

## **General Terms and Conditions of M+S Damerius GmbH & Co. KG**

### **1. Scope**

1. All deliveries, services and offers of the seller (hereinafter referred to as "M + S DAMERIUS") will be provided exclusively on the basis of these General Terms and Conditions (GTCs). These apply as amended at the time the buyer places his order or, in any case, in the form that was last provided to the buyer in writing, and serve as a framework agreement for future orders as well without us having to refer to them again in each individual case. They also apply to all future business relationships, even if they are not expressly agreed upon again.
2. Any terms and conditions of business or purchase of the buyer that deviate from, conflict with or supplement these GTCs will not be recognised. Their inclusion is hereby objected to. This objection also applies in the event that, for example, M + S DAMERIUS delivers goods to the buyer without reservation while being aware of the buyer's terms and conditions of purchase.
3. Differing terms and conditions will only apply if they have been confirmed in writing by a person who has been entered into the commercial register and is authorised to represent M + S DAMERIUS, and, in that case, only when the buyer has referred to the differing terms and conditions in his order.
4. These General Terms and Conditions of Sale only apply with respect to entrepreneurs, legal persons under public law or special funds under public law pursuant to Section 310(1) of the German Civil Code.

### **2. Offers, conclusion of contracts, differing agreements and product specifications**

1. M + S DAMERIUS's offers are non-binding and subject to change. This also applies if we have sent the buyer catalogues, technical documentation (e.g., drawings, plans, calculations, references to DIN standards), other product descriptions, and any other documents – including in electronic form – to which M + S DAMERIUS reserves property rights and/or copyrights.
2. When the buyer places an order for goods, this will be deemed a binding offer. In order to be legally valid, statements of acceptance and all orders require written or electronic confirmation from M + S DAMERIUS. Order confirmations issued via remote data transmission and computer print-out are considered valid without signature. Acceptance can also be granted through delivery of the goods to the buyer.
3. The same applies to deviations from these GTCs and other supplements, amendments or ancillary agreements.
4. The written order confirmation from M + S DAMERIUS stipulates the content and scope of deliveries and services. Any objections to the order confirmation must be submitted in writing without delay, i.e. within one week of receipt.

5. The information and images contained in brochures, catalogues, and other depictions are approximate values that are customary in the industry, unless they are expressly specified to be binding. The buyer must determine for himself whether or not the products are suitable for the intended use by inspecting the products himself.
6. The orderer is not entitled to reject any changes to M + S DAMERIUS's products as long as they are related to technical developments or advancements.

### **3. Prices, payment**

1. All prices, including packaging costs, are in euros including value-added tax (VAT) in the amount required by law, and, by individual agreement, are to be understood as either for collection by the buyer, EXW or DAP in accordance with Incoterms ® as amended.
2. Transport and other service costs will be charged on the basis of the individual agreement in accordance with the previous clause. In the event that the customer agrees to EXW delivery, the buyer is responsible for covering the costs of any transport insurance coverage.
3. Any taxes or public charges that are introduced, levied or increased after conclusion of the contract are to be borne by the orderer.
4. In the event of a substantial increase in labour and material costs after conclusion of the contract, M + S DAMERIUS can increase the price of delivery accordingly. The buyer has the right to object to this price increase. An increase in labour and material costs is considered substantial when said costs increase by at least 10% compared to before the conclusion of the contract. If the buyer exercises his right to object in writing, M + S DAMERIUS has the right to withdraw from the contract.
5. Payments are due at the latest when the goods are ready for dispatch. The date at which goods are ready for dispatch corresponds to the invoice date. Any discounts granted will be agreed upon on an individual basis. If the buyer does not pay within 30 days of the due date, he will be in default without notice. As of the 31st calendar day after the payment due date, default interest of 9% p.a. above the respective base interest rate will be charged pursuant to Section 247 of the German Civil Code. M + S DAMERIUS reserves the right to claim more extensive damages due to payment default; the buyer cannot claim that M + S DAMERIUS incurred less damage or no damage that would entitle them to charge additional interest. Bills of exchange will only be accepted after prior, written agreement and only as conditional payment. Discounts will not be granted in the case of payment via bill of exchange. However, even in the case of an ongoing business relationship, M + S DAMERIUS has the right to only make a delivery, either in whole or in part, against advance payment. M + S DAMERIUS will declare a caveat to this effect at the latest with the order confirmation.
6. Independent of any payment agreements entered into on an individual case basis, any outstanding payments to M + S DAMERIUS will be due immediately if any circumstances arise concerning the buyer's person that would make it no longer reasonable to adhere to the payment agreements made. This is the case in the event of a reasonable indication that the buyer's financial situation has significantly

deteriorated, in particular the cessation of payments, check and bill of exchange protests, or payment delays, if this indicates that M + S DAMERIUS's claim for consideration could be jeopardised by the buyer's inability to pay. In this case, M + S DAMERIUS is further entitled to define a term for the buyer during which time the buyer, at M + S DAMERIUS's discretion, must effect the counter-performance or provide additional securities concurrently with the performance. Following the fruitless expiry of the term defined by M + S DAMERIUS, M + S DAMERIUS is entitled to withdraw from the contract.

7. The buyer is only entitled to offsetting with counterclaims or to withhold payment due to such claims in the event that his counterclaims are undisputed, if a ruling is anticipated shortly, or if said counterclaims are found to be valid.

#### **4. Delivery and performance time, delays**

1. Delivery deadlines are approximate and are non-binding unless they are guaranteed to be binding in the order confirmation. The delivery deadline is considered to be met if the goods are brought to be shipped by the agreed-upon delivery deadline, or if the buyer has been notified that the goods are ready to ship.
2. Compliance with deadlines for deliveries presupposes the timely receipt of all of the necessary information that must be provided by the buyer, documents to be supplied, required authorisations (including any necessary import licenses) and approvals, in particular of plans, as well as compliance with the agreed-upon payment conditions, including timely payment of any separately agreed-upon down payments on an individual case basis, and compliance with any other requirements on the part of the buyer. If these requirements are not met in a timely fashion, delivery deadlines will be extended accordingly.
3. Fixed-date transactions require express written confirmation by M + S DAMERIUS.
4. Delivery and payment delays due to force majeure, unforeseeable malfunctions or operation disruptions, raw material shortages, difficulty procuring materials, or other events for which M + S DAMERIUS is not liable entitle M + S DAMERIUS to postpone the delivery deadline by the duration of the hindrance, provided that this has been agreed upon as binding. If M + S DAMERIUS is unable to deliver or if delivery is not reasonable due to a situation as described above and the hindrance is not merely temporary in nature, M + S DAMERIUS may withdraw from the contract, in whole or in part. In this case, M + S DAMERIUS is obligated to inform the buyer without delay regarding the unavailability and to reimburse any payments to the buyer without delay.
5. If the hindrance due to force majeure lasts for longer than two months, the buyer is entitled, after specifying a reasonable grace period, to withdraw from the contract in view of the portion of the contract that has not yet been fulfilled.
6. If M + S DAMERIUS is unable to comply with the delivery date or delivery deadline, the buyer is obligated to specify a reasonable grace period of at least four weeks in writing. If M + S DAMERIUS does not deliver within the specified grace period and is culpable for this failure to deliver, the buyer is entitled to withdraw from the contract.
7. If M + S DAMERIUS is liable for non-compliance with deadlines that have been agreed upon as binding, after the fruitless expiry of the grace period specified by the

buyer, the buyer is entitled to a compensation for delay amounting to 0.5% of the net price for every full calendar week of delay, limited in total, however, to 5% of the delivery value of the delayed good(s). M + S DAMERIUS reserves the right to furnish proof that the buyer has only incurred significantly less damage than the aforementioned lump sum, or no damage at all. The rights of the buyer pursuant to Section 8 of these GTCs remain unaffected.

8. On demand from M + S DAMERIUS, the buyer is obligated to declare within a reasonable period of time whether he will be withdrawing from the contract due to the delivery delay, and/or demands compensation for damages in place of performance, and/or insists on delivery. In the event of withdrawal from the contract, M + S DAMERIUS is obligated to reimburse any payments we have already received.
9. If shipment, dispatch or delivery is postponed at the request of the buyer beyond the time specified in the contract, M + S DAMERIUS can charge the buyer, at the earliest ten (10) working days after notification that the goods are ready to ship, storage fees in the amount of 0.5% of the invoiced amount for each new month as of the first day of the month, up to a maximum total of 5%. Either of the contracting parties has the right to provide proof of higher or lower storage fees. For orders on demand without specification of a delivery time, the object to be delivered must be accepted at the latest three (3) months after ordering.
10. If the buyer is in default of acceptance, fails to cooperate, or if the delivery from M + S DAMERIUS is delayed for other reasons for which the buyer is liable, M + S DAMERIUS is entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). In this case, M + S DAMERIUS will charge storage fees in the amount of 0.5% of the invoiced amount for each new month as of the first day of the month, up to a maximum total of 5%. Either of the contracting parties has the right to provide proof of higher or lower storage fees.
11. The shipping method used will be agreed upon individually.
12. M + S DAMERIUS is entitled to send partial deliveries to a reasonable extent.
13. Deviations due to production and customary over- or under-deliveries of up to 10% of the ordered quantity are permitted unless a deviation from the contractually agreed-upon quantity is unacceptable for the buyer on an individual basis. If the deviation is within the 10% limit and the deviation is acceptable for the buyer, the goods will be considered to have been delivered in accordance with the contract and the buyer may not derive any rights from said delivery. Invoices are written based on the actual quantity of goods delivered. Reasons why a delivered quantity is unacceptable to the buyer must be sent in writing to the seller within a week of delivery.

## **5. Transfer of risk**

1. If the goods are to be delivered EXW, the risk of accidental destruction and/or loss and the risk of delay are transferred to the buyer as soon as the shipment has been handed over to the person carrying out the transport or has left M + S DAMERIUS's warehouse for the purpose of shipment. The same applies when shipment is being carried out, either in whole or in part, by M + S DAMERIUS's own personnel. Moreover, the risk is transferred to the buyer as soon as said buyer is in default of acceptance after he has received notification of readiness for delivery from



#### M + S DAMERIUS.

2. In the event that collection by the buyer is agreed upon, the risk is transferred to the buyer as soon as said buyer is in default of acceptance after he has received notification of readiness for pickup from M + S DAMERIUS.
3. If the goods are to be delivered DAP, the risk of accidental destruction and/or loss and the risk of delay are transferred to the buyer as soon as the goods have been delivered to the agreed-upon location.
4. If, on an individual basis, for reasons for which M + S DAMERIUS is not liable, and due to a separate written agreement, goods are taken back, the buyer bears all risk until the goods have been received by M + S DAMERIUS.

#### 6. Warranty

1. The prerequisite for any warranty entitlement on the part of the buyer is the proper performance of all of his obligations to inspect the goods and notify the seller of complaints in a timely fashion pursuant to Section 377 of the German Commercial Code.
2. Claims for defects do not apply in the case of minor deviations from the agreed-upon quality or in the case of minor impairments in terms of functionality. The exclusion of customary deviations must be agreed upon in writing. The buyer himself must inspect the suitability of the ordered goods for a specific purpose. Unsuitable goods are only to be considered unsuitable or defective if M + S DAMERIUS has previously confirmed the suitability for the specific purpose in writing.
3. Further, warranty claims cannot be asserted in the event of natural wear and tear or damage that occurs after the transfer of risk as a result of incorrect or negligent treatment, excessive strain, unsuitable equipment, improper assembly works, unsuitable work materials, disregard for operating instructions, improper maintenance, or due to special external factors (e.g. chemical or electrolytic substances) that are not provided for pursuant to the contract.
4. If any improper changes or maintenance works are carried out by the buyer or a third party, this will void any warranty claims for said changes/works as well as any issues resulting from said changes/works.
5. The buyer must notify M + S DAMERIUS of any obvious defects in writing without delay, at the latest within one week of receipt of the delivered object. Defects that could not be discovered within this period even after careful inspection by the buyer must be communicated to the seller in writing without delay, e.g. at the latest one week after discovery. In the case of building materials and other goods intended for installation or any other further processing, said materials and goods must be inspected in any case immediately before further processing. If the buyer fails to properly inspect the goods and/or to properly notify the seller of any defects, M + S DAMERIUS is excluded from any liability for the defects that were not communicated to M + S DAMERIUS or that were not communicated in good time or that were improperly communicated in accordance with legal regulations. In the case of goods that are intended for installation, assembly or mounting, this also applies if



the defect only becomes apparent after the corresponding further processing as the result of the failure of the buyer to fulfil his obligations; in this case, the seller is released from any liability in particular to reimburse the buyer for the related costs (deinstallation and installation costs).

6. Warranty claims are excluded if M + S DAMERIUS is not given the opportunity to view and inspect the goods that are the subject of complaint within ten (10) days of the notification of complaint.
7. In the event that the complaint is justified, M + S DAMERIUS is entitled to decide whether it will repair or replace the goods in question. Otherwise, we are entitled to demand that the buyer reimburse us for the costs resulting from the unjustified request for the remedy of a defect if the buyer was aware or was negligently unaware that there was, in fact, no defect.
8. The buyer must offer M + S DAMERIUS the necessary time and the opportunity to rectify the situation, in particular this includes giving the goods that are the subject of the complaint to M + S DAMERIUS for the purposes of inspection. If M + S DAMERIUS delivers a defect-free object to the buyer for the purpose of rectification, the buyer must return the defective object. This also applies to defective components if these have been replaced with defect-free components in the course of rectification. Rectification does not include the deinstallation, disassembly, or removal of the defective object, or the installation, assembly, or mounting of a defect-free object if we were not originally obligated to provide this service; the buyer's entitlement to reimbursement of corresponding costs (deinstallation and installation costs) remains unaffected.
9. M + S DAMERIUS is entitled to make the owed rectification dependent on the buyer paying the purchase price due. The buyer is entitled, however, to withhold a portion of the purchase price that is proportionate in relation to the defect.
10. If M + S DAMERIUS is not able to remedy the defect or replace the defective object, M + S DAMERIUS is entitled to refuse to remedy the defect or replace the defective object in accordance with Section 439(4) of the German Civil Code; or, if the remedy or replacement is delayed beyond a reasonable period and M + S DAMERIUS is liable for said delay, or if the remedy or the replacement fails twice, the buyer, at his discretion, may either demand a reduction in the purchase price or withdraw from the contract.
11. Otherwise, Section 8 of these GTCs applies to claims for damages. Any further claims of the buyer or claims of the buyer that differ from those outlined in this Section and in Section 8 of these GTCs against M + S DAMERIUS and its subcontractors due to a material defect are excluded.

## **7. Expanded and extended retention of title**

1. M + S DAMERIUS retains the title to the delivered goods until full payment of the purchase price and until all of M + S DAMERIUS's existing and future claims against the buyer from the business relationship have been settled. If there are any outstanding invoices, the retained title is considered M + S DAMERIUS's security for the outstanding balance.
2. The buyer must store the delivered goods properly and separately from goods from

other companies and must identify the goods as coming from M + S DAMERIUS's delivery. The buyer must insure the goods appropriately.

3. Until further notice, the buyer is entitled to sell, install or further process the reserved goods in the normal course of business. The normal course of business does not include the processing, installation or sale of said goods to recipients who have entered into a non-assignment clause with the buyer. Otherwise this authorisation can only be retracted if the seller does not properly meet his obligations to pay or if a petition to initiate bankruptcy proceedings or similar proceedings has been filed. The buyer is not entitled to a lien, chattel mortgage or assignment of security. The buyer is obligated to notify M + S DAMERIUS without delay if the goods are encumbered by any third-party rights or subject to any other intervention by third parties.
4. As a precaution, the buyer hereby transfers to M + S DAMERIUS any claims resulting from the resale or from any other legal reason (processing, installation, tort, insurance, etc.) concerning the reserved goods equal to the invoiced amount of the delivered goods; M + S DAMERIUS accepts this transfer. If the buyer includes the claim from a resale or any other legal reason in an existing current account with his customers, the balance claim equal to the invoice amount is transferred.
5. The buyer is authorised to process the good delivered under retention of title as long as he is not in default. The processing is carried out by the buyer for M + S DAMERIUS. As the manufacturer, M + S DAMERIUS acquires ownership of the new goods pursuant to Section 950 of the German Civil Code while the buyer has taken custody of the goods for the seller. In the case of processing with other goods that have not been provided by M + S DAMERIUS, M + S DAMERIUS is entitled to co-ownership of the new goods, namely corresponding to the value of the reserved goods as proportional to the other processed goods at the time of processing. Goods created by processing are subject to the same restrictions and conditions as reserved goods.
6. M + S DAMERIUS authorises the buyer to collect the claim for his invoice in his own name. This authorisation to collect can only be retracted if the seller does not properly meet his obligations to pay or if a petition to initiate bankruptcy proceedings or similar proceedings has been filed.
7. In the event of culpable conduct on the part of the buyer that is in breach of contract – in particular delayed payment – M + S DAMERIUS is entitled to notify the debtor of the assignment of the aforementioned claims. In this respect, the buyer is obligated to provide M + S DAMERIUS with the name of the corresponding debtor. Moreover, M + S DAMERIUS is then entitled to take back the reserved goods or, where applicable, to demand assignment of the claims for surrender against the third party. Taking back the reserved goods is not considered to be withdrawal from the contract. Section 449(2) of the German Civil Code does not apply.
8. At the demand of the buyer, M + S DAMERIUS must partially release the securities as long as the value of the securities exceeds the claims by more than 20% over the long term.

## **8. Compensation for damages/limitation of liability**

1. Claims for damages on the part of buyer, regardless of the legal basis, in particular



due to breach of obligations arising from contractual obligations and from tort, are excluded, except for in the following cases: when mandatory liability in accordance with the Product Liability Act (*Produkthaftungsgesetz*) applies; in cases of liability for intentional or grossly negligent conduct; in the event of loss of life, physical injury, or injury to health; or due to breach of material contractual obligations, insofar as M + S DAMERIUS has submitted a guarantee of quality or maliciously concealed the defect.

2. The limitations of liability derived from subsection 8.1 also apply in the case of breach of duty by persons whose culpability is attributable to M + S DAMERIUS in accordance with legal regulations.
3. Claims for damages for the breach of material contractual obligations (e.g. an obligation, the fulfilment of which is necessary in order for the contract to be properly executed and the observance of which the contractual partner regularly relies on and may rely on) are limited to foreseeable damages that are typical of the contract insofar as a limitation is not excluded for another reason due to intentional or grossly negligent conduct or due to loss of life, physical injury, or injury to health.
4. In the event that a claim for rectification is justifiably asserted against him by his customer or his customer's customer, the buyer must give M + S DAMERIUS the opportunity to carry out the rectification itself within a reasonable period of time before procuring an alternative "replacement". The buyer must impose this obligation on his customer accordingly. If the buyer violates these obligations, M + S DAMERIUS reserves the right to reduce the reimbursement of expenses to the amount that would have been incurred had M + S DAMERIUS rectified the situation itself. Section 444 of the German Civil Code remains unaffected.
5. Reimbursement of expenses for expenses incurred by the buyer as part of rectifying the situation with his customer are further excluded if the buyer, contrary to his obligation to minimise damages, has not exercised his right to refuse this form of rectification or both forms of rectification due to disproportionality of costs.
6. Claims on the part of the buyer due to the expenses required for the purpose of rectification, in particular transport, travel, work and material costs, are excluded insofar as the expenses are increased because the object of the delivery is brought to a different location than the contractually agreed-upon destination after the fact. The same applies to the right of recourse.

## **9. Statute of limitations**

1. In a deviation from Section 438(1)(3) of the German Civil Code, the warranty period will be one (1) year from the date of delivery or, insofar as an approval is required, from the date of approval, insofar as legal regulations pertaining to the sale of consumer goods (Section 474 et seq. of the German Civil Code), in particular in terms of the right of recourse (Section 478 et seq. of the German Civil Code), do not apply due to the absence of legal regulations. This also does not apply insofar as the law prescribes longer terms pursuant to Sections 438(1)(1), 438(1)(2), 438(3), 444, 445b, and 634a(1)(2) of the German Civil Code.
2. The aforementioned limitation periods under commercial law also apply for contractual



and extra-contractual claims for damage on the part of the buyer that are based on a defect of the goods, unless the application of the standard legal limitation period (Sections 195 and 199 of the German Civil Code) would result in a shorter limitation period on an individual case basis.

3. This does not apply for claims for damages on the part of the buyer resulting from the loss of life, physical injury, or injury to health; from intentional or grossly negligent breach of obligations on the part of M + S DAMERIUS or its subcontractors; or in accordance with the Product Liability Act, which are time-barred in accordance with legal regulations.

#### **10. Provision of documents, place of performance, applicable law, place of jurisdiction, partial invalidity**

1. M + S DAMERIUS reserves its proprietary and copyright-based rights of use for all drawings, diagrams, plans, calculations, instructions product descriptions, models or samples, materials, containers or packaging materials (hereinafter referred to as "Documents") without restriction. Documents may only be made accessible to third parties with the prior consent of M + S DAMERIUS and are, if the contract is not awarded to M + S DAMERIUS, to be returned to M + S DAMERIUS upon its request.
2. The place of performance for the mutual primary and secondary obligations from the contractual relationship and all of the rights and obligations arising from the contractual relationship is Dortmund.
3. The laws of the Federal Republic of Germany apply, excluding the United Nations Convention on Contracts for the International Sale of Goods, apply to these GTCs and all of the legal relationships between M + S DAMERIUS and the buyer.
4. The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Dortmund, provided that the buyer is an entrepreneur, a legal person under public law, or a special fund under public law.
5. If a clause in these GTCs or a clause within any other agreement should be or become invalid, this does not affect or impact the validity of all other clauses or agreements. The invalid clause will be replaced by one that most closely aligns with the economic intent of the original.

#### **Addendum**

By placing an order, the customer/supplier expressly authorises M + S DAMERIUS to pass along, copy, and utilise documents, drawings, and instruction manuals, as well as to share the content of said documents, drawings, and instruction manuals with third parties to the extent that this is necessary in order to complete said order.

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