

# GENERAL TERMS AND CONDITIONS

## Version 2018

### I. Scope

Our Company's deliveries, services and offers are exclusively based on these terms and conditions. We do not accept our customers' conditions opposing or deviating from our terms and conditions unless we explicitly confirmed their validity in writing. Contractual performance activities on our part shall thus not be deemed to be an acceptance of contractual conditions deviating from our terms and conditions. These terms and conditions shall also be an applicable framework agreement for all other legal transactions between the contractual parties and does not necessarily require their renewed express agreement. In general, our General Terms and Conditions are designed for business transactions with commercial customers; should they be applied for a business transaction with a consumer in exceptional cases, any provisions in contradiction to the Austrian Consumer Protection Act shall be disregarded. These terms and conditions are also made publicly known in the internet at <http://www.merlin-technology.com>, so that we can reasonably expect them to be known.

### II. Conclusion of Contract

Our offer is without engagement. We and our customer conclude a purchase contract or contract for work and services by the remittance of our order confirmation. A contract is also concluded by shipment of the goods ordered by the customer. All agreements shall only be binding for us upon our written confirmation. In case of contradictory documents, the content of our order confirmation shall prevail. If we receive any offers, the offeror shall be bound to its offer for a reasonable period of time, however not less than 8 days upon receipt of the offer. If no contract is concluded with us, we reserve the right to invoice the preparation of detailed cost estimates and comprehensive plans to a reasonable extent. In case we receive an order, these activities shall be included in the prices unless otherwise agreed upon in writing. We reserve the right to effect changes to constructions, minor deviations as well as execution guidelines insofar as this is necessary and useful. Should statutory permits be required for the execution of contract, the contracting party responsible for obtaining such permits must make all efforts to obtain the necessary permits in due time.

### III. Price

All prices stated are excl. VAT ex works unless expressly stated otherwise. Should wage costs change under a collective agreement for the industry or due to internal agreements or should there be changes in other costs relevant for the price calculation or costs necessary for the production of goods and services such as costs for materials, energy, transport, work performed by third parties, financing etc., we shall be entitled to adapt our prices correspondingly.



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#### **IV. Terms of Payment, Interest on Arrears**

Unless otherwise agreed upon, our claims are payable concurrently, in cash, against delivery of goods. Cash discount deductions require a separate written agreement. In case of a delay in payment or partial payment, cash discount agreements, if any, shall become ineffective even with regard to all future invoices. Payments by customers are only considered effected upon receipt in our business account.

In case of a delay in payment or a delay in connection with another performance by the customer, we can either insist on performance of the contract and

- a) postpone the fulfilment of our own obligations until payment of the overdue payments or other performance,
  - b) demand a corresponding extension of the delivery time,
  - c) accelerate the entire outstanding amount,
  - d) demand interest on arrears amounting to 8 % above the corresponding base rate of the European Central Bank from the due date, unless the customer can establish sufficient reason for relief,
  - e) claim the bank guarantee provided to us as a security,
- or, while granting a reasonable grace period, we can declare the termination of contract. Actual waiting periods are deemed to be granted grace periods. At least 10 days are considered to be a reasonable grace period.

For damage due to delay in performance, the customer shall also be obliged to reimburse us for the accrued collection and recovery charges. For every reminder we sent, an amount of € 10.90 shall be payable and for the record keeping of the obligation in our dunning process, an amount of € 3.63 shall be payable semi-annually.

Should these Terms of Payment not be observed or should we be informed of circumstances reducing the customer's credit standing after conclusion of the contract, all our claims including claims from other business transactions become due and payable immediately. In this case, we shall be entitled to only execute outstanding deliveries, including outstanding deliveries in connection with other business transactions concluded, against pre-payment or to terminate the contract and demand full damages corresponding to the amount of our performance. The redemption right for the goods delivered with reservation of title shall not be affected thereby. In case of a delay in payment, the customer shall also have the obligation to provide suitable security for all outstanding claims including interest, expenses and costs for collection and recovery.

Should, in case of an agreed payment in instalments, the customer be in arrears even with only one instalment, the total outstanding amount shall immediately become due. In addition, interest amounting to 8 % above the corresponding base rate of the European Central Bank shall be paid from accelerated capital. Payments received shall at first be allocated to costs (expenses) then to interest and finally to the capital. Within four weeks after receipt of payment, we can provide a statement indicating a deviating allocation of a designated payment. We shall be entitled to allocate designated payments to unsecured and/or to the oldest invoices.



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## V. Termination of Contract

In case of a default of acceptance (Item VII.) or other good reasons, in particular such as customer's insolvency or a dismissal of a petition in insolvency for lack of funds as well as in case of a delay in payment by the customer, we shall be entitled to terminate the contract if it has not yet been completely fulfilled by both parties. In case of a termination of contract due to circumstances attributable to the customer, we shall be entitled to receive, at our sole discretion, a lump sum for damages amounting to 15 % of the gross invoice amount and a compensation for the actually incurred damage. In case of a delay in payment by the customer, we shall be released from all other obligations to perform and deliver and we shall be entitled to retain outstanding deliveries and/or services and to demand payment in advance and/or security or to terminate the contract after having granted a reasonable grace period. If the customer - without being entitled to do so - terminates the contract or asks for a termination of contract, we can, at our sole discretion, insist on fulfilment of contract or agree to the termination of contract. In the latter case, the customer shall have the obligation, at our discretion, to pay a lump sum for damages amounting to 15 % of the gross invoice amount and a compensation for the actually incurred damage. The rescission of any services which might already have been rendered on our part shall remain unaffected.

## VI. Cancellation

The purchaser shall be entitled to terminate the contract without stating any reason upon payment of a cancellation fee amounting to 40 % of the agreed price. The court's right to reduce or abate the damages payable shall explicitly be excluded. The assertion of damage in excess thereof shall remain unaffected.

## VII. Delivery, Transport, Default of Acceptance

Unless otherwise agreed upon

- a) the prices indicated are ex our works excluding loading and assembly;
- b) packaging shall be effected as usual in trade in order to avoid the damage of goods under normal transport circumstances to the determined destination and shall only be taken back if explicitly agreed upon.

Upon request and against separate payment, we can effect and/or organise assembly, delivery, installation. For transport and/or delivery, the actual incurred costs including a reasonable surcharge for overhead costs, however, not less than the freight and carriage costs for the chosen method of transport valid at the date of delivery shall be invoiced. Assembly work shall be invoiced according to expenditure of time, a man hour rate customary for the industry shall be deemed to be agreed upon. In case the customer does not accept the goods as agreed upon (default of acceptance) and after having set a grace period that elapsed unsuccessfully, we shall be entitled to either store the goods in our premises and charge a storage fee amounting to 0.1 % of the gross invoice amount per commenced calendar day or to have them stored at the customer's risk and expense with a tradesman entitled to do so. At the same time, we shall be entitled to either insist on fulfilment of contract or - after having set a reasonable grace period of not less than 2 weeks - to terminate the contract and to dispose of the goods otherwise.



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Transport shall be effected at the customer's risk. We will choose the shipment method in our reasonably exercised discretion. If the customer desires a certain method of transport or a specific means of transport, we shall invoice these items separately. The customer must ensure that delivery vehicles can access the point of unloading in an unhindered and safe way and that unloading without delay is possible. The customer must reimburse us for all additional costs and any damage resulting from the violation of this obligation, including third parties' claims. Unless otherwise agreed upon, unloading the means of transport shall be the customer's obligation, even if we commission the transport company. In the latter case, we act as the customer's representative. If our employees perform any work in the course of unloading, these employees shall be deemed to be employees temporarily hired by the customer.

### **VIII. Term of Delivery**

We shall only have the obligation to perform if and when the customer fulfilled all its obligations required for performance, especially all technical and contractual details, pre-work and preparations. We shall be entitled to exceed the agreed deadlines and terms of delivery by up to one week. Only after expiry of this period can the customer terminate the contract after having set a grace period of 4 weeks. Unless expressly otherwise agreed upon in writing, terms of delivery shall be without obligation. However, we will make an effort to adhere to promised periods of time.

### **IX. Place of Fulfilment**

Place of fulfilment shall be the seat of our company, even if delivery is agreed to be effected at another location.

### **X. Minor Performance Changes**

If it is not a consumer business transaction, changes to our performance and/or delivery obligation which are only minor or otherwise reasonable for the customer shall be deemed to be approved. This shall especially be true for deviations due to the goods' features (e.g. measurements, colours, weight, measurement results, moisture range, etc.).

### **XI. Guarantee, Laesio Enormis**

The guarantee period shall end 12 months after delivery. The validity of article 924, sentences 2 and 3 of the Austrian General Civil Code shall be excluded. Our guarantee obligation shall only apply to defects occurring in the course of intended and normal use. It will explicitly not apply to defects due to inadequate installation by the customer or its agents, inadequate maintenance or repair, non-observance of our instructions, user guidelines, service and maintenance guidelines, repairs effected inadequately or without our consent, amendments or changes by any other person but us or our representatives as well as to defects due to normal wear and tear. Security of our goods can only be guaranteed to the extent that can be expected based on our regulations for the treatment of the subject matter of the contract and based on other given information. Only those characteristics we guaranteed expressly in writing shall be deemed to be guaranteed characteristics. We shall not be liable for minor deviations in construction and measurement. We shall only be bound to our publicly made statements concerning the subject matter or the



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characteristics of samples and models we provided, if we guarantee them explicitly in writing in our offer or in our order confirmation. We shall not be bound by any statements of the manufacturer, importer into the EEA or any other person purporting to be the manufacturer. We expressly exclude liability of any kind for our assembly instructions. Replacement or improvement of the subject matter shall be effected in our works. Costs for shipment and transport, if any, shall be borne by the customer. The customer must provide necessary support for guarantee work free of charge. Replaced parts, if any, shall become our property. We shall not assume any guarantee for the sale of second-hand goods as well as for the assumption of repair orders or for changes or modifications. The guarantee shall expire immediately if the customer or a third party we did not explicitly authorise to do so performs changes or amendments to the delivered goods without our written consent. We shall not accept invoices in this case. The customer shall be obliged to carefully inspect the delivery immediately upon receipt. The customer must notify us in writing of any defects immediately upon receipt of the goods. We shall, at our sole discretion, fulfil guarantee claims by improvement, replacement or price reduction. The customer explicitly waives its right to rescission of contract. In general, replacement of goods is only possible in fulfilment of a right to correction of a defective delivery, otherwise it is excluded. If goods are manufactured on the basis of customer's construction information, drawings and other specifications, our liability shall not extend to the correctness of the construction but only to a correct execution according to the customer's specifications. We shall not be obliged to verify the correctness or fitness for use of these specifications and the documents provided by the customer. The customer must indemnify and hold harmless our company in case of any violation of property rights. Should the customer not or not in a timely manner fulfil its payment obligations, our guarantee obligation for defective goods shall become inapplicable. There shall be no extension, suspension or interruption of the warranty periods and obligations due to a remedy of defects. Recourse claims against us according to § 933 b of the Austrian General Civil Code shall be excluded. The application of § 934 of the Austrian General Civil Code (laesio enormis) shall be excluded.

## **XII. Damages**

In cases of slight and simply gross negligence against us, all claims for damages shall be excluded. In cases in which we are obliged to pay damages according to these conditions, we shall not be obliged to pay damages to the customer for any damage to goods which are not subject matter of contract, loss of profit, loss of use, contractual loss or any other economic or indirect consequential damage. In any case, the damages to be paid by us shall not exceed the order value. All claims for damages must - should we not expressly acknowledge the defect in writing - be asserted in court within one year after having gained knowledge of such, otherwise these claims become extinct. Guarantee claims and claims for damages from work performed by our employees or vicarious agents in the course of the execution of contractual services upon the customer's instruction, but which are not included in our agreed scope of service, shall completely be excluded, as in such a case, our employees are deemed to be employees temporarily hired by the customer. The existence of the conditions for a claim for damages must be proved by the injured party. Before connecting or transporting EDP products and/or before installing



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computer programmes, the customer shall be obliged to adequately secure the data already existing on the computer system. We do not assume any liability for lost data and any damage in connection thereto.

### **XIII. Product Liability**

Recourse claims according to article 12 of the Product Liability Act shall be excluded unless the person entitled to recourse can prove that the failure occurred in our sphere and was due to gross negligence at the least.

### **XIV. Retention of Title**

We reserve the title to all delivered items until complete fulfilment of all financial obligations by the customer. We are entitled to enter the customer's premises at any time in order to mark our goods. The customer must fulfil the formalities necessary to protect the retention of title.

If our goods are processed or combined (mixed or amalgamated) with other goods which do not belong to us, we shall acquire a co-ownership to this new product at a ratio corresponding to the ratio between the value of our goods and the value of the processed and/or mixed product at the time of processing and/or mixing. The retention of title shall also extend to the new product.

We shall be entitled to assign the retained title to any third party, especially to credit institutions at any time.

The customer shall not be entitled to sell goods to third parties, for which retention of title or an entitlement was asserted, unless we explicitly express our consent to this sale in writing. The customer already assigns to us all claims against third parties arising from the sale of the goods under retention of title as "raw materials", processed or mixed with all ancillary rights up to the amount of the receivables including interest and costs, irrespective of whether the goods under retention of title are sold to one or more purchasers without or after being processed or mixed. The customer shall be obliged to record the assignment of the receivables in its books and to inform its purchasers of this assignment upon our request.

Upon request, the customer must inform us of its purchasers and inform its purchasers of the assignment in a timely manner. The customer must inform its purchasers of the assignment by recording it in the business records, delivery notes, invoices etc. If the customer defaults in payment, all sales revenues it receives shall be entered separately and it shall only own these revenues on our behalf. Insurance claims, if any, have already been assigned to us to the extent admissible according to article 15 of the Austrian Insurance Policy Act.

The customer must inform us immediately of any attachments of property or other demands and assert our title. The costs for this legal procedure shall be borne by the customer.



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## **XV. Retention**

The contractual partner's right of retention shall be excluded.

## **XVI. Choice of Law, Place of Venue**

These terms and conditions are subject to Austrian law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods shall explicitly be excluded. The contractual language shall be German. The contractual parties agree upon the Austrian domestic jurisdiction. Place of venue for all disputes arising out of or in connection with the contract shall be the competent court in 4910 Ried im Innkreis. We can also sue in the court having jurisdiction over the customer. The parties can also agree upon the competence of a court of arbitration.

## **XVII. Data Protection, Change of Address, Copyright**

The customer agrees that we may also electronically store and process the personal data contained in the purchase contract in fulfilment of this contract. The customer is obliged to inform us of changes of his private and/or business address as long as the legal transaction being the subject matter of the contract has not been fully fulfilled by both parties. If the customer fails to do so, notifications and statements shall be deemed to be delivered if sent to the last known address.

Plans, sketches and other technical documentation as well as samples, catalogues, leaflets, images and the like shall always remain our intellectual property and the customer shall not obtain any rights of use or exploitation thereto.

Drawings and samples provided to us, including drawings and samples which did not result in an order, shall remain at the customer's disposal. Should they not be picked up within 6 weeks after receipt, we shall be entitled to destroy them.

## **XVIII. Ineffectiveness, Supplemental Standards**

If individual provisions of these General Sales Conditions are found to be ineffective, the remaining provisions shall remain in force. The ineffective provision must be replaced by a legally valid provision which comes as close as possible to the intended economic purpose of the ineffective provision.

The contracting party declares that, in view of the pricing that is favorable to him, there is no disadvantage in the event of any change in the legal situation as a result of these GTC.



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