

General Terms and Conditions of Delivery and Payment

I. General

1. The subsequent terms and conditions of delivery and payment apply exclusively to individuals acting upon signing of the contract in the capacity of a person independently engaged in a trade or business (contractor).
2. All goods delivered and services supplied by Messotron Hennig GmbH & Co. KG (hereinafter: Messotron) are based on these very terms and conditions and any separate contractual agreements. Differing terms and conditions of purchase of the Customer are hereby expressly objected to. They do not constitute a part of the contract even upon acceptance of an order, unless Messotron expressly agreed to their application in writing.
3. In the absence of a separate agreement, a contract is concluded subject to the Supplier's written order confirmation. Subsidiary agreements and amendments to the order must be stipulated in writing and require the express written confirmation of the Supplier.
4. The present General Terms and Conditions equally apply to all future business transactions with the Customer.
5. Messotron reserves the title and copyrights to samples, quotations, drawings and similar information of tangible and intangible nature – even if electronic. These documents must not be made accessible to third parties.
6. Messotron shall undertake to make such information and documents, which the Customer designates as confidential, accessible to third parties with the Customer's approval only.

II. Prices and Terms of Payment

1. Provided that the confirmation of the order does not stipulate otherwise, the Supplier's prices are quoted ex works exclusive of incidental expenses such as packaging, freight, customs and similarly. These charges will be invoiced separately.
2. The statutory rate of value added tax is not included in the prices of Messotron. The VAT will be itemised on the invoice at the statutorily applicable rate on the day of the invoice.
3. Messotron reserves the right to adequately amend prices if, following the signing of the contract, a reduction of cost or an increase of cost, especially on the grounds of collective bargaining agreements or changes in the price of material, have occurred. Upon request of the Customer, proof will be supplied of these changes.
4. Claims for payment of Messotron are upon invoicing and delivery. The Customer is in default if the claim for payment has not been settled within a period of 30 days following receipt of the service and invoice.
5. The deduction of a cash discount is subject to a separate written agreement.
6. Messotron delivers abroad subject to advance payment only.
7. Bills and cheques eligible for discounts are accepted exclusively on the grounds of an agreement and on account of payment.
8. A money debt of the Customer is subject to interest for the period of default. The default interest for payment claims is 8 percentage points above the base lending rate. This does not exclude the assertion of a further claim.
9. The Customer is only entitled to setting off if his counter claims were final, undisputed or recognised by Messotron. Moreover, the Customer is only entitled to exercise a retention right to the extent as his counterclaim is based on the same contractual relationship.

III. Reservation of Title

1. Messotron reserves the title to the good delivered until receipt of all payments from the contract of delivery.
2. In the case of the Customer's conduct contrary to the terms of the agreement, especially in the case of delayed payment, Messotron is entitled to take back the purchased good. Such taking back constitutes a rescission of contract. After taking back the delivered good Messotron is entitled to reuse it. The proceeds from such application are to be offset against the liabilities of the Customer minus adequate costs of utilisation.
3. The Customer shall undertake to treat the delivered good with care. The Customer shall in particular undertake to sufficiently insure the good at his own expense against damage caused by fire, water and against theft at replacement value. If maintenance and inspection services are required, the Customer shall perform these services in time at his own expense.
4. The Customer must neither pledge nor assign by way of security the goods supplied to him. If the good is seized or in the event of other intervention of third parties the Customer shall instantly notify Messotron in writing, for Messotron to be able to take legal action pursuant to § 771 ZPO (German Code of Civil Procedure). If the third party is not able to reimburse to Messotron the court and out-of-court costs of legal action pursuant to § 771 ZPO, the Customer is responsible for the loss which Messotron suffered as a result.

If the Customer refrains from reporting any attachment or other intervention of third parties to Messotron, the Customer is liable for the damage resulting from failing to report such incidents.

5. The Customer is entitled to resell the good delivered during the ordinary course of business. The Customer, however, shall hereby assign to Messotron all receivables in the amount of the final invoice total (inclusive of value added tax) of the receivables of Messotron resulting from the resale from his buyers or third parties, irrespective of whether the delivered good was resold without processing or after being processed. The Customer remains entitled to collect such receivables even following the assignment. The authorisation of Messotron to collect the receivables itself is not affected by this. Messotron shall undertake, however, not to collect these receivables as long as the Customer meets his payment obligations from the collected proceeds, is not in default of payment and in particular does not petition to commence composition proceedings or insolvency proceedings or does not cease payments.

If this, however, is the case Messotron may demand that the Client discloses the assigned receivables and their debtors, issues all details necessary for the collection, hands over the respective documents and informs the debtor (third party) of such assignment.

6. The processing or transformation of the delivered good by the Customer is at all times performed on behalf of Messotron. If the delivered good is processed jointly with other items which are not the possession of Messotron, Messotron shall acquire the co-ownership in the new item in proportion to the value of the delivered good (final invoice total including value added tax) with the other processed items at the moment of processing. For the item created by such processing the same applies as for the item supplied subject to reservation of ownership.
7. If the delivered good is inseparably mixed with other items that are not in the property of Messotron, Messotron shall acquire co-ownership in the new item in proportion to the value of the delivered good (final invoice total including value added tax) with the other mixed items at the moment of mixing. If the goods are mixed in such a manner that the item of the Customer is to be viewed as the main item, it is agreed that the Client shall assign to Messotron proportionate co-ownership. The Customer shall hold the sole property or co-ownership created in this manner for Messotron.
8. The Customer shall assign to Messotron the receivables arising from joining the delivered good against a third party, to secure the receivables of Messotron against the Customer.
9. Messotron shall undertake to release the securities to which it is entitled following the Customer's request if the realisable value of the securities exceeds the receivables to be secured by more than 10%. Which securities shall be released is at the discretion of Messotron.

IV. Delivery Time, Delay in Deliveries

1. The delivery time results from the agreements between the contract parties. For Messotron to observe the delivery time prerequisites the clarification of all commercial and technical questions between the contract parties and the Customer having fulfilled all obligations incumbent on him such as the provision of required official certificates or permits or the performance of a down payment. If this is not the case the delivery period shall be extended accordingly. This does not apply if Messotron is responsible for the delays.
2. Observing the delivery period is subject to the correct and timely supply of Messotron. Messotron shall inform the Customer of emerging delays as soon as possible.
3. The delivery period is deemed observed if the delivered good left Messotron until the expiration of such a period or if the readiness for dispatch was notified. If an acceptance has to be performed – except for cases of a justified refusal of acceptance – the date of the acceptance, alternatively the notification of readiness for acceptance, is decisive.
4. If the dispatch or the acceptance of the delivered good is delayed for reasons for which the Customer is responsible, the costs arising due to such delay will be charged to the Customer as from one month following the notification of the readiness for dispatch or acceptance.
5. If the non-observance of the delivery time is due to force majeure, industrial action or other events which can not be controlled by Messotron, the delivery time will be extended accordingly. Messotron shall inform the Customer of the beginning and of the end of such circumstances as soon as possible.
6. The Customer may rescind the contract without fixing a period if the full performance becomes conclusively impossible for Messotron before the passing of the risk. The Customer may also rescind the contract if in the event of an order the performance of part of the delivery becomes impossible and he holds a justified interest in refusing a partial delivery. If this is not the case the Customer shall pay the contractually agreed price due for the partial delivery. The same applies in the event of the inability to perform on behalf of Messotron. In other respects the regulations of Paragraph VII (2) apply.

If the impossibility or inability to perform occurs during the delay of acceptance or if the Customer is solely or largely responsible for the circumstances, he remains obliged to a counter performance.

7. If the Customer sets an appropriate period of time for Messotron – taking into account the statutory exceptions – following the due date and if this deadline is not met, the Customer is entitled to rescind the contract within the framework of the statutory regulations

Further claims from the delay of delivery are determined exclusively by Paragraph VII (2).

V. Passing of Risk, Acceptance

1. If the confirmation of order does not state otherwise, the delivery is agreed “ex works”.
2. The risk is passed to the Customer no later than upon departure of the consignment even if delivery freight paid or delivery free house has been agreed or part deliveries will be performed.
3. If the dispatch is delayed or omitted as a result of circumstances for which the Customer is responsible, the risk passes upon notification of the readiness for dispatch to the Customer. Messotron shall undertake to take out such insurance at the expense of the Customer as the Customer requests.
4. If an acceptance shall take place, such acceptance is decisive for the passing of the risk. It must be carried out immediately, following notification by the Supplier as to the readiness of acceptance. The Customer must not refuse the acceptance in the case of a minor defect only, provided that the Supplier expressly recognises his duty to remedy such a defect.

5. Goods that are ready for dispatch must be immediately called off. If the Supplier set an appropriate deadline to the Customer for such call-off, then following the fruitless passing of such deadline he may store the goods at the expense and risk of the Customer.

VI. Guarantee

For material defects or a defect of title of the consignment which also includes the omission of assured properties the Supplier shall perform, subject to the exclusion of further claims pursuant to Item VII. Guarantee, as follows:

Material Defects

1. Claims for defects of the Customer prerequisite that the Customer properly fulfilled his owed duty of examination and obligation to notify a defect in accordance with § 377 HGB (German Commercial Code).
2. At the discretion of the Supplier all those parts are to be rectified free of charge or to be supplied anew which within 12 months of delivery and as a result of circumstances which occurred before the passing of the risk prove to be unusable or upon closer observation, as substantially impaired. The ascertainment of such defects shall be reported immediately to the Supplier in writing. Replaced parts become the property of the Supplier. The queried parts, to the extent that the Supplier considers this necessary, are to be forwarded to the Supplier for the purpose of examination. Irrespective of this, for items which have been used according to their customary application for a building and caused its defectiveness, a period of five years applies.

If the dispatch is delayed at no fault of the Supplier, the guarantee ends 12 months after the passing of the risk.

3. The statute of limitations is 12 months, as from the passing of the risk.
4. To perform all rectifications and substitute deliveries which seem necessary to the Supplier the Customer, following communication with Messotron, shall grant the time and opportunity required for this. Otherwise the Supplier is exempt from the liability of consequences arising therefrom. Only in urgent cases of risk to the operational safety or to avert unreasonably severe damage, whereby the Supplier is to be instantly informed, or if the Supplier is in delay with remedying the defect, or if the rectification by the Supplier is unacceptable for the Customer in any other manner, does the Customer have the right to remedy the defect himself or have it remedied by third parties and to demand replacement by the Supplier of the required expenses.
5. Messotron shall bear the expenses required for the purpose of subsequent fulfilment, especially the cost of transport, toll, labour and material expenses.
6. For rectification and substitutes Messotron is liable to the same degree as it was for the originally delivered good.
7. No guarantee is accepted particularly for the following cases: Inappropriate or improper use of the delivered good, faulty assembly or commissioning by the Customer or by third parties, natural wear, faulty or negligent treatment, improper maintenance, inappropriate resources, chemical, electrochemical or electrical influences provided they are not the fault of the Supplier.
8. If the Customer or a third party perform an improper rectification, Messotron is not liable for the resulting consequences. The same applies for modifications to the delivered good without the prior approval of Messotron.
9. The Customer has the right to rescind the contract if Messotron allows the fruitless passing of an adequate period set for the rectification or substitute delivery with regard to a defect for which Messotron is responsible. The right of the Customer to rescind the contract also applies in other cases of failed rectification or substitute delivery by Messotron.
10. Following the expiration of an adequate period set for Messotron the Customer may equally demand a reduction.

Defects of Title

11. If the use of the delivered good during the periods named in par. VI Item 2 and 3 entails the infringement of industrial property rights or copyrights, Messotron shall in principle procure to the Customer the right for the further utilisation or shall modify the delivered good in such a manner that the infringement upon the intellectual property right no longer exists; if this is not feasible at economically acceptable conditions Messotron shall take the delivered good back and reimburse the contractually agreed price minus such amount that accounts for the use as well as the maintained condition of the delivered good.

Moreover, Messotron shall release the Customer of undisputed or final claims of the affected owners of the protective rights.

12. These obligations of the Supplier are final subject to Item VII 2 in the case of the infringement of protective or copyrights. They only exist if
- the Customer immediately notifies the Supplier of enforced infringements of protective rights or copyrights;
 - the Customer sufficiently supports the Supplier in the defence of asserted claims or enables the Supplier to assert modification measures;
 - the Supplier is reserved the right to perform defensive measures inclusive of an out-of-court settlement;
 - the delivered good was not manufactured or modified in accordance with the Customer's instructions;
 - the legal violation was not caused by way of the Customer independently modifying the delivered good or using it in a manner contrary to the contractually stipulated purpose.

VII. Liability

1. If due to negligence on behalf of Messotron the delivered good can not be used as stipulated by contract by the Customer as a result of omitted or incorrect proposals and advice given before or after the signing of the contract as well as the infringement of other contractually stipulated collateral duties – in particular manuals for the operation and maintenance of the delivered good – then to the exclusion of further claims of the Customer the regulations of paragraphs VI and VII 2 and 3 apply accordingly.
2. For damage that arose not to the delivered good as such, the Supplier is liable –
- in cases of intent
 - in cases of gross negligence of the owner or executive personnel,
 - in the event of the omission of assured properties, if the assurance was for the purpose of securing the Customer against the damage that occurred,
 - in cases of defects of the delivered good provided that liability applies pursuant to the product liability act for personal injury and damage to property of privately used items.

For the culpable violation of material contractual duties the Supplier shall be held responsible even in the event of gross negligence of non-executive personnel and for minor negligence, however limited to the typically and reasonably foreseeable damage according to the contract.

3. With regard to claims for damages the liability for damage caused by intent or gross negligence and for claims resulting from death, injury to body and health resulting from the negligent violation of the Supplier, is not affected. The deliberate or gross negligent violation of duty of the Supplier equals that of a legal representative or vicarious agent.
4. Further claims – irrespective of their legal cause – are exempt.

VIII. Contractual Commitment

If individual regulations in contracts as well as the present terms and conditions of delivery and payment should be invalid, then this does not affect the validity of the remaining contract or of the remaining present terms and conditions of delivery in any other respect.

In such a case the contract parties shall undertake to agree to such a regulation which replaces the invalid provision and whose meaning and purpose is as close as possible to the economic intention of the invalid provision within the framework of the overall contract.

IX. Applicable Law, Venue

1. For the legal relationship between Messotron and the Customer such governing law of the Federal Republic of Germany shall apply exclusively which applies to the legal relationships of domestic parties, exclusive of the UN Sales Convention.
2. Such court shall have jurisdiction which is competent at the head office of Messotron. Messotron is however, entitled to take legal action at the head office of the Customer.