

General Terms and Conditions of Business (GTB) for Product Demonstrations of Mitutoyo Europe GmbH

1. Scope of Application

1.1.

The following Terms and Conditions shall apply to any and all product demonstrations of Mitutoyo Europe GmbH (hereinafter known as "Mitutoyo") with respect to customers, including information and consulting, related to the performance of product demonstrations.

1.2.

Customer's general terms and conditions of business shall apply only if and when Mitutoyo has expressly accepted their application. In particular, silence on the part of Mitutoyo with respect to such deviating terms and conditions shall not be interpreted as acceptance or agreement, whether for present or future contracts.

1.3.

These General Terms and Conditions of Business shall apply in lieu of any terms and conditions of business of the Customer even if such terms and conditions provide that the acceptance of the order or performance of the service shall be deemed the unconditional acceptance of the Customer's general terms and conditions of business. By participating in the demonstration of the Mitutoyo products, the Customer expressly acknowledges that he is waiving any demurrer derived from his general terms and conditions of business.

1.4.

These General Terms and Conditions of Business shall apply solely to companies in the sense of Section 14 BGB (German Civil Code).

2. Subject of the Contract

2.1.

The subject of the contract for a product demonstration is a live presentation of the Mitutoyo products with the aim of demonstrating the functionality and properties of the products.

2.2.

The demonstration to the Customer shall be owed solely and exclusively with the demonstration devices which have been made available in each case to Mitutoyo. The demonstration will be given in the condition of the devices which they are in at the commencement of the demonstration. A prior "calibration" of the devices to achieve exact measurement results specific to the product is not owed by Mitutoyo.

2.3.

Within the framework of the demonstration, the achievement of a commercially exploitable measurement result is no more owed than is verification that individual products from the Mitutoyo product portfolio are suitable for the application desired by the Customer or for the measurement results to be achieved by the Customer. The sole responsibility that the pertinent Mitutoyo product is suitable for the Customer application or the measurement results desired by the Customer or for the exploitability of measurement results from product demonstrations is therefore borne exclusively by the Customer.

2.4.

Mitutoyo will perform the demonstration free of charge.

3. Information and Consulting

3.1.

Information and consulting within the framework of a demonstration is given solely and exclusively on the basis of Mitutoyo's experience. The values given at such times shall be regarded as average values. Any and all data regarding the results of measurement procedures carried out within the framework of demonstrations are non-binding. The results are merely approximate values unless Mitutoyo has designated them in writing as "precise measurement result".

3.2.

If and when Mitutoyo refers to standards, technical rules, or technical data within the framework of a demonstration, such references shall not represent information about the properties of the Mitutoyo product being demonstrated unless Mitutoyo has expressly declared in writing that the functional feature of the particular product is a "property of the product"; otherwise, any such references are non-binding general descriptions of the performance.

3.3.

A property shall be deemed warranted by Mitutoyo solely if and when Mitutoyo has designated in writing a property of a product as "warranted".

4. Measurement Results and Their Evaluation

4.1.

Mitutoyo shall be entitled to the sole copyright to the measurement results obtained within the framework of the demonstration. The above provision shall also apply if the measured object used for demonstration purposes belongs to and/or is in the possession of the Customer.

4.2.

Mitutoyo will provide a copy of the results of the demonstration measurement (measurement record) to the Customer for the purposes of study by the Customer and non-commercial use.

4.3.

The Customer promises not to exploit commercially the measurement results given to him and not to relinquish the measurement results to third parties – in any form whatsoever – unless Mitutoyo has given its prior written consent to the relinquishment to third parties.

5. Remarks

Mitutoyo expressly points out

- that the documented measurement results reflect only the current status of the parameters being measured at the point in time of the demonstration and under the general conditions at that time, in particular the room climate and the calibration status of the particular demonstration object;
- that other climatic data outside of the demonstration measurement process may lead to other, in particular to deviating measurement results;
- that measured objects may affect the measurement results by their physical properties and their ability to change with respect to shape and mass;
- that external factors after leaving the demonstration measurement environment can affect the demonstration measured object provided by the Customer to such an extent that there may be deviations with regard to the measurement and tolerance parameters designated by Mitutoyo.

6. Performance Time

Binding demonstration dates must be agreed expressly and in writing or text form. Mitutoyo will strive to the best of its ability to comply with non-binding or approximate demonstration dates in the Customer's interest.

7. Force Majeure and Other Hindrances

7.1.

If events of force majeure which prevent an agreed demonstration occur, Mitutoyo will notify the Customer in writing in due time. In this case, Mitutoyo is entitled to postpone the demonstration for the duration of the hindrance or to cancel, in whole or in part, the portion of the demonstration agreement that has not yet been fulfilled, provided that Mitutoyo has met its above obligation of disclosure and has not assumed the procurement risk. Force majeure includes strikes, lock-outs, government intervention, energy or raw material shortages, transportation bottlenecks and/or operational hindrances through no fault on the part of Mitutoyo, such as due to fire, water or damage to demonstration products, and any and all other hindrances, for which, upon objective consideration, Mitutoyo is not responsible.

7.2.

If a demonstration date has been agreed as binding, and the demonstration date passes without being used due to events designated in Clause 7.1., the Customer may at any time decide against the demonstration. More extensive claims on the part of the Customer, in particular claims for damage compensation, are excluded in this case.

8. Exemptions and Limitations of Liability

8.1.

Mitutoyo shall not be liable particularly for claims by the Customer for damage compensation, regardless of the legal claim, particularly in the event of breach of obligation from the contractual obligation or torts.

This shall not apply if the liability is compulsorily prescribed by law, particularly:

- for any willful or grossly negligent breach of obligation on the part of Mitutoyo or willful or grossly negligent breach of obligation on the part of Mitutoyo's legal representatives or vicarious agents;
- for any breach of major contractual obligations (i.e., contractual obligations which the contract partner must be able to expect Mitutoyo to fulfill without reservation due to the nature of the legal transaction) and in the event of impossibility for which Mitutoyo is accountable and significant breach of obligation;
- if, in the case of a breach of other obligations in the sense of Section 241, Subsection 2 BGB, the Customer can no longer reasonably be expected to accept Mitutoyo's performance;
- in the event of injury to body, life, or health by Mitutoyo or its legal representatives or vicarious agents;
- if Mitutoyo has warranted the properties of a product or the successful performance of services, or has assumed a procurement risk, as well as in the case of liability in accordance with the German Product Liability Act.

8.2.

In other cases, Mitutoyo shall be liable for any and all claims for damages aimed at Mitutoyo or reimbursement for expenses incurred from this contractual relationship due to culpable breach of obligation, regardless of the legal claim, but not in the case of slight negligence.

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8.3.

In the case of existing liability pursuant to Clause 8.2. and no-fault liability, particularly in the event of initial impossibility and defects in title, Mitutoyo shall be liable solely for typical and foreseeable loss or damage.

8.4.

Mitutoyo shall be liable from the assumption of a procurement risk solely if and when Mitutoyo expressly assumed the procurement risk on the basis of a written agreement.

8.5.

With the exception of intent, fraud, and other legally compulsory, deviating liability sums, Mitutoyo's liability shall in the aggregate be limited to the scope of the coverage of Mitutoyo's manufacturer's liability insurance.

Upon the Customer's request, Mitutoyo shall at any time provide to him at no charge a copy of the relevant insurance policy.

In the event the insurer is exempted from paying benefits (e.g., due to breaches of obligations on the part of Mitutoyo, reaching the maximum annual coverage, etc.), Mitutoyo promises to pay benefits to the Customer from its own funds solely to a maximum amount of €25,000.00 per individual insured event, excepting, however, fraudulent or maliciously willful action, injury to body, life, or health, or other compulsory, deviating liability coverage amounts.

8.6.

Liability for indirect damage and subsequent damage from defects is excluded, unless Mitutoyo is in breach of a major contractual obligation or Mitutoyo, its executives, or vicarious agents are responsible for a willful or grossly negligent breach of obligation.

8.7.

Any further liability shall be excluded.

8.8.

The exemptions or limitations on liability pursuant to Clauses 8.1. to 8.7. above shall apply in equal scope to executive and non-executive employees and other vicarious agents as well as to subcontractors of Mitutoyo.

8.9.

The above regulations shall not result in a reversal of the burden of proof.

9. Export Control

9.1.

Mitutoyo is not obligated to conduct demonstration services with respect to measurement objects/workpieces which, due to their nature or their intended purpose or their planned final place of use, are subject, with respect to the export control, to an approval obligation on the basis of pertinent export regulations and embargos, in particular those of the European Union (EU), Germany or other EU member states, and of the USA.

9.2.

The Customer indemnifies and holds harmless Mitutoyo from and against any and all losses or damage which may result to Mitutoyo from the culpable breach of the above obligation pursuant to Clause 9.1.

10. Place of Performance/Jurisdiction

10.1.

Place of performance for any and all contractual obligations arising from a demonstration agreement shall be Mitutoyo's place of business in Neuss.

10.2.

To the extent legally permissible, the courts of Neuss have sole jurisdiction for any and all disputes. However, Mitutoyo is also entitled to file suit against the Customer at courts having general jurisdiction over him.

11. Proper Law

Proper law governing any and all legal relationships between the Customer and Mitutoyo shall be solely and exclusively the law of Germany, excluding in particular the application of the UN CISG.

12. Changes of Terms and Conditions of Business, Severance

12.1.

If a current or future provision of the concluded contract should be or become, in whole or in part, invalid/void or unenforceable for reasons other than those of Section 305 – 310 BGB, the validity of the remaining provisions of the contract shall not be affected.

The same applies in the event that oversights or exclusions are found after conclusion of the contract. The Parties shall replace the invalid/void/unenforceable provision or oversight/exclusion with a valid provision that contains the legal and economic import of the invalid/void/unenforceable provision and takes into account the entire content of the contract. The application of Section 139 BGB (Partial Invalidity) is expressly excluded.

12.2.

The most recently revised version of these GTB will be provided to the Customer either by the change service for these GTB on the Web site

www.mitutoyo.eu or in writing or by the posting of a notice before the commencement of the product demonstration.

13. Data Protection

In conformity with the provisions of the German Federal Data Protection Act, Mitutoyo hereby points out that it stores data received from the business relationship with the Customer in a data processing system.