

General Terms and Conditions of Purchase

of MGC Moser-Glaser AG, CH-4303 Kaiseraugst,
consisting of pages 1 to 10

As at: January 2017

Scope of application

These terms and conditions apply to all enquiries, individual orders and blanket orders from MGC Moser-Glaser AG (hereinafter referred to as "MGC" or the "Client"). Any differing terms and conditions of business of the Contractor are hereby expressly rejected or are only valid to the extent that MGC has expressly agreed to them in writing. Silence on the part of MGC with regard to differing terms and conditions communicated by the Contractor does not constitute acceptance of them.

1. Offers

1.1

All offers to MGC will in principle be made free of charge. If, in exceptional cases, making an offer involves costs to be borne by MGC, the amount of these costs must be specified by the bidder before the offer is made. MGC must agree in writing to bear these costs. MGC is not obliged to place an order on an offer made.

1.2

When making its offer, the bidder will adhere to the goods requirements, specifications or service requirements requested by MGC. Any differences must be clearly indicated.

1.3

The period of validity of an offer will be at least three months from the date of submission of the offer to MGC, unless the bidder expressly states a different period of validity in its offer.

2. Placing and acceptance of orders

2.1

Only written orders are valid. Verbal ancillary agreements are only valid if confirmed in writing as soon as they have been made.

2.2

The Contractor must confirm the order within no later than 14 calendar days by returning the signed duplicate of our order or, alternatively, by returning our fax order with a confirmation note. If MGC has not received the confirmation by the end of this period, MGC may cancel the order without the Contractor being able to assert any claims against MGC as a result.

Order confirmations with content differing from our order will only give rise to an order if MGC agrees to the order confirmation in writing. In principle, such consent only concerns the product name, the price, the delivery date or the quantity; it does not automatically imply acceptance of the Contractor's terms and conditions.

2.3

In the case of written framework agreements, an order confirmation may be waived for the individual delivery call-offs, provided that the framework order contains a corresponding agreement. However, if changes to the delivery call-off become necessary, the Contractor will notify MGC of these in writing without delay, but at the latest within seven calendar days of receipt of the delivery call-off. MGC reserves the right to accept or reject these changes, in particular if they do not align with the framework agreement.

2.4

Orders may not be passed on to third parties for manufacture or delivery unless MGC has given its written consent. This provision does not apply to products which the Contractor purchases as trade products from third parties and which are purchased with MGC's knowledge. Even in these cases, the Contractor remains responsible for the complete fulfilment of the contract.

3. Delivery dates, despatch, acceptance of goods, contractual penalty, documents

3.1

The delivery dates stated in MGC's orders apply unless otherwise specified in the contract, on arrival at the destination. The Contractor will ensure that the contractual items are dispatched in good time. If the delivery date is specified in calendar weeks (CW), the delivery must be made to MGC no later than on the last working day of the corresponding CW.

3.2

As soon as the Contractor realises that it will not be able to render its contractual services on time, it will inform MGC without delay, stating the reasons and the expected duration of the delay. However, MGC is not obliged to accept a declared delay. MGC reserves the right to assert claims for damages resulting from the delay and to withdraw from the contract.

3.3

In the case of an "ex works" delivery agreement, MGC is entitled to determine the mode of despatch and the carrier for the despatch of the contractual goods. In the absence of such an agreement, the Contractor must choose the most favourable mode of despatch for MGC.

3.4

The contractual goods will be accepted exclusively during normal business hours. These are: Monday to Friday from 8 am 11.30 am and from 1.35 pm to 4 pm. The Contractor is responsible for ensuring that the carrier delivers the contractual goods within these times. MGC is not obliged to accept deliveries outside these times.

3.5

If the delivery is made at an earlier date than agreed, we reserve the right to return the goods or store them with the carrier at the Contractor's expense and risk if there is no storage capacity. Otherwise the goods will be stored at MGC at the Contractor's expense and risk. Early acceptance of the goods does not oblige MGC to pay for them before the originally agreed due date.

3.6

Partial deliveries are only permissible if they have been agreed with us. Acceptance of a partial delivery does not constitute a waiver of any rights to which we are entitled.

3.7

The Contractor will enter into default if the agreed delivery date is exceeded; a reminder is not required. In the event of delay, MGC is entitled to a contractual penalty amounting to 0.5% for each commenced week of delay in delivery, but not exceeding a total of 5% of the agreed total delivery price. We reserve the right to claim further damages.

3.8

Acceptance of a late delivery does not constitute a waiver of compensation or the return and cancellation of the contract.

3.9

Each delivery must be accompanied by the documents specified in the order. Failure to produce these documents is equivalent to non-delivery. The Contractor's delivery obligation is only fulfilled once the complete documents are provided. Until the documents arrive, the goods will be stored at MGC at the Contractor's expense and risk. If MGC cannot be reasonably expected to accept the goods without documents, MGC is also entitled to refuse to accept the goods or to store them with the carrier at the Contractor's expense.

In principle, each delivery must be accompanied by a delivery note stating MGC's full order details, MGC's product number if this is stated in the order, the full product description, weight (gross, net, tare) and, if applicable, other data if this is normal practice in the trade.

4. Customs regulations

When the Contractor undertakes the export of goods on MGC's behalf, they must independently and at their own cost obtain all required export documents and authorizations. Furthermore, the Contractor is obligated to pay for all associated customs duties, taxes, and any other expenses incurred during the export process. The Contractor will hold harmless MGC from any claims resulting from non-compliance with export and import regulations for which the Contractor is responsible.

5. Work at MGC's premises or for MGC's customers

5.1

If the Contractor's employees or agents work at our premises or our customers' premises, they must comply with the applicable accident prevention regulations and all other safety regulations as well as the relevant company regulations. The Contractor or its vicarious agents may not commence work until they are familiar with these regulations.

5.2

Assembly and installation work must be approved. Unless otherwise agreed, the acceptance date must be announced in writing by the Contractor seven calendar days in advance. Acceptance is deemed to have taken place when MGC's authorised representative has acknowledged in writing that the services are in accordance with the contract. However, any defects can be claimed until the final invoice.

5.3

If invoicing on a time and material basis has been agreed, the Contractor will obtain written confirmation of the hours worked and materials used from an authorised representative of MGC as soon as the work has been carried out, but no later than the day on which it is carried out. A copy of the written confirmation (report) must be submitted to MGC together with the invoice at least.

6. Quality assurance inspection at the Contractor's premises

6.1

Following prior discussion with the Contractor, MGC has the right to conduct a quality assurance inspection of the items to be supplied under the contract, as well as the related production and quality assurance processes, either at the Contractor's premises or at their supply plant. The Contractor must disclose all necessary information to MGC.

6.2

MGC pledges to the Contractor to uphold confidentiality regarding all insights and findings gained in the process.

7. Packaging

7.1

If there is no special agreement on the packaging of the contractual items to be delivered, packaging must be selected which takes into account the sensitivity of the goods to be delivered and protects them sufficiently from damage in transit, is environmentally friendly and does not require special disposal, and does not in any way contaminate the goods to be delivered.

7.2

The Contractor must pack the contractual goods such that different order and delivery lots or products are kept apart; each individual lot or product must be individually and unambiguously "available."

7.3

In the case of returnable packaging, the Contractor will bear the costs and risk for the return freight from the destination to the Contractor.

8. Risk transfer

8.1

In the case of deliveries of goods only, the risk will pass to us on acceptance at the destination.

8.2

In the case of services (see also Section 5.2), the risk will not pass to MGC until acceptance has been successfully carried out.

9. Pricing and payment

9.1

Unless otherwise agreed, our prices stated in the order are always carriage paid to, including transport insurance and packaging costs.

9.2

Unless otherwise agreed, payment will be made within 14 working days of receipt of the goods at the destination specified in the order less a 3% discount or within 30 days net. The same terms and conditions apply to services, whereby the date of successful acceptance applies instead of the date of receipt of the goods.

9.3

Payment for an invoice is conditional upon the proper, complete, and undamaged receipt of the delivered goods at their destination. Additionally, it is mandatory that all documents specified in the order be available. Furthermore, our order data, the product name, and reference information for the delivery, such as the delivery note number and date, must be clearly stated. In the case of services, successful acceptance in accordance with Section 5.2 and, if applicable, submission of a report in accordance with Section 5.3 are required. Invoices that do not fulfil these requirements will be returned by us and do not give rise to a due date.

9.4

The payment period will only commence on the date on which all the terms and conditions set out in Section 9.3 are met. In principle, however, payment of invoices does not constitute acceptance of the provision of goods or services in accordance with the order.

10. Incoming goods inspection, warranty, liability for defects

10.1

On receipt of the goods, we will check their identity (type check) and check for missing quantities and obvious defects as well as damage in transit. There is no further obligation to check. We will notify any defects discovered within up to 14 calendar days; in the case of hidden defects, notification will be made within 14 calendar days of their being discovered at the latest.

10.2

The Contractor warrants that the delivery item possesses the contractually warranted characteristics on handover at the destination. These warranted characteristics include, but are not limited to, all information stated in brochures, catalogues, drawings or other documents. Furthermore, the Contractor warrants that the delivery item is free of legal and material defects, complies with state-of-the-art technology, the relevant laws, safety and accident prevention regulations and other regulations, ordinances and standards relevant to the delivered goods.

10.3

In the event of defects, we may, at our discretion, request that be corrected or defect-free goods delivered. Additionally, in urgent situations or following the lapse of a reasonable grace period, we reserve the right to rectify the defect ourselves at the Contractor's expense, commission a third party to do so, or secure a replacement from an alternative source.

10.4

Our claims arising from material defects will lapse within three years, calculated from the time of acceptance of the goods or acceptance, if such acceptance is covered in the contract.

10.5

The Contractor will bear all expenses incurred by us or our customer for the purpose of repair or replacement delivery at the respective place of use in Switzerland and abroad, insofar as the foreign place of use is specified in the order. We will inform the Contractor of the domestic place of use on request.

10.6

If defective parts are repaired or replaced, the warranty period will recommence for the repaired or replaced parts in accordance with Section 10.4.

In the event of a defect affecting 10% or more of a delivery, the Contractor must, at MGC's request, inspect the delivery at the destination and reject defective parts. Should the Contractor fail to meet this obligation within a reasonable time frame, we hold the right to either reject the goods ourselves or arrange for their rejection by a third party, all at the Contractor's expense. Alternatively, we may opt to return the entire delivery to the Contractor, again at their expense and risk.

10.7

If we take back our products as a result of defective products of the Contractor or if MGC's sales price has been reduced as a result or if MGC has been held liable in any other way, we reserve the right of recourse against the Contractor. No deadline needs to be set in this case. The Contractor will reimburse us for all proven expenses incurred by MGC as a result of the defectiveness of the products.

11. Third-party industrial property rights

11.1

The Contractor warrants that all deliveries are free from third-party industrial property rights or copyrights and that no third-party industrial property rights or copyrights are infringed by MGC's or its customers' use in accordance with the contract. This also applies to industrial property rights and copyrights that exist abroad.

11.2

The provisions of Section 11.1 do not apply to delivery items which the Contractor manufactures in accordance with drawings or other specifications provided by MGC.

11.3

The limitation period for defects of title is 10 years after handover or acceptance at the destination.

12. Product liability

12.1

If MGC is held liable by one of its customers or by a third party on the basis of product liability, the Contractor must hold harmless MGC from such claims on first written request if and insofar as the damage incurred was caused or contributed to by the product supplied by the Contractor. In cases of fault-based liability, however, this only applies if the Contractor is at fault.

12.2

If the cause of the damage is within the Contractor's area of responsibility, then proof of the cause of the error is sufficient for the damage, otherwise the burden of proof lies with the Contractor.

12.3

The Contractor will in any case bear the costs and expenses corresponding to its share of the cause and fault, including the costs of any legal action or recall action; this also applies in the case of recognisable or imminent serial defects.

12.4

On request, the Contractor must cover its risk of liability by taking out insurance and provide us with evidence of appropriate cover.

12.5

Otherwise, claims for damages of any kind against MGC are excluded if MGC or its legal representatives or vicarious agents have caused the damage through simple negligence. This exclusion of liability does not apply in the event of a breach of material contractual obligations which jeopardise or prevent the fulfilment of the contract or in the event of physical injury.

13. Production devices, tools, samples, drawings

13.1

Production devices and tools also include models or moulds or other tools required for the production of casts. This stipulation extends to include various manufacturing implements such as injection moulding tools, punching, drawing, pressing, and cutting tools, along with clamping and workholding devices. It also covers all other unspecified devices, tools, and manufacturing equipment necessary for producing the parts ordered by MGC. In the following, these are summarised under the term "tools."

13.2

The tools manufactured on our account and paid for by us will become our unrestricted property on full payment. In the case of down payments or instalments, we will acquire co-ownership of the tools in the amount of the down payment or instalment made. The Contractor is required to store the tools with all due business-like care at no cost, safeguarding them against any form of damage or loss. Additionally, the Contractor must insure these tools against risks such as fire and theft, with coverage based on their respective replacement value. In addition, the tools will be labelled such that it is clear to everyone that they are the exclusive property of MGC and may not be included in the insolvency estate in case of insolvency. Any exceptions must be justified in writing by the Contractor and also authorised in writing by MGC.

13.3

The obligation to store the tools applies for the duration of the ongoing business relationship and beyond that for six years, calculated from the date of the last delivery. Thereafter, the Contractor is entitled to return the tools to MGC, subject to MGC's prior written consent. If MGC refuses to agree to take back the tools, the Contractor is entitled to scrap them. Consent is also deemed to have been granted if MGC does not respond three months after the request for scrapping. Costs for the scrapping of tools cannot be claimed from MGC.

Irrespective of this, MGC has a restitution claim which MGC does not have to prove in the event of a claim. The Contractor must return the tool as soon as the restitution claim is made, i.e. without undue delay. This restitution claim also exists if tools are paid for pro rata, in which case MGC will reimburse the Contractor's pro rata costs. The requirement for this is that the Contractor has quantified the share assumed by it in writing to MGC before or at the latest when the order is placed.

If the Contractor becomes insolvent and this jeopardises further delivery of the contractual items, all tools and other products owned by MGC will be returned to MGC without delay.

The costs for the return of tools, samples, models etc. will in any case be borne by the Contractor.

13.4

Products made using tools financed by us, or created based on our drawings, samples, models, or other confidential information, must not be used by the Contractor for their own purposes. Additionally, these products cannot be offered or supplied to third parties. All documents that we make available to the Contractor, such as drawings, models, samples etc. remain our property and can be requested back at any time without giving reasons. They must be returned within no later than seven calendar days of receipt of the reclaim.

14. Confidentiality, advertising

14.1

The Contractor undertakes to keep secret from third parties all details of our orders, including prices, terms and conditions, quantities and the technical design of the contractual items etc. and in particular sensitive information which it has received from MGC by chance or deliberately.

The same also applies to findings and information obtained by the Contractor through discussions with MGC employees or through visits or work on MGC's premises.

14.2

Infringements of Section 14.1 will result in the Contractor having to pay MGC a contractual penalty amounting to 15% of the order value of the last 12 months, calculated from the date on which it became aware of the infringement, but at least in the amount of CHF 20,000.00. The contractual penalty does not apply if the Contractor is not responsible for the infringement. Any further claims for damages can still be made as usual.

In the event of particularly serious breaches by the Contractor, MGC is also entitled to extraordinarily terminate all contractual relationships without notice and without compensation, without the Contractor being able to make any claims against MGC as a result. In this case, MGC is also entitled to reclaim any down payments and instalments. An example of a particularly serious case is if the Contractor passes on to MGC's competitors sensitive information.

14.3

The Contractor is hereby prohibited from using the name MGC or the products manufactured specifically for MGC for advertising purposes or mentioning them publicly unless MGC has given written consent.

15. Assignment

Any assignment or pledging of the Contractor's rights arising from the contractual relationship with MGC may only take place with MGC's express written consent, with the exception of monetary claims.

16. Insolvency

If insolvency proceedings are instituted against the Contractor's assets or the insolvency proceedings are dismissed for lack of assets, the Client is entitled to terminate all existing framework agreements and individual orders without notice, without the Contractor being able to assert any claims against MGC as a result.

17. Business ethics

17.1

The Supplier gives binding assurance that it will not make any payments, offer any gifts or provide any services of any kind, either directly or indirectly, to MGC employees. The term "employee(s)" also includes persons who work in a managerial capacity at MGC or a body assigned to MGC.

This binding assurance includes compliance with the relevant national laws, including the U.S. Foreign Corrupt Practises Act and the UK Bribery Act.

17.2

The supplier guarantees that its products do not contain any "Conflict Minerals" in accordance with the US Dodd-Frank Wall Street Reform and Consumer Protection Act (Conflict Mineral Act). "Conflict Minerals" are critical raw materials that are mined in the Democratic Republic of the Congo and/or neighbouring countries under conditions of violent conflict.

17.3

In case of a material breach of a provision of Section 17, business ethics mean MGC can terminate all current contracts with immediate effect. MGC reserves the right to assert further rights and claims arising from a cancelled contract.

The Supplier will hold harmless MGC from all obligations, liabilities, costs and expenses to which MGC is exposed as a result of a breach by the Supplier of any obligations under this section or as a result of the cancellation of the contract.

17.4

Furthermore, the supplier undertakes to comply with the PFIFFNER Group's Code of Conduct. The Code of Conduct is available in the download area at www.mgc.ch. On request, we will also send these to the supplier in writing.

The supplier will ensure that its employees and subcontractors involved in the fulfilment of orders intended for MGC observe the Code of Conduct.

18. Severability clause

If individual provisions of these General Terms and Conditions of Purchase are or become invalid, irrespective of the legal grounds, the remaining provisions will nevertheless remain valid.

19. Applicable law, place of jurisdiction**19.1**

The contract relationship is subject to Swiss law to the express exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

19.2

The exclusive place of jurisdiction for all disputes arising from the contractual relationship is the court with jurisdiction for MGC. However, MGC is also entitled to appeal to the court with jurisdiction for the Contractor.