

**Masterguard GmbH: General Terms and Conditions for Supplies B2B ("GTC")
as of January 2011**

1. Scope of Application

- 1.1 The GTC of Masterguard GmbH ("Supplier") shall apply exclusively to contracts concluded between the Supplier and companies ("B2B").
- 1.2 The GTC shall be valid for supplies and services ("Supplies") of the Supplier to its contractual partner ("Customer") based on the contract ("Contract") between the Supplier and the Customer.
- 1.3 Other conditions than these GTC shall not apply unless they are specified in the complete offer / order confirmation of the Supplier.

2. Offer / Order Confirmation

- 2.1 Details of appearance and workmanship of the Supplies are specified exclusively and conclusively in the Technical Specifications of the Supplier's offer/ order confirmation.
- 2.2 The Supplier reserves any property rights and copyright rights regarding images, drawings, plans, construction documents etc. ("Documents") connected to its offer / order confirmation. The Documents shall only be made available to third parties upon prior approval of the Supplier, and must be immediately returned to the Supplier if the offer is not granted. A right of retention for the Customer shall be excluded.
- 2.3 Any preliminary work performed by the Supplier within the scope of an offer / order confirmation upon request of the Customer may be invoiced by the Supplier even if a contract is not concluded subsequently.
- 2.4 Supplier's offer shall not be binding and shall be understood as a request to the Customer to submit an offer. The conclusion of a Contract shall only occur upon Supplier's order confirmation.

3. Availability of Pre-Deliveries

In the event that the contractually agreed Supplies are not available because the Supplier itself has not been supplied by its own supplier or because the Supplier's stock for the Supplies is exhausted, the Supplier shall be entitled to provide alternative supplies equal in quality and price. If the provision of alternative supplies equal in quality and price is not feasible, the Supplier shall be entitled to rescind the Contract.

4. Conditions and Scope of Supplies

- 4.1 Prices shall be valid Ex Works Supplier's premises Erlangen in accordance with Incoterms® 2010 ("Place of Delivery"). Any supplies and services provided by the Supplier which go beyond the Place of Delivery are not included in the prices and shall be separately calculated and added to the prices.
- 4.2 Prices shall be net in EUR plus the respective turn over tax valid at the time of performance without any further deductions.

Masterguard GmbH
Commercial Registry: Fürth HRB 7922
Managing Director: Dr. Andree Kang
WEEE-Reg. No. DE 51003750
VAT Reg. No. DE 128219098

- 4.3 Packaging shall be calculated according to effort and shall be added to the price.
- 4.4 Partial deliveries shall be permissible insofar as they are reasonable for the Customer.
- 4.5 The scope of the Supplies shall be governed by whether the respective Supply is a Mere Delivery (4.5.1), Placement (4.5.2), Connecting Cables (4.5.3), Installing Cables (4.5.4) or Putting Into Operation (PIO; 4.5.5). These terms are defined as follows:
- 4.5.1 Mere Delivery: Delivery of the Supplies at ground level to the first outer building wall at the agreed place of supply, if available, to the loading platform; without any further work of the Supplier as set out in 4.5.2 – 4.5.5;
- 4.5.2 Placement: Shipping of the Supplies to the agreed location at the place of supply ("Location");
- 4.5.3 Connecting Cables: connecting cables installed by the Customer to the Supplies;
- 4.5.4 Installing Cables: pulling the cables necessary for the Supplies plus Connecting Cables;
- 4.5.5 PIO: putting the Supplies into operation.

The terms set out in 4.5.2 – 4.5.5 (collectively "Performance[s]") each also comprise Mere Delivery.

5. Transfer of Risk

- 5.1 Subject to 5.2, the risk shall be transferred to the Customer as follows:
- 5.1.1 for Mere Delivery, once the Supplies have been made available for shipping by the Supplier at the Place of Delivery (4.1);
- 5.1.2 for a Performance, when the Supplies have been delivered to the place of supply.
- 5.2 The risk shall be transferred to the Customer at the earliest of the following:
- 5.2.1 at the time of shipping, delivery, beginning, execution of a Performance, taking over in Customer's own works or an agreed trial operation is being delayed for reasons for which the Customer is responsible or if the Customer is in delay with acceptance for other reasons;
- 5.2.2 at the time at which the Customer or third parties authorized by Customer perform works in close vicinity (distance less than 10m) to the Supplies and in the same room, if the Supplies have not been protected against emissions as instructed by the Supplier.

6. Payment Conditions

- 6.1 Invoices are immediately due in full.
- 6.2 The Customer may only set off against claims which are undisputed or legally determined.

7. Retention of Title

- 7.1 Objects of the Supplies ("Retained Goods") shall remain the property of the Supplier until all of its claims against the Customer in connection with the business have been satisfied. If the value of all security interests, which the Supplier is entitled to, exceeds the value of all secured claims by more than 20% the Supplier shall upon Customer's request release a respective part of the security interests.

Masterguard GmbH
Commercial Registry: Fürth HRB 7922
Managing Director: Dr. Andree Kang
WEEE-Reg. No. DE 51003750
VAT Reg. No. DE 128219098



- 7.2 For the duration of retention of title, the Supplier may not pledge or transfer the Retained Goods by way of security.
- 7.3 The Customer may resale the Retained Goods in the ordinary course of business and under the condition that the Customer receives payment from its buyer or reserves the right that ownership will pass to the buyer only if the buyer has met its payment obligations.
- 7.4 The Supplier shall keep ownership in the Retained Goods even during processing and upon finalization of the product for which the Customer uses the Retained Goods ("End Product"). Supplier's ownership in the Retained Goods shall continue in the End Product; the Supplier shall acquire co-ownership in the End Product to a ratio arising from the relation between the value of the Retained Goods and the value of the End Product.
- 7.5 Upon conclusion of the Contract, the Customer shall assign, by way of security to the Supplier, all claims arising from resale or processing of the Retained Goods against its buyer in the value of the claims that the Supplier has against the Customer from the Supplies. The Supplier's obligation to release in 7.1 shall remain unaffected.
- 7.6 The Customer shall inform the Supplier immediately in the event of pledges, confiscations, other acts or interferences of third parties.
- 7.7 If the Customer violates any obligations, particularly for delay in payment, the following shall apply:
- 7.7.1 After ineffective expiration of a deadline that the Supplier set to the Customer in order for the Customer to heal its violation of obligation, the Supplier shall be entitled to rescind the Contract and to take back the Retained Goods: The Customer is obliged to hand over the Retained Goods. The statutory regulations concerning the dispensability of setting a deadline shall not be affected.
- 7.7.2 Claiming retention of title and the linked taking back of the Retained Goods does not necessitate the Supplier to rescind the Contract; such acts or pledge of the Retained Goods by the Supplier does not constitute a rescission from the Contract unless the Supplier expressly stated this.

8. Material Defects

The Customer shall be liable for material defects as follows:

- 8.1 Within the period of the statute of limitation, any parts showing a material defect, provided such material defect had already existed at the time of transfer of risk, must, at the Supplier's discretion and free of charge, be repaired, re-delivered or re-performed ("Subsequent Performance").
- 8.2 Subsequent Performance shall not trigger a new statute of limitation (8.3).
- 8.3 Claims for material defects shall become time barred within 12 months. This shall not apply insofar as sec. 438 para 1 no. 2, 479 para 1 and 634a para 1 no. 2 German Civil Code (BGB) prescribe longer periods as well as in cases of injury to life, body or health or in cases of an intentional or gross negligent breach of duty by the Supplier and malicious concealment of a material defect. The legal regulations concerning suspension of statute of limitations ("Ablaufhemmung"), suspension ("Hemmung"), or recommencement of limitation periods shall remain unaffected.

Masterguard GmbH
 Commercial Registry: Fürth HRB 7922
 Managing Director: Dr. Andree Kang
 WEEE-Reg. No. DE 51003750
 VAT Reg. No. DE 128219098



Office address:
 Schallershofer Str. 141, 91056 Erlangen
 T +49 9131/6300-0, F +49 9131/6300-270
 Postal address:
 P.O. Box 2620, 91014 Erlangen

- 8.4 The Customer shall immediately notify any material defects in writing to the Supplier. The notification must comprise any data relating to the Supplies.
- 8.5 In case of notifications of material defects, the Customer may retain payments to the extent as is reasonable in relation to the material defect. The Customer shall only be entitled to retain payments if a notification of material defect was made which cannot be disputed. In the event that the notification of material defect was unrightfully made, then the Supplier shall be entitled to request that the expenses incurred are reimbursed by the Customer.
- 8.6 The Supplier must be granted Subsequent Performance within reasonable time. In the event that this is denied, the Supplier shall be released from any liability for material defects.
- 8.7 In the event that Subsequent Performance fails, the Customer may – irrespective of any claims for damages (13.) – rescind from the Contract or reduce payment.
- 8.8 Claims for defects shall not exist for merely insignificant deviations from agreed appearance and workmanship, for minor impairment of usability, for natural wear and tear, or damage that occurred after transfer of risk due to wrong or negligent use, excessive strain, unsuitable equipment or certain external factors not assumed under the Contract. If the Customer performs inappropriate changes or inappropriate repair work, there shall be no claim for defects for those and the respective consequences.
- 8.9 Claims of the Customer for expenses necessary for Subsequent Performance, in particular expenses for shipping, travel, labour and material shall be excluded to the extent as the expenses are higher because the Supplies were subsequently at another place than the Place of Performance.
- 8.10 Customer's right of recourse against the Supplier is limited to cases where the Customer has not concluded an agreement with its buyers exceeding the scope of the statutory provisions governing claims based on material defects. 8.8 shall apply accordingly for the extent of Customer's recourse claim of the against the Supplier as set out in sec. 478 para 2 German Civil Code (BGB).
- 8.11 The Customer shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, restrictions to liberty and/or intentionally or grossly negligent breach of contract on the part of Supplier. The above provisions do not imply a change in the burden of proof to the detriment of the Customer. Any other or additional claims of the Customer exceeding the claims provided for in this 8. based on a Defect, are excluded.

9. Time of Supply

- 9.1 Compliance with the agreed time of supply necessitates timely receipt of all documents which the Customer must supply as well as any necessary permits and releases, especially concerning plans and observing the agreed payment conditions and other obligations by the Customer. In the event that such preconditions are not met on time the deadlines shall be extended appropriately; this does not apply if the Supplier is responsible for the delay.

Masterguard GmbH
Commercial Registry: Fürth HRB 7922
Managing Director: Dr. Andree Kang
WEEE-Reg. No. DE 51003750
VAT Reg. No. DE 128219098

- 9.2 If non observance of the agreed time of supply is due to Force Majeure, e.g. mobilization, war, uproar or similar events, e.g. strike, lock-out, the time of supply shall be appropriately extended.
- 9.3 In the event that the Supplier is in delay, the Customer may, insofar as it can show credibly that it suffered damage, claim liquidated damages for each complete week of delay in an amount of 0.5%, however, up to a maximum of 5% of the net price of that part of Supplies which could not be used by the Customer due to the delay.
- 9.4 Claims for damages of the Customer due to delay as well as for damages in lieu of performance, which exceed the limits stated in 9.3, shall be excluded in all cases of delay, even upon expiry of a deadline for supply set by the Customer. This shall not apply in cases of mandatory liability for intent or gross negligence or due to injury to life, body or health. The Customer may only rescind from the Contract if the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Customer.
- 9.5 The Customer shall have a right of rescission only if it has granted the Supplier an appropriate deadline and declares that it shall refuse to accept the Supplies upon the expiry of the deadline, and after the deadline has unsuccessfully expired.
- 9.6 Upon Supplier's request, the Customer shall declare within a reasonable deadline if, because of the delay, it wants to rescind from the Contract or if it insists on Supplies.
- 9.7 If dispatch or shipment is delayed at Customer's request by more than one month after notice of readiness for dispatch was given, the Customer may be charged by the Supplier for every new month commenced a lump sum for storage costs of 0.5% of the net price of the items of Supplies up to a total maximum of 5% of the net price of Supplies. The parties may prove that that storage costs were higher or lower.
- 9.8 If for reasons of delay as per 9.7 a re-charging of batteries becomes necessary, the Customer shall bear the extra costs.

10. Installation and Assembly

For the tasks set out in 4.5.2 – 4.5.5 the following provisions shall apply:

- 10.1 The Customer must at his own expense perform and provide in time:
- 10.1.1 all excavations and construction and other works which are outside the Supplier's business. This includes any necessary skilled and non-skilled workers, materials and tools;
- 10.1.2 all necessary utensils and materials for the performance of the tasks such as scaffolds, lifting gears and other equipment;
- 10.1.3 energy and water at the place of use including all connections, heating and lighting;
- 10.1.4 in direct vicinity to the place of performance of the tasks ("Assembly Site") sufficient big, suitable, dry and lockable rooms for the storage of equipment, materials, tools and so forth, and for Supplier's personnel reasonable work and social facilities including suitable sanitary installations. Further, the Customer must provide sufficient protective measures for the property of the Supplier and its personnel at the site in the same way as it would to protect its own property;
- 10.1.5 protective clothing and protective devices which are necessary due to certain circumstances at the Assembly Site.

Masterguard GmbH
Commercial Registry: Fürth HRB 7922
Managing Director: Dr. Andree Kang
WEEE-Reg. No. DE 51003750
VAT Reg. No. DE 128219098

- 10.2 Prior to commencement of the tasks, the Customer shall unsolicitedly provide the Supplier with any necessary details about the access to the Assembly Site, the location, of uncovered power, gas and water lines or similar units as well as the necessary structural data.
- 10.3 Prior to commencement of the tasks all materials and equipment must be available at the site or the Assembly Site and all pre-work must have proceeded so far that the task may begin as agreed and continue uninterruptedly. All access roads, the site or the Assembly Site must be levelled and cleared.
- 10.4 In the event that the tasks are delayed for reasons the Supplier is not responsible for, the Customer must to reasonable extent bear the costs for waiting time and additionally necessary travels of the Supplier or the assembly personnel.
- 10.5 Acceptance of the Supplies shall only occur insofar as the Contract is qualified as a contract to produce a work ("Werkvertrag") and if acceptance has expressly been agreed upon. In this case, the following shall apply: if the Supplier demands acceptance after performing the Supplies, the Customer shall do so immediately. If this does not happen, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place upon the Supplies being put into use.
- 11. Infringement, further legal defects**
- 11.1 Unless otherwise agreed, the Supplier shall provide the Supplies free from third parties' Industrial Property Rights and copyrights ("Protective Rights") with respect to the territory of the Federal Republic of Germany. As far as a third party asserts a justified claim against the Customer based on the infringement of Protective Rights by the Supplies made by the Supplier and used in conformity with the Contract, the Supplier shall be liable to the Customer within the time period stipulated in 8.3.
- 11.1.1 At its own choice, the Supplier shall either effect a right to use for the respective Supply, or change it so that the infringement is healed or exchange it. If this is not feasible with reasonable effort, the Customer shall be entitled to legal rights to rescind or reduce.
- 11.1.2 Supplier's obligation to pay damages shall be in accordance with 13.
- 11.1.3 The Supplier's obligations above shall only exist to the extent that the Customer immediately informs the Supplier in writing about the claims brought forward by the third party; does not accept infringement and that the Supplier reserves all action of defence and settlement negotiations. In the event that the Customer stops using the Supplies for reasons to limit damage or other important reasons, it shall inform the third party, that in doing so it does not acknowledge any infringement.
- 11.2 Claims of the Customer shall be excluded in the event that it is responsible for the infringement.
- 11.3 Claims of the Customer shall further be excluded insofar as the infringement is caused by specific requirements of the Customer, or by application which the Supplier could not foresee or if the delivery is changed by the Customer or is used with products not supplied from the Supplier.
- 11.4 In the event of infringement of Property Rights for all claims of the Customer set out in 11.1.1 the provisions in 8.5, 8.6. 810 shall apply correspondingly.
- 11.5 In the event of other legal defects, the conditions in 8. shall apply correspondingly.

Masterguard GmbH
Commercial Registry: Fürth HRB 7922
Managing Director: Dr. Andree Kang
WEEE-Reg. No. DE 51003750
VAT Reg. No. DE 128219098

11.6 Exceeding or other claims than stipulated in 11 of the Customer against the Supplier due to legal defect shall be excluded.

12. Impossibility, Contract Adaption

12.1 To the extent that Supplies are impossible, the Customer shall be entitled to request damages unless the Supplier is not responsible for the impossibility. However, the Customer's claim for damages shall be limited to 10% of the value of that part of the Supplies that due to the impossibility Customer cannot use. This shall not apply in cases of mandatory liability for intent, gross negligence or initial inability to perform or for injury to life, body or health; this does not imply a change in the burden of proof to the detriment of the Customer. The right of the Customer to rescind from the Contract shall remain unaffected.

12.2 To the extent that events of Force Majeure (9.2) substantially change the economic importance or the contents of the Supplies or considerably affect the Supplier's business, the Contract shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, the Supplier shall have the right to rescind from the Contract. If the Supplier intends to exercise its right to rescind from the Contract, it shall notify the Customer thereof without undue delay after having realised the repercussions of the event; this shall also apply even where an extension of the time of supply had previously been agreed with the Customer.

13. Other Claims for Damages

13.1.1 Claims for damages of the Customer, irrespective of their legal basis, in particular for violations of obligations of the contractual relationship and liability in tort shall be excluded.

13.1.2 This shall not apply in cases of mandatory liability such as under the Product Liability Act ("Produkthaftungsgesetz"), intent, gross negligence, injury to life, body, or health or the violation of essential contractual obligations.

13.1.3 Damages for violation of essential contractual obligations shall be limited to the damage foreseeable and typical for this type of contract unless in cases of intent or gross negligence or injury to life, body or health mandatory liability applies.

13.2 Insofar as per 13. the liability of the Supplier is excluded or limited, this also applies to the personal liability of its employees, workers, co-workers or other vicarious agents, however, but not to the personal liability of legal representatives or executives.

13.3 Insofar as the Customer is entitled to claims for damages as set out in 13., such shall become time barred upon expiry of the statute of limitation applicable to claims for material defects as provided in 8.3. In cases of intent and claims for material defects in accordance with the Product Liability Act the statutory provisions governing the statute of limitation shall apply

13.4 The above provisions in 13. do not imply a change in the burden of proof to the detriment of the Customer

14. Confidentiality

14.1 The parties shall without written permission of the other party neither forward nor use, other than contractually intended, any documents, knowledge, and information – irrespective of its carrier medium – ("Information") that they received from the other party. They must be secured against unauthorized viewing or use. Subject to further rights, the respective party may demand return of the Information in the event that the other party violates these obligations.

Masterguard GmbH
Commercial Registry: Fürth HRB 7922
Managing Director: Dr. Andree Kang
WEEE-Reg. No. DE 51003750
VAT Reg. No. DE 128219098



14.2 The obligation as set out in 14.1 commences upon first receipt of Information and ends 36 months after the Contract ends.

14.3 The obligation as set out in 14.1 shall not apply to information generally known or which was already known upon receipt by the receiving party without it being bound to secrecy. Same applies to information which is transferred by third parties who are entitled to do so or information developed by the receiving party without the use of secret information of the other party.

15. Jurisdiction

Exclusive Jurisdiction is Nuremberg. This applies also for cheques and bills receivable.

16. Applicable Law

German substantial law shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall be excluded

Masterguard GmbH
Commercial Registry: Fürth HRB 7922
Managing Director: Dr. Andree Kang
WEEE-Reg. No. DE 51003750
VAT Reg. No. DE 128219098



Office address:
Schallershofer Str. 141, 91056 Erlangen
T +49 9131/6300-0, F +49 9131/6300-270
Postal address:
P.O. Box 2620, 91014 Erlangen