that the proprietary right is no longer infringed, or exchange the goods. If we are unable to do so under reasonable conditions, the customer shall be entitled to his statutory rights to withdraw from the contract or reduce the purchase price. The customer shall not be entitled to demand compensation for futile expenditure.
 - Our obligation to render compensation shall be governed by Clause XI of these General Terms and Conditions.
 - Our obligations as above shall apply only if the customer notifies us in writing immediately of the claims asserted by third parties, does not recognise any infringement, so that all possible defences and settlement negotiations are still available to us. If the customer discontinues use of the delivered goods in order to keep damage to a minimum or for other just cause, he is obliged to notify the third party that such discontinuation of use does not constitute acknowledgement of infringement of a proprietary right.

- We shall not accept any claims by the customer if he is responsible for infringement of the proprietary right.
- Nor shall we accept any claims by the customer if infringement of a proprietary right is due to any particular specifications of the customer, to use of the delivered goods in a manner which could not be foreseen by us, or because the customer has modified the delivered goods or used them together with other products which were not delivered by us.
- The infringement of proprietary rights shall otherwise be governed by the provisions of Clause IX accordingly.
- In the event of any other defects in title, the provisions of Clause IX shall apply accordingly.
- We shall not accept any further claims or claims based on a defect in title other than those specified in this Clause X filed by the customer against us or our agents in performance.

XI. Compensation

- We shall not accept any claims filed by the customer for compensation, regardless of the legal grounds, in particular for the infringement of obligations under the law of obligations or for tort.
- The above shall not apply in cases where we are obliged by law to accept liability, e.g. under the Product Liability Act, in cases of wilful or gross negligence, for physical injury owing to the assumption of a warranty for the existence of a certain property, or the infringement of essential obligations under the contract. If we are guilty of minor negligence in the infringement of an essential obligation under the contract, compensation will be restricted to the foreseeable, typical damage in such cases; we shall consequently assume liability only up to a maximum of twice the value of the delivery. If we ourselves are not liable, the claims to which we are entitled against third parties can be assigned to the customer on request. In case of acts of God, we shall not be liable for compensation in any way whatsoever.

XII. Export

1. Under certain circumstances, re-export of the contractual products may require a permit and be subject to the export regulations of the Federal Republic of Germany, or in the case of products imported from the USA, may be subject to the corresponding regulations of the USA. The customer himself is obliged to inquire about such regulations from the competent authorities.
2. The customer is responsible in all cases for obtaining any necessary permits from the competent export authorities in each case before he exports such products. Any delivery of the contract products to third parties by the customer, with or without our knowledge, shall simultaneously require transfer of the export permit conditions. The customer shall be liable to us for due and proper compliance with these conditions.

XIII. EC Turnover Tax on Imports

We shall accept no liability whatsoever for the consequences of the particulars stated by the customer with regard to turnover tax on imports or the relevant data in that connection, unless we are guilty of wilful or gross negligence. We are not obliged to verify any particulars stated by the customer in that respect.

XIV. Severability Clause

If any individual provisions of these General Terms and Conditions should prove invalid now or in future, this shall not affect the validity of the remaining provisions. The parties are obliged to replace the invalid provision by a valid provision which comes as close as possible to the intended purpose of the invalid provision. This obligation shall not apply if, at the time of use of the General Terms and Conditions by us vis-à-vis the customer claiming invalidity, the invalidity had already been established by several German regional appeal courts [*Oberlandesgericht*] or by the Federal German Supreme Court of Justice.

XV. Place of Performance, Legal Venue, Applicable Law

Place of performance for our obligations under the contract and legal venue for all and any disputes arising from the contract is Frankenthal. We shall further be entitled to take the customer to court at his registered place of business or habitual abode.

The contractual relationship shall be governed by German law, excluding the UN Convention on the International Sale of Goods and excluding private international law.

Supplier's declaration pursuant to (EEC) Regulation No.3351/83:

The structural elements and systems supplied by us do not conform with (EEC) Regulation No. 3351/83. "NOT A CERTIFICATE OF ORIGIN".