

1. Scope

- 1.1 These T&Cs only apply for companies within the meaning of § 14 paragraph 1 BGB (German Civil Code).
- 1.2 All deliveries, performance, offers, payments and any other legal transactions as well as any separate contractual agreements are subject to these T&Cs. General terms and conditions of purchase and delivery of the client are not applied, unless they were explicitly acknowledged by MS in writing.
- 1.3 Offers by MS are subject to confirmation and non-binding. This also applies if MS provided the purchaser with catalogs, technical documentation (for example drawings, plans, calculations, references to DIN standards), other product descriptions or documentation - also in electronic form.
- 1.4 Orders of the purchaser are deemed as binding contractual offers. Orders have to be made in writing to MS. A contract is only concluded upon order confirmation by MS, but at the latest with the acceptance of the delivery by the purchaser.
- 1.5 MS reserves the rights of ownership and any copyrights to figures, drawings, plans, design documentation, samples, cost estimates and similar information of physical and non-physical form – also in electronic form. They may not be made accessible to third parties.
- 1.6 MS undertakes to make any information and documentation identified by the purchaser as confidential only available to third-parties with the purchaser's agreement in accordance with the Federal Data Protection Act (BDSG).
- 1.7 Any documentation provided by the purchaser remains their property. MS is not entitled to use these without the agreement of the other party, unless for the creation of the offer and for the complete value chain of the subject of the contract.
- 1.8 The purchaser may not transfer his contractual rights to third parties without the explicit agreement of MS. MS may not unreasonably refuse the agreement to the transfer of contractual rights.

2. Prices

- 2.1 Prices are, unless otherwise agreed in the offer/order/order confirmation, ex works and do not include the costs for packaging, freight, loading and unloading, transport, insurance, installation, assembly, start-up and operating briefing.
- 2.2 Prices are expressed as net price plus the statutory VAT.

3. Payment Terms

- 3.1 Invoices are due for payment immediately without deductions or according to the payment terms included in the respective order confirmation.
- 3.2 The purchaser may only off-set receivables that are undisputed and legally confirmed.
- 3.3 In case of delayed payment, MS reserves the right to charge late payment interest in the amount of 8 percentage points above the base rate per year.
- 3.4 Any objections against MS' accounting, bank statements, account reconciliations etc. must be sent in writing and within a time limit of 4 weeks following receipt of the relevant document. A lack of objections by the due date is deemed as acknowledgment of the invoice sum, the balance etc., provided that MS pointed out this legal effect at the beginning of the period.

4. Delivery period, delivery delay

- 4.1 The delivery period results from the agreements between the contracting parties. MS' compliance with the delivery period assumes that all business and technical questions between the contracting parties have been clarified and that the purchaser has fulfilled all of his obligations, such as the provision of the documentation, approvals, required official certifications or authorizations and other performance and delivery components as well as the agreed down payment. If this not the case, the delivery period is extended accordingly. This does not apply if the delay is attributable to MS.
- 4.2 The delivery date indicated in the order confirmation is a scheduled date chosen with a commonly reasonable degree of care. If MS cannot meet binding delivery dates due to circumstances that are not attributable to MS (non-availability of the performance), MS will notify the purchaser immediately and at the same time inform the purchaser of the new estimated delivery date. If the performance is also not available within the new delivery period, then MS is entitled to completely or partially withdraw from the contract. Any counter-performance rendered by the purchaser shall be reimbursed by MS immediately. A non-availability of performance within this meaning is in particular the non-timely delivery by MS' suppliers, in case MS concluded a matching cover transaction, neither MS nor its suppliers are at fault or if MS is, in individual cases, not obliged to undertake the procurement.
- 4.3 If during the course of the performance execution new delivery periods are mutually agreed upon between the contracting parties due to changes to the product or the performance obligations then there is generally no new order confirmation required.
- 4.4 The delivery period is deemed fulfilled, if the delivery item has left MS' factory upon expiry of the delivery period or the readiness for shipping was notified. Insofar as an acceptance has to take place - except for the justified acceptance refusal - the acceptance date is decisive, alternatively the notification of the readiness for acceptance.
- 4.5 If shipping or the acceptance of the delivery item is delayed due to reasons/causes attributable to the purchaser, then he will be charged within one month of the notification of readiness for shipment or for acceptance costs resulting from this delay.
- 4.6 If the non-observance of the delivery period is due to force majeure, such as industrial disputes, mobilization, strikes, lockouts or other events that are beyond the control of MS, the delivery period will be extended appropriately. MS shall inform the purchaser about the start and end of such circumstances as soon as possible.
- 4.7 The purchaser may withdraw from the contract without setting time limits, if the entire performance by MS becomes finally impossible before the passing of risk. Furthermore, the purchaser may withdraw from the contract, if the execution of part of the delivery becomes impossible and he has a legitimate interest in the refusal of the partial delivery. If this is not the case, the purchaser has to pay the contract price due for the partial delivery. The same applies due to the inability of MS. In this case, liability for compensation or damage does not apply. Apart from that, section 9.2 applies.
- 4.8 If the impossibility or the inability occurs during the acceptance delay or if the purchaser is solely or largely responsible for these circumstances, he remains obliged to render counter-performance.
- 4.9 If the purchaser sets an appropriate delivery period for the performance by MS – observing legal exceptions – after the due date and if this period is not met, the purchaser is entitled to withdraw within the limits of statutory regulations. The purchaser is obliged to specify upon the supplier's request within a reasonable time period whether he will exercise his right of withdrawal.
- 4.10 Any further claims resulting from delivery delays - in particular claims for damages, are determined solely by section 9.2 in these T&Cs.

5. Transfer of risks, acceptance, and shipping

- 5.1 The place of fulfillment for deliveries/performances of MS is - provided nothing deviating has been explicitly agreed upon in writing - the head office in Spaichingen.
- 5.2 Deliveries/performances by MS are undertaken according to EXW Incoterms ® ICC 2010, meaning the risk is transferred to the purchaser, when MS has made the delivery item available for collection by the purchaser, this also applies if partial deliveries are made or MS has accepted further performances such as the shipping costs, the delivery or assembly. Insofar as an acceptance needs to occur, the acceptance is decisive for the transfer of risks. The acceptance has to take place immediately on the acceptance date, alternatively following the notification by MS regarding the readiness for acceptance. The purchaser may not refuse the acceptance due to the presence of an immaterial defect.
- 5.3 If shipping or acceptance is delayed due to circumstances that MS is not responsible for, the risk passes to the purchaser on the day of the notification of readiness for shipping or acceptance. MS undertakes to take out insurance coverage requested by the purchaser and at the cost of the purchaser.
- 5.4 MS is entitled to make partial deliveries, insofar as those are reasonable for the purchaser.
- 5.5 Apart from that a preliminary or final acceptance is deemed as granted if despite a written notification of readiness for inspection from MS, on the part of the purchaser no acceptance date is set within 4 weeks or if in case of a completed delivery the delivery item was already put into operation by the purchaser.
- 5.6 Shipping route and means of transport are left to MS excluding any liability.
- 5.7 The goods are packed in standard packaging. Packaging, protection and transportation aids are not taken back. Any packaging exceeding the transportation purposes or any other special protection, for example for longterm storage, requires a separate agreement.
- 5.8 **Incoming goods inspection**
The client has to inspect the goods immediately upon receipt to assess identification and completeness as well as any externally recognizable damage and defects. The client has to notify the carrier or forwarder about any losses or transport damages. If a loss or damage of the transport goods is externally recognizable, the notification has to be made at the latest upon delivery, failing which in writing within 7 days following delivery. The notification has to identify the damage clearly. MS immediately receives a written message regarding this notice of damage from the client. Complaints resulting from the inspection as per paragraph 1, are in any case to be communicated in writing to MS, otherwise the goods are deemed approved. Complaints about hidden material defects have to be made in writing immediately following their discovery. If the delivery is not made to the customer but according to the agreement made to a third party specified by the customer, the client has to impose the obligations under the paragraphs 1 to 3 on that third party. In addition to the third party the customer remains obligated.

6. Installation and commissioning

- 6.1 If not otherwise agreed in writing, the machine/system is installed and put into operation by MS service technicians. A seamless installation and commissioning assumes that the machine/system was unloaded by the client, completely unpacked and moved to its final installation site. Furthermore, all requirements regarding our installation and operating conditions and our installation plan have to be fulfilled by the client (for example supply connections).
- 6.2 Furthermore, our offer price assumes that appropriate support staff and if necessary required lifting devices, are made available to our MS service technician responsible for the assembly free of charge.
- 6.3 The expenses for installation, commissioning and briefing are included in the offer according to separately stated specifications

those do not apply for work on weekends and on work-free business days. We charge any expenses resulting from this according to our respective current assembly and service cost rates.

- 6.4 Disruptions that are not attributable to us are charged for separately.

7. Reservation of title

- 7.1 MS retains the ownership of the delivered goods until receipt of all payments – also for additionally due ancillary performances, where applicable – under the supply contract.
- 7.2 In case of a cancellation for the scope of delivery by the purchaser at MS, MS shall issue a proportionate invoice reflecting the current processing state which the purchaser has to pay immediately.
- 7.3 Upon MS' request the purchaser has to support MS comprehensively in his efforts to protect the ownership right of the delivery item in the respective country or otherwise ensure sufficient security of the interests of MS in the payment.
- 7.4 MS is entitled to insure the deliver item at the purchaser's expense against theft, breakage, fire, water or other damage, provided the purchaser himself has not verifiably taken out insurance coverage.
- 7.5 Until the final payment, the purchaser may not sell, pledge or transfer the delivery item as security. In case of seizure, confiscation or other dispositions by third parties, MS has to be notified immediately in writing.
- 7.6 If the purchaser acts in breach of contract, in particular in case of payment delay, MS is entitled to retract the delivery item following a notice, in stages, against repayment of any possible already made partial payments. The purchaser is obliged to return the items.

8. Claims for defects

- 8.1 MS warrants the freedom from defects and completeness of delivery and performance from the delivery date. If not specified otherwise, the warranty period for custom machines and ultrasonic servo presses is 12 months for single shift operation, but max. for 2,000 operating hours, whichever occurs first. The warranty period for individual ultrasonic components is 5 million welding cycles. The warranty starts from the time of acceptance, but at the latest 6 weeks after delivery. Additional work which was not caused due to a significant defect will be charged during the warranty period as well. The supplier is liable for any material or legal defects of the delivery to the exclusion of all further claims - subject to section 9 - as follows:

Material defects

- 8.1.1 All parts that turn out to be defective due to a circumstance before the transfer of risk, are to be rectified or replaced by parts that are free of defects (subsequently collectively referred to as supplementary performance) at MS' discretion. MS has to be notified immediately in writing about the discovery of such defects. Replaced parts become property of MS.
- 8.1.2 The purchaser has to grant MS the required time and opportunity to perform the supplementary performance due, and in particular has to hand over the rejected good for testing purposes. In case of a spare parts delivery, the purchaser has to return the defective item in accordance with legal requirements. The supplementary performance does not include the disassembly of the defective item nor the renewed assembly, if the assembly was originally not MS' obligation.
- 8.1.3 MS bears any expenses required for the testing and supplementary performance in particular transportation, travel, work, and material costs (not disassembly and re-assembly), if there is indeed a defect. However, if the purchaser's request to have defective parts rectified or replaced is proven to be unjustified, MS may then request the reimbursement of any resulting costs.
- 8.1.4 Within statutory provisions, the purchaser is entitled to withdraw from the contract if MS – taking legal exceptions into account – allows a reasonable specified time period for the rectification or spare part

delivery due to a material defect to elapse without effect. If the defect is only immaterial, the purchaser is only entitled to a reduction of the contract price. Otherwise, the right to reduction of the contract price remains excluded.

8.1.5 No liability is assumed in particular in the following cases:

- a. Unsuitable or incorrect use, incorrect assembly or incorrect commissioning by the purchaser or any third party, ordinary wear and tear, incorrect and careless handling, improper maintenance, unsuitable operating equipment, defective building works, unsuitable building ground, chemical, electromechanical or electrical influences – provided that MS is not responsible for them.
- b. If the purchaser or a third party performs an improper rectification, MS assumes no liability for any consequences resulting thereof. The same applies to any modifications to the delivery item made without MS' prior approval.

Legal defects

- 8.1.6 If the use of the delivery item causes the infringement of industrial property rights or copyrights within the domestic territory, MS shall at his own expense generally procure for the purchaser the right for continued usage or modify the delivery item in a way acceptable for the purchaser so that the protective rights infringement ceases to exist.
- 8.1.7 If this is impossible under economically reasonable conditions or within a reasonable time period, the purchaser is entitled to withdraw from the contract. Under the mentioned conditions MS is entitled to withdraw from the contract as well.
- 8.1.8 Moreover, MS shall release the purchaser from undisputed or legally confirmed claims of the respective protective rights holder.
- 8.1.9 MS' obligations mentioned in section 8.1.6 are conclusive in the event of infringement to protective rights or copyrights, subject to section 9.2. They only exist if
 - a. the purchaser informs MS immediately about asserted protective rights and copyrights infringements,
 - b. the purchaser supports MS to a reasonable extent with the defense of asserted claims and/or makes it possible for MS to perform the modification measures pursuant to 8.1.6,
 - c. all defensive measures including out-of-court settlements are at MS' discretion,
 - d. the legal defect is not due to an instruction of the purchaser
 - e. the infringement of rights is not due to the purchaser having modified the delivery item unauthorized or used it in a manner not compliant with the contract.

9. Liability of the supplier, disclaimer

- 9.1 If the purchaser is unable to use the delivery item as contractually agreed, due to MS' culpably neglected or incorrect explanations, suggestions and advice, that occurred before or after the conclusion of contract, or due to culpable infringement of other ancillary contractual obligations – in particular instructions for the operation and maintenance of the delivery item – then the provisions in sections 8 and 9.2 apply to the exclusion of any further claims of the purchaser.
- 9.2 For any damage that does not affect the delivery item itself, MS is only liable – irrespective of the legal grounds – for
 - a. intent,
 - b. gross negligence of the owners/bodies or executive employees,
 - c. culpable injury to life, body, health,
 - d. defects that an individual fraudulently kept secret,

- e. as part of a guarantee promise,
- f. Defects of the delivery item, insofar as liability exists for personal and material damage to privately used items in accordance with the product liability law. In case of culpable infringement of significant contractual obligations, MS also is liable for gross negligence of non-executive employees and for slight negligence, for the latter case limited to reasonably foreseeable damage typical for the contract. MS has taken out a product liability insurance with adequate cover.

10. Limitation

- 10.1 All claims of the purchaser – irrespective of the legal grounds – lapse after 12 months. For compensation claims pursuant to section 9.2 a - e and f the legal periods apply. They also apply for defects of a building or for delivery items that were utilized for a building in accordance with their customary manner of use and caused its defectiveness.

11. Software usage

Insofar as software is included in the scope of delivery, the purchaser is granted a non-exclusive right to use the supplied software including its documentation. It is provided for the use on the delivery item intended for it. The use of the software on more than one system is not permitted.

The purchaser may only duplicate, revise, translate or change the object code into the source code within the legally permitted extent (§§ 69 a et seq. UrhG [German Copyright Act]). The purchaser undertakes not to remove or change manufacturer's specifications - in particular copyright notes - without explicit approval by MS.

All other rights to the software and the documentation including copies remain with MS or the software supplier. The granting of sub-licenses is not permitted.

MS provides updates for the use of the software included in the scope of delivery at its own discretion within reasonable periods of time. It is recommended to the purchaser to carry out updates immediately or to have them carried out, as only with the current software status an effective support and removal of defects can be guaranteed.

Depending on the software, MS can also deliver improved or changed functions within the scope of updates at its own discretion, but the purchaser is not entitled to this. MS is free in the design of the software and can change the appearance and the way of operation as long as the essential functionality of the software is maintained; MS can change, add or remove functions as long as it is ensured that the subsequent versions will provide at least the essential services of the original versions.

It is recommended to commission MS to carry out the updates. However, the purchaser also has the possibility to carry out updates himself. However, the installation of an update is then at the purchaser's own risk. In case of a faulty installation the original system cannot be restored. If the system does not function correctly after an update, MS does not take responsibility for this. The liability of MS for claims for damages and reimbursement of expenses is excluded in this respect.

The purchaser is obliged to immediately examine the updates provided or carried out. MS must be informed immediately in writing of any defects which are discovered in this process. Defects which could not be detected within the scope of the described proper inspection as well as defects occurring later must be reported in writing immediately after their detection.

12. Applicable law, place of jurisdiction

- 12.1 All legal relationships between MS and the purchaser are solely governed by the law of the Federal Republic of Germany applicable to mutual domestic legal relationships.

- 12.2 The place of jurisdiction is the court of competent jurisdiction responsible for the registered office of MS. However, MS is entitled to file suit at the registered office of the purchaser.