

MES Medien Elektronik Software

General Terms and Conditions (GTCs)

§ 1 Scope of application of the GTCs

- (1) MES Medien Elektronik Software Ingenieurbüro Andreas Schrade (hereinafter “MES”) concludes contracts solely on the basis of these GTCs in the version valid at each submission of the customer’s declaration and found under “GTCs” at www.mesnet.de.
- (2) These GTCs apply to all present and future deliveries, services, offers, agreements and other legal transactions, as well as all business relationships between MES and other companies.
- (3) They also apply in the event of no separate, explicit agreement pertaining to the above.
- (4) If additional, individually negotiated, written agreements exist between the parties, for example a framework supply contract or similar, these agreements are valid in addition to the GTCs. The individually negotiated agreements apply in the event of doubt and/or contradictory provisions.
- (5) The MES conditions of use or those of the respective software manufacturer (licence, EULA or terms of use) apply in addition in the event of a sale or other transfer of works protected by copyright, for example software.
- (6) Modifications of, or supplements to, the agreement concluded by the parties must be effected in writing in accordance with §126 of the German Civil Code (BGB) – pertaining to documents signed in person – unless these GTCs make an exception and declare the text form provision under §126b BGB sufficient. The text form provision under §126b BGB considers declarations via fax, e-mail or similar to be sufficient. The written form stipulated in §126 BGB is required when waiving or modifying the written form provision.
- (7) Contradictory purchase conditions or GTCs on the part of the customer are expressly repudiated herewith. Such contradictory purchase conditions or GTCs will not form part of the contract.
- (8) These GTCs also apply if MES, fully aware of the contractual partner’s contradictory conditions, or those deviating from the MES GTCs, carries out the delivery to the contractual partner without reservation.

§ 2 Conclusion of contracts

- (1) All offers by MES are compiled at least in text form and they are binding for a period of 30 calendar days from the date the offer was issued, unless explicitly stipulated otherwise in the offer.
- (2) The customer is bound by his orders for a period of two weeks.

- (3) The contract is concluded when the customer accepts an offer by MES or when MES confirms an order made by the customer.
- (4) Confirmation of the order by MES is decisive for the scope of delivery.
- (5) Irrespective of the date or form of the agreement, software purchase or maintenance agreements, hardware or hardware service agreements as well as training in the appropriate use of the software are each separate agreements unless expressly confirmed by MES to be a single order. This also applies to the delivery of additional components that are not part of the original agreements as well as other products and/or services. Each of these agreements is legally independent as regards the mutual rights and obligations, their consequences (liability), as well as the warranty.

§ 3 Prices

- (1) Deliveries are based on the valid MES catalogue prices ex warehouse/factory at the time of order.
- (2) Prices are valid ex warehouse or factory. All prices are net plus statutory VAT plus packaging, freight, postal charges and insurance. The customer is responsible for any import/export tariffs and bank charges
- (3) Prices and price components arise from the actual contractual agreements.

§ 4 Terms of payment

- (1) Invoiced amounts are due immediately in full, unless a different payment date, for example in a payment schedule, has been agreed separately.
- (2) Customers must transfer invoiced amounts on time so that the amount has arrived in the MES bank account at the latest by the payment date given in the invoice. If payment is not made in due time, the customer is considered to be in default without any further reminder.
- (3) Payments must be made in cash or by bank transfer. MES does not accept cheques, bills of exchange or any remittance order documents. Should the latter be accepted, this will only be on account of performance.
- (4) The customer may only offset claims arising from this contract with his own claims arising from the contract, or exercise his right of retention in this regard, provided that these claims are undisputed or fixed by legally binding decisions.
- (5) In the event of delayed payment, MES is entitled to charge the legal interest on late payments of 5% above the ECB base rate, unless MES can provide evidence of its own higher interest rates. For business customers, the interest rate is 8% above the ECB base rate.
- (6) MES is entitled to supply certain services only on the basis of advance payment if there is objective evidence that the financial situation of a customer has significantly changed

at the time the agreement is concluded or shortly after, especially, but not exclusively, in the event of insolvency proceedings being instituted, either by the customer or by one of his creditors, or if a request to open insolvency proceeding is rejected due to a lack of sufficient assets, or in the event of objective evidence of actual insolvency that justifies a petition for insolvency proceedings. Furthermore, MES is entitled to request advance payment if the licensee has not yet fully settled his payment obligation towards MES arising from previous invoices. MES can also ask for a adequate security instead of an advance payment.

- (7) Should the customer breach his contractual obligations, for example in relation to the agreed terms of payment, MES is entitled to request the immediate payment of all invoices due and to withdraw from the contract. In the latter case, MES can demand a full or partial surrender of the goods already delivered. Other claims for damages remain unaffected by this. In addition, MES is entitled to stop all services agreed in the contract, such as training programmes and hotline services, with immediate effect.

§ 5 Terms of delivery / delivery commitments / acceptance

- (1) Fixed delivery dates are only binding for MES if these have been confirmed in text form. In the event of a delay, the customer must initially set a deadline of at least 14 days within which MES must fulfil the contractual obligations. The dispatch of services to be supplied by MES is decisive for meeting the delivery date.
- (2) Delivery and service dates can be extended appropriately in cases of force majeure, including, but not restricted to, strikes, lockouts, failure of telecommunication services, storms, riots, civil unrest, fire, wilful damage, flooding, other natural disasters, official actions or disruptions in deliveries to MES.
- (3) Delivery terms and dates are no longer binding in the event the customer requests modifications, supplements or additional services from MES.
- (4) In the event of an acceptance procedure, the subject matter of the contract is considered to be accepted if
 - a) The delivery and installation, if the latter is to be carried out by MES, is completed
 - b) MES has informed the customer of the notional acceptance listed in this section, and has requested the acceptance,
 - c) Four weeks have elapsed since delivery or installation, or if the customer has started using the subject matter of the contract (e.g. has started operating the delivered system) and in this case if two weeks have elapsed since the delivery or installation, and
 - d) If the customer has, within this period, waived acceptance for any reason other than a possible failing notified to MES that makes it impossible to use the subject matter of the contract, or that makes only restricted use possible.

§ 6 Reservation of proprietary rights

- (1) MES explicitly reserves ownership rights of MES products or third-party products sold by MES (goods subject to reservation of ownership or conditional commodities), or of the transfer of user rights, until the invoice issued by MES has been paid in full. For business customers, MES retains ownership of conditional commodities until all outstanding debt from current business has been settled.
- (2) Should the customer use goods subject to reservation of ownership, this is only allowed within the scope of his normal business operations. Any combining, processing, linking or remodelling of these conditional commodities will only be to the advantage of MES, which will acquire a co-ownership share in the products, particularly software, that corresponds to the proportionate value of the conditional commodities in the new products.
- (3) The customer is only entitled to sell on conditional commodities or other products or goods that form part of the MES co-ownership share under the condition that MES ownership rights are maintained. The customer herewith cedes all claims arising from the onward sale of conditional commodities to MES in accordance with the invoice value of the commodities until complete payment of the claims listed under (1). MES accepts this cession of claims. If MES holds a co-ownership share in the goods sold on, these claims are ceded to the amount of the selling value with priority over other claims.
- (4) In the event of a seizure by a third party, the customer will inform the third party of MES's ownership/ownership rights and will immediately inform MES about the seizure.

§ 7 Passing of risk and shipment

The customer assumes the risk and costs of all products delivered by MES. The most cost-effective form of shipment will be chosen unless the customer gives special instructions about the type of transportation to be arranged. Should a customer collect goods himself, risk is passed to the customer the moment the goods are made available to him.

§ 8 Customer obligations / retraceability

- (1) In accordance with the legal provisions, the customer is obliged to ensure that delivered medical products falling under the MDD (Medical Device Directive) can be retraced.
- (2) The customer is obliged to maintain an active market monitoring for delivered medical products. The customer informs MES in writing as soon as they become aware of any complaint, quality issue, error, deterioration or malfunction of the delivered medical products, in particular, but not limited to incidents according to § 2 No. 2 MPSV (Ordinance on Medical Devices Vigilance).
- (3) Recommended measures from MES in connection with complaints, quality issues, errors, deteriorations or malfunctions of the delivered medical products will be provided to the end customer by the customer in a suitable manner.

§ 9 Reservation of rights

- (1) MES is obliged to deliver items to its contractual partner in a condition that is free of material and title defects.
- (2) Warranty for material and title defects is one (1) year from the date of delivery, or from acceptance, if required.
- (3) The delivery item or service are considered free of material defects if they possess the product features described in the respective technical specifications.
- (4) If the delivery item contains MES software, a defect only exists if the features of the software deviate from the program description in the respective technical specifications, or if the software fails to meet its intended purpose as stated in the relevant technical specifications, and also if the function of the software that forms the subject matter of the contract is seriously impaired.
- (5) Every customer must ensure that the software ordered is compatible with his computer system. Functional deficiencies of the program caused by hardware defects, environmental conditions or incorrect operation on the part of the customer or similar are not considered defects.
- (6) MES does not issue guaranties in legal terms to its customers.
- (7) Information provided by MES about the delivery item or the service, especially drawings, illustrations, measures, weights, technical data, performance descriptions, program descriptions or specifications are to be considered as approximations and do not represent an assurance of the product features or guaranty unless they have been explicitly labelled as binding in written form in accordance with §126 BGB or under the condition that exact compliance is required if the product is to meet the contractual purpose.
- (8) All advertising information about the delivery item or service, especially given on websites and in catalogues, all types of advert, brochures and other documents or written material, is only intended as a description and does not constitute an assurance of the product features or the service, unless this has been explicitly agreed with MES in written form under §126 BGB.
- (9) Given that MES products and services are further developed on continuous basis, the company reserves the right to change or modify products or services defined in the contract, particularly equipment, design and other technical features, if at least an equal level of functionality or technical performance of the products or services are ensured, and if these modifications correspond with the state-of-the-art and do not considerable affect the ability of the product or service to meet the contractual purpose. Major modifications will be carried out after consulting the customer.

- (10) Modifications carried out by MES or its suppliers after conclusion of the contract and which do not affect the functionality of the subject matter of the agreement do not entitle the customer to file a notification of a defect, nor do they trigger warranty claims.
- (11) There is no warranty for programs, parts of programs or hardware that have been altered, added to or modified in any way by the customer himself, as well as in the event of inappropriate handling or operation by the customer. This also applies to defects in the operating systems or hardware – also in conjunction with third party software, in the case of non-observance of data protection provisions, or other acts or impacts outside of MES's responsibility that can be traced back to technical breakdowns.
- (12) The customer is to support MES in error analysis and troubleshooting procedures, in particular by providing MES with a detailed description of a defect in written form, in accordance with §126 BGB, giving comprehensive details and granting MES the necessary time and opportunity to remedy the defect.
- (13) MES will analyse the defect within two (2) weeks of being informed of such by the customer and will suggest a solution for remedying the problem.
- (14) MES can either repair the defect within an appropriate period of time or alternatively deliver a repaired, state-of-the-art item.
- (15) The customer allows MES at least three (3) attempts to remedy the defect.
- (16) If the object of delivery is software, a repair can also take the form of supplying the customer with a new version of the software (updates, upgrades), or that MES shows the customer how to avoid the effects of the defect if this is appropriate for the type of defect and considered by the customer to be reasonable.
- (17) If MES refuses subsequent fulfilment, or if it ultimately fails or is unacceptable for the customer, the customer is entitled to withdraw from the contract or reduce payment in appropriate manner.
- (18) The customer may claim damages under the conditions stipulated in §11 should the fault be attributable to MES.
- (19) Should an investigation conclude that no warranty case exists and that the customer could have recognised this, MES is entitled to calculate a one-off payment for time and costs unless the customer can prove that no or only minimal costs were caused to MES.

§ 10 Period of notice of defect

- (1) The customer is to examine delivered items immediately, i.e. within eight (8) days after delivery
- (2) Business customers are to inform MES in writing about apparent defects within a period of two (2) weeks after receipt of the product. Warranty claims are excluded otherwise. Timely dispatch shall be sufficient to meet the deadline.

§ 11 Liability

- (1) MES pays compensation for damages or reimburses futile expenses, irrespective of their legal grounds (for example legal transactions or obligations similar to legal transactions, material and legal defects, violation of obligations and illegal activity), to the following extent only:
 - a. Liability in the event of intended infringement or arising from a guarantee is unrestricted.
 - b. In the event of gross negligence, MES is liable to the amount of typical and predictable damage at the time the contract was concluded.
 - c. In the event of minor negligence of an essential obligation that jeopardises the purpose of the contract (cardinal obligation, especially delay), MES is liable in the amount of typical and predictable damage at the time the contract was concluded, but to a maximum amount of the five times the price of the delivery item in each damages case and to a maximum amount of the ten times the price the of delivery item for all cases of damage originating from the contract altogether.
- (2) MES reserves the right to contest the charge of contributory negligence. The customer is obliged to compile data backups and run state-of-the-art anti-virus programs.
- (3) Cases of loss of life, physical injury or damage to health, or claims arising from the Product Liability Act, are governed solely by the statutory regulations.
- (4) Liability for data loss at the customer or authorised users caused by slight negligence on the part of MES is limited to data recovery if safety copies exist. There is no liability for damages caused by negligence on the part of the customer or authorised user. This applies especially to any form of non-observance of product documentation.
- (5) Customer claims for damages concerning a defect lapse after one (1) year after delivery of the product. This does not apply to cases of fraudulent intent by MES.

§ 13 Final provisions

- (1) Provided both contractual parties are based in Germany, the place of jurisdiction for all legal disputes arising from the business relationship between MES and the customer is the registered office of MES. For claims filed against MES, the place of jurisdiction is solely the registered office of MES. Mandatory legal provisions on exclusive places of jurisdiction remain unaffected by this.
- (2) If at least one of the contractual parties has no registered office in Germany, the place of jurisdiction for all legal disputes arising from the business relationship between MES and the customer is the registered office of MES.
- (3) These General Terms and Conditions are subject to the laws of the Federal Republic of Germany excluding the customer's collision norms and the United Nations Convention on Contracts for the International Sale of Goods.
- (4) If individual provisions of these GTCs become ineffective, void or impracticable, this has no impact on the effectiveness of the remaining provisions or contracts related to these GTCs. The parties will then make efforts to find an acceptable, legally-permissible replacement that comes close to the intended purpose of the ineffective provision. Statutory provisions apply in all other respects.