

# General Terms and Conditions of Menerga GmbH (Ts&Cs)

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### Terms of Sale and Delivery

To be used for retail and commercial customers (the "Customer"). In the event the Customer is a consumer in terms of Section 13 BGB (German Civil Code), i.e. a natural person who enters into a legal transaction for a purpose that cannot be attributed to that person's commercial or freelance professional activities, any deviations and special features that may apply will be highlighted in the text. Full-time or part-time farm operators who generate income from their activities are not considered consumers in terms of these provisions. All agreements, offers and deliveries shall be made solely on the basis of these Terms and Conditions. Thus they are also applicable to future business relationships, even if they are not separately agreed. Differing, contrary or additional commercial terms and conditions shall not become a part of the agreement, even if they are known, unless their application is expressly consented to in writing. The same applies in the case that the Customer objects to our General Terms and Conditions with his purchase order, and orders items solely in accordance with his terms and conditions.

These General Terms and Conditions shall apply unless the parties have entered into any written agreements otherwise or other provisions have been expressly agreed.

### **Section 1      Delivery Agreement**

1. Our offers are subject to change. They only constitute an invitation to submit an offer. Technical modifications, along with modifications and variations in form, colour and/or weight within a reasonable scope are hereby reserved.
2. Measurements, weights, illustrations and drawings, as well as the information and illustrations contained in brochures and catalogues, shall only be binding where this is expressly agreed. This is normally in the form of a written agreement.
3. By ordering a product, the Customer submits a binding declaration that he wishes to purchase the ordered goods. Once the purchase order has been received, the Customer receives an order receipt confirmation; such confirmations may only be issued on a binding basis by the head office of Menerga GmbH. This confirmation does not yet constitute acceptance of the purchase order. The purchase order is only deemed accepted through the

delivery of an order confirmation. However, if within a period of two weeks of the order receipt confirmation, the Customer has still not received an order confirmation or a rejection by us of the order then the contract is nevertheless deemed to have been created. An order confirmation is also valid if it is issued as a computer-generated order confirmation without a signature. The same applies to fax transmissions. Objections to our confirmation correspondence must be submitted in writing within ten days.

4. Purchase orders submitted electronically by the Customer will be saved in our system.

5. The condition of the goods shall be based solely on the agreed technical delivery provisions. Where deliveries are made on the basis of the Customer's drawings, specifications, samples etc., the Customer shall assume the risk as to suitability for the intended purpose. The relevant date in terms of judging whether the condition of the product matches what has been contractually agreed is the date on which the risk is transferred. In that context, we are only liable for correct processing. Unless expressly agreed, we do not assume any liability for determining the quality of work materials and corrosion damage.

6. If the Customer withdraws without justification from an order than has already been placed, we are entitled to claim 20% of the sale price for the costs that have been incurred for processing the order, and for loss of profit, without prejudice to the option of claiming higher actual loss or damage. The Customer has the right to provide evidence of a lesser degree of loss or damage. This shall not apply if the rescission is attributable to Menerga.

## **Section 2 Delivery periods**

1. Delivery periods or delivery dates are only binding if we have expressly described them as binding and they have been confirmed or communicated in writing.

2. The delivery date is generally included with the order confirmation. However, this is subject to final technical clarification at our head office in Mülheim an der Ruhr and the timely provision of documents, approvals (e.g. release of approval drawings), etc. which may have to be procured by the Customer. Approval drawings will be sent out in cases that require customer-specific adjustments or designs, which go beyond the available options. The originally notified delivery date shall lapse if the approval drawing is not accepted and returned to us within five days of delivery. The same applies in the case that such drawings are sent back with modifications or requests for amendments. Such cases shall again be subject to technical clarification. After that period, a new date will be set and communicated in accordance with this paragraph, taking into account the requests for amendments and/or the delayed delivery of the approval drawing.

The same applies where technical issues or mistakes are subsequently become evident in the Customer's purchase order or drawing documentation.

Similarly, for down payments contractually agreed, deliveries will not be made prior to receipt of an agreed payment.

3. The delivery period or delivery date is met if a notice of delivery readiness is provided or the delivery item has left the plant by the end of that period or on the notified delivery date. The same applies if the Customer postpones the date although we were ready to deliver on the agreed date.

4. Partial deliveries within the delivery periods indicated by us shall be permitted insofar as they do not result in any disadvantages for use.

5. The delivery period shall be extended accordingly if failure to comply with the delivery period is due to force majeure, labour disputes or other events that are outside of our control. In this case we will notify the Customer of the beginning and end of such circumstances as soon as possible.

6. The contract is concluded subject to the proviso that we receive the correct products from our suppliers on a timely basis. This only applies where we are not responsible for a failure to deliver, particularly when we have entered into a corresponding hedging transaction with our supplier.

7. If delivery is delayed at the Customer's request, or for reasons that are the Customer's responsibility, he will be charged for the costs incurred due to the storage and financing of the goods at an amount of at least 0.5% of the invoice value for each month commenced, up to a maximum of 5% of the invoice value, starting 14 days after notification of readiness for delivery or the delivery date originally intended. We have the right to calculate the costs related to the removal of the goods from storage, handling and other costs incurred as a result of the removal of the goods from storage to the day. This is without prejudice to the enforcement of further rights due to default. The Customer shall have the right to submit evidence of a lesser degree of damage / lower costs. This shall not prejudice the agreed payment terms. We have the right to invoice the ordered goods on the original delivery date. In the event that discounts are granted in the case of a down payment request, the right to a discount shall be forfeited if the Customer has failed to pay within the discount period following the submission of the down payment request.

8. Should delivery be subject to special features that are specific to the Customer (for example, overhead clearances, obstacles on the construction site, restricted zones, special approvals, stopping restrictions etc.), they must be communicated by the buyer in a timely manner, otherwise any liability on our part shall lapse.

### **Section 3 Remuneration**

1. Unless otherwise agreed, prices shall be valid ex works plus transport and packaging costs and statutory VAT (where applicable). The VAT will be shown separately on the invoice in the amount that applies on the date of delivery. The deduction of discounts is subject to a separate agreement, which is generally made in writing. Discounts may not be applied to the services rendered by Technical Services, even if a discount was agreed for the delivery of the device in an individual case.
2. If the Customer is entitled to deduct a discount based on a written agreement, the relevant time for this is the date on which the amount is received on our account.
3. Bills receivable are not accepted.
4. Unless otherwise agreed in writing, invoice amounts are due immediately. Unless otherwise agreed on the basis of individually agreed payment terms, the Customer shall be in payment default if he fails to submit payment within two calendar weeks of invoicing for the delivery of a device or for services rendered by Technical Services. All payments are judged on the basis of the point at which the amount is credited to our account. If the Customer is in payment default, he is required during the default period to add interest of 9% above the respective base rate to the amounts owed. However, we reserve the right to submit proof of or claim higher damages due to default. The default interest for consumers is 5% above the respective base rate.
5. The Customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship. He shall only have a right of offset if his counterclaims are the subject of a final judgment or have been determined ready for judgment, or if we have accepted the claims.
6. Failure to comply with agreed terms of payment, as well as circumstances of which we only become aware after the contract has been concluded and that give rise to doubts regarding the Customer's ability to pay in a timely manner (e.g. refusal of cover by commercial credit insurer), shall entitle us to demand immediate provision of security - down payment request or bank guarantee - for all claims under the delivery agreement irrespective of the due date, and to suspend all works on the delivery item until such security is provided. In this case, the Customer will be informed immediately following receipt of the notifications; delivery dates will be suspended until the issue has been clarified, at which time new delivery dates will be set.
7. Where a down payment request has been agreed with the Customer, delivery shall be subject to the amount being credited to our account five working days before the date of delivery ex works. If payment is not received, the delivery will be stopped and will only be resumed once the final invoice, which is issued on the delivery date originally planned and notified, has been paid. No discounts may be applied to this final invoice.

If the down payment is not paid and deliveries are stopped, all dates that have been agreed with Technical Services (e.g. commissioning, start-up, installation support etc.) shall no longer apply and must be arranged anew.

8. Where requested by the Customer we will provide a cost estimate for the services to be rendered. Cost estimates that do not result in a contract must be remunerated based on cost.

9. To the extent that our receivables are insured with EULER HERMES credit insurance or a similar company, we are obliged to report non-payment, agreements regarding instalment payments as well as possible payment default to these companies.

#### **Section 4 Price alterations**

1. Price alterations shall be admissible if the period between the offer and the contract date or the actual delivery date defined in the order confirmation exceeds four months. This does not apply in the event that the delay is our responsibility. , Should wages, costs of materials or market-based purchase prices increase before delivery is completed, we shall be entitled, subject to submission of the corresponding supporting documents, to increase the price by a reasonable amount in accordance with the rises in costs.

2. If the Customer is a merchant, a legal entity under public law or a fund under public law, price alterations pursuant to the preceding provision shall be admissible if the period between the contract date and the agreed delivery date is more than two months.

#### **Section 5 Confidentiality**

1. Each contract partner will use all documents (including samples, models and data) and information that he receives from the business relationship only for the purposes jointly pursued, and will treat these items as confidential vis-à-vis third parties with the same diligence as is applied to his own corresponding documents and information.

2. This obligation does not apply to documents and knowledge that is generally known or that the contract partner was already aware of when it was disclosed without him being subject to a confidentiality obligation, or that is subsequently forwarded by a third party entitled to forward this information, or that is developed by the recipient contract partner without the use of the confidential documents or knowledge of the other contract partner.

3. We reserve the right, in individual cases, to make the entry into and implementation of contractual obligations subject to the signing of a separate non-disclosure agreement.

## **Section 6 Packaging and shipping**

1. Packaging becomes the property of the Customer and will be charged as packaging costs pursuant to Section 3 Paragraph 1. of these terms unless otherwise agreed in writing. The choice of delivery method will be made using our best judgment, unless otherwise agreed in writing.
2. The Customer must inform the courier service/freight forwarder/carrier and us without deliberate delay in the case of damage during transport or incorrect amounts. The provisions of the German Commercial Code (HGB) shall apply where admissible.
3. Unless otherwise agreed in writing, the risk of accidental destruction and accidental deterioration shall transfer to the Customer upon handover of the goods, as soon as the goods have been handed over to the courier service/freight forwarder/carrier or to other person or institution designated to carry out the delivery.
4. Where the Customer delays accepting the goods this shall also be treated as equivalent to the handover of the goods.
5. Freight=paid prices, along with agreed transport costs, shall apply subject to unhindered rail, road and shipping traffic on the relevant transportation routes. Dead freight is the responsibility of the Customer.

## **Section 7 Warranty**

1. The warranty period for business customers is 24 months from delivery of the goods. The warranty period is extended to five years if the Customer concludes a maintenance contract with our company for the ordered device(s) for this time period. Otherwise, the statutory regulations apply. Following the acceptance of the correction of faults, a period of limitation of 2 years shall start anew for this service which, however, shall not end before the expiry of the above periods or any period agreed in lieu of them. Any warranty shall be subject to the condition that the necessary maintenance and maintenance intervals according to the operating instructions of the relevant device have been complied with.
2. We assume no more responsibility for material defects that are the result of unsuitable or improper use, incorrect installation locations, defective installation or commissioning by the Customer or third parties, normal wear and tear, excessive stress, incorrect or negligent handling or failure to comply with the maintenance guidelines and maintenance intervals than we do for the consequences of improper modifications or repair works performed by the Customer or third parties without our consent. The same applies to defects that lead to merely insignificant reductions in the value or suitability of the goods.

3. We must be given an opportunity to identify the defect that is the subject of complaint. Goods that are the subject of complaints must be immediately returned to us at our request. The Customer shall forfeit any claims related to material defects if, without our consent, the Customer adapts or processes goods that are the subject of complaint other than as intended, or does not handle the goods with care. Similarly, we may refuse all types of supplementary performance if such performance is associated with disproportionate, i.e. in particular only with disproportionate, costs.
4. With respect to defective goods, we will provide a warranty for commercial customers either by making good the defect or by delivering a replacement (the choice being at our discretion), and possibly the replacement of engines. In the absence of a different requirement resulting from the type of the item, the defect or other circumstances, we shall have the option of two attempts at rectifying the defect or subsequent delivery.
5. If supplementary performance is not successful, the Customer may generally demand that the fee is reduced or he may decide to withdraw from the contract. However, the Customer shall not be entitled to withdraw from the contract if the breach of contract is very minor, particularly in the case of very minor defects.
6. Where the Customer is a consumer, he shall have the choice of whether, with respect to the defective item, the defects should be made good or whether a replacement should be delivered. In the absence of a different requirement resulting from the type of the item, the defect or other circumstances, we shall have the option of two attempts at rectifying the defect or subsequent delivery. At the same time, we may refuse the type of supplementary performance selected by the consumer if it can only be achieved at disproportionate, and in particular only at disproportionate, cost.
7. We only assume liability for defects for used goods if this has been expressly agreed in writing with a business customer, unless it concerns a case of wilful deceit or the absence of a promised feature. This liability restriction does not apply to damages resulting from loss of life, personal injury or damage to a person's health. The warranty period for consumers with respect to the delivery of used goods is 12 months from delivery. This liability restriction does not apply to damages resulting from loss of life, personal injury or damage to a person's health.
8. Warranty rights enjoyed by a business person assume that he has properly complied with the investigation and notification requirements incumbent on him pursuant to Section 377 HGB (German Commercial Code). Damage during transport must be reported to us immediately in writing. The Customer must comply with all required formalities vis-à-vis the carrier in cases where goods are delivered by a freight forwarder or other transport companies. Breakage and losses that are customary in the industry shall not constitute a justification for a notice of defect. Where the Customer is a consumer, obvious defects must be reported to us immediately, and no later than ten days from receipt of the goods; otherwise any claim for the making good of defects shall be excluded. For the purpose of complying with this period the timely posting of a written notification shall be sufficient.

9. If the Customer wishes to withdraw from the contract due to a legal or material defect following failed supplementary performance, he shall not also be entitled to damages claims due to the defect. If the Customer seeks damages following the failure of supplementary performance, the goods shall remain with the Customer if this is appropriate for him. Damages shall be limited to the difference between the purchase price and the value of the defective item. This does not apply if we have caused the breach of contract in bad faith.

10. In general, it is agreed that the manufacturer's description of the product alone will determine the quality of the goods. Public statements, blurbs or our advertising (for the product or individual components thereof) do not represent additional contractual information regarding the quality of the goods. If the Customer receives defective installation instructions, we shall only be obliged to supply defect-free installation instructions, and only if the defect in the installation instructions is inconsistent with a proper installation process.

11. We do not provide the Customer with guarantees in a legal sense. This is without prejudice to potential manufacturer's guarantees by third parties, for which we assume no responsibility.

12. The Customer or third parties commissioned by us shall make best efforts at their own expense to support the execution of the agreed services. In particular, the staff of the contractor shall be provided free of charge with auxiliary staff, lifting devices, lift trucks, scaffolds, fall protection devices, implements as well as electricity and water, including the necessary connections, to the extent required for executing the order and/or complying with safety regulations. The same shall apply to the provision of consumables and operating materials. If this is not ensured, we shall be entitled to refuse the execution of work and make further work conditional on the commitment that the above provisions are made available to the extent necessary. If we need to discontinue the assignment due to any lack of auxiliary means, etc. (as described above), we shall be entitled to charge the costs incurred in this respect.

## **Section 8 Limitation of Liability**

1. In the case of negligent breaches of obligation, our liability shall be limited to the foreseeable, typical and direct average loss or damage with respect to the type of the goods. This also applies to negligent breaches of duty caused by our legal representative or agents. We are not liable for any negligent breach of insignificant contractual obligations. In particular, any additional and further claims by the Customer against us shall be excluded. This applies in particular to damages claims due to a breach of obligations from the contractual obligation and from unauthorised action. For that reason, we are not liable for damages that did not originate in the delivered goods themselves. This restriction of liability does not extend to a breach of obligations the fulfilment of which enables the proper implementation of the contract and on compliance with which the contract partner may normally rely ("cardinal" obligations).



2. The preceding limitations of liability do not apply to claims by the Customer from product liability. Furthermore, these limitations do not apply in the case of non-attributable personal injuries and damage to health, or the loss of the Customer's life.

3. Any liability for indirect and unforeseeable damage, loss of production and use, lost profit, failure to make savings, and financial losses due to third-party claims in case of simple negligence – except for injury of the life, body or health – shall be excluded.

4. Damages claims by a business person due to defects shall lapse one year after the delivery of the item. This shall not apply if we can be accused of bad faith.

5. These limitations of liability shall also apply if we get direct access to the network of the Customer either by being provided with a network connection by an authorised person of the end customer or through remote maintenance. When being granted access, we bindingly assume that we get this opportunity to have access from authorised employees without any further verification being necessary on our part. This limitation shall apply in cases in which damage occurs to data, the data structure and/or any other damage to the network of the Customer demonstrably caused by our connecting to the network of the Customer. If a fault causes data losses, we shall only be held liable for the damage resulting therefrom up to the amount of the recovery expense as may have been incurred if the Customer had been in the possession of machine-readable, up-to-date and complete backup copies. The Customer shall ensure daily data backups. Moreover, he shall ensure compliance with the requirements under the data protection law.

6. The above provisions shall also apply to the personal liability of employees, representatives and vicarious agents.

## **Section 9 Retention of title**

1. The delivered goods (goods subject to retention of title) shall remain in our ownership until all the claims that we make against the Customer now and in the future are met, including all payment balance requests from current accounts. If the Customer acts in breach of the contract, in particular if he defaults with the payment of a claim for remuneration, we reserve the right to take back the goods that are subject to retention of title after we have set an appropriate period for performance. If we take back the goods that are subject to retention of title, this represents a withdrawal from the contract. If we seize the goods that are subject to retention of title, this also represents a withdrawal from the contract. We shall be entitled to utilise the goods that are subject to retention of title which we have taken back. The revenue from the said utilisation will be offset against the amounts owed to us by the Customer after we have deducted an appropriate amount for the costs of the utilisation.

2. The Customer must handle the goods that are subject to retention of title with care. He must insure them at his own cost at replacement value against fire and water damage and theft. If

maintenance and inspection work is necessary, it must be carried out by the Customer at his own cost.

3. The Customer may use the goods that are subject to retention of title and resell them in the proper course of business provided that he is not in default of payment obligations. However, he may neither pledge the goods that are subject to retention of title nor assign them by way of security. The payment claims of the Customer made against his buyers from a resale of the goods that are subject to retention of title as well as the claims of the Customer made with regard to the goods that are subject to retention of title which arise on another legal basis against his buyers or third parties (in particular claims made from unauthorised action and entitlements to insurance benefits), including all payment balance requests from current accounts, shall now be assigned to us in full by the Customer by way of security. We hereby accept this assignment.

4. The Customer may collect the claims assigned to us for his account in his own name on our behalf, provided that we do not revoke said authorisation. This is without prejudice to our right to collect these claims ourselves; however, provided the Customer properly fulfils his payment obligations, we shall not enforce the claims ourselves nor revoke the collection authorisation.

5. If the Customer acts in breach of the contract, in particular if he defaults with the payment of a claim for remuneration, we may demand that the Customer notifies us of the assigned claims and the respective debtors, whom he then informs of the assignment. We may also demand that he hands over all documents to us as well as all information that we need to enforce the claim.

6. The Customer may also not assign this claim in order to collect it by way of factoring, unless he obliges the Factor with irrevocable effect to render payment directly to us as long as claims on our part still exist against the Customer.

7. The processing or alteration of the goods that are subject to retention of title shall always be carried out by the Customer on our behalf. If the goods that are subject to retention of title are processed with other materials that do not belong to us, then we shall acquire co-ownership in the new goods in the ratio of the value of the goods subject to retention of title (invoice final amount including VAT) to the other processed materials at the time of processing. Furthermore, the same shall apply to the new goods resulting from the processing as to the goods that are subject to retention of title.

8. If the goods subject to retention of title are inseparably combined or mixed with other materials that do not belong to us, then we shall acquire co-ownership in the new goods in the ratio of the value of the goods that are subject to retention of title (invoice final amount including VAT) to the other combined or mixed materials at the time of combining or mixing. If the goods subject to retention of title are combined or mixed in a way that the goods of the Customer should be regarded as the main item, the Customer and we are in agreement that he grants us proportionate co-ownership in these items. We hereby accept this assignment. The

Customer will hold our resulting sole ownership or co-ownership in the goods in safekeeping for us.

9. In the event of seizures of the goods that are subject to retention of title by third parties or any other interventions by third parties, the Customer must advise of our ownership and inform us immediately in writing so that we can enforce our ownership rights. If the third party is unable to reimburse us the court or out-of-court costs incurred in this context, the Customer shall be liable for said costs.

10. If the Customer so requests, we are obliged to release the securities to which we are entitled insofar as their realisable value exceeds the value of our outstanding claims against the Customer by more than 10%. In this case, we are allowed to select the securities to be released.

## **Section 10 Software**

Insofar as the Customer receives software for use alongside the delivered goods, he shall be entitled to a non-exclusive right to use this software with the corresponding documentation. The Customer is not permitted to copy the software and/or use it on a device other than the purchased device.

The different options for use, such as copying, revision, translation etc. are set out in the provisions of Sections 69 et seq. UrhG (German Copyright Act). In the event manufacturer's information, such as copyright marks etc., is attached to the software transferred, such information may not be removed, modified or rendered unrecognisable by the Customer.

## **Section 11 Export controls**

Each offer and contract, along with contract fulfilment, shall be subject to the proviso that export approvals will be granted, and that these offers and contracts are not opposed by foreign trade or sanction list-related obstacles or bans on implementation. The party placing the order / client shall not be entitled to any damages claims in the event that a contract / purchase order cannot be implemented for these reasons.

## **Section 12 Data protection clause**

According to the provisions of the Federal Data Protection Act, we are entitled to collect and use personal data about the customer if this information is required for the business relations. The data will only be forwarded to third parties with the Customer's consent, unless the data is subject to the statutory or official disclosure requirement.

According to Article 13 of the General Data Protection Regulation (GDPR) of the European Union we inform you about the processing of your personal data as follows.

According to Article 6 (1) (b) of the GDPR and on the basis of the contract concluded with you, Menerga GmbH, having its registered office in 45472 Mülheim an der Ruhr, Alexanderstrasse 69, collects the following personal data from you for:

- Performance of contractual services
- Determination of the credit limit by our trade credit insurer
- Query to financial credit agencies regarding a credit line
- Payment processing
- Delivery of contractually ordered products and services
- Transmission of your address as well as contact data to logistics companies for the delivery of the goods
- Transmission of your data to our internal as well as external service engineers to perform services
- Transmission of your contact data, if appropriate, to our field service, Menerga Leipzig, Podelwitzerstr. 5, 04680 Colditz OT Commichau  
or  
Menerga München, Theresienstrasse 9, 83339 Chieming, for the purpose of individual customer care
- Entry of your data into the CRM system of the Systemair group of companies for preparing offers, preparing and planning assignments of our service engineers or selling spare parts

The Customer authorises us to process, store, analyse and use (within the limits of our CRM) the data that is received in connection with the purchase order in line with the data protection laws.

### **Section 13 Final provision**

1. The applicable law is that of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

2. The court with jurisdiction over our registered office shall have exclusive jurisdiction over all disputes arising from the contract if the Customer is a merchant, a legal entity under public law or a fund under public law. We also have the right to sue the Customer where it has its registered office. This also applies if the Customer has no general place of jurisdiction in Germany or his residence or usual place of residence is not known at the time when proceedings are commenced.

3. Mülheim an der Ruhr, Germany shall be the place of performance.

4. In the event individual provisions of the contract with the Customer, including these General Terms and Conditions, are found to be wholly or partially invalid, this shall not prejudice the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision the economic outcome of which most is closest to the invalid provision.

5. Assignments of the Customer's rights and obligations under the contract concluded with us shall only be valid with our written consent.

6. Only with our prior written approval is the Customer permitted to advertise using our goods or information, calculations, images etc. received from us.

January 2015