



1. Validity
 - a) All agreements and offers between us and our clients are based on the following terms and conditions. Changes as well as deviating conditions of the client will only be included in the contract when we expressly agree to it; the same applies to the exclusion of these terms and conditions.
 - b) The terms and conditions also apply to future deliveries, services and offers, also when these are not agreed to again in a separate contract.
 - c) The terms and conditions apply exclusively to clients who are contractors in terms of § 14 BGB (German Civil Code), a legal entity under public law and a public law special fund (§ 310 BGB).
 - d) Even if these terms and conditions are made available in English or any other language, the German text shall prevail.
 - e) Legally relevant declarations and notifications by the supplier with respect to the contract (e. g. setting of deadlines, reminders, rescission) must be submitted in writing. "In writing" in accordance with these terms and conditions means in a written or text form (e. g. letter, email, fax). Legal formalities and other documentary proof, especially where there is doubt about the identity of the person submitting the declarations, remain unaffected.
2. Offer, conclusion of contract
 - a) Our offers are without obligation unless the offer states otherwise.
 - b) The client's purchase order constitutes a binding offer. We are entitled to accept this offer within 21 days from the purchase order date. Acceptance usually takes place in the form of an order confirmation. Service execution within this period shall also constitute acceptance of the offer.
 - c) Drawings, illustrations, descriptions, plans, brochures or similar documents attached to or underlying the offer are non-binding information that does not form part of the contract, unless it is expressly agreed in writing that such documents or specific content of these documents shall be included in the contract.
3. Prices, payment conditions
 - a) Our prices are determined – unless certain prices are expressly agreed upon – by our current price lists on the date of delivery.
 - b) All listed prices are net prices, which are subject to the respective statutory value-added tax as well as packaging and shipping costs.
 - c) In contracts with a delivery time of more than 4 months, we reserve the right to increase or decrease the agreed prices according to changes in costs, particularly for material, labour and other incidental expenses. If the increase is more than 5% of the agreed price, the client has a right to rescind the contract (termination or withdrawal).
 - d) Unless our order confirmation, invoice or an agreement states otherwise, the prices apply for immediate payment without discount.
 - e) We are entitled to carry out outstanding deliveries or services only against advance payment or the provision of security, if we, after conclusion of the contract, become aware of circumstances that significantly reduce the creditworthiness of a client and which put the payment of our outstanding accounts receivable by the client at risk.
4. Delivery, delivery time and deadline, part delivery, risk transfer, delay in acceptance
 - a) Delivery times or delivery dates specified by us are not binding, unless it is agreed that a specific delivery time or delivery date is binding. The beginning of the delivery period or deadline requires the clarification of all technical matters and the timely and proper fulfilment of obligations, particularly in respect to the obligations of cooperation of the client.
 - b) We are entitled to provide the contracted services in part deliveries, provided that this is reasonable to the client.
 - c) If delivery on call is agreed to, the client must place the request within a reasonable time.
 - d) If due to force majeure, acts of government, business closure, strikes or similar circumstances – also at our suppliers – delivery is made impossible or unduly difficult, we are released of the obligation of delivery for the duration of the delay and its consequences. If the resulting delays exceed a period of 6 weeks, both parties have the right to withdraw from the contract in terms of the affected scope of services. In the event of non-delivery or inadequate delivery by our suppliers, we are released from our delivery obligations in whole or in part. This applies only if we have made the necessary arrangements to procure the goods to be supplied by us. In this case we undertake to surrender our claims against the supplier to the client at their request. Further claims are excluded.
 - e) Delivery will be made ex-factory at the expense and risk of the client, unless otherwise agreed in a particular case.
 - f) The risk of accidental loss and accidental deterioration of the delivery passes to the haulier, carrier or other person for shipment to the client when handed over to any of these.
 - g) If the client defaults on acceptance or culpably violates other cooperation obligations, we are entitled to compensation for damages in this respect, including any additional costs (in particular storage costs). Further claims are reserved. Moreover, in deviation of f), in this case the risk of accidental loss or accidental deterioration of the delivery is passed onto the client at the time that he defaults on acceptance.
5. Liability for defects / Warranty
 - a) the statutory provisions apply to the client's rights in the event of material defects or defects of title (including wrong and short delivery, improper assembly/installation and faulty instructions), unless stipulated otherwise below. In all cases, this shall be without prejudice to the statutory provisions on the purchase of consumer goods (Section 474ff. German Civil Code) and any rights of the client arising from separately provided guarantees, especially guarantees provided by the manufacturer.
 - b) The basis of our liability for defects is above all the agreement concluded on the nature and intended use of the goods (including accessories and instructions). The following shall be considered to be agreements on the nature of the goods in accordance with this contract: all product descriptions and manufacturer specifications that are subject to the individual contract or that were made public by us (in particular in catalogues or on our internet site) at the time the contract was concluded. If there was no agreement on the nature, it must be determined in accordance with the statutory provisions whether there is a defect or not (Section 434 para. 3 German Civil Code). In this case, public statements by or on behalf of the manufacturer, especially in advertisements or on goods labels, shall prevail over statements by other third parties.
 - c) In the case of goods with digital elements or other digital content, we shall be liable for providing and, where appropriate, for updating the digital content only if this is specified explicitly in an agreement on the nature of the goods in accordance with let. b). We shall not accept liability for statements by the manufacturer and other third parties in this respect.
 - d) We shall not accept liability for defects that are known to the client at the time the contract is concluded or that the client has no knowledge of due to gross negligence (Section 442 German Civil Code). Furthermore, the client may only claim that there is a defect if he has fulfilled his inspection and notification duties without delay, as required by law (Section 377, 381 German Commercial Code). The client shall inspect building materials and other goods intended for assembly or any other kind of further processing immediately before the processing in all circumstances. If a defect is detected on delivery, during inspection or at a later date, the client shall notify us of this in writing without delay. In accordance with the statutory provisions, if the client fails to properly inspect the goods or notify us of any defects, we shall not accept liability for the defect which the client did not report to us, did not report to us on time or did not properly report to us. This also applies to goods intended for assembly, affixing or installation if, due to the breach of one of these duties, the defect is not apparent until after the processing in question. In this case the client is in particular not entitled to claim for the reimbursement of the corresponding costs ("assembly and disassembly costs").
 - e) If the delivered item is defective, we may initially choose whether we effect cure by removing the defect (repair) or by delivering a non-defective item (replacement delivery) if the type of cure we choose is not acceptable to the client in an specific case, he may reject it. Our right to refuse cure in accordance with the statutory provisions remains unaffected.
 - f) We are entitled to only effect the cure owed if the client pays the purchase price due. The client is nonetheless entitled to retain an appropriate part of the purchase price in proportion to the defect.
 - g) The client must give us the necessary time and opportunity to provide the cure owed, in particular to submit the queried goods for inspection. If a replacement is delivered, the client must return the defective item to us at our request in accordance with the statutory provisions; however, the client will not have any right to the return of the item. Cure does not entail the disassembly, removal or deinstallation of the defective item or the assembly, fitting or installation of a non-defective item if we were not originally obliged to perform these acts; this is without prejudice to any claims by the client for the reimbursement of the corresponding costs ("assembly and disassembly costs").
 - h) We shall bear or reimburse the costs incurred in inspecting the goods and effecting cure, including transport, travel, work and material costs, as well as assembly and disassembly costs, in accordance with the statutory provisions and these terms and conditions, if there is indeed a defect. Otherwise, we may require the client to reimburse the costs we incurred as a result of the client unjustifiably requesting a remedy for defects if the client knew or should have been able to recognise that there was in fact no defect.
 - i) In urgent cases, for example to avert a risk to operational security or to prevent disproportionate damage, the client is entitled to remedy the defect himself and to demand reimbursement from us for the objectively necessary expenses he thereby incurs. The client must notify us without delay if he intends to remedy the damage himself in such cases, where possible prior to doing so. This self-help entitlement does not apply if we would have been entitled to refuse cure in accordance with the statutory provisions.
 - j) If the seller misses an appropriate deadline set by the client for the purpose of cure, the client may rescind the purchase contract or reduce the purchase price in accordance with the statutory provisions. However, if the defect is insignificant, he does not have the right to rescind the contract.
 - k) The client does not have any right to the reimbursement of expenses in accordance with Section 445a German Civil Code unless the previous contract in the supply chain is a consumer goods purchase contract (Section 478, 474 German Civil Code) or a consumer contract about the supply of digital products (Sections 445c sentence 2, 327 para. 5, 327u German Civil Code) The client is entitled to the payment of damages or the reimbursement of futile expenses (Section 284 German Civil Code) only in accordance with Nos 6 and 7 below even if the goods are defective.
 6. Other liability
 - a) Unless otherwise specified in these terms and conditions, including the following provisions, we shall accept liability in accordance with the statutory provisions for the breach of contractual and non-contractual duties.
 - b) We shall accept liability to pay damages – whatever the legal reason – in accordance with fault-based liability in the event of wilful and gross negligence. In the event of simple negligence, we are only liable, subject to limitation of liability (standard of care in our own affairs, insignificant breaches of duties), for
 - aa) damage based on injury to life, limb or health,
 - bb) damage based on the breach of a significant contractual duty (a duty whose fulfilment makes the proper performance of the contract possible in the first place and that the contractual partner regularly trusts and may trust us to observe); however, in this case our liability will be restricted to paying damages for foreseeable, typically occurring damage.
 - cc) The limitations of liability arising from let. b) also apply towards third parties and where duties are breached by persons (even in their favour) for whose fault we are liable in accordance with the statutory provisions. The limitations of liability do not apply if a defect was fraudulently concealed or a guarantee was given for the nature of an item or to claims of the purchaser in accordance with the German Product Liability Act.
 - dd) The purchaser can only rescind or terminate the contract due to a breach of duty that does not consist of a defect if we are liable for the breach of duty. The purchaser does not have any right to terminate the contract freely (especially in accordance with Section 650, 648 German Civil Law). Furthermore, the statutory requirements and legal consequences apply.
 7. Statute of limitations
 - a) By way of derogation from Section 438 para. 1 No 3, the general statute of limitations for claims relating to material defects and defects of title shall be one year after delivery. If acceptance is agreed, the statute of limitations shall start from the date of acceptance.
 - b) If the item of goods consists of a building or an item that has been used for a building in accordance with the usual usage of that item and this usage has resulted in the defectiveness of the building (building material), the limitation period in accordance with the statutory provisions shall be five years from the date of delivery (Section 438 para. 1 No 2 German Civil Code). Further special statutory provisions on the statute of limitations shall also remain unaffected (especially Section 438 para. 1 No 1, para. 3, Section 444, 445b German Civil Code).
 - c) The above statutes of limitation in sales law also apply to contractual and non-contractual claims for damages by the purchaser based on a defect in the goods, unless the application of a regular legal statute of limitations (Section 195, 199 German Civil Code) would lead to a shorter statute of limitations in an individual case. Claims for damages by the purchaser in accordance with No 6 let. b) sentence 1 and sentence 2 (aa) and in accordance with the German Product Liability Act shall become statute-barred exclusively in accordance with the legal limitation periods.
 8. Property rights

The client must uphold the property rights related to the delivered items, especially copyright, trademark, design rights and patent rights, regardless of whether they accrue to us or our suppliers or manufacturers. Our products are our intellectual property. The client is not allowed to recreate or copy them, to secure any property rights or otherwise exploit them in any way.
 9. German Law for the Out-of-Court Settlement of Consumer Disputes (abbreviated as VSBG): We shall not be obligated nor ready at a customer's request to participate in any dispute settlement proceedings before any consumer conciliation body as authorised by mentioned law.
 10. Data privacy:

As a customer, your personal data is collected, saved, processed and used if, insofar as and for as long as this is necessary to establish, implement or terminate the contractual relationship. Further collection, saving, processing and use of personal data will only take place if required or allowed by a legal regulation or if you have consented to this. To take steps prior to entering into the contract and to fulfil the contractual relationship or to fulfil individual purchase contracts and purchase orders, it may be necessary in particular to collect, process and use the name of persons, their address, further communication data, the VAT ID no. or even the bank data. The specific legal basis for this Art. 6 para. (1) (b) and (c) GDPR.

In all other respects we refer to our privacy policy, which can be viewed at www.messingschlager.com/en/privacy-policy.
 11. Governing law and place of jurisdiction
 - a) The law of the Federal Republic of Germany applies to these terms and conditions and the contractual relationship between us and the client, to the exclusion of international uniform law, especially the United Nations Convention on Contracts for the International Sale of Goods.
 - b) If the client is a merchant as defined by the German Commercial Code, a legal person under public law or a special fund under public law, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Baunach.

In case of discrepancies, the German version of the terms and conditions shall take precedence.