

General Terms and Conditions of Supply and Order of Mitutoyo Europe GmbH

These General Terms and Conditions of Supply and Order apply to:

1. individuals acting in a commercial or self-employed capacity when concluding contracts (entrepreneurs);
2. legal public-law entities or public separate estates

1. General information

1.1.

All deliveries by Mitutoyo Europe GmbH (the "Supplier") are subject to these terms and conditions and to any separate contractual agreements. Any terms and conditions stipulated by customers do not constitute contractual elements, even in the event of order acceptance.

Offers submitted by the Supplier are without obligation. In the absence of any separate agreement, the written order confirmation by the Supplier constitutes the formation of a contract.

1.2.

The Supplier retains title of ownership and copyright to all samples, cost estimates, drawings and similar information of both a physical and non-physical nature, even if issued in electronic format; they may not be made accessible to third parties. The Supplier undertakes to only make information and documentation that is classified as confidential by the Customer accessible to third parties with the consent of the Customer.

2. Prices and payment

2.1.

In the absence of any separate agreement, prices are valid ex works and include loading at the factory, but not packaging and unloading. Sales tax at the applicable statutory rate must be added to all prices.

Performance elements which are not components of the agreed scope of the delivery will, in the absence of deviating agreements, be executed on the basis of the Supplier's currently applicable price lists.

2.2.

Supplier invoices are due and payable without cash discount or other discounts within 30 days of the invoice date.

The Customer shall be deemed in default of payment 30 days after the invoice date even if no dunning notice has been sent.

Default interest at a rate of 8% above the current base rate will be charged from the time the Customer is in default of payment. Payment is deemed to have been effected on the date the money is received by the Supplier or credited to the Supplier's account. The above provisions are without prejudice for the assertion of more extensive loss or damage.

Payments may be effected solely to the Supplier directly or to an authorized representative with collection identification.

2.3.

In the event of unjustified non-compliance with the terms and conditions of payment or in the event that circumstances become known that raise justified doubts about the creditworthiness of the Customer after diligent commercial review, the Supplier is entitled to cease any further work on ongoing orders and/or to demand advance payment or the provision of objectively reasonable collateral for outstanding deliveries, and to withdraw from the contract if such collateral is not provided within a reasonable subsequent period of grace.

This applies equally if the Supplier learns of such circumstances which existed at the time of concluding the agreement but of which the Supplier was unaware at the time or which should have been drawn to the Supplier's attention. The Customer is obligated to compensate the Supplier for all damages resulting from non-performance of the contract.

The aforementioned regulations apply without prejudice to the Supplier's right to assert further statutory claims.

2.4.

Customers are only entitled to retain payments or to offset them against counterclaims if such counterclaims are undisputed or have been ascertained by a court of law, unless the counterclaim is based on a breach of material contractual obligations on the part of the Supplier. The Customer may exercise a right of retention only if and when its counterclaim relates to the same contractual relationship.

3. Delivery period, delays in delivery

3.1.

The delivery period is defined in the agreements between the contract parties. Compliance by the Supplier with delivery deadlines is contingent upon the clarification of all commercial and technical issues between the contract parties, and on the Customer performing all of its obligations, such as providing any official certificates or permits that are required, or effecting payment on account. Failure to comply with these obligations results in an appropriate postponement of the delivery deadline. This does not apply if and when the Supplier is to blame for the delay.

3.2.

Compliance with delivery deadlines is subject to the correct and punctual delivery of the merchandise needed by the Supplier to execute the order. The Supplier shall notify the Customer as soon as possible if delays become apparent.

3.3.

Shipment of the subject of the delivery from the Supplier's factory or notification of readiness for shipment prior to expiry of the delivery period constitutes compliance with the delivery deadline. In the event that final acceptance is required, the date of final acceptance or notification of readiness for final acceptance is deemed to be applicable unless acceptance is refused on justified grounds.

3.4.

In the event that force majeure, labor disputes or other events beyond the control of the Supplier prevent compliance with the delivery deadline, the Supplier is entitled to postpone the delivery for the duration of the hindrance or to withdraw in part or in whole from those parts of the contract that have not yet been executed, provided that the Supplier has complied with its obligation of notification as defined in 3.2 sent. 2 and has not assumed responsibility for the procurement risk.

The Supplier shall notify the Customer of the start and finish of such circumstances as soon as possible.

3.5.

The Customer may withdraw from the contract without defining a deadline if the Supplier proves ultimately incapable of complete performance prior to transfer of risk. Moreover, the Customer may withdraw from the contract in the event that execution of a part of the delivery pertaining to the order becomes impossible, and the Customer has a justified interest in refusing the partial delivery. If this is not the case, the Customer is obligated to pay the portion of the contract price relating to the partial delivery. The same applies if the Supplier is incapable of delivery. Otherwise, Section 7.2 shall apply.

The Customer remains obligated to honor its commitments in the event of impossible or incapable performance during the default of acceptance or in the event that the Customer is solely or largely responsible for the underlying circumstances.

4. Transfer of risk, partial deliveries

4.1.

In the event that dispatch and/or final acceptance is delayed or omitted for reasons beyond the control of the Supplier, the risk is deemed to be transferred to the Customer from the date of notification of readiness for dispatch or final acceptance. The Supplier undertakes to provide any insurance cover demanded by the Customer at the latter's expense.

4.2.

Partial deliveries are permissible to the extent that they are reasonable for the Customer.

5. Retention of title

5.1.

The Supplier retains title of ownership to any and all equipment and merchandise which it has delivered (hereinafter known collectively as "reserved goods") until such time as any and all of its receivables from the business relationship with the Customer, including claims arising in the future from contracts concluded at a later time, have been settled. The above provision shall also apply to a balance in the Supplier's favor if and when single or all accounts due to the Supplier have been included in a current account and the balance has been drawn.

5.2.

The Customer shall insure the reserved goods adequately, in particular for loss or damage due to fire and theft. Any and all claims against the insurer from an insured event affecting the reserved goods are here and now assigned to the Supplier in the amount of the value of the reserved goods.

5.3.

In the event of breach of contract, in particular of default of payment, the Supplier is entitled, without previously canceling the contract, to request return of any and all reserved goods; the Customer is in this case obligated to surrender the goods without further ado. The Supplier may at any time during normal business hours enter the Customer's business premises for the purpose of determining the stocks of goods delivered by the Supplier. The return of the reserved goods shall be interpreted as cancellation of the contract only if and when the Supplier has expressly so stated in writing or mandatory legal regulations provide for this interpretation. The Customer shall notify the Supplier in writing without delay of any and all attachments by third parties of reserved goods or of receivables which have been assigned to the Supplier.

6. Warranty claims

The Supplier is liable for any material defects in the delivery, with further claims excluded subject to Section 7, as follows:

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6.1.

All parts that prove to be defective as a result of circumstances occurring prior to the transfer of risk must be repaired or replaced with non-defective parts free of charge and at the Supplier's discretion. Such defects must be notified to the Supplier immediately and in writing. Replaced parts become the property of the Supplier.

6.2.

Following notification to the Supplier, the Customer must afford the Supplier the necessary time and opportunity to perform any repairs and substitute deliveries that the Supplier deems necessary; otherwise the Supplier is exempted from liability for any ensuing consequences. The Customer is only entitled to rectify the defects itself, or to commission a third party to rectify the defects, and to demand reimbursement of the necessary expenses from the Supplier in urgent cases where operational safety is jeopardized and/or disproportionately extensive damages are threatening. In such cases the Supplier must be notified immediately.

6.3.

In the event of justified complaints, the Supplier must bear the portion of direct costs associated with the repair and/or substitute delivery that relate to the replacement part and the dispatch of the same. The Supplier must also bear the costs of disassembly and installation and the costs associated with the provision of any engineers and assistants that may be needed, together with the cost of their transportation, provided that this does not place an unreasonable burden on the Supplier.

6.4.

Within the framework of statutory regulations and without prejudice to any exceptional cases recognized in law, the Customer is entitled to withdraw from the contract if the Supplier fails to repair or supply a replacement in rectification of a material defect within a reasonable fixed period. If the defect is only minor, the Customer is only entitled to reduce the contract price. Otherwise the right to reduce the contract price is excluded.

Any further claims are determined solely on the basis of Section 7.2 of these terms and conditions.

6.5.

No liability will be assumed in the following cases in particular:

unsuitable or improper use, faulty installation or commissioning by the Customer or third parties, natural wear and tear, faulty or negligent treatment, incorrect maintenance, unsuitable operating materials, defective construction work, unsuitable building site, chemical, electrochemical or electrical factors, provided that the Supplier is not accountable for them.

6.6.

The Supplier shall not be liable for the ensuing consequences if the Customer or a third party repairs the merchandise improperly. The above provision shall also apply to any modifications of the subject of delivery that are performed without the Supplier's prior consent.

7. Liability of the Supplier, exclusion of liability

7.1.

The regulations in Sections 6 and 7.2 shall apply if the subject of delivery cannot be used by the Customer as defined in the contract as a result of neglected or incorrect observation of any suggestions and advice before or after conclusion of the contract, or of breaches of any other subordinate contractual obligations, including in particular any instructions for operation and maintenance of the subject of delivery, for which the Supplier is accountable. Any further rights of the Customer are excluded.

7.2.

The Supplier shall only be liable, for whatever legal reasons, for damages occurring other than on the subject of delivery as follows:

- a) in cases of intent,
- b) in cases of gross negligence on the part of the owner/executive boards or executive employees,
- c) in cases of culpable injury affecting life, limbs and health,
- d) in cases of defects that the Supplier has maliciously concealed

e) within the framework of the warranty commitment,
f) in cases of merchandise defects, if and to the extent that liability applies for injuries or damages to privately used objects pursuant to Product Liability Act (Produkthaftungsgesetz).

In the event of culpable breaches of material contractual obligations (i.e., contractual obligations where the Customer must be able to rely mandatorily on performance by the Supplier in keeping with the nature of legal transactions), the Supplier shall also be liable for gross negligence on the part of non-executive employees and for minor negligence, whereby the latter instance shall be limited to the reasonably foreseeable damage that is typical of the contract.

Any further claims are excluded.

8. Statute of limitations

Any and all claims of the Customer – irrespective of the legal reasons – lapse after 12 months. The statutory periods of limitation apply to claims for compensation of damages pursuant to Section 7.2 a – d and f. They apply equally to defects in a building structure or subjects of delivery that are used

for a building structure in line with their normal application and cause the defect in said building structure.

9. Export control

The supplied merchandise is intended to remain and be used in the initial delivery country agreed with the Customer. This explicitly does not exclude any resale by the Customer.

The sale, resale or provision of the supplied merchandise, including any associated technology, may be subject to national and/or international export control provisions and/or licensing obligations, e.g., by dint of its nature and/or intended purpose and/or final location.

This applies, in particular, to the sale of merchandise for intended military or nuclear technology use and to merchandise delivered to embargo countries and/or "listed" individuals.

With the submission of its order, the Customer confirms that he will comply with such pertinent export control provisions in the event that he exports and/or resells the merchandise.

In addition, the Customer confirms that he will not deliver the goods either directly or indirectly to countries that are under embargo, and where the import of the supplied merchandise is therefore prohibited and/or restricted.

The Customer shall exempt the Supplier from any claims for damages asserted against the Supplier as the result of any culpable breach of the aforementioned obligations.

10. Return of used electrical devices, environmental protection

10.1.

Electric and electronic devices bearing the manufacturer's label "Mitutoyo" and the additionally applied symbol for the labeling of electric and electronic devices in accordance with Section 7 ElektroG (German Electrical Equipment Act) (picture of a refuse container on wheels with a line drawn through it and a solid bar under it) must always be returned by the Customer for disposal solely and exclusively to return points in Germany authorized by the Supplier for this purpose for further handling, reprocessing, or disposal.

The return of these devices to other collection points in Germany, in particular to public collection points for electric scrap from private households, is not permitted. Section 10.4 applies mutatis mutandis to deliveries to Customers whose domicile or company registered office is outside the territory of Germany.

10.2.

The Customer is obligated to learn about the details and terms and conditions of the German Mitutoyo return system and the possible return sites by logging onto <http://www.mitutoyo-weee.de> on the Internet or by contacting directly the Supplier's German representative offices or authorized dealers in Germany as soon as used electric devices pursuant to Section 10.1 are delivered and, in particular, at the end of the life cycle of each product.

10.3.

When passing on used electric devices in pursuant to Section 10.1. within Germany, the Customer undertakes to obligate the recipient in the same manner and to notify the recipient, in particular, that the devices must be returned exclusively to the "Mitutoyo return system".

10.4.

If, at the time of their disposal, used electric devices pursuant to Section 10.1. are located outside the territory of Germany, they must – in deviation from the above regulations – always be submitted for reprocessing or disposal within the country in accordance with the applicable laws of this country and may not be returned to the German "Mitutoyo return system".

11. Utilization of software, application of the "Terms and Conditions of Licensing for the Use of Computer Programs (Software) of Mitutoyo Europe GmbH".

If and when software is included in the scope of the delivery of the contractual merchandise, the "**General Terms and Conditions of Licensing for the Use of Computer Programs (Software) of Mitutoyo Europe GmbH**" shall also apply. These are available and can be downloaded from www.mitutoyo.eu. The Supplier will gladly provide the Customer with a free copy at the latter's request.

12. Installations, assemblies, application of the "General Terms and Conditions for Works and Services of Mitutoyo Europe GmbH"

In addition to these General Terms and Conditions of Business, the "**General Terms and Conditions for Works and Services of Mitutoyo Europe GmbH**" also apply to the performance of works and services in connection with the delivery of contractual merchandise and, in particular, to installations, fittings and assemblies. These are available and can be downloaded from www.mitutoyo.eu. The Supplier will gladly provide the Customer with a free copy at the latter's request.

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13. Applicable law, jurisdiction

The laws applying in the Federal Republic of Germany to the legal relationships between parties domiciled in Germany are solely applicable to all legal relationships between the Supplier and Customer.

The court of jurisdiction is deemed to be the responsible court at the Supplier's registered office. The Supplier is, however, entitled to sue the Customer at its principal registered office.

14. Amendments of the General Terms and Conditions of Business, final provisions, remark, data protection

14.1.

The Customer will be notified in writing of any and all amendments to these terms and conditions of business. They shall be deemed as accepted by the Customer if the Customer does not object in writing within the defined objection period. The Supplier must specifically refer to this legal consequence in the notification of the change. The Customer must send the objection to the Supplier within six weeks of the receipt of the notification of change.

14.2.

In the event that the Customer files a petition for the opening of bankruptcy proceedings or suspends payments for reasons other than rights of retention or other rights, the Supplier shall be entitled to cancel the contract at any time or to make the delivery of the purchased merchandise subject to the prior fulfillment of the payment obligation. If the purchased merchandise has already been delivered, the purchase price shall be immediately due and payable in the above-mentioned cases. The Supplier is also entitled to request return of the purchased merchandise in the above-mentioned cases and to retain possession until the purchase price has been paid in full.

14.3.

The Customer is not entitled to transfer his contractual rights without the consent of the Supplier.

14.4.

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 omissions are found after conclusion of the contract. The Parties shall replace the invalid/void/unenforceable provision or oversight/omission 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.

14.5.

The Supplier explicitly states that the Customer's personal data and/or data that might indirectly relate to individuals are recorded, stored, processed and used by the Supplier in the performance of this contractual relationship, and/or the Supplier commissions third parties to record, store, process and use them in the course of processing the order data. The Supplier is entitled to transfer the aforementioned data to affiliated companies and/or to use them for dispatching information about special offers by the Supplier. The aforementioned is without prejudice to the Customer's statutory rights to deletion, blocking, information about, and correction of, the data.