
Terms and conditions of sale and supply

Para. 1 General

All orders intended for us are subject exclusively to the following terms and conditions of sale and supply, provided that another agreement has not been confirmed or agreed by us in writing. These conditions apply to all our business transactions. To the terms and conditions of sale and supply of the company MERZ Schaltgeräte GMBH + CO KG contradicting general terms and conditions are not recognized. Their validity is expressly prohibited. Our failure to send terms and conditions of the buyer in no way constitutes consent or agreement to the buyer's terms and conditions. Our terms and conditions of sale and supply in their current version and as agreed shall apply to all future business dealings and contracts without the need to expressly state this condition and also in those individual business dealings where any exceptional conditions are agreed. Unless otherwise agreed between the parties and not contrary to the present sale and supply terms and conditions, the "general conditions of supply for products of the electrical industry" shall additionally apply.

Para. 2 Quotations, brochures, prices

To our non-binding offers and all verbal agreements before, during or after the conclusion of contract, we are bound only after further written confirmation. Statements by our staff, travellers or agents shall likewise only be valid if confirmed by us in writing. All drawings, images and all the measurements and performance information that are contained in our brochures, printed matter or data carriers, are not binding, unless they have been expressly confirmed by us in writing. Unless otherwise agreed in writing, our prices valid on the day on which the order was confirmed are exclusively applicable. The validity of the price list expires with the publication of the new price list. All our prices are net prices and are subject to statutory VAT. They are ex warehouse and do not include transportation and packaging costs. For orders below our minimum order value of 75,00 Euro we reserve the right to add the difference.

Para. 3 Delivery times

The indication of delivery deadlines is non-binding, unless an express agreement on a fixed date has been agreed in writing. Furthermore, our delivery times are subject to the reservation of self-supply, the availability of other delivery services and intermediate sales. The delivery period begins on the day of the order acceptance by us, however not before complete clarification of all execution details. The delivery period is regarded as met with the timely notification of dispatch, if dispatch is made impossible through no fault of our own. The day of delivery shall be the day of dispatch, with an agreed pick-up the day of despatch of the readiness for dispatch. If we exceed a non-binding delivery date or a non-binding delivery time with our ordered goods, by more than 10 days, the buyer has the right to set in writing a reasonable subsequent period for the delivery. With this reminder, we shall fall into arrears. Events such as force majeure, industrial action or similar events at our premises or those of our suppliers or unforeseeable hindrances over which we have no influence will extend the agreed terms of delivery by a maximum of two weeks. If in this case the late delivery for the buyer is not of interest, he shall be entitled to cancel the contract following the expiry of a grace period, set by the buyer in writing, of 14 days, after which he can enforce a refusal to accept performance. Claims for damages for non-performance or delayed delivery are excluded, provided that no intent or gross negligence exists on our part or on the part of persons acting on our behalf.

Para. 4 Shipping

Delivery is at our discretion by a typically suitable means of transport and on account of the buyer plus the packaging and insurance costs, unless something else arises from our current price list or a different individual agreement was reached. Packaging material shall be disposed of at the buyer's own expense. Transport insurance is only at the express request of the buyer. Deliveries are always at the buyer's own risk, even when we cover the freight costs, unless we carry out the transport with our own vehicles and personnel and damages are not caused by third parties. The risk is transferred with the handover of the goods to the post office, the parcel service, the haulier or the carrier, latest however to the buyer, when they leave the factory or warehouse. This applies particularly to sales, for which CIF, CFR, FAC, FAS or FOB have been agreed. For deliveries abroad separate specified shipping conditions are additionally valid.

Para. 5 Partial deliveries

We are entitled to partial deliveries. The buyer is obliged to accept partial deliveries. If we fail to deliver the outstanding parts of a partial delivery and if the buyer does not receive a satisfactory reply to its written reminder notice within a period of two weeks, the buyer has the right to withdraw from the entire contract, if the outstanding parts cannot be obtained in any other way and the delivered parts are of no use to the buyer.

Para. 6 Terms of payment

The following conditions apply to the payment of our invoices: payment within 30 days of invoice date: without deduction. Bills of exchange and checks are accepted, if at all, only on account of performance and subject to discount. All expenses incurred shall be borne by the buyer. The acceptance of a bill of exchange after its settlement date or prolongation does not constitute a deferment of payment. We reserve the right to return bills of exchange and checks at any time. If the buyer falls into arrears with a payment, we are entitled, without special proof, to claim default interest of 9% above the base interest rate (§ 247 BGB) and to charge overdue fees of EUR 5.00 for the 2nd and each further reminder. Insofar as the delay in payment exceeds two months, all granted discounts are retroactively cancelled. Then the gross prices in our price list apply. The assertion of higher damages in individual cases remains reserved. In the event that the buyer fails to meet his payment obligations or issues a bill of exchange or cheque which is protested, or if circumstances become known demonstrating that the buyer's contractual obligations towards us are at risk, we reserve the right, regardless of previous payment agreements, to request immediate payment of all sums outstanding for deliveries supplied. Deliveries which are still outstanding on our part to the buyer can be made with cash on delivery or dependent on the provision of suitable guarantees without in any way affecting the performance of our delivery obligations. The buyer is entitled to also prepay, instead of a suitable security deposit. If the security deposit requested is not forthcoming within a period of one week, we reserve the right to withdraw from the contract. If partial payments have been agreed, the respective balance is due immediately if the receipt of a payment by instalments, is delayed more than 10 days. Payments to third parties, in particular to agents or commercial travellers, will not be accepted unless such persons are expressly authorised by us to collect payment.

Para. 7 Warranty

Upon receipt of the goods at their destination, the buyer must immediately inspect them for flawless condition, completeness and compliance with the contract. The § 377 HGB shall apply in this respect. Defects must be notified to us immediately and in writing. In case of defects, the cause of which already existed at the moment of transfer of risk, we are entitled to choose to repair, replace or provide again free of charge the affected part or services or the entire piece. We must be given the opportunity to remedy the defect within a reasonable period of time. The warranty period is 12 months from delivery of the item to the buyer, unless a longer time period has been agreed in writing. The same shall apply to cancellation and reduction. This does not apply in the cases in accordance with §§ 479 para. 1, 438, para. 1 no. 2 and 634a para. 1 no. 2 BGB and to intent or fraudulent concealment of a defect or the absence of a warranted quality. The buyer's rights of recourse in accordance with § 478 BGB only exist insofar as the buyer has not reached any agreement with its own customer going beyond its statutory rights in the event of defects. The provisions concerning expiry suspension, interruption and restart of the limitation period remain unaffected. Only in case of an undoubtedly legitimate complaint, the buyer is entitled to withhold payment proportionate to the occurred defect – maximum however three times the value. This does not apply if the defect claims are time-barred. There will be no claims for defects in the case of only slight variation from the agreed quality or insignificant impairment of usefulness, of usual wear, damage arising after transfer of risk due to incorrect operation, improper handling, excessive stress, the use of improper equipment, or by special external influences which are not foreseen in the contract and non-reproducible software errors. Improper modification or repair work by the buyer or third parties exclude our warranty liability. Claims for damages by the buyer due to a defect are excluded. This does not apply if the defect was fraudulently concealed, or if a warranted feature was missing, or by harm to life, limb or health, or to freedom and in a wilful or grossly negligent breach of duty on our part. A change in the burden of proof to the detriment of the buyer is not associated with it. Moreover, other further claims made by the buyer in respect of a defect are also excluded.

Para. 8 Reservation of title

The goods supplied remain our property up until such time as the buyer has fulfilled all his contractual obligations to MERZ Schaltgeräte GMBH + CO KG in full. The buyer is entitled to sell or otherwise deal with the product in the proper business dealings to usual conditions and to dispose of it. As a guarantee of our rights, the buyer undertakes to transfer to us the proceeds received from any sales, to the value of the invoice amount including any VAT, irrespective of whether the goods were resold without or after processing. If our goods are processed or joined to other goods, we have the right without incurring further obligation to co-ownership in the new object, the value of co-ownership being equal to the invoiced sum remaining after any other goods have been subtracted. The value of the reserved goods within the meaning of this condition is our invoice value. If the buyer becomes the sole owner of the new item, it shall be hereby agreed that a co-ownership is granted in the aforementioned relation. At the request of the buyer, we are willing and obliged to release securities at our discretion, if and insofar as the value of the collateral exceeds the value of our claims from the ongoing business relationship by 20%. The buyer has the right to collect payment from its customers provided that the buyer fulfils his payment obligations to us in a timely and orderly manner. Our authorisation to collect the claim ourselves shall remain unaffected. However, we commit ourselves not to collect the debt as long as the buyer meets his payment obligations from the collected proceeds, is not in default and in particular has not filed an application to commence insolvency proceedings. If this is the case, the buyer is obliged to render accounts to us about the goods subject to reservation, to name the third-party debtors and to give to us all information necessary for the collection. The buyer shall inform third-party debtors without being asked, of the assignment and request that they make payments only to us. The seizure of the goods by us always constitutes a withdrawal. The buyer undertakes to handle the reserved goods with due care and attention and also to insure them against flood damage, fire, burglary, theft and similar risks. All claims against an insurer or insurers or against third parties causing damage, shall be transferred and handled by us. In the case of third-party compulsory attachment orders regarding the reserved goods or regarding receivables from third parties transferred by way of guarantee, the buyer must immediately and unreservedly report to us all the information we might require to proceed with an intervention. The cost of intervention shall be borne by the buyer. Furthermore, the buyer must notify us of any damage and loss of the goods as well as any change to its place of business or address. The company MERZ Schaltgeräte GMBH + CO KG accepts the aforementioned assignment.

Para. 9 Offsetting / right of retention

Offsetting against our claims is only allowed when the claims of the buyer are expressly recognized by us as authorized or legally valid. The right of retention due to claims made by the buyer against us which are not derived from the same contractual relationship, is excluded.

Para. 10 Liquidated damages

If the buyer fails expressly or by implication to fulfil the terms of the contract, in particular to accept the item of sale, we are entitled to issue a final reminder with a notice of seven days, to request a fixed sum payment equal to 20% of the order sum as compensation. The assertion of further damages remains reserved.

Para. 11 Place of performance, jurisdiction

Place of performance for all claims arising from the contractual relationship between us and the buyer is Gaildorf, Germany. If the buyer is a business person, a legal person in public law or a public company, the place of jurisdiction is Schwäbisch Hall, Germany. This shall also apply to claims arising out of bill of exchange or cheque transactions. This also applies to contracts with foreign contractors. German law shall apply exclusively to the contractual relationship. Application of the CISG (UN Convention on Contracts for the International sale of Goods) is excluded.