



## Sales and Delivery Conditions of Meiser Vogtland GmbH & Co. KG

### § 1 General

1. The following terms and conditions apply exclusively, unless they have been amended by us in writing in an individual case.
2. Differing conditions of the Purchaser are not recognized by us, unless we have approved such differing conditions in each individual case in writing. This shall also apply, if we execute a contract without explicitly contradicting such conditions. All conditions agreed upon between us and the Purchaser for the purpose of the execution of this contract are also to be laid down in writing or in textual form.
3. Oral side agreements are not taken. The order confirmation shall be deemed as adopted.

### § 2 Conclusion of the Contract

1. Our quotations are always non-binding. When receiving an order due to such an offer, the contract comes into effect only if we confirm our acceptance of the order in writing or if the delivery is carried out. In the latter case the invoice applies as order confirmation. If the customer is a consumer, we reserve the right to supply the goods only after the revocation period of 14 days has expired. However, this reservation shall not apply in the case of exclusive use of means of communication at the initiation or conclusion the contract. The right to correct errors of offers, of confirmations of orders and of invoices is reserved.
2. All information, pictures, drafts, models, prospects, technical data and catalogues or other technical data as given in our prospects, catalogues, advertisements and price lists or in the information attached to an offer are also non-binding. They are only supposed to give a mere description and are only intended to give an adequate idea of the goods described therein. The afore-said information will only become part of the contract, if and insofar as they are expressly confirmed by us in writing or in textual form as binding. In case they are attached to our offers/confirmations or in case they are the basis for our offers/confirmations and confirmed, they are supposed to give only approximate information, subject to the effective measures and proportions to be communicated by the Purchaser. We reserve deviations and improvements in construction and execution as well as deviation in quality, design and colour, which are customary in the trade and usual with respect to the material. Changes by us in construction and form, which are not customary in the trade, are also legitimate, unless the change or deviation is not tolerable for the client. If a frame agreement exists, such frame agreement shall prevail.

### § 3 Property rights

1. Estimates of costs, drafts, drawings, and other documents remain in our ownership. The complete copyright with all rights to all information and documents handed over during the contractual relations belongs only to us in relation to the client. This also applies to all information and documents coming into existence due to initiations and co-work by the client. Disclosure to third parties may only be affected with our permission. Drawings and other documents which are part of offers have to be handed back to us on demand or, if the order is not placed, without undue delay.
2. If during production of goods according to drawings, samples, or any other specifications of the client any rights of third parties are violated, the client is obliged to release us from all claims against him. We are not obliged to verify the aforementioned documents with respect to existing Commercial Rights of Protection of third parties. Indemnity obligation concerns all applications arising from, or in connection with, claims made by a third party.

### § 4 Purchase Price and Payment, Set-off

1. In lack of a special agreement the prices quoted in price lists and catalogues do not include packaging and VAT. The prices quoted in our offers and confirmations only include the costs for the necessary packaging in case of a written agreement. Costs for the assembly have to be borne by the client, unless something else has been agreed upon by the parties.
2. If nothing else has been agreed, all invoices with billing are immediately payable without deductions at the date of issuance (due date). If the customer defaults in payment, legal provisions apply. We reserve the right to prove additional damages in interest. The customer's right to determination according §366 para. 1 BGB (German Civil Code) is waived in favour of the statutory amortisation provision of §366 para. 2 BGB.
3. Payment orders and cheques are accepted only according to special agreement and only on account of payment. Payment orders and cheques will be accredited the day at which we can finally dispose of the equivalent amount. Purchaser will be liable for all collection and discount charges. Any guarantee for the presentation of the draft or of the cheque in due time or a lack of protest is excluded.
4. If after entering into a contract we become aware that our claim for payment is endangered due to the insufficient capacity of performance of the client, we have the right to refuse performance and we are entitled to set a reasonable period of time during which Customer shall be obliged to pay step by step in return for delivery or provide appropriate security. After fruitless expiry of this period or in case of the client's refusal, we are entitled to withdraw from the contract.
5. The client can only set off his claims against our claims or invoke a right of retention in case his counterclaim is recognized by declaratory judgment or is undisputed.

### § 5 Retention of Title

1. We retain the title in the respective object of delivery until complete satisfaction of any and all claims arising from the business relation with the client. In case the client is Entrepreneur, the title retained shall secure the entire balance in our favour. If we have agreed with the client on a payment of the purchase price by cheque or payment order, the title shall be retained until the payment order has been cashed in by the client and shall not extinguish by the accrediting of a cheque received by us.
2. The client shall handle the object of delivery with due care. If the client is Entrepreneur, he is also obliged to provide for a fire-, water- and theft insurance, with the coverage amounting to the replacement value and has to inform us in writing, in case maintenance, repair- or service activities should become necessary. The client has to provide for such activities on his own expense.
3. The client has to inform us immediately of any and all threatening or already materialized seizures, in particular actions of execution of a third party with regard to the goods to which the title has been retained or with regard to the claims assigned to us or with regard to other securities of us, handing us out all the documentation necessary for our intervention. This also applies to impairments of other kinds. The costs for the aforesaid are borne by the client as far as the third party is not able to bear such costs.
4. If the client is Entrepreneur, additionally the following provisions apply:
  - a) The client has the right to handle or process the retained goods in the ordinary course of business. The client always undertakes an eventual handling or processing of the goods in which the title has been retained for us and on our behalf as the manufacturer under § 950 BGB, without any obligations resulting here from for us, to the consequence that we acquire the title in the goods which have come into existence due to such handling or processing. If our title in the good is extinguished due to such handling on processing, the client is obliged to grant us co-ownership in the good which has come into existence to the extent he himself is (co-) owner.
  - b) We assume the obligation to release the securities upon the client's request if and insofar the realizable value of the securities available exceeds the aggregate of the secured debts due by more than 10 %. The demand for release is given if the nominal value of the assigned claims covers the securable claim of 150 %. The choice of the securities to be released remains with us. The Purchaser is entitled to sell the retained goods or the object which came into existence due to the processing, joining or mixing with other objects in the ordinary course of his business, however only if he discloses the retention of title. The client herewith assigns to us his claims deriving from such resale already herewith in the entire amount of his final invoice (including VAT) in order to secure all our claims arising from the business relation with us, irrespective of whether such object is sold to one or more customers without or only after processing. If the retained goods are sold by the client with other objects not sold by us to the client, the claims deriving from the resale are herewith assigned to us proportionally to the invoice amounts of the other objects sold. In case of the sale of goods, in which we acquired co-ownership according, the Purchaser herewith assigns to us a part of the claim in the amount which is proportional to our co-ownership. The same shall apply, if the retained goods - alone or with other goods - become object of a contract for work and services or a similar contract.
  - c) The client is not entitled to make any other disposals than those mentioned above. In particular, he is not entitled to assign these claims, including the sale of accounts receivable to factoring banks without our prior written consent; § 354 a German Commercial Code (HGB) remains untouched. In case of a sale of accounts receivable to a factoring bank without recourse (true factoring) we give our consent only under the condition precedent of the client immediately transferring the payment made to him by the factoring bank to us.
  - d) The client has the right to collect the assigned claims only as long as he complies with his contractual payment obligation vis-à-vis us. Furthermore, the direct debit authorization can be revoked explicitly by us, if
    - the client does not honour a bill when it is due or
    - the conditions of our right to refuse performance pursuant to § 4 ciper 4 of these Sales and Delivery Conditions are met.



With regard to the collection of these claims, the client is considered as our trustee with the explicit obligation to transfer to us any and all proceeds, minus his profit. However, we remain entitled to collect such claims ourselves but undertake to not collect such claims as long as the client honours its payment obligation with respect to the proceeds he collected and as long as he is not in default with his payment and no application for the opening of insolvency proceedings has been filed for and as long as he has not ceased his payments. If, however, one of the aforementioned conditions materializes, we can demand that the client discloses to us the claims assigned and the respective debtors and provides us with all the necessary information, hands out to us the necessary documents and informs the third-party debtors about the assignment.

5. In case the client has foreseen the shipment of the delivered goods abroad, he is obligated to immediately give notice of this intention to us in writing and, upon our request, to provide a security to us having the closest possible resemblance with and similar effects as the aforementioned retention of title under the laws of the country of destination of the goods. The client has to take all actions necessary to create and preserve such claims.

#### **§ 6 Delivery, Transportation and Passing of the Risk**

1. Delivery dates or terms of delivery shall be binding only if they have been explicitly arranged as binding deadlines or in textual form.
2. In any and all cases deadlines only become effective upon the full and complete cooperation of the client as well as the receipt of the agreed payment. Belated alterations or late cooperation on behalf of the buyer will prolong the service period accordingly.
3. If the client is no customer, our duty to deliver always is subject to a correct and timely self-delivery, unless we intentionally or negligently cause the incorrect or untimely self-delivery. In case of an act of god or other events which we have not caused intentionally or negligently, we are entitled to postpone the delivery for the period in which such obstructing event persists plus an adequate additional period or to withdraw from the Contract with regard to the part not yet fulfilled. Events like labour disputes, lockouts and other circumstances which complicate or render impossible the delivery without any intention or negligence of our part, are to be considered an act of god, irrespective of whether they have occurred within our business or within the business of one of our suppliers.
4. The delivery is performed on behalf of and on the risk of the client, unless the prices have been expressly and in writing agreed upon as "Free Destination". Moreover, the goods are generally delivered without packaging. In the lack of an individual agreement, we are free to choose the dispatch type sequence, the way of transportation and safeguarding measures. In case that packaging has been agreed upon, such will be performed in a way customary in trade and against surcharge. The material for packaging and auxiliary materials for the transportation (e. g. underlying wood) have to be returned by the client without undue delay, unless they have been purchased. In case of a delivery to the operation site, the transport of the good to the destination of the client to a trafficable street is included in the price; however, the unloading of the good has to be arranged by the client on his expense.
5. The risk in the goods passes to the client in the moment the goods are handed over to the agent responsible for the delivery, at the latest, however, at the time the goods leave the factory or the warehouse. If the client is a consumer, however, this shall only apply if he himself has commissioned a carrier not appointed by us. This also applies in case of a delivery Free Destination and irregardless of the question who has to bear the costs for the delivery and irregardless whether the delivery is performed at the place of performance. In case the client intentionally or negligently causes the delay of the collection of the goods himself, the passing of the risk occurs when the notice of readiness for the dispatch or of readiness for collection is given. If notice has been duly given according to the Contract that the goods are ready for dispatch, demand for delivery has to be made immediately. Otherwise, we are entitled to dispatch the goods according to our choice after a reminder, while the client has to bear costs of transport and risk of loss. We can also keep the goods according to our discretion and charge the client immediately. In case a delay in the dispatch which has not been intentionally or negligently caused by us, lasts for a period of more than four weeks, the client has to bear the customary charges for storage.
6. If the transport on the pre-arranged route or at the pre-arranged time becomes impossible without our fault, we are entitled to deliver on a different route or at a different time. Additional costs of such an alternate transport have to be borne by the client. However, we have to grant the client the occasion to comment on the change of route previously.
7. If any damage occurs during transport, the client is to arrange a statement of facts at the responsible authorities and to inform us without undue delay. The client has to accept delivered goods notwithstanding his rights pursuant to §§ 7 and 9 of these Sales and Delivery Conditions, even if the goods have immaterial defects. We are entitled to part delivery and part performance customary in the trade at any time, unless the part delivery or part performance is unreasonable for the client.
8. Additional deliveries or deficiencies in the delivered quantities customary in the particular trade are permissible.
9. If the client declares not to accept the goods ordered by him already before the production of the goods, he has to pay an amount of 30 % of the contractual value as reimbursement for lost profit and costs which have arisen; both parties reserve the right to give proof of a damage in a higher or an inferior amount.
10. If the delivery is not timely, the client has to set a grace period, which has to run for at least two weeks. If the grace period set by the client expires fruitlessly without notification that the goods are ready for dispatch, the client is entitled to withdraw from the contract or to terminate the contract in any other way, if the client has announced these consequences of a fruitless expiry of the set time period simultaneously with the setting of the period. Our extended liability pursuant to § 287 BGB shall be excluded.

#### **§ 7 Right to Revoke the Contract and Return the Goods**

1. If the customer is a consumer, he shall have the right to revoke his declaration of intention to conclude the contract within two weeks without giving reasons from the day he, or a third party designated by the customer and not being the carrier, took the goods in his possession.
2. To exercise his right of withdrawal, the customer has to give us a clear statement about his decision to revoke his declaration of intent to conclude the contract. The timely dispatch of the revocation shall be deemed sufficient for compliance with the revocation term.
3. If the customer has already received the goods, he is obliged to send them back to our place of business in Oelsnitz/Vogtland or to hand them over immediately, in any case but at the latest within 14 days from the day he informed us about the withdrawal. The deadline shall be deemed, if the customer sends the goods off before the expiry of the period of 14 days.
4. If Customer makes use of a right of revocation according to para. 1, we are obliged to repay the client all payments, which we received from him, including delivery costs (except additional costs resulting in the fact that the customer decided on a different kind of delivery than the cheapest standard delivery offered by us) immediately and within 14 days from the date we received his declaration of intent to conclude the contract.
5. We may refuse the repayment according para. 4, until we received the goods or the client proved evidence that he returned the goods, depending whichever is the earlier.
6. In the case of an agreement that is concluded exclusively via telecommunications media (distance selling agreement), and if the goods cannot be returned by ordinary mail due to their nature, we pay for the immediate costs of the return or goods not eligible for shipping will be picked up by us.
7. The Consumer shall only be liable for any diminished value of the goods delivered by us, resulting from the handling other than what is necessary to ascertain the nature and functioning of the goods.
8. The right of withdrawal according to para. 1 does not apply if the goods are manufactured according to customer's specifications, or if they are explicitly tailored to particular personal needs. The right of revocation expires if we have started the execution of the service before the end of the withdrawal period with the customer's expressed approval, and the customer agreed beforehand to lose his right of revocation.
9. The Client can fill in and transmit electronically the withdrawal form or use any other clear declaration on our website: (<https://www.meiser.de/de>). If the Client uses this form of withdrawal, he will receive a confirmation of the entry immediately per email from us.

#### **§ 8 Obligation of Inspection and Notification**

1. If the customer has properly met his duties to examine and to make complaints in respect according to §377 HGB, warranty claims of the customer necessitate that the customer has fulfilled his obligations according to § 377.
2. Notifications regarding apparent defects, which were recognizable in a thorough inspection, are to be claimed in writing or textual form with the accurate description of the defect. Defects, not being clearly recognizable though fulfillment of the obligations according to §377, are also to be declared in writing or textual form after the notification by description of the faults. If the Customer does not fulfill his obligations reasonably, it will lead to the loss of right of the notifications of defects.
  - a) The defective goods shall be retained in the condition at the time when the defect was identified and shall be made available to us for inspection. We are entitled to perform on-site-inspections in order to convince ourselves of the accuracy of the reclamations. Reservations in the bill of loading do not



represent any proof of defects.

b) In case that goods are directly delivered by us to third parties, the Purchaser has to safeguard that the obligation of the Purchaser to notify defects is also validly agreed upon in the relationship between the third party and the Purchaser. The Purchaser has to inform us without undue delay and in writing about a possible notification of defects by the third party and to forward such notification to us.

c) Galvanized parts, which have been damaged in the course of transportation or assembly and/or which have been re-welded, as well as oversized parts, which are assembled after having been galvanized have to be treated by the Purchaser with cold zinc spray or paste without undue delay. The same applies to lagging acid spots which look like rust.

#### **§ 9 Warranties**

1. If there is material defect or a defect of title, we have the right and we are obliged to provide additional fulfillment. The costs and expenses of remedying the defect or of subsequent delivery shall be borne by us. If the removal of the defect is disproportionate due to the expenses required for subsequent fulfillment or due to any associated dismantling and re-installation costs, we may refuse to remove the defect completely. Sentence 3 does not apply if the customer is a consumer. However, we are entitled to limit the customer's claim for reimbursement of expenses for any dismantling and re-installation costs to a reasonable amount.

2. If we refuse rework or supplementary performance or if the subsequent fulfillment should fail or become impossible or if the customer cannot be reasonably expected to accept it, the Customer can withdraw from the contract and demand reduction or compensation. The right of withdrawal only applies in case of significant contractual violations at the time when declaring the withdrawal. If the Customer is not Consumer, the right to withdraw expires, if the customer has not declared the withdrawal after 14 days at the latest after receiving the notification about the rejection or the fail of the supplementary performance or if the customer declares after the date at the latest that it is not acceptable to the Client.

3. The customer's warranty rights, who is not Consumer, only apply, if he met the obligations of examination and reproof according to § 8.

4. Warranty rights are to be claimed by the customer in writing or textual form by naming all recognizable faults and circumstances under which the faults occurred. The Customer, who is not the Consumer, is obliged to check the delivered goods that are supposed to be assembled with other parts, for visible faults and has to inform us.

5. We do not accept any liability for causes, which do not correspond with our fulfillment obligation, especially improper use and handling, use of inappropriate materials or installation work contradicting general regulations of architecture and technology.

6. In case of non-contractual infringements of duties, the customer has the right to withdraw, if we are not responsible and the customer cannot be reasonably expected to further keep to the contract.

7. If a third party claims rights, necessary for the exploitation of the rights of use granted to the customers, the customer has to inform us immediately and comprehensively in writing. The Customer authorizes us with immediate effect to dispute with the third party, in and out of court on our own. If we make use of this option at our own discretion, the Customer may not accept third party's claims without our consent. We are obliged to defend the claims at our own expense and to hold customer harmless from all cost and damages connected with legal defense if these are not based upon the customer's breach of duty.

8. Statements on our part about the quality of the goods shall not be deemed to be an assumption of a guarantee for the quality unless this has been expressly agreed in writing. In this case, the rights of the customer shall be determined in accordance with the guarantee declaration issued by us. The Customer has to declare to us the rights of warranty within two months after the occurrence of the guarantee case in writing or in textual form (cut-off period).

9. Any warranty claims raised against us are restricted to a limitation period of

a) two years, if the Customer is Consumer,

b) one year, if the customer is Entrepreneur.

The limitation period according to b) does not apply to objects which were customarily used in a building structure and caused defectiveness or if we can be blamed for fraudulent intent. The regulations at the beginning of the limitation period in § 445 b para. 2 BGB either apply to the Customer's rights of recourse regarding possible dismantling and assembly costs or to other warranty claims regarding § 437 BGB.

#### **§ 10 Liability**

1. In any case of contractual or non-contractual liability we shall pay damages or expenses only:

In the event of a breach of material contractual obligations, the fulfilment of which is essential for the proper performance of the contract and on the observance of which the customer may regularly rely (so-called cardinal obligations), due to slight negligence by us, our legal representatives or vicarious agents, our liability shall be limited to the amount of the damage foreseeable at the time of conclusion of the contract, the occurrence of which must typically be expected.

2. Our liability is always limited to EURO 25,000.00 per case of damage, in total to a maximum of EURO 50,000.00 from the contract, unless the sum is unreasonably low in view of the individual case.

3. The above limitations of liability do not apply if the customer is a consumer. Furthermore, in the case of intent or gross negligence as well as in the case of injury to life, body or health or from the assumption of quality guarantees or due to fraudulent concealment of a defect or in the case of liability under the Product Liability Act.

#### **§ 11 Calculation Basis**

Basis for the calculation is the entire rectangular surface. The covered surfaces will be calculated as a whole, including the butt joints and fetches as well as cut-outs. In case of round screeds or segments, the entire rectangular surface corresponds to the smallest rectangular, surrounding the screeds. For single grids below 0.7 square meters, we charge differentiated surcharges for minor sizes. The running meters for additional aprons for line sections and cut-outs are charged additionally.

#### **§ 12 Place of Performance, Jurisdiction, Applicable Law, Salvatory Clause**

1. The laws of the Federal Republic of Germany shall apply, regardless the place where the contract was concluded. The application of the UN Law on International Sales is explicitly excluded.

2. The exclusive place of jurisdiction for all disputes arising from this contract or associated with it is Oelsnitz/Vogtland or at our choice the customer's general place of jurisdiction. This exclusive general place of jurisdiction also applies if the customer has no general place of jurisdiction in Germany or his ordinary residence or customary residence is not known at the time of raising the judicial claims. Unless agreed otherwise in writing, place of performance is Oelsnitz/Vogtland. Sentences 1 to 3 do not apply to non-merchants.

3. Personal data of customers are processed electronically in compliance with the German Federal Data Protection Act basic as well as basic requirements in EU-guidelines and regulations.

4. Should any of the provisions contained in the contract and conditions between us and the customer become or will become ineffective, the validity of the remaining provisions of the agreement made between the parties is not incidentally affected. Instead of the ineffective provision, an adequate settlement has to be agreed between the parties, which shall be closest to the economic goal setting of the parties. The same applies to possible gaps in the contract. All previous terms and conditions issued by us hereby cease to be valid.