



General Terms & Conditions of M+S SILICON GMBH & CO. KG

www.ms-silicon.de

I. Scope of Application

1. The following Terms shall exclusively apply to all orders, contracts, deliveries and other performances of **M+S SILICON** even for future transactions in the event of permanent business relationship. Varying terms shall only apply if they have been confirmed in writing by an authorized and registered representative of **M+S SILICON** and also in the event the Buyer has referred to its terms to the contrary in the order.
2. These General Terms & Conditions shall apply to all tradesmen if the contract is relevant to the operation of their trade, to judicial persons under public law and special assets under public law.

II. Quotation, Acceptance, Scope of Performance

1. All quotations of **M+S SILICON** shall be without engagement.
2. The contract shall become operative with the confirmation or implementation of the order. Collateral agreements are required to be in writing.
3. The exact scope of performance shall follow from the confirmation of order. Objections against it must be made forthwith in writing. Additional or short supplies amounting to 10 per cent of the order cannot be queried by Buyer. Additional deliveries at this level shall be invoiced. Short supplies shall not result in any claims by Buyer.
4. Specifications relating to the dimensions, weight, colour, material and equipment in catalogues of **M+S SILICON** and other illustrations shall only be approximate unless they are assured in a binding manner in our confirmation of order.
5. Buyer cannot refuse modifications due to technical further developments.

III. Prices

1. Prices shall be in Euro plus the VAT applicable at the time of delivery.
2. Packaging, transport and other service costs shall be separately invoiced and shall be borne by Buyer like the possible transport insurance.
3. Taxes or public duties which are introduced, levied or increased after conclusion of the contract shall be debited to Buyer.
4. In case of any substantial increase in wage and material costs after conclusion of the contract **M+S SILICON** can reasonably increase the delivery price and withdraw from the contract upon Buyer's objection.

IV. Terms of Payment

1. Claims shall become due and payable with the provision for shipment. Payment must be made within 10 days from date of invoice with 2 per cent discount, within 30 days net. Bills of exchange shall only be accepted subject to previous agreement as conditional payment without granting discount. From the 31st calendar day after maturity **M+S SILICON** shall be authorized to claim 8 per cent interest above the basic rate. The right to claim higher damage caused by default shall remain unaffected.
2. **M+S SILICON** shall be authorized to demand advance payments or securities if Buyer does not adhere to the terms of payment. Upon expiry of a reasonable deadline granted to Buyer **M+S SILICON** shall be authorized to withdraw from the contract or to make damage claims instead of performance. This shall also apply if circumstances concerning the assets of Buyer that appear to reduce the credibility of Buyer according to the due businessmanlike discretion become known after conclusion of the contract. In this case all payment obligations of Buyer under the business relationship shall become due and payable immediately.
3. Buyer may only setoff against undisputed and absolute claims or assert the right of retention.

V. Delivery Periods

1. Delivery periods shall only be specified approximately and without engagement unless they are assured in a binding manner in the confirmation of order. The expiration of time shall commence upon receipt of all documents and releases required for the execution of the order and when Buyer has fully complied with its duty to cooperate in due time and not before clarification of execution details.
2. Unforeseen events, e.g. force majeure, war, mobilization, riots, boycott or breakdowns, strike, lockout, official interventions, power supply or material procurement problems shall authorize **M+S SILICON** to prolong the delivery periods or to rescind the contract if they are not attributable to it. In the event of withdrawal from the contract **M+S SILICON** agrees and undertakes to immediately inform the contracting partner regarding the non-availability and to reimburse possible counter performances forthwith.
3. Delivery shall be deemed made within the deadline when the goods ready for service have been shipped or picked up. If delivery is delayed for reasons attributable to Buyer, the notification of readiness for shipment shall be sufficient to meet the deadline.
4. If a delivery date without engagement is not complied with after two weeks Buyer shall be authorized to set a reasonable deadline for delivery through which **M+S SILICON** shall incur default. Upon expiry of this deadline Buyer must set another reasonable deadline threatening refusal. Upon fruitless expiry of such deadline Buyer shall be authorized to withdraw from the contract or to make damage claims instead of performance if the default is based on wrongful intent or grave negligence.

VI. Delivery, Passing of the Risk

1. Delivery of goods shall be on account and risk of Buyer even if freight prepaid delivery is agreed or delivery is made by vehicles of **M+S SILICON**. The choice of shipment shall be at the discretion of **M+S SILICON**.
2. With the delivery of the goods to the transport person and exit from the plant for the shipment purpose at the latest the risk including the confiscation shall be passed to Buyer. If the delivery of the goods ready for shipment is delayed due to reasons not attributable to **M+S SILICON**, the risk shall be passed to Buyer upon receipt of the notification of readiness for shipment
3. Part deliveries shall be permissible. Excess deliveries or short supplies amounting to 10 per cent of the order cannot be queried by Buyer.
4. For call orders without specification of the delivery period the delivery item must be accepted within three months after order.
5. If Buyer fails to accept the delivery item within 14 days following the notice of readiness for shipment or if no call is made for call orders, the invoice amount shall become immediately due and **M+S SILICON** shall be authorized to charge reasonable storage charges. **M+S SILICON** shall also be authorized to withdraw from the contract and to make damage claims instead of performance.

VII. Retention of Title

1. The object of performance shall remain property of **M+S SILICON** until full settlement of all claims under the business relationship for any legal reason whatsoever including accruing and conditional claims even from contracts made at the same time or later even if payments for especially specified claims are made. For open account the retained ownership shall be deemed to be security for the balance claim of **M + S SILICON**.
2. Buyer shall be authorized to resale the privileged goods in the usual course of business. No pawn, transfer of ownership by security or fiduciary assignment shall be permitted. Buyer assigns its claims from the resale of privileged goods at this stage and in advance to **M+S SILICON** who agrees hereto. Buyer shall be authorized to collect these claims as long as Buyer meets its obligations towards **M+S SILICON** and the entitlement to compensation shall not be endangered. Buyer shall on demand by **M+S SILICON** specify the debtors of the assigned claims and notify the assignment. **M+S SILICON** shall be authorized to notify the assignment to the debtors independently.
3. The processing of the privileged goods shall be for **M+S SILICON** without engagement on its part. The processed goods shall be deemed privileged goods. In the event of processing, combining or mixing the privileged goods with other goods not belonging to **M+S SILICON** the co-ownership in the new goods shall be established in relation with the invoice value of the goods at the time of processing. If Buyer acquires the sole ownership, it shall already assign the co-ownership to **M+S SILICON** in the relation indicated above and keep them at no cost for **M+S SILICON**. If the privileged goods are resold together with other goods whether without or after processing etc., the advance assignment shall be limited to the delivery value of the privileged goods.

4. **M+S SILICON** shall be obliged on demand by Buyer to release the securities to which it is entitled in its discretion if the value of the securities exceed the claims to be covered by more than 20 per cent. This shall apply on demand by a third party who is affected by the excessive collateral.
5. With discontinuation of payment, initiation of bankruptcy proceedings, any judicial or extra-judicial composition proceedings Buyer's right shall extinguish to resale or to utilize the privileged goods as well as to collect the assigned claims.
6. Buyer agrees and undertakes to furnish the information necessary to assert the rights of **M+S SILICON** and to deliver the required documents as well as pawns, seizures and to immediately notify the execution measures in writing relating to the privileged goods or the assigned claims or the claims assigned to **M+S SILICON**.
7. In case of default as well as any substantial violation of the duty to exercise proper care the assertion of the right of reservation of ownership shall not be deemed withdrawal from the contract unless its is expressly declared by **M+S SILICON**.

VIII. Use of Customer Drawings and Tools

Goods produced by **M+S SILICON** using tools and devices manufactured according to customer's drawings may be offered and sold to third parties even if tools costs have been invoiced pro rata. These tools may be published in catalogues or exhibitions without incurring rights or claims from this for Buyer.

IX. Notice of Defects, Warranty

1. Buyer must examine the goods for defects immediately upon receipt. Identified defects must immediately be notified in writing to **M+S SILICON** in an understandable manner for immediate discontinuation of the processing and manufacture. A deadline of 1 week after identification shall apply to non-apparent defects.
2. In the event of violation of the duty to examine and to give notice of defects all warranty claims due to this defect shall extinguish.
3. Exclusion of trade-related variations must be agreed upon in writing. The same shall apply to possible guarantees. Minor irrelevant variations of the goods delivered compared with samples, catalogues, prospectus and price lists etc. or goods delivered earlier shall be deemed in conformity with the contract and not defects.
4. Buyer must check the suitability of the goods for its designated purpose. Unsuitable goods shall only be defective if **M+S SILICON** has confirmed its suitability in writing. The wear and tear of working parts within the scope of usual use shall not constitute defect.
5. If assembly, installation, distribution or maintenance instructions are not complied with, modifications are carried out on the goods, components exchanged or materials or cleaning agents used not conforming with manufacturer's specifications, deficiency claims shall only exist if Buyer can prove that the defects were not caused by this, but already existed at the time of passing of the risk.
6. **M+S SILICON** shall upon occurrence of a defect carry out subsequent improvement or replacement at its own discretion against return of the defective goods. **M+S SILICON** shall not bear the additional costs arising from the fact that the goods have been transported to another location than the place of performance.
7. In the event of failure to carry out subsequent improvement or replacement Buyer shall be authorized to reduce the payment or to withdraw from the contract.

X. Liability, Damage Claim

1. If **M+S SILICON** violates any substantial obligation for the performance of the contract by negligence, the liability of **M+S SILICON** shall be limited to the typical damages of this type in comparable business that were foreseeable at the time of conclusion of the contract or during the commission of the violation at the latest – in the individual case to an amount of € 1,000,000. § 444 Civil Code damage claims due to physical and health injury as well as damage claims under the Product Liability Act shall remain unaffected from these limitations of liability.
2. Otherwise, damage claims shall be ruled out to the extent that wrongful intent or grave negligence cannot be attributed to **M+S SILICON** and its assistants. Especially, no liability shall be assumed for damages on the delivery item or for consequential damages of any kind or for profit loss or other property damages of Buyer.

3. Additional claims of any kind and legal reason whatsoever shall be ruled out.
4. The exclusion of liability towards Buyer shall apply to the same extent also for the personal liability of the legal representatives, assistants and personnel.

XI. Limitation of Time

The limitation of time for all claims that are not attributable to the conduct of **M+S SILICON** based on wrongful intent shall be one year. This shall not apply to the obligation of **M+S SILICON** to reimburse costs that Buyer has to pay to any consumer due to the delivery of a new item for the purpose of subsequent performance.

XII. Final Provisions

1. Place of Performance shall be Dortmund.
2. Exclusive legal venue for between merchants and judicial persons under public law or special assets under public law shall be for all disputes arising from the legal relationship between **M+S SILICON** and Buyer shall be the Registered Office of **M+S SILICON** in Dortmund.
German law shall apply.
3. Should individual terms be or become wholly or partially invalid or not enforceable, the validity of the remaining arrangements and the contract shall not be affected by this. The provision that comes next to the economic purpose shall apply.

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