

General Terms and Conditions - Terms of Delivery and Payment

1. scope of application

The deliveries of M&S Armaturen GmbH (hereinafter referred to as: Seller) shall only be made on the basis of the following General Terms and Conditions in the version valid at the time of the conclusion of the contract. Agreements or terms and conditions of the purchaser deviating from these require the express written consent of the seller in order to be effective, insofar as they conflict with these terms and conditions. The Seller's Terms and Conditions of Sale shall become an integral part of the contract at the latest upon acceptance of the offer submitted by the Buyer (when placing an order).

2. offer and conclusion of contract

a) The seller's offers of goods are non-binding. Upon completion of the customer's order in the online shop, the customer submits a binding purchase offer. An express acceptance of the offer only comes about when the seller expressly declares acceptance of the purchase offer or when the goods are sorted out and shipped to the customer without prior express declaration of acceptance.

b) The price valid at the time of the conclusion of the contract shall apply, plus the taxes to be shown openly in the invoices, insofar as they do not conflict with separate agreements. All prices are exclusive of the shipping costs stated in each case.

c) The Seller reserves its unrestricted property and copyright exploitation rights to cost estimates, drawings and other documents (hereinafter referred to as Documents). The Documents may only be made accessible to third parties with the prior consent of the Seller and, if the order is not placed with the Seller, must be returned to the Seller immediately upon request.

3. obligations of the purchaser

a) If the Purchaser is in default of payment, interest shall be charged on the purchase price during the period of default at a rate of 9 percentage points above the respective base interest rate. The Seller reserves the right to prove and assert higher damages caused by default. If the Purchaser is a consumer, the aforementioned interest rate shall be 5 percentage points above the respective base interest rate.

b) If the Purchaser is in default of acceptance, the Seller shall be entitled to withdraw from the contract after setting a reasonable grace period and to claim damages in lieu of performance.

4. terms of use online shop

a) In addition to direct orders, the buyer has the option of creating his own user account and thus registering as a customer in the seller's trading system. The data required to create the user account must be provided by the user completely and truthfully. b) With the login and the associated acceptance of the terms and conditions and the privacy policy of the online shop, the online shop user agrees not to disclose his access data (customer number and assigned password) to third parties.

c) The online shop user has the obligation to inform the company M&S Armaturen GmbH immediately if an employee, to whom the access data was known, leaves the company of the online shop user. In this case, M&S Armaturen GmbH will provide the corresponding company with new access data.

5. payment

5.1 The invoice amounts are to be paid by bank debit or in accordance with the conditions of the Seller on the order confirmation and/or invoice. Payment periods stated on the order confirmation and/or invoice, in particular also for the calculation of the period for discount deductions, shall commence upon receipt of the invoice. Agreed cash discount deductions are only permissible if no invoices already due are to be settled. The purchaser may only offset or assert a right of retention against claims that are undisputed or have been legally established. In all other respects, offsetting and the assertion of a right of retention shall be excluded.

5.2 Irrespective of the agreed method of payment, the Seller may also demand security prior to delivery if, after conclusion of the contract, justified doubts arise as to the solvency or creditworthiness of the Purchaser, agreed terms of payment or delivery are not complied with in material respects or material changes occur in the business relationships of the Purchaser. If the Purchaser refuses to provide security within a reasonable period of time set by the Seller, the Seller may withdraw in whole or in part from all contracts concluded with the Purchaser. Further claims remain reserved.

5.3 Employees of the Seller shall only be entitled to collect payments upon presentation of an existing legitimation for this purpose.

6. delivery

6.1 In the absence of specific instructions from the Purchaser, the choice of the transport route shall be made by the Seller at its due discretion. Cartage charges at the place of receipt, surface freight as well as additional freight for express goods and air freight shipments shall in any case be borne by the orderer. Freight charges for self-collection by the purchaser shall be calculated according to the most favourable freight tariff for the seller.

6.2 The weight of the delivery shall be determined by the weight ascertained at the time of dispatch at the supplying plant or warehouse.

6.3 The agreed delivery period shall commence with the dispatch of the order confirmation, but not prior to the provision of the documents, approvals and releases to be procured by the Purchaser. If an agreed delivery date is exceeded by more than two weeks, the Purchaser shall be entitled to grant the Vendor an additional period of two weeks. If the delivery obligation is not fulfilled by the expiry of the grace period, the Purchaser shall be entitled to withdraw from the contract. The withdrawal must be declared in writing, immediately after expiry of the grace period set, at the latest within two weeks after expiry of this period.

6.4 Events for which the Seller is not responsible and which make the delivery or its transport impossible or unreasonably difficult shall give the Purchaser the right to withdraw from the contract insofar as these events last longer than three months. Independent of this is the right of the seller to postpone the delivery until the obstacle has been removed. The Seller shall notify the Purchaser of such circumstances without delay. Partial deliveries which have already been made shall be deemed to be an independent transaction; payment for the partial deliveries may not be refused on account of the quantities still outstanding. In the event of at least grossly negligent delayed delivery/partial delivery or complete or partial non-delivery, claims for damages are limited to the typical, foreseeable damage. Otherwise, claims for damages are excluded.

General Terms and Conditions - Terms of Delivery and Payment

7. transfer of risk

The risk shall pass to the customer when the goods are handed over to the forwarding agent, carrier or other third party appointed to carry out the shipment. The handover begins at the same time as the loading process. The customer bears the risk for all returned deliveries during the return transport as well as for the packaging during the outward and return transport.

8. liability for defects

8.1 Identifiable defects shall be notified to the Seller without undue delay within the meaning of § 377 of the German Commercial Code (HGB), at the latest within eight days after receipt of the delivery at the place of destination. Samples of the delivery complained about are to be sent in. If there is a defect, the Purchaser may - unless otherwise agreed - only demand rectification or subsequent delivery (subsequent performance) of the delivery complained of. If the supplementary performance fails twice, the purchaser is entitled to reduce the purchase price or to withdraw from the contract. The agreed liability for defects shall apply to all deliveries within the scope of the rectification of defects.

8.2 The Seller shall be liable to the Customer for all contractual, quasi-contractual and statutory claims, including claims in tort, for damages and reimbursement of expenses as follows:

The seller is liable for any legal reason without limitation

- in the event of intent or gross negligence,
- in the event of intentional or negligent injury to life, limb or health,
- on the basis of a guarantee promise, insofar as nothing else is regulated in this respect,
- on the basis of mandatory liability such as under the Product Liability Act.

a) If the Seller negligently breaches an essential contractual obligation, liability shall be limited to the foreseeable damage typical for the contract, unless liability is unlimited in accordance with the above clause. Material contractual obligations are obligations which the contract imposes on the Seller according to its content in order to achieve the purpose of the contract, the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the Customer may regularly rely, "cardinal obligations".

b) In all other respects, liability on the part of the seller is excluded.

c) The above liability provisions shall also apply with regard to the Seller's liability for its vicarious agents and legal representatives.

8.3 The technical application advice provided by the Seller verbally and in writing is non-binding and does not release the Purchaser from its own examination of the products for their suitability. This shall also apply if the delivery is generally recommended for a specific purpose. Should liability on the part of the Seller nevertheless come into question, the provisions of the agreed liability for defects shall apply accordingly. It shall be the sole responsibility of the Purchaser to comply with any industrial property rights of third parties, e.g. application patents, and statutory regulations when processing the delivery.

8.4.1 Claims of the Buyer due to material defects shall become time-barred one year after handover of the object of purchase to the Customer. Excluded from this are claims for defects by consumers as well as claims for damages due to the infringement of life, body or health and claims for damages due to gross negligence or intentional damage caused by the seller. In this respect, the statutory limitation periods shall apply.

9. retention of title

9.1 The delivery shall remain the property of the Seller until all outstanding claims arising from the joint business relationship, including interest and costs, have been settled in full or until the cheques or bills of exchange given for this purpose have been honoured in full. The seller is entitled to assert the retention of title by simple declarations. The retention of title also extends to the resold delivery and to the products resulting from processing. In the event of combination or mixing with material which does not belong to the Seller, the Seller shall always acquire co-ownership of the new item produced in the ratio of the value of the reserved goods to the value of the new item. In this case, the Purchaser shall be deemed to be the custodian for the Seller to this extent. If the seller does not acquire co-ownership when combining several items, the orderer shall already now transfer to the seller the co-ownership share determined in accordance with sentence 4.

9.2 The customer is revocably entitled to sell the delivery in the ordinary course of business. Any other disposal, in particular pledging, transfer by way of security or transfer by way of exchange is not permitted. The Seller must be notified immediately of any pledges made by third parties - even after mixing or processing - and of any other impairment of the rights to the delivery owned by the Seller. The Purchaser hereby assigns to the Seller accepting the assignment, irrespective of any processing, all claims and ancillary rights to which it is entitled from the resale and the business relationship with its customers in connection with the resale. In the event that the delivery is sold by the Purchaser together with other goods not belonging to the Seller, the assignment of the purchase price claim shall only apply to the amount of the value of the delivery.

9.3 The Purchaser is revocably authorised to collect the claim arising from the resale of the delivery. The authorisation to collect and the right to process shall also expire without express revocation if the Purchaser ceases to make payments, in the case of Clause 4.2, a protest of a cheque or bill of exchange or a seizure that has taken place. Assigned accounts receivable received thereafter shall immediately be accumulated in a special account with the designation to be specified separately by the Seller. At the Seller's request, the Purchaser shall immediately inform the Seller in writing of the debtors of the assigned claim and notify the debtors of the assignment. The seller undertakes to release, at his discretion, the securities given to him at the request of the orderer, insofar as their realisable value exceeds the respective total claim of the seller to be secured by 20%.

9.4 If the orderer defaults on its payment obligation to the seller or breaches one of the obligations arising from the agreed retention of title, the entire remaining debt shall become due immediately. In such cases, the Seller shall be entitled, subject to § 107 (2) InsO, to demand the surrender of the delivery and to collect it from the Purchaser. The purchaser has no right of possession. The Seller shall be entitled to notify the Purchaser's customers of the assignment of the Purchaser's claim to the Seller and to collect the claim. Any repossession of goods shall always be made only as a precaution; even if partial payment is subsequently permitted, this shall not constitute a withdrawal from the contract.

General Terms and Conditions - Terms of Delivery and Payment

10. final provisions

10.1 If individual provisions of these terms of delivery or of the delivery transaction are or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties are obliged to agree on a new provision that comes as close as possible to the purpose pursued by the invalid provision.

10.2 The place of performance for all obligations arising from the delivery transaction and the place of jurisdiction for all disputes in connection with the delivery transaction and/or any proceedings for documentary evidence shall be the Seller's place of business in Friedeburg, unless otherwise agreed.

10.3 The relations between Seller and Purchaser shall be governed exclusively by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

FRIEDEBURG, September 2021