

GENERAL TERMS AND CONDITIONS MTS – 2022:

Terms and Conditions of Sale, Delivery and Payment of MTS GmbH

As of: 22.12.2022

§ 1 Scope of application, protective clause.

1. Our following Terms and Conditions of Sale, Delivery and Payment (SDP) shall apply to contractors (Unternehmer) within the meaning of § 14 of the German Civil Code (Bürgerliches Gesetzbuch, „BGB“), legal entities under public law and special funds under public law. They shall also apply to all future transactions with such contractual partners.
2. Our Terms and Conditions of Sale, Delivery and Payment shall apply to all our deliveries and services.
3. Insofar as no individual provisions have been agreed upon with regard to the specific transaction, our Terms and Conditions of Sale, Delivery and Payment shall apply exclusively. We do not recognise conflicting or deviating general or individual terms and conditions of the contractual partner unless our authorised representatives have expressly agreed to their validity in writing. Our contractual partner must check the effectiveness of the power of representation, for example, on the basis of the commercial register. Our Terms and Conditions of Sale, Delivery and Payment shall also apply if we perform services without reservation in the knowledge of conflicting or deviating terms and conditions of the contractual partner.
4. The German version shall be authoritative for the interpretation of our Terms and Conditions of Sale, Delivery and Payment even if a foreign language version has been made available to our contractual partner.

§ 2 Offer, conclusion of a contract, offer documents.

1. Our offers are subject to confirmation unless we expressly specify a time limit for acceptance.
2. Our contractual partner shall be bound to its orders for 21 days; i.e., we can accept its order during 21 days after we have received it with binding effect for our contractual partner. If our contractual partner has specified a longer acceptance period, this shall be decisive. A contract is concluded when we declare acceptance in writing or execute the ordered service or delivery. Mere silence with regard to an offer made by our contractual partner shall not constitute acceptance.
3. Our written order confirmation, or our written offer, if it is accepted in writing by the contractual partner without reservations, shall be decisive for the content of the contract. If our contractual partner wishes to make supplements or amendments at a later date, these must be expressly confirmed in writing by our authorised representatives in order to become part of the contract. This shall apply in particular to the delivery of further parts and the provision of further services.

4. We reserve property rights and copyrights to cost estimates, illustrations, calculations, samples and other items and documents. They may not be reproduced or made available to third parties without our express consent. This also applies to such written documents that are designated as „confidential“.

§ 3 Prices, price changes.

1. Deliveries and services for which fixed prices have not been expressly agreed upon shall be invoiced at the prices valid with us on the day of delivery or service.

2. Unless otherwise stated in the order confirmation, our prices are net „ex works“ (EXW – Incoterms 2020) excluding postage, packaging, insurance, customs and transport costs. Statutory turnover tax is not included in our prices; it will be shown separately on the invoice at the rate applicable on the date of invoicing and will be charged if the delivery or service is subject to turnover tax.

3. We reserve the right to increase our prices accordingly if there are more than four months between the conclusion of the contract and the delivery and if our manufacturing costs increase by at least 5% up to delivery, without us being able to specifically foresee this or being responsible for it, in particular in the event of a change in material and raw material prices, other market price changes for included upstream suppliers or service providers or due to binding collective wage agreements. Our contractual partner is aware that rising prices on the raw materials market and among manufacturers of commercial vehicles in particular have an impact on our products. If, due to unforeseeable circumstances for which we are not responsible, our manufacturing costs increase by 20% or more than the amount on which they were based when the contract was concluded, we shall be entitled to withdraw from the contract. Our contractual partner shall have the same right in the event of a price increase of 20% by us for the original scope of services; our contractual partner's right of withdrawal may only be exercised in writing within four weeks after notification of the price increase and shall have the effects of § 346 BGB. Upon request, we shall provide our contractual partner with evidence of the price adjustment factors and their specific increase.

§ 4 Payments, terms of payment, confirmation of financing, set-off, retention, our rights in the event that our payment claims are jeopardised.

1. Unless otherwise specified in the contract, 40% of the net order value shall be due as a down payment for a transaction involving vehicles (MTS suction body) upon notification of completion of the shell. We shall be entitled to withdraw from the contract if the down payment is not made when due and we have unsuccessfully set a further reasonable grace period of, as a rule, 10 calendar days for payment, or if the setting of the grace period is unnecessary in accordance with § 323 II BGB. No interest will be paid on the deposit. The remaining 60% of the net order value will be due upon notification of readiness for delivery.

2. The provision of other services is to be paid within ten working days (excluding Saturday) after the provision of the service, whereby our receipt of payment will be decisive.

3. If the provision of a financing confirmation prior to the start of production has been agreed upon and if this is not provided when due, we shall be entitled to withdraw from the contract if we have either set a further reasonable period of grace in vain, or if the setting of the period of grace is unnecessary in accordance with § 323 II BGB.

4. The deduction of a cash discount is barred.

5. We shall be entitled to demand interest from our contractual partner from the due date, even if it is not in default, at a rate of five percent of the outstanding invoice amount.

6. The legal consequences in the event of default in payment on the part of our contractual partner shall be governed by the statutory provisions of the BGB. In particular, we may demand interest on arrears in accordance with § 288 BGB – currently nine percentage points above the base interest rate applicable at the time – on the outstanding invoice amount. Furthermore, we shall be entitled to withhold performance from contracts not yet fulfilled and, following the fruitless expiry of a grace period, to declare due all other claims against our contractual partner that are not time-barred.

7. Our contractual partner may only offset its own claim against a claim to which we are entitled if its claim has been legally established or if we have acknowledged it. Our contractual partner shall only be entitled to a right of retention pursuant to § 273 BGB to the extent that its counterclaim is based on the same contractual relationship.

8. We expressly reserve the right to refuse cheques or bills of exchange as a means of payment.

9. If we have agreed with our contractual partner that it shall open a documentary letter of credit with its bank or another bank that we accept, the letter of credit shall be opened in accordance with the applicable Uniform Customs and Practice for Documentary Credits. The letter of credit shall be irrevocable and divisible.

10. The basis of our conclusion of a contract is the performance of our contractual partner. If we learn of circumstances that justify the assumption that it will not be able to meet the payment obligations it has entered into (such as, for example, if insolvency proceedings are applied for or opened, over-indebtedness, insolvency, cessation of payments, unsuccessful attempt at compulsory enforcement), we may withhold our performance and request our contractual partner to pay the full purchase price prior to delivery or performance or to provide valuable security. If our contractual partner does not comply with this within a reasonable period of time, we shall be entitled to withdraw from the contract. We expressly reserve any further rights.

11. We reserve the right to assign our claims against our customers and other contractual partners to third parties.

12. Our contractual partner shall bear all fees, costs and expenses incurred in connection with any successful legal action taken against it outside Germany.

§ 5 Delivery time, delay in delivery, impossibility of delivery.

1. Our statements regarding delivery dates and delivery periods are based on our production planning at the time of conclusion of a contract and are not legally binding unless we expressly assure our contractual partner in writing of a fixed delivery period or a fixed delivery date (designation as, for example, „assured“, „guaranteed“, „binding“).

2. For bindingly agreed upon delivery periods, the following shall apply: Unless otherwise agreed, the delivery period shall commence on the date of conclusion of the contract. In the absence of an express agreement to the contrary, delivery periods or dates shall be deemed to have been complied with if we hand over the delivery item to the transport agent on the relevant date or at the expiry of the relevant period, or if we prove that we have given timely notice that the delivery item is ready for dispatch on the relevant date. Delivery periods shall be extended by periods of time in which our contractual partner fails to perform in a timely manner any cooperation activities incumbent upon it (for example, provision of materials, clarification of technical and/or commercial issues) and/or fails to fulfil in a timely manner any obligations incumbent upon it (for example, payment of an agreed down payment, provision of necessary permits, releases and/or documents). We reserve the right to withdraw from the contract under the conditions set out in Section 3. In the event of force majeure or the occurrence of unforeseeable obstacles, which we are unable to avert despite exercising reasonable care in accordance with the circumstances of the individual case, the delivery period shall be extended until the obstacle has ceased to exist and by a reasonable restart period. The following circumstances, listed by way of example, shall lead to the aforementioned extension of the delivery period if we are not responsible for them and they impede timely manufacture or delivery in the specific case: official interventions at home or abroad, incorrect or untimely delivery of carrier vehicles, raw and construction materials essential to production, materials or merchandise, power failure, natural events (storms, hail, water, fire, etc.), effects of war or a global pandemic, strikes, lawful lockouts, operational disruptions or operational restrictions, including those at supplier plants. We shall not be responsible for any fault on the part of our upstream suppliers.

We shall notify our contractual partner without delay of the occurrence of force majeure or an unforeseeable obstacle and, if possible, the expected duration of any resulting impediment to performance.

In the event of a delay in delivery of more than eight months, our contractual partner shall be entitled to withdraw from the contract if it is not responsible for the delay in delivery, if waiting until the obstacle is expected to cease would jeopardise the business purpose and is unreasonable for it, and if it has previously set us a reasonable grace period in writing with a threat of rejection.

3. If our contractual partner fails to comply with a material obligation incumbent upon it under the contract (such as the provision of necessary permits, releases and/or documents such as the order confirmation of the carrier vehicle in the event of provision by our contractual partner) when due, we shall be entitled to withdraw from the contract if we have either granted it a further reasonable period of grace in vain or if the granting of the period of grace is unnecessary in accordance with §

323 II BGB. In such a case, we shall be entitled to claims for damages and compensation for use under the statutory conditions.

4. If our performance becomes permanently impossible or substantially more difficult due to force majeure or unforeseen events of the aforementioned kind, we shall be released from our obligation to perform. In such cases, our contractual partner shall be entitled to a right of withdrawal under the statutory conditions.

5. If we are not supplied or not supplied correctly by a supplier with whom we have concluded a congruent covering transaction on a timely basis for the purpose of fulfilling a contract and we are not responsible for this, we shall be entitled to withdraw from the contract. We shall immediately inform our contractual partner of the non-availability of the service and immediately refund any consideration received from it. In such a case, liability for damages shall be barred.

6. A claim of our contractual partner for damages due to a delay in delivery contrary to the terms of the contract or a complete or partial failure to deliver requires that we are at fault. The statutory provisions on the allocation of the burden of proof and presentation shall apply. We do not recognise flat-rate compensation for damages by our contractual partner. Our liability for damages shall be limited in accordance with § 10.

§ 6 Our rights in the event of non-acceptance or delayed acceptance.

1. Acceptance shall take place at our production site in Germersheim, unless we have agreed with our contractual partner on dispatch or otherwise.

2. If our contractual partner does not accept the delivery item on the contractual delivery date for reasons for which it is responsible, we shall be entitled to demand flat-rate compensation for the consequential costs connected with the non-acceptance (for example, storage, transport and/or financing costs). The flat rate shall amount to 0.5% of the gross contract sum per week or part thereof of non-acceptance until acceptance, but not more than 5% of the gross contract sum plus turnover tax. We may demand compensation for any damage in excess of this if we can prove that we have actually incurred damage exceeding the flat rate. Any flat rate already paid shall be credited against this. Our contractual partner shall be entitled to prove that we have not incurred any damage at all, or that the damage is significantly lower than the flat rate.

3. In the event of non-acceptance, we shall also be entitled to set for our contractual partner a reasonable deadline for acceptance. After the unsuccessful expiry of the deadline, we shall be entitled to withdraw from the contract. If we have withdrawn from the contract and the non-acceptance is due to the fault of our contractual partner, we shall be entitled to demand, as flat-rate compensation, 20% of the net contract sum in the case of the purchase of a new machine, or 20% of the net contract sum in the case of the purchase of a used machine. Our contractual partner shall be entitled to prove that we have not incurred any damage at all, or that the damage is significantly lower than the flat rate. For our part, we may prove that we have actually incurred damages in excess of the flat rate, in particular with regard to the reduction in value of the delivery item. Our claim in accordance with § 6, s. 2 shall remain unaffected, whereby the delivery of the

delivery item within the framework of another use by us shall take the place of acceptance by our contractual partner.

§ 7 Transfer of risk, shipping, transport insurance.

1. If our contractual partner does not accept the delivery item on the contractual delivery date without any fault on our part, the risk of accidental loss and accidental deterioration of the delivery item shall pass to our contractual partner upon receipt of the notification of readiness for shipment or the request to collect the goods.
2. If we undertake the shipment of the goods, our contractual partner shall bear the costs of the transport. In particular, our contractual partner shall bear all export-related costs (for example, levies, fees, customs duties, taxes). The risk of accidental loss and accidental deterioration of the delivery item shall pass to our contractual partner upon shipment at the time we hand over the delivery item to the person entrusted with the transport.
3. We are not obligated to take out a transport insurance policy. We shall only initiate such a contract if our contractual partner requests us to do so in writing. The costs of transport insurance shall be borne by our contractual partner.
4. If we procure registration numbers for the transfer of a suction excavator on behalf of our contractual partner, without an express written instruction from our contractual partner, we shall not be obligated in this connection to take out insurance for our own damages to the vehicle. The costs of such insurance shall be borne by our contractual partner. In the absence of an express instruction, our contractual partner shall bear sole responsibility for the existence of insurance cover.

§ 8 Retention of title to secure our payment claims.

1. The goods delivered by us shall remain our property until full payment of all claims arising from the business relationship, even after a contract is concluded. The receipt of the invoice amount on one of our accounts shall be deemed to be payment. In the event that our contractual partner acts in breach of contract, in particular in the event of default in payment, we shall be entitled to take back the goods, without this in itself constituting a withdrawal from the contract. However, we reserve the right to withdraw from the contract and all further legal rights.
2. Our contractual partner shall store the goods subject to retention of title for us, without any charge. He shall be obligated to ensure that they are treated with care and to insure them adequately at its own expense against loss and damage by fire, theft, vandalism and natural events. Proof of insurance must be provided to us upon request. Insurance claims in connection with our deliveries under retention of title shall be assigned to us already upon the taking out of the insurance policy, in the amount of the claims invoiced to our contractual partner.
3. Our contractual partner shall not be entitled to use the goods subject to retention of title as collateral, specifically to pledge them or to assign them to third parties as security. Our contractual partner must inform us immediately in writing of any seizure or other access by third parties to the

goods subject to retention of title. Insofar as the third party does not reimburse us for the in-court and out-of-court costs of a release request, our contractual partner shall be liable for this.

4. As long as the goods subject to retention of title have not been paid for in full, our contractual partner shall only be entitled to sell and process them in the ordinary course of business with our consent. For the protection of our title to the goods subject to retention of title and the reservation of title, the following restrictions shall continue to apply: a) Insofar as our contractual partner resells the goods subject to retention of title, it hereby assigns to us all claims arising against third parties in connection with the resale in the amount of our final invoice amount and our ancillary claims, irrespective of whether the goods subject to retention of title have been resold without or after processing. We revocably authorise our contractual partner to collect the claims even after the assignment. We shall not exercise our own right to collect the receivables and shall not revoke the collection authorisation of our contractual partner as long as it meets its payment obligations vis-à-vis us, is not in default and, in particular, no application for the opening of insolvency proceedings against its assets has been filed and there is no cessation of payments. If one of such circumstances exists, our contractual partner shall be obligated to notify us of the assigned claims and their debtors, and to provide us with all further information required for collection, to hand over to us the relevant documents and to notify its debtors of the assignment. The assignment is subject to the condition precedent of the settlement of our claims. Our contractual partner shall not be authorised to resell the goods subject to retention of title insofar as its customers have excluded or limited the assignment of the claims against them. b) Any processing or transformation of the goods subject to retention of title shall always be carried out for us as manufacturer, so that we shall become the direct owner of the processed or transformed item. If the purchased item is processed or transformed using other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title to the other processed or transformed items at the time of processing or transformation. If the purchased item is inseparably combined, mixed or blended with other objects not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title (final invoice amount including turnover tax) to the other objects at the time of combination, mixing or blending. If our contractual partner acquires sole ownership by combining, mixing or blending, it is already agreed upon conclusion of the contract that (co-) ownership of the uniform item is transferred to us in the ratio described in the previous sentence. Our contractual partner shall hold the sole ownership or co-ownership thus created in safe custody for us, without any charge. c) At the request of our contractual partner, we shall be obligated to release the security to which we are entitled to the extent that their realisable value exceeds the claims to be secured by more than 25%. We shall decide which security is released.

5. Insofar as our retention of title is not legally effective under the law of the country to which the goods may be delivered, we may require our contractual partner to provide and maintain equivalent security until final payment. If our contractual partner does not comply with this request, we shall be entitled to demand immediate payment of all unfulfilled claims, irrespective of any agreed term of payment or any deferral.

6. Insofar as we are the recipient of goods, we object to the validity of any retention of title provided by our supplier in its favour.

§ 9 Product quality, warranty, notice of defects, limitation of warranty claims.

1. The contractual requirements for our product result exclusively from the written contract in accordance with § 1 (3) of our SDP. A certain characteristic of our product shall only be deemed to be warranted or guaranteed if this is expressly stated in the contract. Details or illustrations of our product on the Internet, in advertisements, brochures, offer documents and operating instructions have a descriptive and informative function, but shall only constitute an agreed contractual product requirement if they are expressly designated as binding at the place of their publication or in the written contract in accordance with § 1 (3) SDP. Unless otherwise agreed, used goods are sold with the condition they have at the time of handover to our contractual partner. The contractual condition of used goods includes in particular typical wear and tear damage. Without the express written agreement of a specific intended use, our contractual partner shall bear the sole risk of the technical and commercial usability of our products, for example the risk of suitability for official approval abroad. Our contractual partner may only assert warranty claims due to a defect if it proves that the defect claimed by it was already present at the time of the transfer of risk.

As such, we shall not be liable in particular for product defects and damages that can be traced back to

- improper commissioning, operation or use
- any maintenance, inspection or repair not carried out by us or by third parties authorised by us for this purpose
- the operation of a suction excavator by persons who cannot prove participation in our training courses
- a modification of the goods at the instigation of our contractual partner and in case of installation of non-compatible spare parts and spare parts not provided for by the manufacturer
- chemical, electrical or electrochemical influences on our product for which we are not responsible.

2. If a third party has given a guarantee for a specific product characteristic, we shall only be obligated to provide a warranty in this respect if our contractual partner has not obtained any or complete satisfaction from the guarantor by asserting its rights under the guarantee; however, legal action by our contractual partner against the guarantor shall not be required for this purpose.

3. Any warranty claims of our contractual partner shall require that it has fulfilled its commercial obligations to give notice of defects and to examine the goods in due time. Notices of defects must be submitted to us in writing within the following deadlines:

- within three weeks after delivery in the case of defects that are obvious or that could be detected in the course of a proper incoming inspection, which also includes the trial use of the product;
- within three weeks after the discovery of a defect, if this could not be discovered during a proper incoming inspection;

4. If our contractual partner has complied with its duties to inspect and give notice of defects and if our delivery is defective, we shall have the right and the duty to remedy the existing defect or to deliver a replacement product at our discretion. Our contractual partner shall give us the necessary time and opportunity to determine the cause of the defect and to carry out subsequent improvements or replacement deliveries. Our contractual partner shall inform us without delay if our waiting for subsequent performance would endanger operational safety or if disproportionately large damage would result. As a rule, the subsequent improvement of defects is carried out at our company's registered office. In such a case, our contractual partner shall deliver and collect the vehicle or vehicle part at its own expense at the registered office of our company. If the subsequent improvement is carried out at the contractual partner's place of business, the contractual partner shall bear the additional costs incurred in comparison with subsequent improvement at the Germersheim production site, in particular trip and travel expenses. Of the costs of subsequent improvement, we shall bear only the costs of the replacement part and the installation costs directly relating to the defective part, including the costs of providing our fitters. If the subsequent improvement fails or if we do not carry out the subsequent performance although we are legally obligated to do so, our contractual partner may withdraw from the contract or reduce the contract price in accordance with the statutory provisions. Claims for damages may be made to the extent specified in § 10, provided that the conditions for such claims are fulfilled. As a rule, the subsequent improvement of a defect shall be deemed to have failed after the fourth unsuccessful attempt to remedy it.

5. We shall not owe subsequent performance if its provision is impossible or cannot be reasonably expected of us due to disproportionate effort within the meaning of § 275 (2) BGB. If our Terms and Conditions of Sale, Delivery and Payment do not govern a particular matter here, the statutory provisions shall apply.

6. If we are entitled to warranty claims against an upstream supplier, we may assign such warranty claims to our contractual partner. In such a case, our warranty liability shall be limited to the extent to which our contractual partner cannot claim compensation from our upstream supplier. The period of limitations for claims against us shall be suspended for the duration of the negotiations conducted by our contractual partner with the upstream supplier.

7. Our contractual partner shall have neither a right of subsequent performance nor a right of reduction or withdrawal:

- if a defect is attributable to objects or products supplied by our contractual partner;
- if our contractual partner requests a certain type of execution, although we have pointed out to it the risk of a resulting susceptibility to defects of the product;

- if it acquires a used machine from us. The aforementioned limitations of liability shall not apply if we have fraudulently concealed the defect in question or have guaranteed its absence.

8. Our liability for compensation of damages caused by product defects is governed by § 10.

9. The period of limitations for warranty claims amounts to one year from the statutory commencement of the period of limitations. If we undertake measures of subsequent improvement, the aforementioned period of limitations shall newly commence only for those claims that relate to the same defect or consequences arising from a defect in the subsequent improvement. By taking measures of subsequent performance (subsequent improvement, subsequent delivery), we do not recognise a legal claim of our contractual partner for warranty (with the consequence of a new commencement of the period of limitations) directed against us, unless we expressly declare this in writing. The statutory provisions on the period of limitations shall apply to liability for the absence of a warranted characteristic, for intentional, grossly negligent or fraudulent conduct and for claims for damages arising from an injury to life, limb or health; the same shall apply to claims under the German Product Liability Act (*Produkthaftungsgesetz*).

§ 10 Liability for compensation for damages.

1. For claims for damages directed against us, in particular for compensation for direct damages (including loss of profit) or for indirect damages (financial loss) and other consequential damages, irrespective of the legal grounds on which the claims are based (impossibility, default, non-performance, fault upon conclusion of the contract, positive breach of contract or tort), we shall only be liable in the event of

- intentional acts
- gross negligence on the part of our statutory representatives and executive employees
- any culpable injury to life, limb or health
- defects that we have fraudulently concealed or where we have assumed a guarantee for the condition of the item

defects in the delivery item, insofar as liability exists under the German Product Liability Act for personal injury and property damages to privately used objects. In the event of a culpable breach of material obligations arising from the nature of the contract, without the observance of which the purpose of the contract would be jeopardised (cardinal obligations), we shall also be liable in the event of gross negligence on the part of non-executive employees and in the event of slight negligence, in the latter case in a manner limited to reasonably foreseeable damages typical contracts.

2. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our vicarious agents.

§ 11 Written form requirement.

Insofar as declarations must be made in writing in accordance with these Terms and Conditions, a declaration sent by fax, telegram or e-mail shall also be sufficient to comply with the form.

§ 12 Place of performance, area of jurisdiction, applicable law.

1. The place of performance for all obligations and services arising from the contractual relationship is our registered office (Germersheim).
2. The area of jurisdiction for all types of disputes, also in proceedings involving documents or cheques, is our registered office (Germersheim). However, we reserve the right to sue our contractual partner before the courts that would have jurisdiction in the absence of a jurisdiction agreement.
3. The legal relationship with our contractual partner shall be governed exclusively by the substantive law of the Federal Republic of Germany, to the exclusion of the Convention on Contracts for the International Sale of Goods and to the exclusion of German conflict of laws provisions.