

## General Terms of Sale and Delivery

### 1. General

- 1.1 All transactions between MERO-TSK International GmbH & Co. KG ("MERO-TSK") and any person purchasing or offering to purchase ("Buyer") goods manufactured and sold by MERO-TSK ("Products") shall be governed solely by the following terms and conditions. Any arrangements between MERO-TSK and the Buyer relating to the assembly and installation of the Products, or the supervision thereof, shall be witnessed and governed by a separate written agreement between MERO-TSK and the Buyer.
- 1.2 Unless otherwise specifically agreed to in writing by MERO-TSK's duly authorized officer, MERO-TSK'S acceptance of any purchase order by the Buyer shall not constitute an acceptance of any provisions which vary from the terms and conditions set forth herein and no provisions on the Buyer's order form which are inconsistent with or additional to these terms and conditions shall be part of the agreement between the parties. The Buyer shall be deemed to have made and accepted these terms as the sole terms of the agreement between the Buyer and MERO-TSK, unless the Buyer shall have notified MERO-TSK in writing of its specific objections within ten (10) days of the Buyer's receipt hereof. All purchase orders must be accepted at MERO-TSK's office by an authorized officer of MERO-TSK.
- 1.3 These terms and conditions may not be modified, amended, waived, superseded or rescinded, except by a written agreement signed by duly authorized officers of MERO-TSK and the Buyer.

### 2. Quotations and Samples

- 2.1 Quotations submitted by MERO-TSK shall be subject to final order confirmation, unless MERO-TSK shall agree in writing to a fixed period of validity.
- 2.2 Unless otherwise stated, initial quotations shall be submitted free of charge only if MERO-TSK and the Buyer shall have entered into a contract with regard to the Products for which quotations have been provided and such contract shall be in effect.
- 2.3 MERO-TSK's brochures contain approximated specifications only; exact specifications shall be available from MERO-TSK upon request.
- 2.4 Supporting drawings and other particulars relating to quotations submitted by MERO-TSK and any copyrights relating thereto ("MERO-TSK Information") shall be the property of MERO-TSK, and the Buyer shall not hold in confidence and not disclose to any third party any MERO-TSK Information.
- 2.5 All drawings and other particulars submitted by MERO-TSK to the Buyer must be approved by the Buyer within fourteen (14) days after receipt thereof. Any changes thereto shall be made at MERO-TSK's discretion, at the Buyer's expense.
- 2.6 Samples or drawings submitted by the Buyer to MERO-TSK will be returned only

on request. Should no order be placed, MERO-TSK may destroy samples and drawings at the end of three (3) months following the submission of MERO-TSK's quotation.

- 2.7 MERO-TSK reserves the right to correct typographical or clerical errors at any time, as well as modify, improve or discontinue Products, or to change specifications, without notice, at any time before the Buyer and MERO-TSK enter into a binding agreement with respect hereto.

### 3. Price and Terms of Payment

- 3.1. Unless otherwise agreed, MERO-TSK's prices are valid **ex works** as such term is defined in Incoterms latest edition, provided, however, the Buyer shall bear the cost of packaging and loading.
- 3.2 Unless otherwise agreed, the Buyer hereby agrees to pay the purchase price stated in the final order confirmation, in full and without any deduction or set-off of any kind whatsoever.
- 3.3 The Buyer shall be invoiced in the currency of the Federal Republic of Germany (EUR). Invoices shall be payable in such currency, and, unless otherwise agreed, shall be payable by irrevocable letter of credit in favour of MERO-TSK opened by the Buyer's Bank, and confirmed by a leading German Bank, no later than five (5) business days prior to delivery of the Products by MERO-TSK. Such letter of credit shall be negotiable upon presentation of the invoice for the Products by MERO-TSK and the corresponding bill of lading. All costs and expenses of such letter of credit shall be borne by the Buyer.
- 3.4 MERO-TSK shall be entitled to cancel any further performance hereunder if the Buyer fails to timely and fully pay any invoice in accordance with the terms hereof. The receipt by MERO-TSK or part payment shall not constitute a waiver of any of MERO-TSK's rights set forth herein or provided by law. The Buyer shall be liable to MERO-TSK for any damages caused to MERO-TSK as a result of the non-performance or delayed performance by the Buyer of any of its obligations under these terms and conditions.
- 3.5 If MERO-TSK, in its sole discretion, shall determine that the financial condition of the Buyer at any time jeopardizes the Buyer's ability to perform its obligations hereunder, MERO-TSK may require additional security satisfactory to it before further performance by MERO-TSK. Such determination shall constitute a further ground for MERO-TSK to cancel any further performance hereunder.

### 4. Delivery and Risk of Loss; Damage for Delay

- 4.1 Unless otherwise agreed, delivery shall be made ex works, as such term is defined in Incoterms ICC, latest edition.

Delivery shall be deemed complete and risk of loss shall pass to the Buyer when the Products have been placed at the disposal of the Buyer at MERO-TSK's factory.

- 4.2 MERO-TSK shall notify the Buyer in writing of the delivery date within seven (7) days after receipt of the Buyer's order and will confirm such delivery date in writing no less than seven (7) days before delivery.
- 4.3 If MERO-TSK shall be unable to deliver the Products on the stated date for any cause within the Buyer's control, including, without limitation, delay in receipt of all data to be supplied by the Buyer or import licenses, clarification of details and fulfilment of conditions of payment and other obligations of the Buyer, MERO-TSK shall notify the Buyer in writing of this delay and the Buyer shall be deemed to have granted MERO-TSK an extension of time to make delivery.
- 4.4 Partial delivery is permitted with the consent of the Buyer. Each partial shipment shall be deemed a separate transaction for purposes of this Section.
- 4.5 If the Buyer does not accept delivery of the Products within a reasonable period of time after such Products have been delivered by MERO-TSK, the Buyer shall be charged for storage of the Products and MERO-TSK shall be entitled to resell or otherwise dispose of the Products after written notice to the Buyer, but without waiving any other remedies it may have against the Buyer.
- 4.6 Should MERO-TSK be unable to deliver the Products on the stated date for any reason within MERO-TSK's control and the Buyer should suffer damages as a direct result thereof, the Buyer's sole remedy shall be to claim from MERO-TSK, for each whole week of delay in delivery, compensation in an amount equal to one percent (1 %) of the value of the Products which could not be used because of such delay in delivery; provided, however, that MERO-TSK's maximum liability hereunder shall be an amount equal to three percent (3 %) of the value of such Products.

### 5. Claims and Warranty

- 5.1 MERO-TSK warrants to the Buyer that the Products sold to the Buyer hereunder shall be free from defects in material and workmanship provided that the Products are installed, used and maintained in accordance with MERO-TSK's specifications and instructions. Unless otherwise agreed, this warranty shall remain in effect for a period of twelve (12) months from the date of delivery of the Products to the Buyer or ninety (90) days after delivery of the Products by the Buyer to its customer, whichever sooner occurs. Upon delivery of the Products by MERO-TSK, the Buyer shall inspect the Products and shall immediately notify MERO-TSK in writing as to any and all claims that the Products delivered are incomplete, do not conform to the purchase order or are otherwise defective. Claims based on defects which are not immediately

determinable shall be made in writing to MERO-TSK within the warranty period set forth herein. Claims which do not follow these procedures shall be deemed waived by the Buyer. Upon notice to MERO-TSK concerning defective Products, the Buyer shall immediately set aside such Products for inspection by MERO-TSK within a reasonable period of time after notice. Upon being notified of the existence of such defect, MERO-TSK will correct the same by repairing the Product or by delivering a replacement Product to the Buyer, as MERO-TSK in its discretion shall elect. Except as expressly provided in Section 4.6 hereof, the liability of MERO-TSK hereunder is limited to repair or replacement of defective Products.

5.2 This warranty shall not apply to any Products which, in the judgment of MERO-TSK, have been subject to negligent or improper installation, including without limitation, installation on unsuitable building sites, with unsuitable materials, or by means of defective construction work, chemical interference, misuse, neglect, accident or damage while in the hands of the Buyer or any third party; nor shall it apply to any Products which have been repaired or altered outside MERO-TSK's plant, except where such repair has been performed by MERO-TSK's agents or has been explicitly approved by MERO-TSK. The Buyer will indemnify MERO-TSK and hold it harmless from any claims, suits, liabilities, judgments, orders, expenses (including attorney's fees and expenses) or other damages arising out of any such installation, interference, misuse, neglect, accident, damage, repair or alteration.

5.3 The warranty contained herein shall inure only to the benefit of the Buyer and may not be transferred to any other person without MERO-TSK's express written consent. Any Buyer intending to resell the Products to a third party customer shall provide to its customers in its own name warranties with respect to the Products and installation thereof which shall in no event be less than the warranty provided to the Buyer by MERO-TSK hereunder. If the Buyer shall give a warranty which is longer in duration or broader in scope than the warranty of MERO-TSK, the Buyer shall advise the customer in writing of such discrepancy and that MERO-TSK is not bound by such more liberal terms. The Buyer will indemnify and hold MERO-TSK harmless from and against any claims, suits, liabilities, judgments, orders, expenses (including attorney's fees and expenses) or damages arising out of the Buyer's warranty or the Buyer's acts with respect to the Products, including assembly and installation. The Buyer waives any right to claim contribution or indemnity from or joint liability of MERO-TSK in regard to the Products except to the extent of MERO-TSK's warranty as set forth in Section 5.1 hereof.

5.4 The warranty set forth in this Section 5 shall be the sole and exclusive warranty of MERO-TSK to the Buyer, any customer of the Buyer and any other person and any and all other claims, causes of action and grounds for recovery, whether in contract, tort, strict liability or otherwise, are excluded. It is expressly understood and agreed that, except as expressly provided herein, MERO-TSK shall not be liable to the Buyer, any customer of the Buyer or any other person, whether by way of indemnification or contribution or otherwise, for indirect, special

consequential, exemplary or punitive damages or loss of profits or business, whether arising from defective workmanship or materials, breach of warranty, delays in delivery or any other cause whatsoever, including the negligence of MERO-TSK.

5.5 This warranty shall be in lieu of all other warranties, written, oral, implied or statutory, including without limitation express or implied warranties of merchantability, quality or fitness for a particular purpose.

#### **6. Reservation of Ownership and/or Security Interest**

The Products shall, unless otherwise agreed, remain the property of the MERO-TSK until the purchase price, interest (if any) and all costs and expenses, including, without limitation, payment of any judgments and legal costs and expenses relating to the release of the Products (the "Purchase Price") have been paid in full. If the goods are resold, the Buyer agrees to assign and assigns by way of security to the MERO-TSK up to the time of payment of the Purchase Price, any claims against the Buyer's customers which may have arisen or arise in future from the resale, and shall, at the MERO-TSK's request, notify the MERO-TSK of the names of third party debtors and of the amount of the debts owed by these to the Buyer. As long as the Buyer complies with his payment obligations and no detrimental change occurs in his financial standing, the MERO-TSK will not collect the debts assigned. If this reservation of ownership is not effective under the law of the country of destination the Buyer will cooperate in establishing a similar security interest in favour of the MERO-TSK in compliance with the legal provisions of its country. The Buyer specifically agrees that, where applicable, the MERO-TSK may file one or more financing statements and may execute and/or file all other documents necessary to perfect the MERO-TSK's security interest hereunder. The Buyer hereby appoints the MERO-TSK's attorney to execute and file such financing statements and other documents in the Buyer's name.

#### **7. Patents and Other Industrial Property Rights**

In the event that MERO-TSK uses specifications or designs provided by the Buyer, the Buyer shall indemnify, defend and hold MERO-TSK harmless from all claims, judgments, orders, expenses (including all attorney's fees) or damages of third parties based on patent and other industrial or intellectual property rights.

#### **8. Cancellation**

8.1 Subject to the provisions of Section 8.2 hereof, any order for Products is subject to cancellation prior to shipment of such order.

8.2 In the event that the Buyer purports to cancel any order for any Products which have been specifically produced for the Buyer, MERO-TSK, in addition to all other remedies available to it under applicable law, shall be entitled, upon a proper showing of efforts to mitigate damages, to be reimbursed by the Buyer for all direct costs of labour, materials purchased or contracted to be

purchased and overhead costs incurred by MERO-TSK in connection with the production of said Products. The Buyer agrees that MERO-TSK's calculation of the costs of labour, materials and overhead shall be accepted by the parties hereto. In addition MERO-TSK shall have the right to complete and sell to a third party specifically produced Products, the order for which has been purportedly cancelled by the Buyer, without any further obligation or liability whatsoever to the Buyer.

#### **9. Force Majeure**

Neither Party shall be liable for damages or otherwise for failure to satisfy or perform any obligation or duty to be satisfied or perform any obligation or duty to be satisfied or performed pursuant to the terms and conditions hereof, other than the payment of money, if such failure is occasioned by act of God, war, civil disorder, strikes, labour disputes, acts or regulations of governmental agencies and authorities, fires, unforeseen shortage of material, delay in transportation or other circumstances beyond the reasonable control of the party hereto who has failed to satisfy or perform which by the exercise of due diligence such party is unable to prevent or overcome ("Force Majeure"), but any such obligation or duty, although the satisfaction or performance thereof has been postponed pursuant to this, shall remain in force and shall be satisfied and performed pursuant to the terms and conditions as soon as such satisfaction and performance becomes legally and practicably possible. The party prevented from performing its obligations or duties because of Force Majeure shall promptly notify the other party hereto in writing of the occurrence and particulars of such Force Majeure and shall provide the other party, from time to time, with its best estimate of the duration of such Force Majeure and with notice in writing of the termination thereof.

#### **10. Miscellaneous**

10.1 This Agreement shall be governed by and construed in accordance with the laws of the Federal Republic of Germany excluding the United Nations Convention on Contracts for International Sale of Goods (CISG). Any action arising out of this Agreement shall be brought only in a court of competent jurisdiction in Wuerzburg, Federal Republic of Germany

10.2 Should any single provision of this Agreement be deemed invalid, the balance of the Agreement shall remain binding and enforceable in accordance with its terms.

10.3 This Agreement and the rights and obligations of either party hereunder may be assigned and transferred only upon the prior written consent of the other party.

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*as of April 2005*