

General Terms and Conditions – MESCO Engineering GmbH

1. Validity

The General Terms and Conditions of MESCO have exclusive validity. Differing or adverse conditions of the Buyer shall not be accepted, except where MESCO has explicitly acknowledged their validity in writing. The General Terms and Conditions of MESCO are valid even if MESCO performs the service unconditionally in the awareness of differing or adverse conditions.

2. Offers

All offers made by MESCO are without obligation and not binding. The offers are considered accepted only after confirmation in writing by MESCO.

3. Type and scope of performance

MESCO shall carry out the projects according to the general state of the art. The type and scope of performance is determined by the specification, in which the Buyer shall indicate what results are expected under what conditions. If no specifications are prepared, the type and scope of performance shall be determined by the written confirmation of order by MESCO.

4. Prices and conditions of payment

All estimates of cost are free of charge and not binding, unless explicitly stated otherwise. All pricing - unless stated otherwise - is exclusive of taxes, customs tariffs, transport, packaging, insurance, installation, putting into operation, training, travel expenses and charges. If the payment of a fixed price was agreed, this includes only the services listed in the offer; additional services not listed therein shall be charged separately by MESCO according to the ruling price list. Invoices are payable ten days after the date of the invoice, without deduction. The deduction of discounts requires a special written agreement. Rebates on applicable prices are granted on condition of the Buyer's fulfilment of his contractual duties. Specifically, rebates shall be cancelled if the Buyer fails to comply with the planned project procedure and scope or the envisaged term of payment for reasons within his scope of responsibility. If partial payments have been agreed, the remaining sum becomes due immediately as soon as the Buyer fails to pay an instalment for 14 days or more, suspends payments or bankruptcy proceedings relating to his property are filed. In case of overdue payments MESCO has the right to demand a default interest of 5% above ECB base rate. Should MESCO be able to prove a higher damage caused by the default of payment, MESCO has the right to put it forward. The Buyer is in default if he fails to pay after receiving a dunning notice sent by MESCO after the original term of payment. Regardless thereof, the Buyer is in default if he fails to pay on a calendar payment date specified in the contract or in the invoice. The Buyer has the right to set off only if his counterclaims are legally determined, not controversial or accepted by MESCO. The offsetability of litigious counterclaims is limited to claims resulting from the agreement on which the counterclaims are based.

5. Rights of use

Unless stipulated otherwise, Buyer has the right to use the products in the envisaged applicative context and to inform third parties about them in the envisaged scope. Rights of use are not transferable without MESCO's consent. Any software not produced by MESCO itself, is transferred exclusively at the licensing conditions of its producer. Buyer has to inspect the licensing conditions of the producer at any point in time.

6. Modification

Any extension or modification of the projects, especially of the software, by the Buyer or by third parties requires the written consent of MESCO.

7. Confidentiality

Both parties to the agreement undertake to treat with confidentiality all business or trade secrets, as well as all information declared as such, they may become aware of in the course of the business relationship, with no temporal limit.

8. Specifications and changes of project definition

Buyer may require MESCO's consent to modification requests, as far as equitable. If the Buyer notifies specifications and modification requests in writing, they shall be considered accepted if MESCO does not reply within two weeks after their receipt. If MESCO confirms in writing any changes of specifications or modification requests put forward verbally by the Buyer, or if MESCO describes what changes to the software would result from such adjustments, the resulting modification is considered accepted if the Buyer remains silent for two weeks. If MESCO notifies in writing in what way the requested modifications will affect the terms of the agreement, such changes are considered accepted if the Buyer remains silent for two weeks.

9. Impracticability of the project

If the task posed by Buyer, notwithstanding an earlier competent assessment, turns out to be impracticable, either for technical or economic reasons, and the Buyer does not consent to a possible adjustment of specifications in due time, MESCO has the right to withdraw from the agreement. In this case the Buyer may claim no damages for failure to perform as a result of the MESCO's withdrawal from the agreement.

10. Terms of delivery / delay

All terms of delivery are binding if agreed in writing; otherwise MESCO will deliver as quickly as possible. MESCO has the right to partial deliveries. The obligation to deliver presupposes the timely and correct fulfilment by the Buyer of the duties resulting from the agreement. Should the Buyer fail to fulfil his duties to cooperate or to provide materials, or should the term of delivery fail to be met for reasons within the Buyer's scope of responsibility, MESCO has the right to an adequate prolongation of the term of delivery. If such prolongation entails additional costs and charges, specifically waiting times for personnel, MESCO shall have the right to charge such resulting additional costs separately on the basis of its usual rates. Should MESCO fail to deliver on time for reasons within its own scope of responsibility, Buyer shall have the right, after warning of rejection and lapse of a reasonable extension, to withdraw from the agreement. Claims for damages resulting from negligence are excluded.

11. Force majeure and other terms of delivery

In the event of force majeure, MESCO shall have the right to postpone its delivery obligations by the duration of the hindering consequences of the force majeure event plus a reasonable start-up period, or to partly or completely withdraw from the agreement regarding the part of the order still to be delivered. Labour disputes such as strikes or lockouts at the Buyer's or MESCO's sites shall be treated as equivalent to force majeure. The Buyer may request a declaration from MESCO whether MESCO intends to withdraw from the agreement or complete the order within a reasonable term. If MESCO fails to declare itself, the Buyer shall have the right to withdraw from the agreement.

12. Reservation of ownership

Title to delivered goods and performed services is reserved until full payment according to § 455 BGB (German Civil Code). We reserve ownership to the delivery item until the receipt of all payments envisaged by the agreement for delivery. Should the Orderer behave in a way contrary to the agreement, specifically in case of payment default, MESCO shall have the right of restitution of the delivery item after transmission of a dunning notice, and the Orderer shall have the obligation to return the delivery item. The acceptance or seizure of the returned item by MESCO, except where the Statute Covering Instalment

Sales is applicable, does not constitute withdrawal from the agreement, unless explicitly declared in writing by MESCO.

Seizures or similar acts by third parties must be notified to MESCO immediately in writing by the Orderer.

Processing or modification of the reserved goods by the Orderer is always done on our behalf. Should the reserved good be processed together with other objects not in our ownership, we shall acquire joint ownership of the resulting new object, in proportion to the value of the reserved good in relation to the value of the other processed objects at the time of processing. In all other respects, the resulting new object is considered as a reserved good.

The Orderer is obliged to insure the delivery item against theft, breakage, fire, water and other damages as long as the reservation of title persists.

13. Acceptance

Buyer shall inspect the hardware and software immediately after having declared his readiness to accept the goods or after delivery by MESCO, in order to control their conformity to specifications and to confirm their conformity in writing. Details regarding the object, duration and procedure of the test will be agreed in good time. The hardware and software shall be considered accepted one week after the end of the agreed testing period, in the alternative two weeks after declaration of the readiness to accept the goods or the delivery, if the Buyer has not notified in writing any essential defects until then. In case of not essential defects as defined by § 459 BGB (German Civil Code) acceptance may not be refused.

14. Guarantee – Warranty

Any defects must be notified immediately in writing. The Buyer will detail the defects and malfunctions and describe their respective appearance and effect. MESCO shall rectify the defects within reasonable time. The Buyer shall support MESCO in doing so within reasonable limits. Should MESCO not agree or not be able to rectify the defects, or should the rectification take longer than adequate for reasons falling within MESCO's scope of responsibility, or should the rectification fail for other reasons, the Buyer may request either termination of the contract (rescission) or an adequate lowering of the purchase price (reduction). Warranty is excluded for malfunctions deriving from influences external to MESCO's scope of responsibility, such as force majeure, faulty operation or treatment, modifications by the Buyer's personnel or third parties, excessive stress, inadequate operating materials, exposure to extreme temperatures and temperature variations, air pollution, humidity, radioactivity, voltage fluctuations or damages caused by other chemical, electrochemical or electrical influences not envisaged by contract. If not expressly stipulated otherwise, the warranty period is six months after acceptance.

15. Industrial and intellectual property

MESCO does not guarantee that the use of the software does not infringe on industrial and/or intellectual property rights of third parties or cause damages to third parties, except where adverse rights or damages to third parties are known to MESCO or unknown due to gross negligence.

16. Liability of MESCO

All Buyer's rights deriving from late performance, damages for non-performance and defects beyond the provisions of paragraphs 10 and 14 above are excluded. Specifically, MESCO shall not be liable for damages external to the delivery item, such as consequential harm caused by a defect, missed profit and other pecuniary damages. This does not hold true if such damage is caused by premeditation or gross negligence.

If MESCO fail to comply with one of its contractually essential duties (so called cardinal duties), liability is limited to the foreseeable damage. The same holds for claims pursuant to §§ 1, 4 Produkthaftungsgesetz (ProdHG – German Product Liability Law) in case of initial inability to perform or impossibility falling within MESCO's sphere of responsibility, if there is no forced liability for premeditation or gross negligence. All further Buyer's claims – irrespective of their legal reasons – are excluded. In so far as MESCO's liability is excluded or limited, this holds true also for the

personal liability of its executives, personnel, agents and other persons employed in the performance.

17. Termination

MESCO shall have the right to terminate the contract if the Buyer discontinues payments or if a serious worsening of the Buyer's economic situation arises, specifically if his property is object of sustained seizures or other measures of judicial execution or if a judicial or extra-judicial proceeding under insolvency, bankruptcy or similar laws is commenced against the Buyer.

18. Regulations on destination site

Buyer is obliged to alert MESCO to the legal, official and other regulations that must be observed on the destination site in occasion of the delivery and for the use of the delivered products.

19. Export and import permits

The products and the technical know-how delivered by MESCO are destined to be used and to remain in the Federal Republic of Germany. The export / re-export of delivered items by the Buyer may require an export license and is fundamentally governed by Foreign Trade and Payments Regulations of the Federal Republic of Germany. The Buyer is obliged to collect the relative information of his own accord. Regardless whether the Buyer indicates the final destination of the items delivered under this contract, it is his duty to apply to the Foreign Trade and Payments Office for the eventually required permit before proceeding to export the products. Every subsequent transfer to third parties of the items delivered under this contract, with or without the knowledge of MESCO, requires a transfer of the export permit. The Buyer is liable to MESCO for the correct compliance to this condition.

20. Place of performance

If not stated otherwise in the confirmation of order, the place of performance shall be the legal seat of MESCO.

21. Written form

All agreements must be made in writing. This applies also to collateral agreements, undertakings and subsequent amendments to the contract.

22. Place of jurisdiction

If the Buyer is a merchant or commercial company inscribed in the commercial register the place of jurisdiction shall be the legal seat of MESCO. MESCO reserves the right to institute legal proceedings against the Buyer before its general jurisdiction.

23. Application of German Law

The contract shall be subject to the law of the Federal Republic of Germany exclusively. The Uniform Law on the Sale of Goods (EKG), the Uniform Law on Stipulation of contracts (EAG) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) are excluded.

24. Severance

In the event any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, except where the abiding by the contract would constitute an unreasonable severity for one of the parties.

September 2001