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External links

Despite careful checks, we are not able to accept liability for the content of external pages to which we provide links. The operators of such pages are responsible for their content.

General terms of delivery and sale

Art. 1 - General

The general terms of delivery and sale outlined below shall apply to all orders placed with us unless a conflicting agreement is formulated in writing by us or confirmed by us. These conditions apply to all of our business transactions. Any general terms and conditions that conflict with the general terms of delivery and sale of MERZ GMBH and MERZ Schaltgeräte GMBH + CO KG will not be recognized. Their applicability is expressly rejected. Our failure to acknowledge the receipt of general terms and conditions of the purchasing party shall not imply our acceptance of the general terms and conditions of the purchasing party. Our terms of delivery and sale in their currently applicable version shall form part of all future contracts once they have been agreed and have taken effect in the case of ongoing business relationships; this shall apply even if this is not explicitly stated in individual cases - even if deviating conditions have previously been agreed for individual contracts.

Unless otherwise agreed between the parties and as long as they do not conflict with our current terms of delivery and sale, the general terms and conditions for products within the electrical industry shall apply.

Art. 2 - Quotations, brochures, and prices

All of our non-binding quotations and any oral agreements before, during, or after the conclusion of a contract shall only become binding following written confirmation. Any statements made by our employees, travelling salesmen, or agents also require our written confirmation before taking effect.

All drawings, illustrations, dimensions, and performance specifications given in our brochures, other printed material, or on data carriers are non-binding unless they are expressly confirmed by us in writing.

Unless otherwise agreed in writing, only the price lists that are valid on the day on which the order is confirmed shall be considered to be authoritative. The validity of each price list shall expire upon the publication of a new price list. All of our prices are net prices and are subject to statutory VAT. They apply ex works and do not include transportation and packaging costs.

In the case of orders below EUR 100, we reserve the right to apply the gross price as per the price list or a minimum order charge of EUR 25.

Art. 3 - Delivery periods

Any specified delivery periods are non-binding unless an express written agreement of a definite delivery date has been made. Moreover, our delivery periods are subject to deliveries to us from our suppliers, availability, and wholesalers. The delivery period starts on the day on which the order is accepted by us as long as all order execution details have been clarified. If, through no fault of our own, we are unable to ship a delivery, the stated delivery period shall be considered to have been met if the delivery in question is communicated to the customer as being ready for shipment by the specified delivery date. The day of shipment shall be considered to be the delivery date; if it has been arranged that the customer will collect the delivery, the day on which the customer is informed that the delivery is ready for collection shall be considered to be the delivery date. If we exceed a non-binding delivery date or period by more than 10 days for a delivery with a non-binding delivery date or period, the purchasing party is entitled to impose a reasonable period for the delivery of the goods in question in writing. On receipt of the communication of this warning, we shall be considered to be in default.

In the event of force majeure, industrial action that affects us or our suppliers, or comparable unforeseeable events that we are unable to prevent or resolve, the agreed delivery dates shall be extended by the duration of the event in question but by no more than two weeks. If, in this case, the delayed delivery date is of no use to the purchasing party, the purchasing party is entitled to withdraw from the contract following the expiration of a period of 14 days communicated to us in writing along with notice that the customer intends to withdraw. Claims for damages relating to non-fulfilment or delayed delivery are excluded except in cases of intent or gross negligence on our part or on the part of our agents.

Art. 4 - Shipment

Delivery shall take place according to our choice of a suitable means of transport. Costs including packaging and insurance are to be borne by the purchasing party unless specified otherwise in our currently valid price list or agreed otherwise as part of an individual agreement. The packaging must be disposed of by the purchasing party at his own cost. Transport insurance shall only be taken out at the express request of the purchasing party.

Even if we are bearing the freight costs, deliveries shall always take place at the risk of the customer unless we transport the goods in question using our own vehicles and personnel and the damage is not caused by third parties. Once the goods are passed to the care of the post office, parcel service, carrier, or freight company and at the very latest when the goods leave our plant or warehouse the risks pass to the purchasing party. In particular, this also applies to sales for which CIF, CFR, FAC, FAS, or FOB has been agreed. For deliveries abroad, the specified special shipping conditions also apply.

Art. 5 - Partial deliveries

We are entitled to make partial deliveries. The purchasing party is entitled to accept partial deliveries. If we default on the outstanding items and if a period of 2 weeks - to be imposed by the purchasing party in writing - passes without delivery, the purchasing party is entitled to withdraw from the entire contract if the missing parts cannot be procured elsewhere and if the delivered parts alone are of no use to the purchasing party.

Art. 6 - Payment terms

The following conditions apply to the payment of our invoices:

Payment within 10 days from the date of the invoice: - 2% early payment discount

Payment within 30 days from the date of the invoice: - Payment in full

Bills of exchange and cheques will - if at all - only be accepted as conditional payment subject to the clearance of funds. All incurred costs are to be borne by the purchasing party. The acceptance of a bill of exchange after a payment deadline or extension does not constitute the granting of a payment deferral. We reserve the right to return bills of exchange and cheques at any point. Should the purchasing party default on payment, we are entitled - without further notice - to impose default interest at 9% above the base rate (§ 247 BGB) and to charge a fee of EUR 5 for 2nd and subsequent notices of arrears. Should the purchasing party default on payment by more than 2 months, all granted deductibles shall be retrospectively revoked. The gross prices as stated in our price list shall then apply. We reserve the right to assert a claim to higher damages caused by default of payment. Should the purchasing party not meet his payment obligations, a bill of exchange or cheque be protested, or other circumstances become known that indicate that the purchasing party may not be able to meet his payment obligations towards us, all debts owed to us for effected deliveries shall become due immediately, regardless of any payment agreements made previously. Any outstanding deliveries to the purchasing party in question may then be made dependent on cash on delivery or the provision of appropriate securities; otherwise, our obligation to deliver shall be suspended.

The purchasing party is also entitled to pay in advance rather than providing appropriate securities. If the required securities are not provided within a week, we are entitled to withdraw from the contract. If part payments are agreed, the remainder shall become due immediately if an instalment is delayed by more than 10 days contrary to agreement. Payments to third parties - and, in particular, to sales representatives or travelling salesmen - will not be recognized unless the party in question has been expressly authorized by us to collect payment.

Art. 7 - Guarantee

The purchasing party must investigate the goods upon receipt at their destination to make sure that they are faultless and complete and that they comply with the terms of the contract. § 377 HGB applies here. Any defects must be communicated to us immediately in writing. In the case of defects whose cause is already present when the risk passes to the customer, we are entitled to choose whether to improve the affected parts or services or the entire component at no charge, to make a new delivery of goods, or to render services anew. We must be permitted to rectify any defects within a reasonable period of time.

The warranty period shall be 12 months following the handover of the goods to the purchasing party unless a longer term is agreed in writing. This also applies to withdrawal and reduction. However, this does not apply in the scenarios described in §§ 479 Para. 1, 438, Para. 1 Item 2 and 634a Para. 1 Item 2 BGB or in cases of intent or the fraudulent concealment of a defect or fault pertaining to an assured characteristic. Claims to recourse against the supplier as per § 478 BGB shall apply only insofar as the purchasing party has not made any agreements with his customers that go beyond the statutory defect entitlements. Legislation pertaining to suspension of expiration and the suspension and recommencement of terms remains unaffected.

The purchasing party is only entitled to withhold payment in cases where there is a clearly justified complaint - and only then to an extent that is proportionate to the occurred material defect and to a value that is no more than three times its worth. This does not apply if the claims for defects have expired by limitation.

No claims for defects shall arise as a result of insignificant deviations from the agreed quality or of insignificant restrictions in usability, in cases of normal wear, in cases of damage resulting from incorrect usage following the passing of risks, in cases of improper usage, excessive loads, or the use of unsuitable operating resources, as a result of special external influences that were not incorporated into the contract, or as a result of non-reproducible software errors. This guarantee shall be invalidated in the case of unauthorized changes or maintenance work carried out by the purchasing party or by third parties.

Claims for compensation on the part of the purchasing party as a result of a quality defect are expressly excluded. However, this does not apply in cases where a defect is fraudulently concealed or if an assured characteristic is not present or in cases of bodily injury, death, health impairment, or impairment of liberty or in cases of intent or grossly negligent breach of duty on our part. This is not associated with a change in the burden of proof to the disadvantage of the purchasing party. Incidentally, all other further claims on the part of the purchasing party in relation to defects are excluded.

Art. 8 - Reservation of title

The delivered goods remain our property until the purchasing party fulfils all obligations towards MERZ GMBH or MERZ Schaltgeräte GMBH + CO KG relating to the business transaction. The purchasing party is entitled to sell and dispose of the goods as part of normal business under the usual conditions.

However, in order to protect our interests, the purchasing party shall relinquish to us all rights to receivables arising from the selling on of the goods to his customer to the value of the invoice including statutory VAT. This applies regardless of whether the goods are sold on in their delivered condition or following further processing. If our goods are further processed or combined with other goods, we shall be afforded joint ownership of the new goods in proportion to the relationship between the invoiced amount for our goods and the total invoicing value of all other goods used. The value of the goods subject to retention of title shall be our invoice value for the purposes of this clause.

If the purchasing party becomes sole owner of the new goods, it is hereby agreed that the purchasing party shall pay us for our joint ownership part in accordance with the ratio mentioned above. At the request of the purchasing party, we are willing and indeed obliged to release securities of our choice should the value of securities held exceed the value of pending receivables arising from the current business relationship by 20% or more. The purchasing party remains entitled to collect receivables from the customers of the purchasing party as long as the purchasing party properly and promptly meets his payment obligations towards us. This does not affect our authority to collect receivables ourselves. However, we hereby commit ourselves to refrain from collecting receivables as long as the purchasing party meets his payment obligations arising from the revenues in question and is not in default of payment and as long as there is no request for the opening of insolvency proceedings with regard to the assets of the purchasing party. Should this be the case, however, the purchasing party is obliged to render account to us of sales of the goods subject to retention of title, to name the third-party debtors, and to provide us with all information required for the collection of these receivables.

The purchasing party must immediately inform all third-party debtors of the transfer of rights in this case and urge them to render payment to us only. The seizure of goods subject to retention of title by us constitutes a withdrawal from the contract. The purchasing party is obliged to handle the goods carefully and cautiously and to protect them from water, fire, theft, and all other usual risks. All claims against insuring parties or third parties who are alleged to have caused damage to the goods shall be relinquished to us for processing.

The purchasing party must immediately inform us if the goods subject to retention of title or the assigned receivables of third-party customers become involved in recovery actions by third parties, providing us with all information and paperwork required for an intervention without delay. The purchasing party must bear the costs of the intervention. In addition, the purchasing party must inform us of any damage to or loss of goods subject to retention of title and of any change to the purchasing party's registered office or domicile.

MERZ GMBH and MERZ Schaltgeräte GMBH + CO KG shall accept the above acts of transfer.

Art. 9 Offsetting, right of retention

Offsetting against our receivables is only permitted with receivables owed to the purchasing party that have been expressly recognized as authorized by us or with receivables with a justifiable legal basis. The right of retention relating to other claims by the purchasing party against us with regard to a different contractual relationship is excluded.

Art. 10 - Flat-rate damages

Should the purchasing party expressly or implicitly refuse to honour the terms of the contract - in particular with regard to the acceptance of the subject matter of the contract - we are entitled, following a further written request including a warning of withdrawal with a 7-day period of notice, to demand a flat-rate amount of 20% of the total order value instead. This shall not affect the enforcement of rights to further damages.