

Purchasing Conditions

of all companies belonging to the M+S Group – hereinafter referred to as “M+S”

1. Scope

- 1.1 These Purchasing Conditions apply with respect to entrepreneurs, legal persons under public and private law, and special funds under public law.
- 1.2 Unless otherwise agreed upon, all orders shall be carried out exclusively in accordance with the following conditions as amended at the time the order is placed. In addition to these Purchasing Conditions, the following shall apply where agreed: specifications, drawings, descriptions, standards and other documents, in particular confidentiality and compliance agreements, as well as the “M+S Quality Assurance Agreement for Suppliers” as amended. These Purchasing Conditions shall apply exclusively. Any purchasing conditions that conflict with or deviate from M+S’s Purchasing Conditions or any additional purchasing conditions from the Supplier that are not expressly recognised by M+S in writing shall not apply. This approval requirement applies in all cases, even if, for example, the Supplier refers to its GTCs within the scope of the order confirmation and M+S does not expressly object.
- 1.3 Unless otherwise agreed upon, these Purchasing Conditions also apply to all future orders and contractual relationships between M+S and the Supplier without M+S having to refer to them in each individual instance.
- 1.4 Insofar as these Purchasing Conditions make reference to a “delivery”, “Supplier”, or “delivery item”, this wording also refers to the provision of services in addition to and outside of the delivery of an item; in these Conditions, “delivery” is synonymous with “service”.
- 1.5 Any oral agreements between the contractual partners shall either be documented jointly, for example in the form of a negotiation protocol, or promptly confirmed in writing by each party individually.

2. Orders

- 2.1 In general, a contract is considered to be concluded when M+S places an order (offer) and receives a confirmation (acceptance) from the Supplier in text form (fax, e-mail or web portal are sufficient). If the Supplier fails to accept the order within a period of 2 weeks from receipt, or if the Supplier dispatches the goods during this period, M+S is entitled to cancel the order.
- 2.2 Unless otherwise agreed upon, individual orders must be confirmed by the Supplier within 2 weeks of receipt. Delayed acceptance shall be considered a new offer and requires approval by M+S. Due to its installed energy management system, one important criterion for M+S when making a purchasing decision is the energy-related performance of the Supplier as well as its products or services.
- 2.3 Partial deliveries or call-offs shall not require express confirmation by the Supplier because these are bindingly specified by M+S during the ordering process.
- 2.4 M+S can request changes to the object of the contract within reason. The effects of these changes, in particular with regard to additional or reduced costs as well as to the delivery date, are to be resolved amicably and appropriately.
- 2.5 Any amendments or additions to the order made by the Supplier (modified acceptance) shall only take effect once they have been confirmed promptly by M+S in text form (fax, e-mail and web portal are sufficient).

3. Payment

- 3.1 The price specified in the order is binding. All prices shall be understood to include any applicable value added tax, even if this is not listed separately.
- 3.2 Unless otherwise agreed upon on an individual basis, the price shall include all services and ancillary services to be performed by the Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. suitable packaging, transport costs including any transport or liability insurance). This also includes the cost of disposal for the packaging.
- 3.3 Unless the delivery is to be transported at M+S’s expense, M+S’s shipping instructions are to be observed. In case of doubt, the least expensive shipping option shall be chosen.
- 3.4 Invoices shall be paid within 30 days of receipt and complete delivery and provision of all services. If M+S pays the invoice within 14 calendar days, the seller shall offer a discount of up to 4.76% off of the net amount of the invoice. In the case of bank transfers, payment shall be considered to have been made on time when our transfer order has been received by M+S’s bank before the expiry of the payment term; M+S shall not be held liable for any delays caused by the banks involved in the payment transaction.



- 3.5 In the case of the acceptance of deliveries ahead of the agreed-upon delivery date, the payment due date shall still be based on the originally agreed-upon delivery date. M+S retains the right of offsetting and retention as well as the right to plea non-performance within the limits of the law. In the event of incorrect delivery in particular, M+S is entitled to withhold payment proportionally until the order has been duly fulfilled.
- 3.6 M+S is not subject to interest for late payments; statutory provisions shall apply.
- 3.7 Without the prior written approval of M+S, which may not be refused without good reason, the Supplier shall not be entitled to assign its claims to M+S or transfer such claims to third parties. In the event of extended retention of title, this approval shall be considered to be granted. If, contrary to the first sentence of this clause, the Supplier transfers its claim against M+S to a third party without M+S's consent, this assignment shall nevertheless remain in effect. However, M+S's may at its own discretion make payment to the Supplier or the third party, effectively discharging the obligation.

4. Delivery dates, delays

- 4.1 The dates and deadlines specified by M+S in the order shall be binding. Unless otherwise expressly agreed upon, the delivery dates and deadlines specified in the order shall concern the receipt of the goods at the place of receipt specified in the order. If the term of delivery is not specified in the order and has not otherwise been agreed upon, it shall amount to 2 weeks from the conclusion of the contract. The Supplier is obligated to ship the goods in a timely manner such that they will arrive on time.
- 4.2 If the Supplier can foresee that it will not be possible to deliver the goods within the term of delivery, he must inform M+S of this immediately in writing as well as in advance of the delivery date by phone, explain the reasons for the delay, and also, if possible, provide an expected date and time of delivery.
- 4.3 Should the Supplier fail to provide the agreed-upon services, fail to comply with the agreed-upon delivery date, or be in default, the rights of M+S – in particular to rescission and compensation for damages – shall be determined in accordance with the statutory provisions. The provisions set out in Section 4.4 shall remain unaffected. By accepting the delayed delivery or service, M+S does not renounce its statutory or contractual claims to compensation.
- 4.4 If the Supplier is in default, M+S is entitled – in addition to further statutory claims – to demand flat-rate reimbursement for the damage caused by delay in the amount of 1% of the net price for each full calendar week; however not more than 5% of the net price of the goods that were delivered late. M+S reserves the right to furnish proof that greater damage has been incurred. The Supplier reserves the right to furnish proof that significantly less damage or no damage at all has been incurred.
- 4.5 In the event of repeated delivery delays during the period of continuing obligations, M+S is entitled, after issuing prior warning, to terminate the contractual relationship in full, effective immediately.

5. Long-term and call-off contracts

Open-ended contracts and contracts with a term of more than 6 months (long-term contracts) may be terminated by either party at any time with a notice period of 3 months.

6. Delivery, transport, packaging, transfer of risk

- 6.1 The Supplier assumes the procurement risk for its services unless otherwise agreed upon on an individual basis (e.g. risk limited to stock).
- 6.2 Unless otherwise agreed upon, goods will be shipped DDP in accordance with Incoterms as amended. The risk shall be transferred to M+S once the goods have been delivered to the agreed-upon delivery location on the agreed-upon date or within the agreed-upon time period. If no delivery location has been agreed to, the goods shall be delivered to our headquarters in Dortmund. This also applies if, based on a special agreement, M+S is responsible for the shipping costs.
- 6.3 Regarding the point at which M+S shall be considered to be in default of acceptance, statutory provisions apply. However, the Supplier must still expressly offer its services to M+S if a specific or determinable date and time has been agreed upon for an action or for the cooperation of M+S (e.g. provision of material). Should M+S be in default of acceptance, the Supplier may demand compensation for extra expenses incurred (Section 304 of the German Civil Code, BGB). If the contract concerns a non-fungible good that is to be manufactured by the Supplier (custom goods), the Supplier shall only be entitled to further rights if M+S is obligated to cooperate and is responsible for the failure to do so.
- 6.4 Partial deliveries shall only be permitted by special agreement.
- 6.5 Every delivery must be accompanied by a delivery slip in duplicate in the indicated position. All correspondence must include the dates that were particularly noted when the order was placed.

7. Ownership of material, documentation and means of production

- 7.1 Materials provided by M+S remain the property of M+S and shall be stored, labelled and managed free of charge. Their use is only permitted for M+S orders.
- 7.2 From the start of the manufacturing process, the Supplier must inspect the provided materials for visibly identifiable defects and perform an identity verification. During the manufacturing process, the Supplier must carry out further inspections provided that these have been specifically agreed upon with M+S or are required in accordance with the Supplier's quality management system. Should the Supplier identify any quality defects on the materials provided by M+S, they must inform M+S without delay in order to determine suitable next steps.
- 7.3 The processing, combination or mixing of materials provided by M+S may only be carried out on behalf of M+S.

The same applies to the further processing of the delivered goods by M+S, such that M+S is considered to be the manufacturer and, in accordance with statutory provisions, acquires ownership of the product at the latest with said further processing.

If the value of the materials provided by M+S exceeds the value of the processing and, if applicable, the other components of the newly created goods, the newly created goods shall be the property of M+S; otherwise M+S shall be the co-owner of the goods proportional to the value of the provided materials compared to the value of the overall result.

- 7.4 Ownership of the goods shall be transferred to M+S unconditionally and without consideration of the payment of the price. However, in individual cases, if M+S accepts the Supplier's offer of transfer of ownership upon receipt of payment of the purchase price, the Supplier's retention of title shall lapse at the latest once M+S has paid the purchase price for the delivered goods. In the regular course of business, M+S remains authorised to resell the goods, even before paying the purchase price, under advance assignment of the claim arising therefrom (alternatively, the simple retention of title extended to the resale shall apply). In any case, all other forms of retention of title are excluded, in particular the extended form, the transferred form and the retention of title extended to further processing.
- 7.5 All drawings, descriptions and other technical documents (documentation) provided to the Supplier by M+S shall remain the property of M+S. M+S is also the copyright holder. These types of documents are to be used exclusively for the provision of contractual services and shall be returned to M+S unprompted after completion of the order. Ownership of the documentation created according to M+S's specification shall be transferred to M+S if requested by M+S. Documents must be kept confidential with respect to third parties, including after conclusion of the contractual term. The obligation to maintain confidentiality shall remain intact until and insofar as the knowledge contained in the documents entrusted to the Supplier has become general knowledge. Any individual confidentiality agreements or legal regulations regarding confidentiality shall remain unaffected.
- 7.6 The previous provisions shall also apply to any tools, moulds, models, samples, drawings, standards, dies, stencils or any other means of production provided to the Supplier by M+S or paid for in full by M+S. These means of production as well as the items manufactured using them and any confidential information may not be passed on to third parties, destroyed or used for any purposes other than those contractually agreed upon without the written consent of M+S. They must be stored and treated with care by the contractual partner. Should the Supplier breach these obligations, M+S may demand that the items in question be returned subject to further rights.

8. Quality

- 8.1 The Supplier must comply with the relevant statutory provisions, the recognised rules of technology, safety regulations and the agreed upon technical specifications for its deliveries. Changes to the delivery items require the previous written consent of M+S.
- 8.2 Regardless, the Supplier is obligated to continually inspect the quality of the delivery items. Each contractual partner will inform the other regarding any opportunities to improve quality.
- 8.3 Testing documents must be kept for at least 15 years and be presented to M+S if needed. The Supplier is obligated to compel sub-suppliers to do the same within the limits of the law. Sub-suppliers may only be hired with the previous written consent of M+S.
- 8.4 Insofar as any regulatory authorities responsible, for example, for medical products, vehicle safety, emissions regulations, etc., require access to or further information regarding M+S's production process and test documents in order to ensure that certain requirements have been and are being met, the Supplier agrees, upon request from M+S, to grant said authorities the same rights on its premises and to provide any and all reasonable support.

9. Material defects

- 9.1 At the time that risk is transferred, the goods must exhibit the agreed-upon characteristics and be suitable for the use specified in the contract. If no characteristics have been agreed upon, the goods must at least meet the mandatory

legal requirements and conform to state-of-the-art technology. Furthermore, they must also comply with the applicable safety regulations at the time of delivery. The Supplier guarantees that the contractual objects are free of defects and meet the aforementioned requirements.

- 9.2 When carrying out its deliveries, the Supplier complies with the relevant statutory regulations of the European Union and the Federal Republic of Germany, including all relevant regulations and guidelines. The Supplier must inform M+S concerning any changes to the goods, their availability, their possible uses or their quality as a result of statutory regulations, in particular the REACH Regulation (EC No.1907/2006), and, in individual cases, agree to suitable measures together with M+S. The same applies as soon as and insofar as the Supplier realizes that these changes are to be expected.
- 9.3 At the time of conclusion of the contract, M+S is not obligated to inspect the goods or make any special inquiries regarding possible defects. In a slight deviation from Section 442(1) of the German Civil Code, M+S retains the right to make claims regarding defects without restriction, including when M+S has no knowledge of a defect due to gross negligence at the time of conclusion of the contract.
- 9.4 In terms of the commercial duty to inspect the goods and the duty to give notice of defects, the statutory provisions (Sections 377 and 381 of the German Commercial Code, HGB) apply with the following stipulation: M+S's duty to inspect the goods it receives is limited to defects that can be easily visually identified during M+S's incoming goods inspection, including the delivery documents (e.g. damage occurring during transport, incorrect delivery or delivery of the incorrect amount), or can be identified during M+S's quality control by means of random sampling. Insofar as acceptance of goods has been agreed upon, there is no duty to inspect. Otherwise, it depends on the extent to which an investigation is feasible in the ordinary course of business, taking into account the circumstances of the individual case. M+S's duty to give notice of defects for defects discovered later shall remain unaffected. Notwithstanding our duty to inspect the goods we receive, M+S's complaint (notice of defect) shall be deemed to be immediate and timely if it is sent within 5 working days of discovery or, in the case of obvious defects, of delivery.
- 9.5 In the event of defects in the delivery or service, M+S shall be entitled to demand subsequent performance (either rectification of defects or replacement delivery) free of charge. This also applies to deliveries for which the inspection is limited to random sampling. Subsequent performance shall also include the deinstallation of the defective goods and subsequent reinstallation, provided that the goods were installed in another item or attached to another item in accordance with their type and purpose of use before the defect became apparent; M+S's statutory claim for reimbursement of corresponding expenses (removal and installation costs) shall remain unaffected. This also includes the costs of a necessary replacement and/or repair of products in which M+S installed defective contractual objects, as well as the costs for handling and guarantee processing (incidental material costs). The expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, and, if applicable, deinstallation and installation costs, shall be borne by the Supplier, even if it becomes apparent that there was actually no defect. M+S's liability for compensation in the event of unjustified requests for the rectification of defects shall remain unaffected; in this respect, however, M+S shall only be liable if M+S recognises that there was no defect or failed to recognise that there was no defect due to gross negligence. The Supplier shall bear the costs and risk for the return shipment, sorting or scrapping of defective delivery items.
- 9.6 Should the Supplier fail to rectify the situation, M+S shall be entitled to withdraw from the contract, in whole or in part, without compensation and/or to demand a reduction of the price, damages, or the reimbursement of futile expenses.
- 9.7 Should the Supplier fail to comply with its obligation to rectify the situation within a reasonable period of time as specified by M+S, M+S may remedy the defect itself and demand reimbursement for the expenses required for this purpose, or else demand a corresponding advance payment from the Supplier. Should the Supplier fail to rectify the situation or if subsequent performance is deemed unreasonable for M+S (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline shall be required; M+S shall inform the Supplier of such circumstances without delay, and in advance if possible.
- 9.8 If an incoming goods inspection exceeding the usual scope becomes necessary as a result of a defective delivery, the Supplier shall bear the costs.
- 9.9 If damages are claimed due to defective materials, M+S shall also be entitled to claims for reimbursement of expenses in accordance with Clauses 9.5 to 9.8 of these Procurement Conditions.
- 9.10 In the case of defective deliveries, M+S's claims arising from product liability law, tort and management without mandate shall remain unaffected by Section 9 of these Procurement Conditions.
- 9.11 Contrary to Section 438(1)(3) of the German Civil Code, if no other agreement has been made, claims due to material defects shall become time-barred 36 months after the transfer of risk.

Insofar as acceptance of goods has been agreed upon, the statute of limitations begins with the acceptance of the goods. The 36-month statute of limitations shall apply mutatis mutandis for claims arising from defects of title, whereby the legal statute of limitations for a right in rem of a third party on the basis of which surrender of the delivery item may be demanded (Section 438(1)(1) of the German Civil Code) shall remain unaffected; furthermore, claims arising from

defects of title shall not become time-barred under any circumstances as long as the third party can still assert the right against M+S – in particular in the absence of a statute of limitations. The statutes of limitations under commercial law, including the aforementioned extension, shall apply – within the limits of the law – to all contractual claims for defects. Insofar as M+S is also entitled to non-contractual claims for damages due to a defect, the regular statute of limitations shall apply (Sections 195, 199 of the German Civil Code), unless the application of the statutes of limitation under commercial law results in a longer statute of limitations in individual cases.

9.12 If the Supplier fulfils its obligation of subsequent performance by means of a replacement delivery, the statute of limitations shall begin anew for the product delivered as a replacement after its delivery, unless the Supplier has expressly reserved the right at the time of subsequent performance to make the replacement delivery only as a gesture of goodwill, to avoid disputes or in the interest of the continuation of the contractual relationship.

10. Defects of title

10.1 The Supplier guarantees that all deliveries are free of third-party rights and, in particular, that the delivery and use of the goods does not infringe upon any patents or other industrial property rights of third parties in the country of the agreed-upon place of delivery and, insofar as the Supplier is aware, in the intended countries of use.

10.2 The Supplier guarantees against claims arising from the infringement of industrial property rights and applications for industrial property rights (property rights) in the event of contractual use of the delivery items, of which at least one of the families of industrial property rights has been published either in the Supplier's home country, by the European Patent Office or in one of the states of the Federal Republic of Germany, France, Great Britain, Austria, or the US.

10.3 The Supplier shall release M+S from all claims arising from the use of such property rights insofar as the Supplier is liable by operation of law.

10.4 This shall not apply insofar as the Supplier has manufactured the goods to be delivered in accordance with drawings or models supplied by M+S or other equivalent descriptions or specifications provided by M+S, and does not know, or, in connection with the results developed by him, does not need to know whether these goods infringe upon any property rights.

10.5 The contractual partners shall inform each other immediately, in text form and in advance by phone, of any infringement risks or alleged cases of infringement that they become aware of and shall give each other the opportunity to counteract corresponding claims by mutual agreement.

10.6 Upon request by M+S, the Supplier shall inform M+S of the use of its own and third-party published property rights to the delivery item by providing M+S with the application number.

10.7 If the contractual use of the delivery item is impaired by the property rights of third parties, the Supplier shall be obligated, irrespective of its other contractual and legal obligations, to obtain the right at its own expense after consultation with M+S either from the party with the power to dispose of the property right, so that M+S may use the delivery items without restriction and without additional costs for M+S, or to modify the parts of the affected delivery relevant to the property right such that that they no longer fall within the scope of protection, but nevertheless comply with the contractual provisions.

10.8 Claims for defects of title shall become statute-barred 36 months after the transfer of risk. The statutes of limitations under commercial law, including the aforementioned extension, shall apply – within the limits of the law – to all contractual claims for defects. Insofar as M+S is also entitled to non-contractual claims for damages due to a defect, the regular statute of limitations shall apply (Sections 195, 199 of the German Civil Code), unless the application of the statutes of limitation under commercial law results in a longer statute of limitations in individual cases.

11. Supplier's liability, right of termination

11.1 Insofar as M+S or a third party incurs damage due to the delivery of defective parts or the improper provision of a service or any other infringement of contractual obligations, the Supplier shall be obligated to compensate M+S or the relevant third party for said damages.

11.2 If the Supplier is responsible for a product defect, it shall indemnify M+S against claims by third parties to the extent that the cause lies within its domain and organisation and it itself is liable in relation to third parties. Within the scope of its indemnification obligation, the Supplier shall, in accordance with Sections 683 and 670 of the German Civil Code, reimburse expenses arising from or in connection with a claim made by third parties, including recall actions carried out by M+S. M+S shall – as far as possible and reasonable – inform the Supplier regarding the content and scope of recall measures and give the Supplier an opportunity to comment. Further legal claims shall remain unaffected.

11.3 If a claim is made against M+S on the basis of strict liability towards third parties in accordance with non-mandatory law, the Supplier shall be liable to M+S to the extent that it would also be directly liable.

11.4 Insofar as the delivery is made for the automotive industry and the Supplier knows or should know this, the Supplier is obligated to take out product liability insurance for all deliveries and services carried out by and performed by it with a sum insured that is commensurate to the risks of the automotive industry for property damage and personal injury, including recall cost coverage, and to maintain such insurance for at least 15 years beyond the date of delivery. Proof of the type and scope of the insurance coverage, including the name of the liability insurance provider, shall be provided to M+S in suitable form. Deviations shall be reviewed and agreed upon on an individual case basis.

11.5 M+S is entitled to terminate the delivery contract without notice if there is due cause.

12. M+S's liability, force majeure

12.1 Any claims for damages, for whatever legal reason, may only be asserted against M+S in the event of intent; gross negligence on the part of the legal representatives or executives; due to injury to life, limb, or health; or if a defect has been fraudulently concealed or a guarantee for the condition has been given, or due to the breach of material contractual obligations.

12.2 In the event of a culpable breach of material contractual obligations, M+S shall only be liable for the reasonably foreseeable damage typical for the contract unless there is intent, gross negligence, or liability for injury to life, limb, or health. A change in the burden of proof to the detriment of the purchaser is not associated with the above provision. Material contractual obligations shall be defined as those obligations for which fulfilment is essential for the proper performance of the contract and compliance with which the contractual partner regularly relies on and may rely on.

12.3 Force majeure, industrial disputes, unrest, official measures, non-delivery by suppliers, and other unforeseeable, unavoidable, and serious events shall release M+S from its performance obligations for the duration of the disruption and to the extent of its effect. The contractual partners shall be obligated, within reason, to immediately provide the required information and to adapt their obligations to the changed circumstances in good faith. This also applies should the events occur at a time in which M+S is in default.

13. Confidentiality/advertising

13.1 The Supplier undertakes to treat all commercial and technical details that are not evident and that become known to him through the business relationship as trade secrets.

13.2 The Supplier may only use its business relationship with M+S for the purposes of advertisement with the prior written consent of M+S.

14. Place of performance, place of jurisdiction and applicable law

14.1 The place of performance for the delivery of the goods shall be the place of delivery specified by M+S. If no place of performance has been specified or agreed upon, the place of performance shall be Hannöversche Strasse 28, 44143 Dortmund, Germany. The place of performance for payment shall be the offices of the M+S Group company with which the delivery contract was concluded.

14.2 For all legal disputes, including within the scope of legal proceedings related to bills of exchange or cheques, the place of jurisdiction shall be the offices of the M+S Group company that placed the order. M+S is also entitled, at its discretion, to file a suit against the Supplier at its place of business.

14.3 The contractual relationship shall be governed exclusively by the laws of the Federal Republic of Germany, excluding the provisions regarding conflict of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is excluded.

14.4 Should any provision of these Purchasing Conditions as well as any further agreements made between the contracting parties be or become invalid, this shall not affect the validity of the remaining contractual provisions.

Dortmund, last updated: 12/2023