



General Conditions of Sale (Issue 10/2015)

I. General

The following General Conditions of Sale (hereinafter referred to as "General Conditions") shall be valid for all purchase orders of a customer (hereinafter referred to as "Purchaser") at MECOS AG (hereinafter referred to as "MECOS") of MECOS-products (such as new plants or machines including the respective documentation as well as spare, repair or replacement parts) or of separate individual MECOS-engineering services such as studies, technical investigations, etc. (MECOS-products and/or MECOS-engineering services are hereinafter collectively referred to as "Deliveries").

II. Quotation and contract

1. Unless otherwise expressly stated in the quotation, quotations are non binding.
2. Technical documents and figures on weight, performance, operating costs, etc. shall be for information purposes only and non-binding, unless expressly stated in writing that they are binding.

Quotations, drawings and other documents entrusted to Purchaser are MECOS's property and in particular subject to copyrights and shall without MECOS's written approval not be copied or duplicated, nor disclosed to any third parties in any way for a period of 10 years after the end of any warranty period. Such material shall be returned to MECOS upon request.

3. These General Conditions shall apply exclusively; any provisions to the contrary of or deviating from these General Conditions are not accepted unless MECOS has expressly agreed to them in writing. These General Conditions shall also apply if Deliveries to Purchaser are performed without reservation by MECOS in the knowledge of any such deviating or contravening conditions.

They are also deemed accepted by Purchaser if the latter accepts Deliveries from MECOS or performs services himself.

4. These General Conditions, as amended, shall also be valid for all future transactions with Purchaser.

III. Scope of supply

1. The scope of Deliveries is specified by MECOS's official written acknowledgement of the order. Any modifications or amendments shall be subject to written confirmation by MECOS.
2. Electric equipment is subject to the regulations of Electrosuisse / ESTI Eidgenössische Starkstrominspektorat.
3. If Deliveries are used outside Switzerland, the health, safety and environment equipment shall be as agreed upon in the contract. It is Purchaser's responsibility to comply with local statutory and other regulations, including, but not limited to the connection to the grid.
4. Where Deliveries shall be performed in accordance with standard commercial terms, these shall be interpreted according to the Incoterms of the International Chamber of Commerce, Paris, as effective on the date of the contract.
5. Any taxes, fees, dues, customs duties or charges incurred or levied in respect of the contract outside Switzerland shall be paid and borne by Purchaser or shall be reimbursed to MECOS if MECOS is held liable for such taxes, fees, dues, customs duties or charges.

IV. Documentation/software/intellectual property

1. In case the Deliveries include supply of software or intellectual property, Purchaser shall only have the non-exclusive, royalty-free, irrevocable and non-transferable and non-sublicenseable rights to use such software or intellectual property for an unlimited period. Said rights of use are limited to the Deliveries and to the purpose of use specified or intended in the contract. No further use is permitted. Purchaser shall only be entitled to transfer said rights to a third party who acquires the Deliveries, provided always that said rights are not extended or otherwise modified. Any transfer shall only be permitted in total and not in parts.
2. Unless otherwise explicitly provided for in the contract, any supply of software shall not include the source code. Purchaser shall not be entitled to modify, to reverse engineer, to decompile or to disassemble the software in any way. Purchaser shall be obliged not to disclose or make accessible the software, including programming documents, to third parties other than as provided for in Clause IV.1.

V. Price

1. Unless otherwise agreed, prices are on an ex-factory basis excluding packing and loading on factory premises, excluding freight and installation, plus VAT as applicable.

Packing material – except pallets – is not returnable.

2. The prices are calculated on the basis of the cost level on the date of the quotation and are subject to variation in the event of any change in the cost of materials, wage rates, freight rates or other price factors.

VI. Terms of payment

1. Payment shall be made strictly net to MECOS's bank account within 30 days after the date of the invoice. VAT shall be payable on receipt of invoice. Where down payments are taxable, the proportionate VAT shall be payable on the agreed dates of payment. Bills of exchange, drafts or promissory notes, if accepted by MECOS, shall not discharge Purchaser from his debt until same has been duly fulfilled.
2. Purchaser shall not be entitled to offset any sums or claim any right of retention against payments due to MECOS unless MECOS does not dispute Purchaser's claims or Purchaser's claims are confirmed as valid and due by final judgement.
3. In the case of delay in payment, interests - without prejudice to other legal claims- will be charged according to the applicable law. Furthermore MECOS reserves the right to adapt the delivery date accordingly.
4. If Purchaser fails to fulfil his payment obligations or obligations under the retention-of-title clause or in the event of a serious deterioration in his business standing or of discontinuation of payment, MECOS shall be entitled to refuse further performance, to make further Deliveries dependent upon advance payments or provisions of security, to claim damages due to non-performance or to terminate the contract.

VII. Retention of title

1. The title in the goods shall rest with MECOS until full and final payment of all amounts due to MECOS under the contract or in connection therewith has been effected.
 - a) Any machining or processing of Deliveries which are subject to retention of title or any combination of such Deliveries with other items by Purchaser or third parties shall be carried out on behalf of MECOS. Where this results in the production of a new item, MECOS shall be the co-owner proportionate to the value of the Deliveries.
 - b) As a security for any claims of MECOS, Purchaser hereby assigns and novates to MECOS all claims resulting from a re-sale of the Deliveries to the extent these correspond to MECOS's claims.
 - c) Purchaser is authorised to collect/enforce the claims so assigned; MECOS reserves its rights to collect/enforce the claims itself.
 - d) If Purchaser is in breach of contract and, in particular fails to effect payments when due, MECOS shall be entitled to take back the Deliveries and Purchaser shall be obligated to return them. If the Deliveries have been used before being returned, MECOS – without the need to furnish proof of deterioration – shall be entitled to charge Purchaser as deterioration 25% of the value of the goods for the first 6 months of use and 10% for each and every further period of 6 months during which the goods have been in use.
 - e) In the event that the country to which the Deliveries are supplied does not allow retention of title, but permits the supplier to reserve other comparable rights, MECOS shall be free to exercise any or all of such rights. In such cases, Purchaser shall on demand take all measures at his expense to give effect to and maintain such rights in the Deliveries.
2. If a distress warrant is served or if MECOS's owner's interests should be affected in any way, Purchaser shall notify MECOS without undue delay and shall take safeguarding measures at his costs.

VIII. Time of delivery

1. The time of delivery shall only be binding if stated so expressly and in writing in the contract. The time of delivery starts according to mutual agreement, provided always that MECOS has received all information including licences and permits to be furnished by Purchaser and these are duly clarified, however, not before receipt of agreed down payments and/or payment securities. The time of delivery shall be deemed observed if MECOS has sent notification of readiness for dispatch to Purchaser within the agreed time of delivery.
2. The time of delivery shall be extended by a reasonable period, also in cases where the original time of delivery already has elapsed, in the event of



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strikes, lockouts, acts of god or in case of any unforeseen circumstances arising beyond control of MECOS, e.g. factory disturbances, scrapping, late receipt of material purchased from subsuppliers, faulty or delayed supplies by subcontractors or other delays due to reasons beyond the control of MECOS, provided such circumstances affect the timely performance. In substantial cases MECOS will notify Purchaser on occurrence and anticipated duration for such events. MECOS expressly reserves a right of termination according to Clause XIII.

The time of delivery shall also be extended accordingly if Purchaser is in delay with his payment obligations or other obligations, at least for a period corresponding to the delay.

3. In the event Purchaser can prove that (i) a delay in respect of a time of delivery expressly specified in writing in the contract as binding arises due to the fault of MECOS and (ii) Purchaser suffers damage in consequence thereof, Purchaser shall be entitled, to the exclusion of any further claims for any delay whatsoever, to claim liquidated damages to an amount not exceeding 0.5% for each full week of delay, but in the aggregate limited to 5% of the respective value of that item or part which due to the delay could not be put to commercial use within the agreed time. To the extent MECOS does not deny that liquidated damages are due, Purchaser shall be entitled to deduct any liquidated damages payable by MECOS under this Clause from MECOS's final invoice. Purchaser shall not be entitled to claim liquidated damages for the first two weeks of delay. Further Purchaser shall not be entitled to liquidated damages if Purchaser has been provided with an appropriate replacement.

IX. Transfer of risk

Unless otherwise agreed, the risk in the goods shall pass to Purchaser upon delivery to the person entrusted with shipment (e.g. forwarding agent, carrier). In the event of a delay in shipment owing to reasons beyond MECOS's control, the risk in the goods shall pass to Purchaser on notification of readiness for shipment. From this date on the goods will be stored at the cost and risk of Purchaser; cost of storage shall be at least 0.5% of the contract price per month.

X. Performance of contract

1. The delivery shall be deemed fulfilled when the risk in the goods has passed to Purchaser in accordance with Clause IX.
2. Delivery in lots shall be accepted by Purchaser.
3. From delivery on Clause XI shall apply.
4. Deliveries, including goods with minor deficiencies, shall be accepted by Purchasers without prejudice to Purchaser's rights under Clause XI.

XI. Warranty for delivery defects

1. To the exclusion of any further rights and remedies MECOS provides a warranty for the Deliveries as follows:
 - a) for MECOS-products: these shall be free from defects in material, production or workmanship, or
 - b) for separate MECOS engineering services: these shall be free from calculation errors,

to the extent that parts of the Deliveries, which have been rendered unusable as a result of such defects or the use of which has been affected by the defect in a substantial manner, shall either be repaired or replaced free of charge ex works. Replaced parts shall become property of MECOS.

All other costs and expenses shall be borne by Purchaser.

MECOS provides the same warranty for repair and replacement as for the original Deliveries.

In respect of items purchased from sub-suppliers and used by MECOS in the manufacture of Deliveries without any considerable processing, MECOS's liability shall be limited to assigning to Purchaser any warranty claims it may have against the supplier. Items purchased from sub-suppliers are only covered by MECOS's warranty in so far as MECOS's choice or calculation of such items proves to be deficient.

2. The warranty period for claims with respect to defective Deliveries shall be 12 months from transfer of risk as per Clause IX. The warranty period for repaired and replaced Deliveries restarts and lasts six months from repair resp. replacement or 12 months after the expiration of the above mentioned warranty period, whichever occurs first.
3. In order to enable MECOS to carry out necessary repair or replacement, Purchaser shall:

- a) grant the necessary time and opportunity;
- b) furnish, at his expense, the necessary assistance staff and equipment and carry out ancillary work; and
- c) perform, at his expense, all work in excess of the original scope of Deliveries.

The extra cost of any work carried out beyond regular working hours shall be to Purchaser's account.

4. MECOS's warranty shall not apply in case of natural wear and tear or for parts which are subject to premature deterioration nor for any faulty or incorrect storage, incorrect handling or use, faulty installation or putting into operation, excessive stress or strain, wrongful maintenance, use of unsuitable lubricants, utilities or fuels, etc., unsound civil engineering or civil work, inadequate foundations or unsuitable soil, chemical, electro-chemical or electrical influences or any other causes arising beyond the control of MECOS after the transfer of risk.
5. In cases where Deliveries are operated electrically, MECOS does not assume any responsibility for effects of starting peaks on the grid or on electrical equipment or machinery connected to such grid.
6. Purchaser's rights arising out of breach of warranty shall be subject to the following conditions precedent:
 - a) the existence of a defect covered by MECOS's warranty has been reported to MECOS in writing immediately on discovery;
 - b) Purchaser has complied with MECOS's service and maintenance instructions and has the equipment properly inspected at the specified intervals;
 - c) no repair work has been carried out without MECOS's approval;
 - d) no spare parts have been fitted other than original MECOS parts; and
 - e) the defect of the Deliveries was not caused by merely slight negligence.

7. Rights of Third Parties

MECOS warrants that Deliveries do not infringe any third party rights registered in Switzerland at the date this contract enters into effect provided a damage caused by such breach of warranty is not based on slight negligence. MECOS shall defend Purchaser and provide, at the discretion of MECOS, a suitable remedy in order to indemnify him, provided that Purchaser notifies a claim from a third party concerning violation of intellectual property rights within five days after it became known to Purchaser and subject to the condition precedent that Purchaser gives MECOS sufficient opportunity for legal defence. However, Purchaser shall defend and hold MECOS entirely harmless if the basis for violation of third party rights was the specification of Purchaser.

8. Further claims due to breach of warranty other than those mentioned under Clause XI shall be excluded.

XII. Purchaser's right of termination

Purchaser shall only have the right to terminate the contract by written notice under the preconditions set out hereunder:

1. If it should become entirely impossible for MECOS to perform the contract and such impossibility occurs for reasons due to MECOS's fault. In the event of partial impossibility of performance, Purchaser shall have the right to terminate the contract only if partial performance is proved by Purchaser to be unreasonable to him; otherwise Purchaser shall only be entitled to claim a reasonable reduction of the price.
2. If, in the case of a defect for which MECOS is responsible in terms of Clause XI, Purchaser has granted twice a reasonable period in writing, expressly stating that he will terminate the contract and if such period expires fruitlessly, provided that Purchaser proves that this period has expired for reasons due to MECOS's fault and that the delay in remedying the defect or the defect substantially makes adherence to the contract unreasonable.

In case of termination as per this Clause XII the obligations of MECOS to provide the Deliveries under the contract expire ipso iure with receipt of the notice of termination. MECOS shall reimburse to Purchaser the costs Purchaser incurred in excess of the contract price to the extent such costs were necessary and reasonable in order to complete the Deliveries either by Purchaser or through third parties.

XIII. MECOS's right of termination

MECOS shall have the right to terminate the contract in whole or in part by written notice if



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- (i) unforeseen circumstances or other circumstances beyond MECOS's reasonable control materially modify the economic intent or the content of MECOS's performance or any of the above circumstances materially affect the operations of MECOS, or
- (ii) the economic situation of Purchaser undergoes a substantial deterioration, or
- (iii) Purchaser is in delay of any of his payment obligations and such delay exceeds 60 days, or
- (iv) Purchaser breaches a provision of this contract and has not remedied such breach within a reasonable period indicated by MECOS.

Any right of termination as per above shall remain unaffected by a prior extension of the delivery period as agreed upon by the parties. In case of termination as per this Clause XIII all obligations of MECOS out of and/or in connection with the contract expire. Purchaser shall pay to MECOS the price for the Deliveries provided by MECOS plus MECOS's loss of profit and reimburse any costs and compensate any damages incurred by MECOS due to this termination.

XIV. Limitation of liability of MECOS

Notwithstanding anything contained to the contrary in the contract, at law or otherwise the following provisions 1. through 4. shall apply:

1. MECOS shall only be liable for the circumstances expressly specified in these General Conditions and to the extent and subject to the limitation(s) stated hereunder. Further rights and remedies against MECOS arising in contract, at law or otherwise are excluded, in particular any rights and claims of Purchaser for compensation of damages, reduction of contract price, termination or cancellation.
2. MECOS shall in no event, regardless whether arising out of and/or in connection with this contract and/or the Deliveries and irrespective whether based on contract (including but not limited to breach of warranty and breach of contract), tort (including but not limited to negligence), law, strict liability, indemnification or otherwise, be liable and shall in no event indemnify Purchaser for any loss of profit, loss of revenue, loss of interest, cost of capital, loss of business, business or progress interruption, loss of production, additional production costs, downtime costs, loss of use of any Works or any parts thereof or any other real or personal property, loss of data or information, any special, ancillary or incidental loss or damages or any exemplary or punitive damages, or any claims of Purchaser's contractors/customer(s) or other third parties against Purchaser, including claims for penalties and liquidated damages and/or any loss, cost and/or damage similar to any of the foregoing regardless whether any and/or all of the aforementioned loss, cost and/or damages are qualified as direct or indirect or consequential damages and/or for any indirect and/or consequential loss, cost and/or damage. Purchaser shall indemnify, defend and hold harmless Contractor from any and all of the claims, losses, cost and/or damages as described in the first sentence of this clause XIV., 2. paragraph.
3. The total liability of MECOS for all claims in the aggregate, irrespective whether in contract (including but not limited to breach of warranty and breach of contract), tort (including but not limited to negligence), law, strict liability, indemnification or otherwise, arising out of, connected with, or resulting from the performance or non-performance of the contract or from the manufacture, sale, delivery or use of any goods or the furnishing of any services, shall not exceed in the aggregate 100% of the contract price or 1 Million Euros, whichever is less.
4. The above provisions on limitation of liability shall apply to the maximum extent permitted by law.

XV. Assignment

Purchaser shall not assign or transfer his rights under the contract to any third party without MECOS's consent.

XVI. Applicable norms and standards

Unless otherwise explicitly agreed in the contract, the following conditions, laws, norms and standards are applied to the Deliveries in the following order of precedence:

- General Conditions of Sale of MECOS
- MDT norms/directives as well as existing Swiss technical regulations
- the metric system

XVII. Export control

1. Notwithstanding any regulation regarding force majeure as stated in the contract, MECOS reserves the right to suspend at its sole discretion its performance at any time, in whole or in part, without incurring any liability, whenever such performance would be prevented by any applicable export or

re-export control regulation (including but not limited to EU and U.S. laws, as the case may be) or where an export license required by such regulations cannot be obtained. In the event the performance of the contract is prevented due to the above reasons for a period of more than 180 days, MECOS or Purchaser shall be entitled to terminate the contract to the extent the performance is prevented. In the event an export license has been denied by the responsible authorities, MECOS or Purchaser shall be entitled to terminate the denied part of the performance immediately. As consequence of such termination Purchaser shall pay to MECOS the price of the Deliveries performed by MECOS under the contract and any cost for unavoidable commitments incurred by MECOS with respect thereto. Any claims, rights and/or remedies of Purchaser with respect to such termination shall be excluded.

2. MECOS shall provide Purchaser with a customs invoice and a packing list as standard shipping documents. Such documents are made out to the name of Purchaser. The content and layout of such documents are defined by MECOS and cannot be adjusted or amended. The provision of any further information or documents which might be required by Purchaser for import purposes, such as but not limited to countries of origin, HS codes (numeric codes according to the "International Convention on the Harmonized System", issued by the World Customs Organization (WCO)), certificates of origin, declarations of preferential origin or other certificates shall be subject to an individual agreement. All costs for such additional information or documents shall be borne by Purchaser.

XVIII. Assembly, commissioning and/or maintenance services

Insofar as MECOS also performs assembly, commissioning and/or maintenance services, the corresponding MECOS conditions shall also apply to these services.

XIX. Confidentiality and data protection

1. Purchaser shall keep any information or documentation disclosed to him in connection with the Deliveries, which are not in the public knowledge or accessible to the general public, strictly confidential and shall not disclose them or make them accessible to third parties; Purchaser shall only use such information or documentation in connection with and for the purpose of the Deliveries and shall not otherwise use them in any way without prior written consent of MECOS.
2. Purchaser shall comply with any applicable data protection laws and regulations and shall take all precautionary measures to ensure protection against unauthorized access by third parties.

XX. Written Form

1. Telephone and verbal agreements and consents shall be valid only if they have been confirmed in writing which can also be in electronic form by e-mail.
2. Contract amendments or modifications must also be in writing; the same shall apply to a modification of this Clause on the written form itself.

XXI. Place of performance and ARBITRATION

1. The place of performance for all claims under the contract shall be Zurich, Switzerland, or such other premises of MECOS as may be indicated in the order acknowledgement.
2. ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH THE PRESENT CONTRACT INCLUDING ITS VALIDITY SHALL BE EXCLUSIVELY AND FINALLY SETTLED UNDER THE RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE (ICC) BY 3 ARBITRATORS APPOINTED IN ACCORDANCE WITH THE SAID RULES. VENUE OF ARBITRATION SHALL BE ZURICH, SWITZERLAND. THE LANGUAGE OF ARBITRATION SHALL BE ENGLISH. THE PARTIES WILL KEEP THE EXISTENCE OF THE ARBITRATION OR ANY INFORMATION OR DOCUMENT RELATING THERETO OR DISCLOSED THEREIN AND THEREFORE CONFIDENTIAL.

XXII. GOVERNING LAW and severability

1. THIS CONTRACT SHALL BE SUBJECT TO THE SUBSTANTIVE LAWS OF SWITZERLAND TO THE EXCLUSION OF THE CONFLICTS OF LAWS PROVISIONS AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.
2. In case of invalidity or unenforceability of any provision, the remainder shall not be invalid or unenforceable but said provision shall be replaced by a valid and enforceable provision which corresponds to the largest extent legally permissible to the invalid provision and the parties' presumed intention.

Purchaser is herewith informed that MECOS stores personal data according to the Swiss Data Protection Laws.