

## **General conditions of purchasing MERZ Schaltgeräte GMBH + CO KG (November 2021)**

### **I. General provisions**

1. These General Terms and Conditions of Purchase shall apply to all business relations between MERZ Schaltgeräte GMBH + CO KG (hereinafter referred to as MERZ Schaltgeräte for short) and the contractor (hereinafter referred to as CO for short).
2. The CO's general terms and conditions shall only apply insofar as MERZ Schaltgeräte has agreed to them in writing for the respective conclusion of the contract.
3. If special provisions deviating from these Terms and Conditions are agreed upon in writing for a specific order, these General Terms and Conditions of Purchase shall apply subordinately and in addition.
4. The validity of other conditions cannot be derived from the acceptance of delivered goods.

### **II. Purchase order (PO) – Order confirmation**

1. PO must be in writing. Oral agreements shall only be effective if confirmed in writing by MERZ Schaltgeräte.
2. PO shall be confirmed in writing by the CO stating our order number within five working days after the date of PO, otherwise MERZ Schaltgeräte may cancel the order free of charge.
3. MERZ Schaltgeräte shall be entitled to request modifications of the delivery item even after conclusion of the contract, if such modifications are reasonable for the CO.

### **III. Delivery dates- Withdrawal**

1. The delivery dates and deadlines agreed between MERZ Schaltgeräte and the CO shall be binding. If it becomes apparent to the CO that delivery dates cannot be met, the CO shall immediately contact MERZ Schaltgeräte and give reasons as well as new delivery dates. In this case, the CO shall be obliged to arrange for delivery as soon as possible at his own expense.
2. If the CO fails to perform or fails to perform in accordance with the contract, MERZ Schaltgeräte shall be entitled to rescind the contract after a reasonable grace period has expired to no avail or, if the CO is responsible for the failure to meet the delivery date, to claim damages in accordance with the statutory provisions. This shall also include the additional costs incurred in the event of replacement by a third party.
3. MERZ Schaltgeräte shall be entitled to terminate or withdraw from the contract for good cause, in particular if the CO has suspended payments not only temporarily, or if the CO has filed for insolvency proceedings, or if insolvency proceedings have been instituted against the assets of the CO or if such proceedings have been refused for lack of assets.
4. If the CO is in default of delivery (the basis is its self-confirmed delivery date), MERZ Schaltgeräte may demand a lump-sum compensation for its damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net purchase price for each complete calendar week of the delay, but in total not more than 5% of the net purchase price of the goods delivered late. The right of MERZ Schaltgeräte according to Art III No. 2 to withdraw from the contract or to claim damages for delay shall remain unaffected.

## IV. Prices - conditions

1. The net prices stated in the PO are fixed prices including freight, packaging and transport insurance.
2. Additional and/or surplus services shall only remunerated if this was agreed upon in writing prior to the performance of the service.
3. The CO shall be obliged to collect and dispose of all packaging of the delivered products from the place of receipt at his own expense upon MERZ Schaltgeräte's request.

## V. Shipping - Invoice

4. The goods shall be shipped at the expense and risk of the CO. Each delivery of goods shall be accompanied by a delivery bill stating the purchase order number, date and purchase order item number, the designation of the goods with MERZ Schaltgeräte material number as well as, if available, the serial numbers.
5. The invoice shall be send exclusively to the accounts payable department of MERZ Schaltgeräte.:  
[rechnung.schaltgeraete@merz-elektro.de](mailto:rechnung.schaltgeraete@merz-elektro.de)

## VI. Payment

1. Payment shall be made with 3% discount within 30 or within 60 days net, calculated from the complete and proper receipt of goods including all agreed documents including the necessary operating and maintenance instructions.
2. The date of receipt of the invoice shall be the date of the receipt stamp of the invoice. However, payment periods shall not commence before receipt of the goods at the agreed place of delivery.
3. The date of handing over the transfer order to the bank or the date of dispatch of the check shall be decisive for the timeliness of payment by MERZ Schaltgeräte VII. Protective Regulations the CO undertakes to comply with the recognized rules of technology and in particular with the regulations and guidelines issued by the legislator, the supervisory authorities, the employers' liability insurance associations and the VDE with regard to execution, accident prevention and environmental protection.

## VIII. Defects of quality and title

1. Unless otherwise provided hereinafter, the liability of the CO for defects as to quality and title shall be governed by the statutory provisions.
2. In case of a serial defect MERZ Schaltgeräte shall be entitled to refuse acceptance of the remaining delivery and to assert the statutory rights for defects for the entire delivery. A serial defect shall be presumed if at least 10 % of the delivered goods show a similar defect during the warranty period.
3. The warranty period is 36 months after delivery of the goods. The warranty period for defects in a building and for defects in an object which has been used for a building in accordance with its customary use and has caused its defectiveness shall be 60 months. It shall be extended by the period during which the delivered item cannot be used due to its defectiveness.

4. MERZ Schaltgeräte shall inspect deliveries after delivery by the CO as far as this is feasible in the ordinary course of business, at least, however, for deviations in identity and quantity, transport damages and other obvious defects. The obligation to give notice of defects according to § 377 HGB (German Commercial Code) shall be deemed to be fulfilled if the CO is notified of defects within 10 working days after receipt of the delivery or, in case of hidden defects, within the same period of time after their detection. 5.
5. In case of a material defect or a defect of title MERZ Schaltgeräte shall be entitled to demand supplementary performance, to withdraw from the contract, to reduce the purchase price or to claim damages or compensation for futile expenses under the conditions of § 437 BGB (German Civil Code).
6. In case of excess deliveries MERZ Schaltgeräte reserves the right to return the excess goods at the expense of the CO.
7. The limitation period for claims based on material defects shall be suspended if the parties negotiate about the existence or the scope of warranty claims or if the CO himself checks the existence of a defect. The suspension shall be terminated if the CO refuses in writing to continue the removal of the defect or if he informs MERZ Schaltgeräte in writing that the negotiations have been terminated or if the result of the examination is sent to MERZ Schaltgeräte.

## IX. Liability

1. The CO shall be liable for damages resulting from the delivery of defective products in accordance with the statutory provisions.
2. The CO shall indemnify MERZ Schaltgeräte against claims arising from the statutory product liability insofar as the cause of the damage lies within the CO's sphere of responsibility.
3. Provisions for the execution of the order shall remain the property of MERZ Schaltgeräte. They shall be stored, designated and managed separately by the CO free of charge and may only be used for the respective purpose of the contract. The CO shall be liable to MERZ Schaltgeräte for any damage caused to the materials provided.

## X. Confidentiality

The CO is obliged to treat the order and the work resulting therefrom, including all associated documents, devices and equipment etc., as confidential and not to make them accessible to third parties, either directly or indirectly. Press releases, other publications and advertising with orders placed shall only be permitted with the written consent of MERZ Schaltgeräte.

## XI. Other conditions

1. Place of fulfillment for delivery and service is the MERZ Schaltgeräte in Gaildorf.
2. Place of jurisdiction for all disputes, as far as legally permissible, is Gaildorf. MERZ Schaltgeräte shall also be entitled to bring an action at the place of business of the CO or before any other court having jurisdiction by virtue of domestic or foreign law.
3. All legal relations between MERZ Schaltgeräte and the CO arising out of or in connection with the contractual relationship shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. Even if individual provisions are legally invalid, the remaining parts of the contract shall remain binding, unless adherence to the contract would cause unreasonable hardship to one of the parties.
5. MERZ Schaltgeräte shall store the data of the CO within the scope of the Federal Data Protection Act. General Terms and Conditions of Purchase of MERZ Schaltgeräte, Kernerstr .15, 74405 Gaildorf, Germany
6. MERZ Schaltgeräte shall be entitled to set off any claims against claims of the CO.
7. The CO may assign claims against MERZ Schaltgeräte to third parties only with the written consent of MERZ Schaltgeräte.

Gaildorf, November 12, 2021

Siegfried Glaser  
Geschäftsleitung

