

## 1. Terms and Conditions

1.1 We conclude contracts with entrepreneurs (§§ 310 para. 1, 14 BGB), legal persons under public law and special funds under public law via deliveries and services obtained from us only to these General Terms and Conditions of Purchase (GTCP). These GTCP apply in particular to contracts for the purchase and / or delivery of movable goods ("goods"), irrespective of whether the seller manufactures the goods himself or buys them from Suppliers (§§ 433, 650 BGB).

1.2 Our GTCP also apply to all future contracts in the ongoing business relationship with our customer. The customer can retrieve and download our purchasing terms and conditions at any time on the Internet at [www.mts-tunneling.com](http://www.mts-tunneling.com).

We can also send it free of charge at any time. For foreign customers, we send the GTCP at the latest with each offer and each order confirmation in the contract language.

1.3 Any terms and conditions of business or sale of the Supplier are hereby contradicted. Any conflicting, deviating, supplementary or unilateral terms and conditions of business or purchase of the Customer to our general terms and conditions, even if they are included in an offer or an order confirmation of the Supplier, do not apply. This also applies if we do not expressly object to them or accept deliveries or services without reservation; unless we have expressly agreed to such conditions in writing in individual cases.

## 2. Conclusion of contract

2.1 If the delivery or service follows our order, the contract is concluded by the order confirmation of the Supplier. If we accept a delivery or service without our order having been confirmed in advance by the Supplier, the contract is only concluded through our order confirmation or further processing of the delivery or service. If the Supplier's offer is "subject to change", the Supplier may freely revoke it until the dispatch of our order confirmation. If the supplier reserves the right to intermediate sale in his offer confirmed by us, he is entitled to sell the goods otherwise until receipt of our order confirmation.

2.2 Our order or order confirmation is decisive for the scope and content of the contract.

2.3 The customer is bound to his offer for at least four weeks from receipt by us.

2.4 The Supplier is obliged to confirm our order within a period of five working days or to execute it without reservation by sending the delivery item or providing the service, otherwise we are entitled to revoke it.

2.5 The preparation of offers and projects by the supplier is non-binding and free of charge for us.

## 3. Prices, payments, due date, cash discount, non-assignment, import VAT, withholding tax

3.1 The price stated in our order is binding. This price is "freight prepaid" including all ancillary services of the Supplier (such as assembly or installation) and includes packaging, freight, postage, value assurance and transport and liability insurance. Added to this is the respective statutory sales tax. In the case of agreed foreign deliveries, the Supplier assumes customs clearance.

3.2 Invoices of the Supplier must be verifiable, comply with the requirements of § 14 UStG, contain our order number and the delivery note number and be set up in the order sequence stating the product description, price and quantity. Appropriate certificates of performance must be attached.

3.3 Price increases after order until delivery or performance are excluded. Should the Supplier reduce his prices or improve the other conditions in the period between order and delivery or service provision, these reduced prices or improved conditions apply to our order.

3.4 The beginning of payment and discount periods requires the receipt of the invoice and the complete provision of the delivery or service.

3.5 The agreed price is due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice.

3.6 If we make payment within 14 calendar days after the date stated in Section 3.4, the Supplier grants us a 2% discount on the net amount of the invoice.

3.7 For the timeliness of our payment and the observance of a discount period, the receipt of our transfer order from our bank is adequate if sufficient funds are available.

3.8 If payment is made by special written agreement in another currency, the relevant exchange rate will be the European Central Bank's EURO Reference Rate on the due date of the payment.

3.9 We do not owe any maturity interest. Interest on arrears is limited to 3 percentage points above the respective base interest rate, unless the Supplier proves a higher interest rate damage. The assertion of any further damage caused by delay remains unaffected.

3.10 Rights of set-off and retention as well as the breach of contract for non-fulfilled contract are entitled to us to the legal extent.

3.11 The customer can only set off against our accounts receivable if his counterclaim is undisputed, recognized by us or has been legally established or is ready for decision or his claim comes from the same contractual relationship from which we derive our claim. The same applies to the assertion of a right of refusal or right of retention. The Supplier can only assert a right of refusal or retention if we have not provided adequate security despite written request from the Supplier.

3.12 The Supplier is not entitled to assign or pledge his claims against us without our written consent, which may not be unreasonably withheld. § 354a HGB remains unaffected.

3.13 If a foreign Supplier makes deliveries or services that are subject to VAT in Germany, the tax liability shall pass to us (Section 13 b UStG). The Supplier may not declare German value added tax in invoices for such deliveries and services. If, in the case of the provision of such supplies and services, the Supplier transports goods from a third country to Germany and thereby incorporates import VAT, this shall be borne by the Supplier.

3.14 We shall be entitled to withhold any applicable withholding tax / deduction tax from the price to be paid and to pay it to the Treasury for the account of the Supplier, unless the Supplier provides us with a valid exemption certificate.

## 4. Delivery, delivery times, delivery delay, lump-sum damages for delay, transfer of risk, contractual penalties, spare parts

4.1 The Supplier is not entitled to have the delivery or service owed by him performed by third parties without our prior written consent, which we cannot unreasonably refuse. Partial deliveries are not permitted.

4.2 If the validity of the commercial clauses "Incoterms" is agreed, the version valid at the time of the conclusion of the contract shall prevail. Without agreement, the delivery will be made "free domicile" under the terms of the Incoterms DDP ("Delivered Duty Paid") with destination at the place of performance (see Section 11.1).

4.3 The Supplier bears the procurement risk. In particular, we do not accept any reservation of timely self-delivery.

4.4 The delivery shall be accompanied by a delivery order specifying the date (Issue and Shipping), content of the delivery (Item number and Amount) and our order code (Date and Number). In marine shipping, the name of the shipping company and the ship shall be indicated in shipping documents. The Supplier must choose the lowest cost suitable transport option for us. In all shipping notices, delivery notes, packing slips, bills of lading, on the outer packaging, etc., the order numbers and details of the unloading point specified by us must be provided in full. If the delivery order is missing or incomplete, we are not responsible for the resulting delays in processing and payment. Separate from the delivery order, we will send you a corresponding shipping notice with the same content.

4.5 The delivery time specified in the order is binding. If a delivery or service has been agreed with assembly / service, the handover of the delivery item after proper execution of the installation / service shall be decisive. Insofar as acceptance is made in accordance with the contract, this is decisive for compliance with the agreed delivery date.

4.6 The Supplier is obliged to notify us immediately if circumstances occur or become apparent which indicate that the agreed delivery time may not be met.

4.7 In the event of a delay in delivery, we are entitled to the statutory claims and rights; furthermore, the Supplier is obliged to pay us a flat-rate compensation for delay in the amount of 1% of the net order value of the order affected by the delay per completed calendar week of the delay, maximum but 5% of the net order value of the affected order, unless the supplier proves that we have suffered no or only minor damage. This lump-sum compensation for delay is credited towards a further damage caused by delay. Our further legal claims and rights remain unaffected.

4.8 The acceptance of a delayed delivery or service does not constitute a waiver of claims and rights due to the delay.

4.9 The risk of accidental loss and accidental deterioration of the delivery or service is transferred to us at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk, the burden of proof and the due date of the remuneration. The handover or acceptance is the same if we are in default of acceptance.

4.10 We do not make any penalty claims for non-performance or improper performance. We can assert contractual penalties up to the final payment, without this requiring a prior reservation, in particular in case of acceptance, according to § 341 section 3 BGB.

4.11 The Supplier is obliged to supply us with spare parts for a period of ten years from delivery onwards at market standard, but at most his current spare parts prices, in particular even if the business relationship has ended.

## 5. Industrial property rights of third parties, exemption, own industrial property rights

5.1 The Supplier guarantees that his deliveries and services do not infringe any industrial property rights or other rights of third parties.

5.2 If a third party claims that deliveries or services of our Supplier infringe on industrial property rights:

- we will inform our Suppliers about this without delay,
- our Supplier indemnifies us fully from all legitimate claims of third parties, including reasonable costs of legal defense and / or prosecution, upon first written request,
- At Supplier's option, Supplier will either obtain a right of use for the relevant service item at his expense or change the subject matter in coordination with us in such a way that the property right will not be violated, but the object of service continues to meet the contractual requirements in every respect, unless, we would have to represent the infringement of industrial property rights. Our further legal claims remain unaffected.

5.3 We reserve all rights, including copyrights, trademark rights, company rights and know-how, to any models, production facilities, tools, samples, templates, illustrations, brochures, calculations and other documents and supplies. They may not be made accessible to third parties, reproduced or distributed by our customers without our express written approval. This applies in particular to documents which are marked as "confidential". They are to be used exclusively for tendering or production based on our order. Such items are - unless they are processed - kept separate at the expense of the Supplier and marked as our property.

5.4 The Supplier is obliged to carry out any necessary maintenance and inspection work as well as all maintenance and repair work in good time at his own expense. The Supplier is obligated to insure the tools, molds and models, etc. that belong to us at new value at its own expense against fire, water and theft damage to the usual extent. After completion of the order, they must be returned to us unsolicited, copies, including backup copies, must be completely destroyed / deleted.

## 6. Condition of the goods, warranty, outgoing quality control, inspection and notification duties, Supplier recourse

6.1 The Supplier warrants that the delivery item has no defects affecting its value or suitability, has the agreed quality, is suitable for the use required under the contract, is state of the art, complies with the latest regulations of authorities, in particular the Machinery Directive, in accordance with the Product Safety Law, the applicable safety-technical requirements and the occupational safety and accident prevention regulations as well as the REACH regulation. In particular, the Supplier must enclose a safety data sheet in the language of the recipient country with the delivery item in all cases mentioned in Art. 31 Sections 1 to 3 of the REACH Regulation and make it available to us in German as well.

6.2 In order to safeguard the quality of its deliveries, the Supplier must carry out a documented, quality inspection in accordance with DIN EN ISO 9001 or equivalent, at least one outgoing goods inspection, according to type and scope. He must keep records, in particular about his quality checks, and make them available upon request. The Supplier hereby consents to quality audits to assess the effectiveness of its quality assurance system by us or a third party commissioned by us. Our initial sample release does not release the Supplier from this outgoing goods inspection and, like our specifications in the technical delivery conditions or specifications, does not restrict this.

6.3 Our duty of inspection upon delivery is limited to defects that become apparent during our inspection of incoming goods under external inspection of the outer packaging including the delivery documents (transport damage, identity, completeness). Examinations shall be carried out in a reasonable sample. Insofar as acceptance has been agreed, there is no obligation to carry out an inspection. In any case, our notification of defects is timely if it is received by the Supplier within a period of three working days, calculated from the complete receipt of the goods, or in the case of hidden defects from discovery.

6.4 Statutory claims for defects are unconditional. The subsequent performance by the Supplier shall be effected at our discretion by remedying the defect (repair) or by delivering a defect-free item (replacement delivery), unless the Supplier proves that the subsequent performance variant chosen by us has disproportionate costs and we do not suffer any significant disadvantages as a result of the other subsequent performance variant. If the Supplier fails to fulfill his obligation of supplementary performance within a reasonable period set by us, we can remedy the defect ourselves

and demand compensation from the supplier for the necessary expenses without prejudice to other claims and rights. The supplementary performance costs to be borne by the Supplier also include import and expansion costs.

6.5 By way of derogation from Section 442 (1) p. 2 of the German Civil Code (BGB), we are also entitled to claims for defects without restriction if the defect has remained unknown to us at the time of conclusion of the contract as a result of gross negligence.

6.6 The limitation period for warranty claims is 36 months, calculated from the transfer of risk, unless mandatory provisions of Sections 478, 479 of the German Civil Code intervene or the Supplier grants a longer period of time or a longer period of time applies by law.

6.7 After remedying the defect, the agreed warranty period for the repaired or replaced delivery items begins again.

6.8 Our statutory claims for recourse within a supply chain (Supplier recourse in accordance with §§ 445 a, 445 b, 478 BGB) are in addition to the claims for defects without limitation. In particular, we are entitled to demand exactly the type of supplementary performance (repair or replacement) from the Supplier, which we owe to our customer in individual cases. Our legal right to choose (§ 439 Abs. 1 BGB) is not restricted by this. Before we acknowledge or fulfill a defect claim asserted by our Customer (including reimbursement of expenses according to §§ 445a section 1, 439 sections 2 and 3 BGB), we will inform the Supplier and ask for a written statement with a brief statement of the facts. If a reasoned opinion is not given within a reasonable period of time and if no mutually agreed solution is brought about, the deficiency claim actually granted by us shall be deemed due to our customer. In this case, the Supplier is responsible for proof to the contrary. Our claims from Supplier recourse also exist if the defective delivery item has been further processed by us or another contractor, e.g. by installation in another product.

## 7. Liability, producer liability, indemnity, insurance, assignment

7.1 The liability of the Supplier is fully in accordance with statutory provisions. The Supplier is responsible for the negligence of his suppliers as well as his own.

7.2 If the Supplier is responsible for any damage, in particular product damage, he shall indemnify us against claims of third parties insofar as the cause for this was set in his area of control and organization and he himself is liable externally. Within the framework of this exemption obligation, the Supplier has accrued expenses under §§ 683, 670 BGB or in accordance with §§ 830, 840, 426 BGB (German Civil Code), which arise from or in connection with a claim of third parties, including legally conducted recall actions. We will inform the Supplier as far as possible and reasonable - about the content and extent of recall measures and give him the opportunity to comment. Our further legal claims remain unaffected.

7.3 The Supplier shall complete and maintain product liability insurance with a flat rate coverage of at least € 10 million per personal injury and calendar year during the term of this contract, i.e. until the end of the warranty period. The Supplier hereby assigns to us all indemnification claims based on the damage caused by the Supplier arising from this insurance, we hereby accept the assignment. The insurance coverage is provided to us on our request at any time by written confirmation of the insurer.

## 8. Retention of title

We hereby accept, subject to agreement, that the ownership of deliveries ("Reserved Goods") remains with the Supplier until full settlement of the Supplier's claim in this regard ("Simple Retention of Title"). Excluded are all other forms of retention of title, in particular the extended, the transferred and extended to the further processing of retention of title.

## 9. Compliance, minimum wage, data protection, change of control

9.1 Our customer undertakes to comply with the respective legal regulations for dealing with employees, environmental protection and occupational safety and to observe the principles of the United Nations Global Compact. The Supplier shall endeavor to the best of its ability, as far as possible by contractual obligation, to ensure compliance with these requirements also with its upstream Suppliers and personnel service providers. If the Supplier violates the requirements of the MiLoG or the ordinance issued on the basis of § 3a AÜG, it releases us from all claims of third parties due to such violations, in particular according to § 13 MiLoG. Such use entitles us to terminate the business relationship with the Supplier without notice.

9.2 The Supplier agrees that his data will be compared against the currently applicable sanction lists, in particular of the European Union. According to § 32 BDSG we point out that we store data of the Supplier on the basis of the Federal Data Protection Act. If we provide our Suppliers with personal data

of our employees (hereinafter referred to as "Personal Data") or if the Supplier becomes aware of this personal data in any other way, the following provisions apply. Personal data disclosed in the aforementioned manner and not processed on our behalf may be processed by the Supplier solely for the purpose of processing the contract and not otherwise processed, except in the case of legal admissibility, in particular disclosed to third parties and / or analyzed for own purposes and / or be used to create profiles. The Supplier may process the personal data further, in particular forward it to its group companies for the execution of the respective contract, as far as this is legally permissible. The Supplier shall ensure that the personal data is only made available to those employees of the Supplier who are employed to carry out the contract in question and only to the extent necessary for the execution of this contract (need-to-know principle). The Supplier will design its in-house organization to meet the requirements of applicable data protection law, in particular to take technical and organizational measures to adequately safeguard personal data against misuse and loss. The Supplier does not acquire any rights to the personal data and is obliged to rectify, delete and/or restrict the processing of personal data at any time under the legal conditions. Retention rights with regard to personal data are excluded. In addition to its legal obligations, the Supplier informs us immediately, at the latest within 24 hours, regarding a violation of the protection of personal data, in particular in case of loss. Upon termination of the contract in question, the Supplier shall delete the personal data, including any copies made, in accordance with the statutory provisions.

9.3 The Supplier shall inform us in writing of any legal succession in our business relationship and / or in contracts existing with us, as well as any changes to its name.

## 10. Confidentiality

10.1 "Confidential Information" in the sense of the following Confidentiality Statement comprises all information (including data, records, documents, drawings, samples, technical components and know-how) about company bodies, employees, consultants of the Supplier or any other third party acting for it, which is disclosed within the scope of this contract and the negotiations on this contract in particular concerning our company, our customers, our production processes, our pricing, etc., which is marked as confidential or by their nature require confidentiality. Whether and on what medium the confidential information is embodied is irrelevant; In particular, oral information is also included.

10.2 Our Supplier is obliged to treat the confidential information strictly confidentially and not to disclose it to third parties or to make it accessible to third parties without our written consent. Our Supplier will take appropriate precautions to protect confidential information, or at least the safeguards to protect sensitive information about his own business.

10.3 Our Supplier is not entitled to use confidential information disclosed by us for any purpose other than the purpose of the respective performance of the contract.

10.4 In particular, our Supplier is not entitled to reproduce, recreate, open or disassemble any samples or other relevant information (reverse engineering).

10.5 The confidentiality obligations according to Sections 10.1 and 10.2 do not apply to such information for which our Supplier can prove that

- we have previously agreed in writing for the specific individual case of disclosure or use by our Supplier;
- they were evident before the conclusion of this confidentiality agreement;
- our Supplier has obtained it from a third party prior to the conclusion of this confidentiality agreement or has obtained it from a third party without breach of this confidentiality agreement, provided that the third party has in each case lawfully acquired the confidential information and does not infringe a confidentiality obligation that binds it; or
- our Supplier is obliged to divulge the confidential information by law or in accordance with the rules of a stock exchange or by an enforceable order of a competent court or competent authority.

10.6 This confidentiality agreement comes into force upon conclusion of this contract and ends five years after termination of the business relationship.

## 11. Place of performance, jurisdiction, applicable law

11.1 Place of performance is our place of business in Lüttow-Valluhn.

11.2 Exclusive jurisdiction for all disputes arising from commercial transactions with general merchants and legal persons under public law is for both parties Schwerin (§ 38 ZPO). This also applies to bill of exchange and check processes. We can also sue our Supplier at its general place of

jurisdiction. For procedures exclusively assigned to the local courts, the district court Schwerin is responsible.

11.3 The law of the Federal Republic of Germany applies to the exclusion of all references to other legal systems and international treaties. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG, "Vienna Sales Convention") is excluded.

## 12. Severability clause

If individual provisions of these GTCP or of the delivery transaction are or become invalid in whole or in part, this shall not affect the validity of the remaining provisions or other parts of such clauses. The ineffective clause is replaced by a provision that corresponds as far as possible to the purpose of this clause and is effective.

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## MTS MICROTUNNELING SYSTEMS GMBH

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