

## General Terms and Conditions for Processing and Delivery (GTC) of Müller Spot Plating GmbH (hereinafter referred to as "MSP") Exclusively for business transactions with other businesses in terms of section 310 (1) in conjunction with section 14 German Civil Code (BGB)



Version 01 / 02 January 2023

### Section 1 Scope

1. Our General Terms and Conditions for Processing and Delivery (GTC) are the basis for concluding any of the following with MSP:

- Purchase and delivery contracts pursuant to sections 433, 650 BGB ("Deliveries"), and
- Service contracts pursuant to sections 611 et seq. BGB ("Services").

They apply exclusively. If no provisions are made for a certain matter, the provisions of the law shall apply. Conflicting or additional terms and conditions of the Client are not accepted. Such shall only apply if MSP has accepted some or all of them expressly and in writing. Our terms and conditions shall also apply if the deliveries or services of MSP are made or provided without reservation despite MSP being aware of conflicting or additional terms and conditions of the Client.

2. These terms and conditions shall also apply exclusively to all future transactions with the Client.

3. These terms and conditions apply only to businesses, legal persons under public law or separate assets under public law in terms of section 310 (1) BGB.

### Section 2 Consulting, suitability, documentation

1. Any verbal or written consulting services of MSP are based on the experience of MSP. Such consulting services are always dependent on the Client providing complete information in good time. Outcomes of such consulting services are only binding if we expressly declare these to be binding and/or if these consulting services are provided in written form. In any case, the Client remains obliged to conduct their own review of the consultation outcomes.

2. Information in MSP prospectuses, catalogues and technical documentation on, for example, the suitability and use of MSP services, is non-binding unless explicitly confirmed as binding by MSP in an offer or order confirmation. Such information does not exempt the Client from conducting own reviews and tests or from complying with legal and official regulations, in particular when using any goods processed by MSP.

3. MSP reserves all proprietary rights and copyrights to images, drawings, calculations and all other (technical) documents provided by MSP. These documents or parts thereof may not be made available to third parties and may not be used for any purpose other than the one the Client has received them for, unless written permission was granted. They shall be surrendered to MSP immediately upon request if MSP is not awarded the contract. The Client has no right of retention in regard to these documents.

4. MSP may disclose documents of Client to any such third parties that MSP hires as suppliers or service providers as permitted by law.

### Section 3 Offers, concluding a contract

1. Offers of MSP are subject to confirmation unless specified otherwise in writing by MSP. If the order confirmation of the Client lists terms and conditions that deviate from those of any offer that MSP made as a binding offer, such deviations shall only be binding if and when expressly confirmed in writing by MSP.

2. MSP can confirm an order after it was received. The order confirmation of MSP decides the scope of services. If MSP does not issue an order confirmation, an order is also confirmed by MSP starting the coating process and providing the services.

3. In general, orders should be placed in writing; orders placed by phone and data submission by e-mail are carried out at the risk of the Client.

4. In their order confirmation, the Client shall reference the corresponding offer and shall provide any and all information MSP needs in regard to the goods that were submitted for processing, in particular goods supplied for coating services; such information shall include article name, quantities, dimensions, material, material number and/or material composition, any pre-treatment for and instructions regarding the surfaces that are to be treated or coated, specifications for treating and coating, heat treatment, standards and individual value of the goods. This also includes details on treatment processes and requirements for storing the goods.

5. Changes to the information referred to in section 4 must be communicated to MSP in good time.

6. MSP is entitled to request from the Client any supplementary information that is necessary to ensure proper treatment and coating of the goods. The Client is obliged to provide any and all such information and to cooperate.

7. Contracts are concluded subject to timely receipt of all and correct raw materials, packaging and any other components required for processing.

### Section 4 Changing services

1. The services of MSP are final as listed in the offer or in the order confirmation of MSP. If MSP does not send an offer or order confirmation, the scope of services is defined by the services provided by MSP.

If the Client fails to provide information or provides incorrect information, MSP reserves the right to change the scope of services accordingly. Any disadvantages

resulting from the above, especially in regard to costs or damage, shall be borne by the Client.

2. MSP reserves the right to make the following changes to deliveries or services after the contract was concluded, if such are reasonable for the Client:

- Changes to goods in line with continuous product development and improvement;
- Minor and insignificant deviations of colour, shape, design, dimensions, weight or quantity;
- Deviations customary in the sector; and
- Other necessary changes.

3. MSP reserves the right to process the items or have the items processed at another facility without additional costs for the Client, if:

- Such facility is suitable for the process in question;
- Processing cannot take place at the original facility due to unforeseen circumstances;
- This is necessary for other reasons that the Client can be reasonably expected to accept.

4. MSP shall endeavour to take into account any request for modification of the contracted deliveries and/or services the Client makes after conclusion of the contract, insofar as this is possible and reasonable for MSP under consideration of our operational capacity. If reviewing the options for modification or the actual implementation of such modifications have an impact on the terms agreed for the services (remuneration, deadlines, etc.), the contract has to be amended in writing without delay. MSP may demand payment of appropriate additional remuneration based on the hourly rates of those employees who could not complete any other tasks due to the interruption caused by reviewing the change request and the negotiation of the contract amendment; such additional remuneration shall be payable for the entire duration of such interruption. MSP may also require appropriate remuneration for any necessary review of whether and under what conditions the desired change is feasible, provided that MSP informs the Client of the need for such review and if the Client issues a corresponding review request.

**Section 5 Reject and loss rates**  
For technical reasons, the processes of MSP cause a varying rate of rejects or scrap material that cannot be avoided. MSP will discard any rejects MSP discovers.

1. Based on the experience of MSP, it is agreed that the following reject and loss rates apply; MSP will not pay any compensation for rejects and losses within these limits.

a) For individual barrel plated/vibrobot parts, the rate is 10 % for delivery quantities of up to 500 parts, 5 % for up to 10,000 parts, 2.5 % for up to 50,000 parts, and 1.5 % for 50,001 parts and more.

b) For rack goods, the rate for delivery quantities of up to 100 parts is 10 %, for up to 1,000 parts 5 %, for up to 10,000 parts 2.5 %, and for 10,001 parts and more 1.5 %.

c) As setting up machinery for prototypes is more complex, the reject rate varies depending on the product and process. We can therefore not accept liability for any rejects.

d) For strip materials, the reject rate for quantities over 151 m is 25 %, over 301 m 15 %, over 501 m 5 % and over 1,001 m 2.5 %. Added to the aforementioned rates are 3 m for junctions and reference samples (standard: 1 x raw, 2 x finished) per coil/ring. An additional 3 m of raw material are needed for every break in the raw material. Unmarked sections, damaged coils or material can cause waste of up to 150 m (system shutdown) in length.

e) The reject or loss rates may be higher than stated above, depending on the geometry of the parts or bands. In these cases, the rate will be agreed separately.

f) As setting up machinery for prototypes is more complex, the reject rate varies depending on the product and process. We can therefore not accept liability for any rejects.

g) The rate is agreed separately for specialist methods such as spot gold plating (macro-spot technique, micro-spot technique, MPP micro-precision technique), as part geometry and dimensions may affect the specialised machinery and complex settings for this process in such a way that reject rates in these cases may vary considerably from the reject rates set out above.

h) Furthermore, in cases where goods are finished with two or three coating processes, the separate settings for the individual machines or the weight (kg/m) of materials thicker than 1.0 mm may cause higher reject rates.

2. Where the actual reject and loss rates are higher than losses caused by technical reasons as set out in (1) or than the separately agreed rates, MSP will compensate the Client for any rejects exceeding such agreed rates in line with section 15 of these terms and conditions by paying the proven production costs to the Client. To reduce the administrative workload, strip product rejects will be invoiced quarterly and separately for each article. If defective material is delivered, MSP does not accept any liability and resulting additional costs will have to be reimbursed by the Client. No compensation will be paid for any rejects or other

changes or impairments which may have arisen during processing. In the event of damage or destruction, insofar as caused by us, MSP shall be liable for an amount not exceeding the cost of the surface finishing of the product in question.

**3.** The compensation payable by MSP under (2) shall be limited to the value of the contract concluded by MSP and the Client or to a maximum of EUR 5,000.00. Any further claims of the Client against MSP in connection with rejects or loss are excluded.

**4.** Neither will MSP compensate any rejects or loss caused by force majeure, such as power failures MSP is not responsible for.

**5.** In order to avoid any further use of rejects, MSP has the right to scrap rejects at MSP's expense and to offset any proceeds from scrapping against these costs.

**6.** As part of the incoming goods inspection by the Client as defined in section 14 (1) of these terms and conditions, the Client must check barrel plated and bulk goods processed by MSP for bending in particular.

**7.** For process-related reasons, the number or weight recorded in the delivery documents and on the batch labels may differ from the actual quantity/weight by +/- 1 %. MSP will not compensate any deviations within this tolerance.

#### **Section 6 Delivery times and dates, storage fees**

**1.** Delivery times begin once the Client has received the order confirmation, but not until all particulars of the order were agreed and any and all documents required from the Client and permissions are received; the same applies to delivery dates. Delivery time expectations of the Client shall only apply if accepted in writing. The same applies to time limits for order confirmation. If MSP accepts changes the Client has made to the order after the contract was concluded, any delivery date that may have been agreed is void and the delivery period shall start again.

**2.** The delivery times specified by MSP are only approximations, unless the delivery date was expressly agreed. Any times specified for deliveries or services are only binding if expressly agreed as such.

**3.** Compliance with delivery or service obligations, in particular delivery dates, depends on the following:

- Timely fulfilment of any co-operation obligations of the Client in due form, in particular receipt of documents and information to be supplied by the Client;
- Agreement on all technical details with the Client;
- Receipt of agreed advance payments or any agreed letters of credit;
- Obtaining any official permits and licenses that may be required;
- Material being available in good time; and
- Timely delivery of the raw parts, unless MSP is responsible.

The *exceptio non adimpleti contractus* applies.

**4.** If dispatch or delivery of goods is delayed by more than one month after they were declared ready for dispatch on request of the Client or if goods are delivered too early by the Client, MSP may charge storage fees of 0.5 % of the service price for each commenced month, but no more than a total of 5 % of the service price. The parties may provide proof that higher or lower storage fees were incurred. In this case, MSP is also authorised to choose another suitable storage location and to have the goods in question, always at the expense and risk of the Client.

#### **Section 7 Default**

**1.** MSP shall not be responsible for delayed delivery or performance caused by the following delivery and performance issues, unless MSP accepted a procurement risk or issued a guarantee, in particular with respect to compliance with time limits or deadlines; this shall also apply if any of these issues arise for suppliers or their sub-suppliers: Force majeure as well as delivery and performance issues arising only after the contract was concluded or which MSP only becomes aware of after the contract was concluded due to no fault of MSP, and for which MSP can prove that no reasonable and due diligence on the part of MSP would have allowed for foreseeing or preventing these circumstances, and provided that MSP has no other obligation to accept responsibility or to prevent or address the circumstances. The above - either such event occurring or becoming known without fault only after the contract was concluded, MSP having proven unpredictability and unavoidability - include the following in particular: Legitimate industrial action (strikes and lockouts); disruption of operations, scarcity of raw materials, failure of machinery and auxiliary materials. The Client cannot assert damage claims for delayed deliveries and services in any of the above events. In the event of a permanent delivery and service issue in terms of (1), each party to the contract has the right to cancel the contract immediately in line with legal provisions. In the event of a temporary delivery and service issue in terms of (1), MSP shall have the right to postpone deliveries and services for as long as the reason for the delay remains in effect plus an additional reasonable start-up time. If we can prove that the Client is impeding deliveries and services in an unreasonable manner, MSP can withdraw from the contract. The Client may only withdraw from the contract as provided for in the provisions below.

**2.** Delayed deliveries or services MSP is responsible for: Unless a more far-reaching liability (especially no-fault liability) or less far-reaching liability was agreed or can be inferred from the contractual provisions, MSP will be liable for any damage caused by delay due to intentional or grossly negligent breach of duty as follows: 2.1. In the event of intent in line with legal provisions. 2.2. As set out by law, subject to a limitation of liability for damages to the foreseeable damage typical for this type of contract: - in the event of gross negligence on the part of our legal representatives, managers and other vicarious agents; - in the event of minor negligence on the part of our legal representatives, managers and other vicarious agents if they violate major contractual obligations; this especially the case if the underlying contract is a "drop dead date" contract or if the Client can prove that the Client no longer has an interest in contract fulfilment as a result of

MSP delaying the delivery or services. 2.3. In all other events of minor negligence in connection with a delay of delivery or service, MSP shall be liable to pay 0.5 % of the delivery or service value per complete week, but no more than 5 % of the delivery or service value, as lump-sum compensation. Further legal claims and rights of the Client remain in effect.

**3.** Client's right of withdrawal in the event of delayed delivery or service: If we can prove that MSP is not responsible for the delay, the Client may only withdraw from the contract if the Client has made their interest in the continuation of this contract dependent on services being provided on time (drop dead date contract) or if the Client proves that the Client no longer has an interest in contract fulfilment as a result the delayed delivery or service or that the Client cannot reasonably be expected to continue the contract.

#### **Section 8 Force majeure**

Significant, unforeseeable disruptions of operations and any such not caused by MSP, delayed or failed delivery as well as interruption of operations as a result of fire, explosion, flooding, shortages of energy, supplies, raw materials or labour, strikes, accidents, disease, pandemics, lockouts, difficulties in obtaining means of transport, traffic disruptions, official orders of the authorities and cases of force majeure with an impact on MSP or MSP's suppliers will extend the delivery times of MSP by the duration of the event that is preventing performance. This shall also apply if MSP was already in delay with providing the service when these circumstances occurred. MSP shall report the start and end of such interruptions to Client within no more than a week.

If the delivery or performance is delayed by more than six weeks, both the Client and MSP shall be entitled to withdraw from the contract for the delayed services.

#### **Section 9 Prices and payment, invoicing**

**1.** In its offers and order confirmations, MSP indicates prices for its full services either in only money or in money and precious metals. If a price for the full services is given in money and precious metals, the main components of this price will be the processing costs, precious metal refining and loss of precious metal for process-related reasons. Precious metal and processing costs make up the price for the full service.

For metal tape, the price for the full service (processing costs and precious metal) is generally calculated based on the weight of the coated material.

**2.** Unless agreed otherwise, MSP prices are "ex works" plus VAT, customs duty, freight, packaging and transport insurance costs. MSP will only insure the goods if requested by the Client.

**3.** If costs fall or rise after the contract was concluded, in particular as a result of collective agreements, changes in material or energy prices, energy tariffs and production costs, MSP reserves the right to adjust prices accordingly.

**4.** Additional expenses not listed in the order confirmation that occur as a result of adding services on request of the Client will be invoiced separately. In particular, MSP reserves the right to change prices or charge for additional services if:

- Changes are made to the coating material or the process used for the goods because the information and documents supplied by the Client were not in line with the actual conditions or were incomplete;

- Type and scope of the services as listed in the order confirmation was changed on request of the Client. If the need for additional services (e.g. special pre-treatment, special packaging or special racks) becomes clear before processing or coating starts, MSP shall communicate the additional costs to Client before starting to process the goods.

**5.** MSP is entitled to demand an adequate partial or advance payment when a contract is concluded. No interest will be paid on such advance payments. If payment for the service is deferred, if payment in instalments is agreed or if payment is delayed, the Client will be charged interest at the standard rates, but no less than 2 % per year above the respective base rate in terms of section 247 *BGB* plus VAT without a reminder to this effect having to be sent.

**6.** MSP will issue invoices electronically. The Client therefore has to communicate a binding and at all times accessible email address in advance. Client must confirm receipt of the invoice immediately. A read confirmation is sufficient. If no confirmation is sent, the date on which MSP sent the invoice shall be the date it was received by the Client. Invoices are due immediately once received by the Client and shall be paid within the time limits specified in the invoice.

Cash discounts and other discounts must be agreed separately. No discounts shall apply to new invoices if older invoices were not yet paid.

**7.** MSP expressly reserves the right to accept bills of exchange or cheques. Bills of exchange and cheques will only be accepted as payment subject to prior agreement of MSP and will only be considered as payment once their amount was credited without reservations. Expenses and costs are charged to the Client and must be paid immediately. Bills of exchange must be for a period of 90 days or less, starting on the invoice date.

**8.** Waiving the provisions of sections 366, 367 *BGB* and contrary to any terms and conditions of the Client, it is for MSP to decide which outstanding payments will be covered by Client's payments. In other words, the Client waives their right to specify how the Client's payments are to be used.

**9.** If payment is delayed, MSP may charge interest on arrears at 9 % p.a. above the respective base rate in accordance with section 247 *BGB* plus VAT and is entitled to withhold further services until all outstanding invoices have been settled. In the event of a delivery or service not complying with the contract, the Client may only withhold payments in reasonable proportion to the degree of non-compliance (especially in the event of a defect) and expected costs of subsequent performance (especially removal of defect). The Client is not entitled to assert claims and rights based on non-compliance with the contract if the

Client failed to make payments when due and if the outstanding amount is in reasonable proportion to the non-compliant deliveries or services, despite non-compliance with the contract.

**10.** Failure to pay invoices that are due or other circumstances that indicate a material deterioration of the Client's financial situation after the contract was concluded shall give MSP the right to demand immediate payment of all of MSP's claims under the same legal relationship. In the event of doubts as to the Client's solvency or creditworthiness, MSP shall be entitled to demand the Client to make advance payments or to submit appropriate securities for the service to be provided. If the Client is not prepared to pay in advance or to submit securities, MSP shall be entitled to withdraw from these contracts and claim damages for non-performance after a reasonable grace period has expired.

**11.** The Client shall only be entitled to offset claims against claims of MSP if the counterclaim is recognised, undisputed or was established by a court. Claims against MSP may only be assigned subject to permission of MSP.

**12.** The Client shall only have a right of retention if the counterclaim is based on the same contractual relationship and is recognised, undisputed or if a decision was or is about to be made by a court or if MSP has violated its obligations under the same contractual relationship to a considerable degree despite a written warning and has not offered adequate protection. If a service of MSP is indisputably defective, the Client may only withhold amounts that are reasonably proportionate to the defect and to the expected costs of remedying the defect.

**13.** Payment terms remain in effect even if deliveries are delayed through no fault of MSP.

#### **Section 10 Prices for precious metal, surcharges, precious metal account**

**1.** Prices for precious metal are calculated based on the opening prices of Umicore, published daily by AGOSI ([www.agosi.de](http://www.agosi.de)), on the day shown on the delivery note plus a surcharge of 2.5 %.

**2.** The precious metal weights listed in offers and invoices always include a process-related, unavoidable loss / wastage of precious metals.

**3.** In the case of precious metal coating handled through a precious metal account, a general 5 % surcharge is applied to the share of the precious metals gold (Au), silver (Ag) and palladium (Pd) stated on the order.

**4.** MSP charges a one-off fee of EUR 250.00 for opening a precious metal account, per type of precious metal.

#### **Section 11 Importing materials from third countries**

**1.** Where the raw material that is to be supplied by the Client or Client's sub-contractor (material to be provided for MSP's surface finishing service) originates from a third country (non-EU country), the Client shall ensure that the goods have been released for free circulation and have the status of Community products before being delivered to MSP.

The Client shall submit to MSP any and all customs documents proving that the goods are Community products.

**2.** Import duties and other costs incurred by bringing the goods into the customs union shall be borne by the Client.

**3.** Where the goods of the Client that MSP is to process must first be imported into the European Union as non-Community products, and will leave the customs union of the European Community as processed goods after processing by MSP, MSP must be notified hereof in advance. If the Client is exempted from customs duties in such case, a corresponding confirmation of exemption issued by the customs authority must be submitted to MSP.

Where the goods are first released for free circulation by paying import duties, any import duties and other costs incurred shall be payable by the Client.

**4.** Should import duties be charged to MSP, MSP will pass these on to the Client when processing the order.

**5.** MSP is not responsible for the customs treatment of goods.

#### **Section 12 Place of performance, acceptance, collection, transfer of risk, dispatch, packaging**

**1.** The place of performance for the requested services is the site of MSP. Unless agreed otherwise, the Client will collect the goods from the factory once notified of completion.

**2.** The Client is obliged to accept the goods in line with legal provisions as soon as MSP has notified the Client that the requested services are complete. If the Client does not accept the service within two weeks after such notification, the goods shall be deemed accepted. The same shall apply if the Client refuses to accept the service without good reason.

**3.** If collection of the goods was agreed, the risk of destruction or loss of or damage to the goods shall pass to the Client upon provision of the good for collection and notification of readiness for collection. If it was agreed to ship the goods, the risk is transferred to the carrier in question upon dispatch or handover of the goods to the carrier. In the event of delayed acceptance or debtor's default on the part of the Client, the risk is transferred to the Client at the time such delay occurs.

**4.** MSP is entitled, but not obliged, to send and insure deliveries on behalf and at the costs of the Client. If MSP has agreed to be responsible for shipping, the above provisions, especially regarding place of performance and transfer of risks, continue to apply. Type and means of transport are chosen by MSP. Any additional costs caused by deviating instructions of the Client shall be payable by the Client.

**5.** If goods are shipped in rented containers, these must be emptied and returned free of charge within 30 days after the delivery was received. Loss of and damage to returnable packaging shall be charged to the Client if Client is responsible and if rented packaging is not returned to MSP. Rented packaging may not be used for any other purpose or for any other items. They are for transport of the delivery goods only. Labels must not be removed.

**6.** Unless agreed otherwise, MSP shall decide type and extent of packaging. Packaging is chosen with due care and to the best of MSP's knowledge. Disposable packaging becomes the property of the Client and cannot be returned to MSP; rather, MSP will provide the Client with the name of a third party that will collect the packaging and take it for recycling in accordance with the packaging regulation.

**7.** In the event of damage to or loss of the goods during transport, a record must be prepared immediately and MSP should be informed thereof. The Client shall assert any claims in connection with transport damage towards the carrier without delay.

**8.** Partial services are permissible, provided that this causes no disadvantages for the Client.

#### **Section 13 Delivery of goods, incoming goods inspection by MSP**

**1.** Upon delivery of the goods, the Client must provide any and all information on the goods that is necessary to identify the Client's products and to ensure due and careful treatment of these to prevent damage. Such information includes, in particular, the number of items, designation and value of the goods, individual price and total value, gross and net weight, mode of transport and desired mode of transport for return if delivery was agreed. Additionally, the goods must be accompanied by the information required for processing or coating, especially detailed treatment instructions, unless these are listed in the order or order confirmation.

**2.** If collection of the goods by MSP was contractually agreed, the above information must accompany the duly packed and ready-to-transport goods.

**3.** MSP is not liable for damage caused by inaccurate labelling and identification of the goods.

**4.** MSP will examine the delivered goods for visible external damage. MSP is not obliged to carry out further checks. Any detected defects shall be reported to the Client within 10 working days after the defect was detected.

**5.** The Client is obliged to compensate any damage MSP incurs as a result of being supplied with material that cannot be processed, including lost profit.

#### **Section 14 Incoming goods inspection and notice of defects, storage**

**1.** Section 377 German Commercial Code (*HGB*) shall apply *mutatis mutandis* to the services of MSP. Client's claims for defects shall only be permissible if Client, having inspected the goods processed by MSP for defects after return delivery in terms of section 377 *HGB*, notifies MSP immediately and in writing of any defects discovered, including a detailed list of defects. The burden of proof that a concealed defect exists falls to the Client.

**2.** If complaints are filed, the Client shall give MSP the opportunity to review the goods in question without delay. Upon request, the allegedly defective goods or a sample of these must be surrendered to MSP at our costs within one week after the defect was reported. If a complaint is unjustified, MSP reserves the right to charge costs associated with transport, transshipment and checking the goods to the Client.

**3.** If necessary, the Client shall run a trial processing run in order to establish whether the delivered goods are suitable for the intended purpose.

**4.** MSP will check the processed goods prior to shipping, if possible. If the Client requires further checks, these must be agreed separately and paid for by the Client.

**5.** MSP shall bear costs for processes such as checks, validation and tests (including multiple times, if necessary) that the Client or third parties incur only if:

- a. MSP has previously agreed to these tests and to payment of associate costs in writing.
- b. costs are only incurred to separate usable from unusable parts.
- c. only a few items of a batch (no more than 5) will be subject to destructive tests.
- d. these tests are industry standards, i.e. they are NOT conducted for scientific research.
- e. the total costs of such tests do not exceed a net amount of EUR 3,000.00.

**6.** The Client is obliged to store the delivered goods properly and under standard conditions (in particular temperature: 15-20°C, humidity max. 40 %). Additionally, sulphur-free packaging is required for products with surfaces that contain silver.

#### **Section 15 Quality, liability for material defects**

**1.** The quality of MSP's services complies with customary requirements for galvanic surface finishing. If special qualities are required, for example in regard to heat or weather resistance, this must be communicated in writing at the earliest possible time, no later than when placing the order, and MSP has to expressly confirm such quality requirements. Any form of dimensional accuracy is only guaranteed if exact specifications were recorded in writing in the order.

**2.** MSP grants a warranty for any defects present at the time risk is transferred to the Client, unless the defect was caused by circumstances that the Client is responsible for. Neither does MSP give a warranty for any defect for which MSP can prove that the services were provided in due form.

**3.** The characteristics listed in the service specifications are the comprehensive and final list of specifications for the delivery or service. The delivery and service descriptions of MSP are quality agreements and not guarantees or warranties, unless expressly agreed otherwise. To avoid any doubt, if we make any statements in connection with this contract, these do not contain any guarantees or warranties in terms of special liability or special warranty obligations. If in doubt, only express written declarations on our part regarding guarantees and warranty shall be valid.

**4.** If a service is defective, MSP must always be given the opportunity to remedy the defect within a reasonable period of time. If subsequent improvement is impossible for technical reasons or does not take place within the specified time limit due to fault of MSP or if it is unsuccessful, meaning that at least two attempts

to repair the defect have failed, or if it is unreasonable for the Client, the Client may withdraw from the contract or reduce the price. In case of successive performance contracts, a party may only withdraw from that part of the contract that governs the defective service, unless continued fulfilment of the entire contract has become unreasonable.

**5.** Claims of the Client in relation to costs incurred in connection with any subsequent performance, especially transport, travel, labour and material costs, are excluded insofar as the costs are higher because the item or service in question was subsequently transferred to a location other than the site of the Client, unless such transfer is part of the item's intended use.

**6.** The Client may not assert claims for defects if the Client or third parties modify the items processed by MSP in an improper manner and without the prior written consent of MSP, especially in case of any form of surface treatment, or if the Client uses or processes an item despite being aware of the defect. Neither can claims for defects be asserted:

- in the event of only minor deviations from the agreed quality or an insignificant reduction of usability;

- for any differences and damage resulting from missing, incorrect, incomplete or inaccurate information provided by the Client when placing the order or from treatment instructions that MSP has deemed unsuitable before the order was placed;

- for damage caused by unsuitable properties of the supplied goods, such as material defects, dimensional deviations, treated surfaces, processing residue or other foreign bodies, manufacturing defects, improper heat treatment, rust spots, non-detachable residue, soldered joints, etc. However, this only applies insofar as it was not obvious for MSP at the time the order was placed or when the goods were delivered that the items in question are unsuitable for processing in general and for surface treatment in particular;

- if visible spots and other defects that were not visible before processing become apparent when increasing contrast during processing;

- for reduced corrosion resistance of stainless steels caused by machining;

- for corrosion of a surface-workpiece combination in an electrolytic environment. However, this shall only apply if the Client has not informed MSP in writing of the electrolytic environment at the place where the items are to be used before concluding the contract.

- in the event of improper storage within the meaning of section 14 (6).

**7.** Insofar as claims for defects are asserted with respect to processed parts that are subject to wear and tear, the warranty does not cover normal wear and tear. In the event of doubt, the Client has to prove that any wear and tear that occurred is unusual.

**8.** For damage and expenses which our Client has to cover by contract or law or agrees to cover in connection with any violation of national or international product law, official regulations, environmental protection or emissions laws, we shall only be liable in line with legal provisions applicable to MSP. We only accept any further liability if expressly agreed in writing. Both our liability for defects under the contract concluded with the Client as well as our liability under compelling law we are subject to remain unaffected.

**9.** For technical reasons, we can only guarantee usability of coatings for a maximum period of six months, even in case of proper storage in terms of section 14 (6).

The galvanic, chemical or mechanical treatment of surfaces may cause negative changes in the surface quality of uncoated areas. This is particularly true for materials containing copper and copper alloys. Uncoated areas are therefore not covered by warranty.

#### **Section 16 Defects of title, industrial property rights**

**1.** We assume no liability for material defects should the use, installation and resale of the delivered items violate third-party rights; however, we guarantee that MSP is not aware of the existence of any such third party-rights associated with the delivery items.

**2.** The Client guarantees that no third-party rights (in particular no patents, licenses or other intellectual property rights) will be violated in connection with the specifications, manufacturing equipment supplied by the Client or by MSP on Client's instructions or by using any suppliers or recipients of a service named by the Client when performing our contractual obligations.

**3.** If a third party holds MSP liable for a violation caused by complying with the specifications provided by the Client or in connection with manufacturing equipment supplied by the Client or by MSP on Client's instructions, the Client shall indemnify and hold MSP harmless on first request in regard to any and all claims and shall reimburse any costs MSP incurred in this regard. If such claims are asserted, MSP is entitled to stop production and delivery without the Client having any right to assert claims against us.

**4.** Upon request of MSP, the Client shall provide legal counsel at its own expense or intervene in any legal proceedings. If requested, an advance payment towards the legal fees shall be made to MSP.

**5.** MSP reserves the right to assert further compensation claims.

**6.** The limitation period for any claims to which MSP is entitled under this provision shall be five years after the contract was concluded.

#### **Section 17 Liability**

**1.** The liability of MSP is governed by statutory provisions in cases of intent or gross negligence on the part of MSP or its representatives or vicarious agents. In all other cases, MSP shall only be liable in line with the provisions of the Product Liability Act and for injury to life, limb or health of a person, if an express guarantee was given or if major contractual obligations were violated, i.e. any obligations the

fulfilment of which makes the proper implementation of the contract possible in the first place and compliance with which the Client can usually expect. Claims for damage resulting from the violation of major contractual obligations due to minor negligence are limited to the foreseeable damage typical for this type of contract. Also in cases of gross negligence, the liability of MSP shall be limited to the foreseeable damage typical for this kind of contract if none of the exceptions listed in the second sentence of (1) applies.

**2.** Insofar as MSP is not liable for intent, gross negligence, culpable violation of major contractual obligations, for the injury to life, limb or health of a person or under the Product Liability Act, any liability for damages caused by the subject of service to legal assets of the Client, e.g. other items, due to lost profit or other financial losses is excluded.

**3.** The provisions of (1) and (2) above shall also apply to compensation in addition to service and compensation instead of service, irrespective of legal grounds, but especially in connection with defects, violation of obligations or tort. They also apply to any claims for compensation of futile expenses and to liability for impossibility.

**4.** Claims for damages asserted against MSP are limited to any cover under operational and product liability insurances, aeronautical product liability insurance, and recall cost insurance of MSP as applicable. This shall not apply in cases where MSP is liable as a result of intent, gross negligence, injury to life, limb or health of a person, culpable violation of major contractual obligations or under the Product Liability Act.

**5.** The liability to pay damages is also excluded if and insofar as the Client has effectively limited liability towards Client's customer. In such case, the Client shall endeavour to agree legally permissible limitations of liability for MSP also.

**6.** Insofar as MSP's liability to pay damages is excluded or limited, this also applies to all claims of the Client based on fault at the time the contract was concluded, violation of ancillary obligations or claims of the Client based on producer liability as well as impossibility. Insofar as the liability of MSP is excluded or limited, this also applies to the personal liability of MSP staff, employees, workers, representatives, proxies and vicarious agents.

**7.** Insofar as liability is excluded or limited in the above provisions, the Client shall also indemnify and hold MSP harmless in regard to claims of third parties on first request.

Claims of the Client for damages and expenses in connection with defects are governed by the following provisions, without regard to the legal nature of the claim, especially and also with respect to claims for defects and breaches of duty, as well as tort liability. We are liable for damages in accordance with the statutory provisions: - in case of intent; - in the event of culpable injury to life, limb or health; - in case of defects or other circumstances that were fraudulently concealed, or - in case of defects if freedom from defects was guaranteed or where a quality guarantee was given. Furthermore, we shall be liable for damages in line with legal provisions; however, liability shall be limited to the foreseeable damage typical for this type of contract: - in the event of gross negligence on the part of our legal representatives, managers and other vicarious agents; - in case of minor negligence on the part of our legal representatives, managers and other vicarious agents, if and insofar they violate major contractual duties (obligations the fulfilment of which is essential for the proper performance of the contract and the observance of which the Client may rely on). Any mandatory liability of our company under the law, especially under the Product Liability Act, remains unaffected. Unless agreed otherwise above, all other claims are excluded.

#### **Section 18 Processing prototypes**

**1.** Client's prototypes submitted to MSP for processing may only be used for internal purposes of the Client.

**2.** Our liability for material and property damage is excluded insofar as MSP has not caused such damage intentionally or through gross negligence or is not liable for it under the Product Liability Act or has not violated a major contractual obligation. In the event of a violation of a major contractual obligation through minor negligence, our liability is limited to the foreseeable damage typical for this type of contract.

**3.** If third parties assert claims against MSP, the Client will indemnify and hold MSP harmless in regard to such claims and will cover any associated costs to defend MSP against such claim, insofar as we are not liable for the damage towards the Client.

#### **Section 19 Special legal provisions**

**1.** The Directive 2002/95/EC (RoHS) and the Electrical and Electronics Equipment Act may apply to orders placed by the Client. Both contain a ban on the use of certain environmentally hazardous substances, such as lead, which may no longer be used in electrical and electronic equipment. Germany implemented the RoHS through the Electrical and Electronics Equipment Act (*ElektroG*), which entered into force on 16 March 2005.

According to section 3 *ElektroG*, manufacturers and importers are obliged to register with the competent authority when they put a product covered by the *ElektroG* on the market.

You can access the RoHS on the EU website under [www.europa.eu.int/eur-lex/pri/de](http://www.europa.eu.int/eur-lex/pri/de). You can view and download the *ElektroG* under [www.gesetze-internet.de/elektroG/BJNR07620005.html](http://www.gesetze-internet.de/elektroG/BJNR07620005.html). The Client is obliged to inform MSP whether the goods supplied to MSP for coating fall under the RoHS or *ElektroG* and to confirm whether this is the case or not. If MSP does not receive any notification from you, MSP will assume that the product components supplied to MSP for surface treatment are not incorporated into or connected to products that are listed in section 2 (1) of the *ElektroG*. If the product components supplied for

surface treatment are not covered by that law, the Client must inform MSP which of the exceptions provided for in the *ElektroG* or RoHS is applicable in the case in question. MSP does not accept any liability for failure to provide this information. If third parties assert claims against MSP based on such violation, you are obliged to indemnify and hold MSP harmless.

2. If the Client requires any guarantees, obligations, confirmations or declarations in regard to compliance with national or international law, regulations and requirements, especially in connection with criminal law, corruption, antitrust law, environmental protection, human rights, occupational safety and minimum wage, these shall only establish a contractual obligation on the part of MSP towards the Client if MSP expressly agrees to this in writing. The same applies to MSP complying with non-binding standards on request of the Client.

#### **Section 20 Processing parts for aircraft and spacecraft**

1. The Client shall inform MSP in good time if the parts MSP processes are to be used in the aeronautics and space industry, including the relevant safety level, in order to enable MSP to decide whether the contract should be accepted or not. MSP will not be liable for failure to provide such information or if the information provided is incorrect or incomplete.

2. No liability is accepted for any environmental damage resulting from disrupted operation of aircraft caused by products treated by MSP after such products were brought into circulation or after the work of MSP is complete. This does not apply in cases of intent.

#### **Section 21 Limitation periods**

1. The limitation period for claims and rights arising in connection with defects of our products and services and for any resulting damage is one year. The above limitation period does not apply if the law specifies longer limitation periods for cases addressed in sections 438 (1) no. 2, 479 and 634a (1) no. 2 *BGB*. The limitation period set out in sentence 1 shall also apply to all claims for damages asserted against MSP, regardless of whether they are related to a defect and irrespective of the legal basis of the claim. Limitation periods start in line with statutory provisions.

2. The limitation period referred to in (1) above does not apply in case of intent, if MSP has fraudulently concealed the defect, in case of claims for damages due to injury to life, limb or health or freedom of a person, in case of claims under the Product Liability Act, in case of a grossly negligent breach of duty or in case of violation of major contractual obligations.

3. Subsequent performance does not suspend limitation periods for the original service nor do limitation periods start anew in such cases.

#### **Section 22 Reservation of title, right of lien**

1. MSP reserves title to the delivery ("product subject to retention of title") until all payments under the business relationship with the Client were made. This retention of title also covers any recognised account balance, insofar as we record claims against the Client in our current account (current account subject to retention of title). If the Client violates the contract, especially if the Client delays payment, we are entitled to recover the products that are subject to retention of title. MSP recovering the products that are subject to retention of title also constitutes a withdrawal from the contract. Once MSP has recovered the products that are subject to retention of title, MSP may exploit these otherwise and the proceeds shall be counted towards the amounts owed by the Client, minus any reasonable costs incurred when using the products otherwise.

2. The Client is entitled to resell the products that are subject to retention of title in the ordinary course of business; however, the Client assigns to MSP all claims with the same value as the final invoice amount (including VAT) of our claims that Client has against Client's customers or third parties as a result of such resale. If the Client includes these claims from resale of the products that are subject to retention of title in a current account for Client's customer, a current account claim equivalent to the recognised account balance shall be assigned; the same applies to any "causal" balance in the event of insolvency of the Client. The Client shall remain authorised to collect the assigned claim even after their assignment. This shall not affect the right of MSP to collect the claims itself, subject to provisions of insolvency law, however, MSP undertakes not to collect the claims as long as the Client does not violate their contractual obligations (especially as long as Client complies with their payment obligations), is not in default with payments or has not filed for insolvency and has not ceased making payments. The Client may not pledge the claims as security or otherwise.

3. If MSP is no longer obliged to not collect any claims itself in line with (2) above, MSP shall have the right, subject to provisions of insolvency law, to revoke Client's right to resell the goods and to exercise MSP's right to recover and exploit the products in terms of (1) above and/or to revoke the right to collect claims and to demand that Client disclose to MSP any and all claims and debtors, submits all information required to collect the debts, surrenders any associated documents and to notify the debtors (third parties) of such assignment.

4. In the event of damage to or loss of the products subject to retention of title as well as in the event of a change of business seat or residence, the Client will inform MSP immediately and in writing. The same shall apply if these products are seized or otherwise affected by third-party actions, so that we can file a claim in terms of section 771 Code of Civil Procedure (*ZPO*). Insofar as the third party is not in a position to reimburse MSP the judicial and extrajudicial costs of an action in accordance with section 771 *ZPO*, the Client shall be liable for any losses of MSP. If such products are released without resorting to the courts, any resulting costs may also be charged to the Client, as can the costs incurred when retrieving the seized products.

5. Any processing or modification of the products subject to retention of title by the Client is done on behalf of MSP. If the products subject to retention of title are processed together with others goods not belonging to MSP, MSP will acquire co-ownership of the processed product in proportion of the value of the products subject to retention of title to overall value of the new product (final invoice amount including VAT) at the time of processing or modification. Apart from the above, the goods created through processing or modification are subject to the same provisions as the products subject to retention of title. The Client is granted an interest in the goods created through processing or modification that is proportionate to the Client's share in the products that are subject to retention of title.

6. If the products subject to retention of title are combined or mixed with other goods not belonging to MSP in a manner that makes them inseparable, MSP will acquire co-ownership of the new product in proportion of the value of the products subject to retention of title to overall value of the combined or mixed products (final invoice amount including VAT) at the time of mixing or combination. If the goods of the Client are the main component of the mixed or combined new product, it is agreed that the Client will transfer a partial ownership interest to MSP. The Client acts as custodian for the wholly-owned or partially-owned products on behalf of MSP.

7. When reselling the products subject to retention of title after processing or modification, the Client assigns to MSP by way of security that part of the Client's payment claim that is equivalent to the final invoice amount (including VAT) of our claims. If MSP has acquired only a co-ownership share following processing, modification, mixing or combination of the products subject to retention of title together with other products not belonging to the MSP in accordance with (5) or (6), the purchase price claim of the Client will only be assigned to MSP in advance to the amount equal to the proportion of the amount invoiced by MSP for the products subject to retention of title, including VAT, to the invoice amounts of the other goods not belonging to MSP. Otherwise, (2) to (4) above apply to the claims assigned in advance.

8. If this retention of title or assignment is not valid under the law of a foreign country in which the products that are subject to retention of title are located, any security provided for under such law that is equivalent to this retention of title or assignment shall be deemed agreed. If the co-operation of the Client is needed to establish such rights, the Client is obliged to do anything required to create those rights if so requested by us.

9. The Client is obliged to treat the products subject to retention of title with care and to maintain them at Client's costs; in particular, the Client is obliged to arrange, at Client's costs, sufficient insurance cover for these goods at their reinstatement value against theft, robbery, burglary, fire and water damage. The Client shall assign any and all insurance claims for the products subject to retention of title to MSP. MSP accepts such assignment. Furthermore, MSP reserves the right to demand performance or to claim damages.

10. MSP agrees to release any securities MSP holds to the Client insofar as the realisable value of our securities exceeds the claims that they secure by more than 10 %; MSP shall decide which securities shall be released.

#### **Section 23 Confidentiality, prohibition of utilisation**

1. The Client agrees to treat as confidential all commercial or technical details the Client becomes aware of when conducting business with MSP and that are expressly marked as "confidential" or that can be recognised as confidential information based on their circumstances, especially any know how of MSP, ("confidential information") and to establish and maintain adequate measures to keep these secret. Confidential information may only be used for fulfilling the contract and must not be disclosed or made available to unauthorised third parties. The information may only be copied if operational reasons so require and if compliant with copyright regulations. If the Client discovers that confidential information became known to unauthorised third parties or was lost, the Client shall notify MSP hereof immediately.

2. The obligations set out in (1) above do not apply to any information that was already widely available when the other party received it or that becomes widely available at any point during the contract duration without a contract violation. The same shall apply if the Client can prove that any confidential information the Client receives was already available to the Client beforehand.

#### **Section 24 Know-how, inventions**

Any secret, high-value and advanced knowledge (know how), inventions and any associated industrial property rights MSP has before or acquires while it fulfils its contracts are the property of MSP, subject to any separate agreements with the Client or any use or utilisation of the delivery items by the Client as contractually agreed.

#### **Section 25 Place of jurisdiction, place of performance, applicable law, data protection, severability clause**

1. At the discretion of MSP, the place of jurisdiction is either the court having jurisdiction *ratione loci* and *ratione materiae* at the place of business of MSP or the general place of jurisdiction of the Client. This also applies in case of disputes concerning deeds, bills of exchange and cheques.

2. The place of performance for any payments to MSP under the contract is the place of business of MSP.

3. Contracts between clients and MSP are exclusively governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods from 11 April 1980 (CISG), if pertinent, does not apply.

4. MSP processes all information of the Client solely for the purpose of fulfilling MSP's contracts and in accordance with data protection laws as amended.

5. Should anything in these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions. The parties shall endeavour to replace the void clause with such other legally effective clause that comes as close as possible to the economic outcome of the original provision.