

General Terms of Delivery and Service

GENERAL

The following terms apply to all deliveries (= "supply", "delivery") and services (= "service", "performance") of MESUTRONIC Gerätebau GmbH, in the following also referred to as "seller" or "we", and for all our offers and contracts relating to deliveries (in the following also referred to as "goods" or "products") and services by us, unless express written agreements to the contrary have been made. These terms apply also to all our future statements, offers and contracts. Terms of business or purchase conditions of the customer (= "client", "customer", "buyer") which we do not accept expressly in writing are completely non-binding for us and do not form part of the contract, even if we do not contradict them expressly.

Additional terms apply to assembly and repair works. For software, including software as a component of a product delivered by us, additional contract conditions for the assignment of software apply.
Metal detection made in Germany

1. Offer, Contract Conclusion, Regulation of Contractual Obligations

1.1

Our offers are always non-binding.

Cost estimates which may be required by the customer are non-binding. Unless expressly agreed otherwise, we reserve the right to be compensated by the customer for costs incurred in the preparation of the estimate.

Measurements, pack sizes, weights, images, simulation results and drawings are only binding for the execution of the agreement if this is confirmed expressly in writing.

Every offer or cost estimate is to be considered as a whole. The removal of single items or an alteration of the type, quantity or place of delivery requires our approval. Delivery cost estimates are always non-binding.

1.2

Any drawings, designs and other submittals made available by us, whether it concerns originals or duplications, are only surrendered on loan and remain our property.

They may not be used, duplicated or brought to the knowledge of third parties for other purposes and are to be returned to us at the earliest opportunity or at our request.

1.3

To determine our contractual obligations and/or properties of our deliveries or services, only specifications and statements are relevant which have expressly become part of the contract in writing. Specifications in brochures or offers, advertising statements, statements in other publications and statements of third parties do not justify, under any circumstances, contractual fulfilment claims, warranty claims or claims for compensation against us.

Assurances or warranties for the characteristics of goods and services and the assumption of risk for their characteristics are only offered if and so far as this has been expressly agreed in writing.

1.4

Contracts and service/performance requests, as well as amendments and additions to these, and all other agreements which refer to a contract or its performance must be in writing.

We are entitled to use both electronic and text formats for communication purposes; the customer is entitled to use the same forms of communication.

Oral agreements are only valid if they are confirmed immediately in writing.

If a contract is not made in writing, any order received by us only becomes binding once it has been confirmed by us in writing. If we commence a delivery or service/performance without express written agreement or confirmation, a contractual relationship will only come into existence through our complete delivery or service/performance. Our obligations are set out conclusively in the contract signed by both parties or, should this not exist, the content of our order confirmation.

1.5

Our obligations are subject to ourselves being supplied correctly and in time with preliminary or ancillary products, raw or auxiliary materials, fuels or services of third parties which we require for our production or to be ready to deliver.

1.6

In the event that we procure goods or services which we use to fulfil our contractual obligations towards the customer, any testing or other form of control of such goods or services is carried out only in our own interest and is based only on our own needs.

1.7

Provided that the intended purpose or the usability is not affected, the value is preserved or increased and the changes are reasonable for the customer to accept, we have the right to alter the subject of our delivery or service/performance, compared with any sample, offer or contract description, in order to improve our delivery or performance for the purposes of production or technical advancements or because the alteration is due to customary divergences in weight, amounts, measurements, material composition, material construction, structure, surface and colour, or due to the nature of the materials used.

2. Prices

2.1

Subject to an express agreement to the contrary, our prices are quoted in EURO, ex-works, without sales tax, other public tax, packaging, insurance, freight, assembly or commissioning.

2.2

In the event that a price has not been agreed expressly, our list prices on the day of delivery shall be applied.

2.3

Subject to an express agreement to the contrary, in the event that our delivery, performance, part-delivery or part-performance is not due within four months of the conclusion of the contract and there is an increase in the cost of materials, labour, energy, carriage and/or public taxes or such are newly introduced, we are entitled to offset the increased costs with an appropriate surcharge. This clause shall also apply to fixed price agreements.

2.4

Subject to an express agreement to the contrary, we are entitled to claim pre-payment for products not held in stock; namely a third of the sum after receipt of the order confirmation and another third after communication of the notice of dispatch readiness.

2.5

We may invoice the customer at any time once delivery has been made or service/performance has been carried out.

2.6

We are entitled to offer the customer a current account arrangement in which all invoices are placed into an account held by us for the benefit of the customer and to send the customer an account statement. Our offer is accepted if the customer does not inform us of his rejection in writing within one month of having received the first account statement.

2.7

Our account statements, quantity accounts, mass accounts or balance confirmations are considered

approved and binding, if we expressly indicate this, unless the customer objects within two weeks of receipt in writing.

3. Delivery, Service/Performance

3.1

Delivery or performance times are only binding if they are agreed in writing. In the event of doubt, the delivery times referred to in the order confirmation shall apply. The delivery period commences with conclusion of the contract; however, not before the fulfilment of existing co-operational duties by the customer. In particular, these include the provision of materials and documentation to be procured by the customer and the arrangement of authorizations, releases, agreed deposits or other securities for the fulfilment of his contractual obligations. Once the notice of dispatch readiness has been issued, the agreed deadlines will be considered to have been met, even if delivery or performance cannot take place for reasons which are not our fault.

3.2

If delivery or performance deadlines are not met for reasons beyond our control, such as force majeure, war, terrorist attacks, import or export restrictions, labour disputes, or if the aforementioned affects our component suppliers, the agreed deadlines shall be extended for a reasonable period, even if at the time we are in default.

3.3

If we do not keep to a fixed delivery or performance deadline, for reasons other than those mentioned in Clause 3.2, the customer has the right to withdraw from the contract, after he has set us in writing a reasonable period within which to deliver or perform and we have not adhered to it.

3.4

Further rights of the customer based on our default, in particular compensation, shall be excluded to the extent set out in Clause 7.

3.5

We are entitled to part-performance of our contractual obligations, provided that the obligation is divisible and part-performance does not lead to unreasonable burdens for the customer or to burdens we cannot compensate the customer for.

3.6

If the customer has the right to require fulfilment or supplementary performance, or the right to withdraw from the contract and/or claim compensation or expenses as a result of a breach of contract by us, we can demand that he exercises his rights within a reasonable period. If the customer fails to do so, any claim for compensation instead of performance and/or withdrawal from the contract is effective only after the expiry of a newly set reasonable period to be determined by him.

4. Transfer of Risk, Dispatch, Examination and Notice of Non-Conformity

4.1

Delivery or performance take place at our registered office (= "ex-works") where the contract was concluded. Once the product is handed over to the customer the risk of accidental destruction or deterioration of the product is also transferred.

4.2

If by request of the customer the product is sent to another place, the method of dispatch may be determined by us, if the customer has stated nothing to the contrary. Transport insurance is taken out only on instruction and at the expense of the customer. The risk is transferred by delivery to the forwarding agent, the carrier or other person or institution chosen to execute the dispatch.

4.3

If the handing over or dispatch is delayed for reasons which we do not have to account for, the risk is transferred to the customer from the day notice is given of readiness for the handing over or dispatch.

4.4

The product is to be examined by the customer immediately on receipt. The same applies if delivery is not made to him but to a third party named by him. Defects, shortfalls, wrongful deliveries or other objections are to be indicated immediately after knowledge of these has been acquired. Initially, notice is to be given by telephone or fax, so that we can inspect the product and secure any evidence. Obvious defects and deviations are to be indicated to us within 72 hours of receipt of the product. Further obligations towards us according to §377 German Commercial Code and the duty to indicate to the carrier at the time of delivery any obvious damage in transit and shortfalls remain unaffected.

5. Defects, Warranty, Limitation

5.1

If the object delivered by us or our performance is faulty and the customer demands supplementary performance, we have the option whether to remove the defect (rectification of defect) or to deliver a product or performance without defects (delivery of replacement). We will inform the customer immediately of our decision. If we choose to rectify the defect, the faulty product is to be sent to us for repair. If the objection is found to be justified, we will pay the cheapest dispatch costs from and to the original domestic delivery address of the customer. This applies mutatis mutandi if we come to the customer to carry out the rectification. In order to carry out such work under warranty, the customer must give us or a third party chosen by us the opportunity and a reasonable period of time. Except in cases where §637 German Civil Code applies, the customer is only permitted to carry out such work himself with our approval.

If we deliver a replacement, at our discretion and expense, we can require the customer either to dispose of or utilise the defective product and transfer the proceeds of such utilisation less his own expenses, as long as the customer trades in such or similar products or the utilisation or disposal is reasonable for other reasons.

5.2

Claims for defects shall not arise in relation to minor deviations from the agreed characteristics of the product or minor interference with its usability.

5.3

Our warranty and liability will terminate: - if our product is altered, including by the installation of parts of foreign origin, unless the defect or damage is not causally linked with the alteration; - if our instructions are not followed for dispatch, packaging, installation, treatment, use or servicing; - or if faulty installation or commissioning or changes or repair works have taken place by the customer or third parties.

5.4

Natural wear and tear is excluded from our warranty. In addition, we are not liable for changes to the condition or the operating method of our products due to improper use, a wrongful combination with other objects, faulty storage, use with unsuitable material and climatic or other effects which have not been set out in the contract. The warranty does not apply to defects which are based on construction errors or the use of unsuitable materials where, despite our advice, the customer has prescribed the use of such construction or material. We undertake no warranty for parts provided to us by the customer.

5.5

In accordance with German law, if supplementary performance is unsuccessful, the customer can cancel the contract (rescission) or claim a reduction in payment (reduction); Clause 7 shall apply to claims for compensation.

5.6

Subject to the contractual and non-contractual claims for compensation set out in Clause 7, further or other rights relating to a defect which are not set out in Clause 5 are hereby excluded. In the case of minor defects, the appropriate claim for compensation by the customer is not for the purchase price paid, but for the damage which his legal estate has suffered by the fact that the object is not free of defects.

5.7

If a notification of defects is shown to be unjustified, we are entitled to be compensated by the customer for any expenditure caused by such notification.

5.8

Clause 5 applies to defects of title which are not based on a breach of intellectual property rights of third parties.

5.9

The limitation period for claims against us arising from or in connection with defects in our delivery or performance or the violation of a contractual term in the case of purchased things, commences with their delivery, and in other cases commences with the acceptance of our performance. All such claims are subject to a limitation period of 12 months or 6 months in the case of products which are not new. Claims relating to the following are not regulated by the aforementioned periods, but instead by statutory limitation periods: violation of life, body, health or liberty; fraudulent concealment of a defect; warranties as to the characteristics of the object; real rights by third parties to require the buyer to deliver up the object; where the contractual relationship concerns buildings or things for buildings in the sense of §438 Section 1 No. 2 German Civil Code; and claims relating to construction defects in the sense of §634a German Civil Code.

5.10

The limitation period is put on hold for the duration of any necessary supplementary performance; it does not begin afresh.

5.11

Clause 5 shall also apply if we have delivered or performed something different or lesser than contracted for.

6. Intellectual Property Rights

6.1

Unless regulated by contract otherwise, we are only obliged to deliver the product free of intellectual property rights in the country of the place of delivery.

6.2

If it is part of our contractual duty to deliver software with the product and no separate software licensing agreement is concluded, the customer has the right to use the software solely in combination with the product. The customer is not permitted to copy or interfere with the software, or assign or grant legal rights in the software to third parties. All exploitation rights remain with us.

6.3

If our product infringes intellectual property rights or such is alleged, at our discretion, we may acquire a license for the infringing product for the benefit of the customer, or modify the product so that it no longer infringes intellectual property rights or replace the product with a similar one which no longer infringes intellectual property rights. At our request and expense, the customer shall make the product and any software available to us for this purpose.

6.4

We do not accept liability for the infringement of intellectual property rights if a product was manufactured according to the specification of the customer, or the alleged infringement is the result of a combination with another product which does not originate from us, or the product is used in a manner which we could not foresee.

6.5

We are exclusively entitled but not obliged to exploit intellectual property rights for our product or to challenge any infringement of such rights.

6.6

For claims based on an infringement of intellectual property rights we are liable only if the intellectual property right is or was not owned by the customer or any company directly or indirectly under his control based on capital or voting rights, and the customer informs us immediately of a known infringement risk or alleged cases of infringement, and if possible, at our request, permits us to lead

any judicial and extrajudicial disputes, and with the exception of copyrights at least one intellectual property right has been published at the European Patent Office or at a corresponding national office in Germany, France, Great Britain, Austria or USA.

6.7

If the customer resells the product, it is agreed that he will make arrangements with his buyer which correspond to Clause 6 and from which we are entitled to benefit directly (contract for the benefit of third parties).

6.8

Clauses 6.1 to 6.7 conclusively regulate liability relating to intellectual property rights and shall apply correspondingly to any service or performance of ours.

7. Liability

7.1

In the event of a claim for damages and/or compensation for wasted expenditure for the purposes of §284 German Civil Code (in the following referred to together as "compensation") based on a breach of contract or external-contractual duties, our liability is only unlimited in the case of intention or negligence by our legal representatives or our leading employees (for the purposes of §14 paragraph 2 German Employment Protection Act) and intention or gross negligence by our vicarious agents.

In the event of liability for slight negligence by our vicarious agents, liability is limited to the damage typical for a contract which could be foreseen at the conclusion of the contract. Foreseeable damage typical for a contract is the damage which we foresaw at the conclusion of the contract as a possible consequence of a breach of contract or, based on the circumstances which we knew of or had to know about, would have had to foresee.

In the event of damage caused by delay as a result of slight negligence on our part, our liability is limited to 5% of the agreed remuneration.

7.2

In the following our liability is determined according to statutory requirements and not Clause 7.1: claims for injury to life, body or health; claims based on the acquisition of a warranty or a procurement risk; claims based on breach of essential contractual obligations; claims for damages instead of performance based on strict liability according to the German Product Liability Act or other statute.

7.3

If our liability is excluded or limited, the same applies to the personal liability of all persons who have participated in the preparation, conclusion and/or execution of the contractual relationship; thus in particular our employees, legal representatives and vicarious agents.

7.4

The preceding terms do not alter the burden of proof to the disadvantage of the customer.

7.5

Clause 7 shall apply unless something to the contrary is stipulated elsewhere in these terms or in the contract itself.

8. Reservation of Title

8.1

The goods remain our property until all demands, which we are absolutely or partly entitled to from the customer when the (purchase) price is payable, have been settled and/or all bills of exchange, cheques or other documents given to us by the customer are cashed and credited to us. In case of open accounts, the reservation of title applies as security for our balance demands. The transfer of individual demands into an open account, or the recognition of an account balance, does not affect the reservation of title. The transfer of title to the customer is under no circumstances dependent on the fact that the customer fulfils demands of a third party which we have the right to assert or set-off against him.

8.2

Until final payment is made, the customer is obliged to treat and keep our goods as immediate holder so that they are identifiable as our property. The customer will keep the property for us free of charge. The same shall apply in cases where we have joint ownership. The customer is obliged to insure our property in his possession against damage to the same extent as he has insured his own property, and to provide us with all necessary information and documentation to allow us to enforce our rights.

8.3

The customer is only entitled to resell, further process or install the product which is still our property or in which we have joint ownership in accordance with the following stipulations and only if the claims referred to are exercisable by us:

The customer is permitted to resell the reserved goods as part of his normal business dealings. However, he may not pledge the goods or use them as security.

The processing or reorganization of the reserved goods shall take place for the benefit of us as a manufacturer and we will become the owner of the new object, albeit without incurring liability ourselves. If our ownership is lost due to processing, connecting, blending or mixing our goods with things which do not belong to us, it is agreed that from this moment we shall acquire joint ownership in the new unified object. The share of joint ownership is to be based on the invoice value of our reserved goods against the invoice value of the complete new object.

The preceding authorisations granted to the buyer shall be revoked if the buyer fails to fulfil his duties towards us in time, gets into financial difficulties, fails to make his payments or insolvency proceedings are commenced against his legal estate.

8.4

The customer hereby assigns to us any claims he may have from the resale of reserved goods or the object we (co)own, and we hereby accept such assignment. The assignment in each case relates to the whole claim, if its sum is smaller than or as high as our outstanding demand; otherwise the assignment relates only to the sum of our outstanding demand with priority over any claim the customer has.

Notwithstanding our right to debt recovery, subject to a condition subsequent the customer is authorised to recover assigned claims from the debtor in his own name. This authorisation of the customer ends automatically (point of cessation) if he recognises that he is heavily indebted or he ceases making payments or insolvency proceedings are commenced against his legal estate.

At our request, the customer shall provide us with the information necessary to enforce any claims assigned to us; this includes handing over all original documentation relating to the claim or granting us access to the documentation, naming the debtor, providing a full address, stating the sum and reason for the debt and informing the debtor of the assignment.

8.5

Without prejudice to other rights, we are entitled to revoke all authorisations relating to our property or rights given to the customer if the customer, despite a reminder, breaches contractual obligations culpably or we have an indication which justifies the supposition that the customer has got or is likely to get into financial difficulties and the customer fails to make his continuing solvency plausible.

8.6

The customer shall inform us immediately about measures taken by third parties to enforce judgments relating to our reserved goods or claims assigned to us, and the customer shall hand over any documentation necessary to allow an intervention.

8.7

In the event of payment default or other culpable breach of contract by the customer, we are entitled to withdraw from the contract in accordance with German law and to require the delivery up of our reserved or jointly owned goods.

8.8

At the request of the customer and at our discretion, we agree to release securities due to us based on

the preceding clauses, if their value exceeds our demands according to list prices applying to the customer at the time by 15% or more.

9. Payment, Set-Off, Due Date

9.1

Provided that nothing to the contrary is agreed in writing or a case arises to which Clause 2.4 applies, we will invoice the customer at the time of delivery and payment is due without deductions within 10 days of the invoicing date. At the end of this period the customer is in default. We also have the right to make deliveries dependent on receipt of payment (including by cash on delivery or direct debit); Clause 2.4 remains unaffected.

9.2

Payment is to be made in cash or by transfer to the account stated in the invoice. Payment discounts offered by us are calculated from the invoicing date.

9.3

Settlement of an invoice by bill of exchange or cheque is only permitted by separate agreement. Discount charges, exchange fees and other expenses are calculated from the day payment of the invoice is due and are payable by the customer. Any risks and costs related to payment of the invoice amount shall be assumed/met by the customer.

9.4

If the customer is culpably in default of payment, we are entitled to charge interest for the default at the rate required to cover our own credit expenses or at the rate of 8% above base interest rate. Our right to assert further or statutory claims for compensation remains unaffected.

In the event of a culpable default in payment by the customer, we are entitled to cancel arranged payment dates and to demand payment of the complete debt arising from our business relationship and to require immediate cash payment and to revoke any discounts or other agreed benefits, even if such are not openly indicated in the customer order, contract or invoice. This right is not excluded by the granting of an extension or by acceptance of cheques or bills of exchange. Furthermore, we are entitled to make any outstanding deliveries only against payment in advance or the provision of securities. Our rights arising from §321 German Civil Code remain unaffected in any case, and we are entitled to exercise them once the customer is culpably in default of payment based on this or any other commercial transaction with us.

9.5

A set-off against our demands is permitted only in relation to claims by the customer which are not disputed, or are legally binding, or to which the customer is entitled based on a logically substantiated assertion relating to the transaction from which we are asserting our demand. A right of retention based on earlier or other transactions (i.e. not the present contractual relationship) cannot be asserted. The assignment of claims requires our written approval.

9.6

We are entitled to offset payments against the oldest payable debt.

9.7

If the customer encounters financial difficulties (= over indebtedness, insolvency or imminent insolvency) and as a result an application to commence insolvency proceedings is brought against his legal estate, all our claims against him become due and are unconditionally payable at the time of the application; the same applies to old claims, claims subject to a condition subsequent and claims subject to a condition precedent. If at this time we have claims against the customer which are non-monetary or whose monetary value is yet to be decided or is uncertain, we are entitled at our reasonable discretion to estimate the monetary amount owed and to claim such amount.

9.8

If insolvency proceedings are brought against the legal estate of the customer, we are entitled to offset against his demands claims which are conditionally or not yet payable. If at this time claims are brought against the customer which are non-monetary or whose monetary value is yet to be decided or is uncertain, we are entitled at our reasonable discretion to estimate the monetary amount owed.

10. Place of Jurisdiction; Applicable Law

10.1

The place of jurisdiction is Deggendorf. The plaintiff also has the right to commence proceedings against the defendant at the court in the district where the defendant has its registered office and which in accordance with the national regulations of the defendant is responsible for the legal dispute.

10.2

It is agreed that German law shall apply to all legal relations between us and the customer.

10.3

If individual provisions of these terms are invalid, this shall not affect the validity of the remaining provisions. An invalid provision is to be replaced by agreement with a provision which corresponds with its intended economic purpose. The same shall apply if these terms are invalid as a whole.
