

# General Terms and Conditions of Business (GTB) for Works and Services of Mitutoyo Europe GmbH

## 1. Scope of Application

### 1.1.

The following terms and conditions (GTB) as well as the individual supplementary terms and conditions specific to the work and service listed below (Clause 20) as pertinent for the individual case, to which express reference is made here, shall apply solely and exclusively to any and all works and services of Mitutoyo Europe GmbH (hereinafter known as "Mitutoyo").

### 1.2.

If and when Mitutoyo GTB have been introduced into the business with the Customer, they shall also apply to any and all further business relationships between the Customer and Mitutoyo unless otherwise agreed in writing. Customer's terms and conditions shall apply only if and when Mitutoyo has expressly accepted in writing their application. In particular, silence on the part of Mitutoyo with respect to such deviating terms and conditions shall not be interpreted as acceptance or agreement, whether for present or future contracts.

Mitutoyo's GTB shall apply in lieu of any Customer's terms and conditions of purchasing as well, even if and when the latter provide that the acceptance of the order is to be deemed the unconditional acceptance of the terms and conditions of purchasing. By accepting Mitutoyo's order confirmation or performance, the Customer expressly acknowledges that he is waiving any demurrer derived from the terms and conditions of purchasing.

### 1.3.

These GTB apply only to relationships with companies in the sense of Section 14 BGB (German Civil Code).

## 2. Information, Consulting, Properties of the Goods

### 2.1.

Information regarding the services performed by Mitutoyo is provided solely and exclusively on the basis of Mitutoyo's experience. The values given at such times shall be regarded as average values. Any and all information regarding services performed by Mitutoyo, including the data contained in offers and other printed materials from Mitutoyo, especially technical data, shall be regarded as approximate average values. Changes in the content and performance of services by Mitutoyo shall be made in accordance with reasonable judgment (Section 315 BGB) or remain within the scope usual in the trade.

### 2.2.

Any reference to standards, similar technical rules or technical data, or contents of the services in offers and/or printed materials or brochures as well as the Mitutoyo advertising shall be deemed as properties of the Mitutoyo services only if and when Mitutoyo has expressly declared the characteristic to be a "property" of its service; otherwise, any such information shall be regarded solely as a non-binding, general description of the service.

### 2.3.

A property shall be deemed warranted by Mitutoyo solely if and when Mitutoyo has designated in writing the property as "warranted".

## 3. Conclusion of Contract, Scope of Performance

### 3.1.

Offers from Mitutoyo are at all times submitted subject to change unless expressly designated in writing as "binding". They are an invitation to submit an order. With the exception of the case of the unreserved acceptance of an item for repair by Mitutoyo, a contract shall not be deemed concluded, even in ongoing business transactions, until Mitutoyo has confirmed the Customer's order in writing. Mitutoyo's order confirmation is authoritative for the content of the service agreement. If the service is performed immediately, the confirmation may be replaced by an invoice or delivery note from Mitutoyo.

### 3.2.

Any and all agreements, secondary agreements, assurances, and changes in the contract shall not be binding on the Parties unless in writing. This provision shall also apply to the waiver of the requirement of written form itself. Oral agreements and/or amendments/modifications are invalid.

### 3.3.

The Customer shall notify Mitutoyo in writing in good time before conclusion of the contract of any special requirements which must be met by the services.

### 3.4.

Mitutoyo shall assume a procurement risk only if and when Mitutoyo has expressly agreed to this in writing with the Customer as "Assumption of the Procurement Risk".

## 4. Performance Period, Performance Dates, Default of Performance

### 4.1.

Performance dates or periods shall not be binding unless agreed expressly and in writing. If and when non-binding or approximate (about, approximate, etc.) performance dates and periods have been agreed, Mitutoyo shall strive to comply with such dates and periods to the best of its ability.

### 4.2.

Performance periods shall commence – with the exception of cases of the so-called standard repairs at Mitutoyo – upon the Customer's receipt of Mitutoyo's order confirmation, but not, however, before any and all details of the performance of the order have been clarified and any and all other prerequisites on the part of the Customer have been fulfilled, in particular the payment of agreed advances; this provision shall apply mutatis mutandis to performance dates. If and when the Customer requests changes in the service after awarding the order, a new performance period shall commence upon Mitutoyo's confirmation of the change.

### 4.3.

Performances and deliveries before the expiration of the agreed performance and delivery period are permissible. Mitutoyo is entitled to submit partial performances and deliveries. In the absence of deviating written agreement, the interest in Mitutoyo's performance shall cease to exist only if and when Mitutoyo does not perform major services or performs them with delay.

### 4.4.

The service shall be performed, unless otherwise agreed, upon submission of a release order for long-term contracts and within the agreed performance period at the discretion of Mitutoyo for individual contracts.

### 4.5.

If and when Mitutoyo is in default of performance, the Customer must first set a reasonable subsequent period for performance for Mitutoyo. If and when this subsequent period expires in vain, damage compensation claims due to breach of obligation – regardless of the reason – shall be possible only pursuant to the regulations in Clause 17.

### 4.6.

If Mitutoyo fails to perform the service by the date specified in the contract or within a contractually determined time period, the Customer may cancel the contract only if and when he has associated his interest in performance of the services with the timely performance thereof in the contract.

### 4.7.

Mitutoyo shall not be deemed in default as long as the Customer is in default of the performance of obligations owed to Mitutoyo, including any such performances resulting from other contracts.

### 4.8.

In the event of default of performance for which Mitutoyo is accountable due to wilful or grossly negligent conduct, the Customer shall have a claim to compensation for any loss or damage verifiably caused by the default, subject to the restriction of Clause 17. In the event of gross negligence, the damage compensation shall be limited to the typical, foreseeable damage or loss. If, in exceptional cases, the Customer also has a claim due to slight negligence, any such claim shall be limited in its amount to 0.5% of the net order value for each and every full week of default, but limited in the aggregate to no more than 5% of the net order value.

## 5. Delay, Postponement, and Interruption of the Service Performances

If and when the performance of the services is delayed due to reasons for which the Customer is accountable, Mitutoyo is entitled, after a 14-day subsequent period has been set and has fruitlessly expired, at its discretion to request immediate payment of the compensation or to cancel the contract or to refuse fulfillment and to request damage compensation in lieu of the entire performance. Notification of the subsequent period must be given in writing or text form. It is not necessary for Mitutoyo to refer in this letter once again to its rights pursuant to this clause. In the event that it requests damage compensation, Mitutoyo is entitled to request a lump sum for damages in the amount of 20% of the agreed net compensation in lieu of the concrete amount of damages. The Customer retains the right to produce proof of a differing sum for damages or that no damage or loss was suffered if lump sum damages are requested.

## 6. Access to Serviced Object

The Customer shall grant to Mitutoyo free access to the serviced object at the agreed times for the performance or the services. The Customer is liable to this extent for the proper, risk-free condition of the access and of the workplace.

## 7. Acceptance

### 7.1.

The Customer is obligated to immediate acceptance as soon as Mitutoyo has given notification of the completion of the service and to the extent that Mitutoyo is obligated to a work performance.

### 7.2.

If, despite the fulfillment of the conditions defined in Clause 7.1., the acceptance is delayed due to reasons for which the Customer is accountable, the Customer shall be deemed to have accepted the work upon the expiration of a period of 2 weeks after submission of the notification of completion by Mitutoyo.

### 7.3.

The Customer shall also be deemed to have accepted the service if he begins operation of the object of the work performance of Mitutoyo for a function test

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after expiration of a reasonable period without previously raising written objection to an acceptance to Mitutoyo.

## 7.4.

The Customer shall also be deemed to have accepted work performances upon expiration of a period of 4 weeks after the point in time at which Mitutoyo, at the Customer's request, dispatched the object of the service to a third party whose registered office is in the European Union.

## 8. Customer's Cooperation Obligations

### 8.1.

It is the Customer's responsibility to create the technical and organizational circumstances within his sphere of influence which will enable Mitutoyo to carry out the contractually agreed services completely and in conformity with the contract. This includes free technical support for error analysis and elimination, implementation of support rendered by Mitutoyo, and provision of all relevant information free of charge.

### 8.2.

Furthermore, the Customer shall, upon first request, provide to Mitutoyo copies of any and all technical documents related to the object of the service which are in his possession and which are useful or required with respect to the service being performed by Mitutoyo.

### 8.3.

The Customer shall, upon awarding of the contract and upon first request by Mitutoyo, describe the defects / malfunctions which are to be remedied in the greatest detail which is possible for him and to communicate in writing any and all information from his sphere of influence which is necessary for Mitutoyo's performance of the service in conformity with the contract.

## 9. Right of Use

Mitutoyo's service obligation in cases of repair or maintenance presumes that the devices which require repair or maintenance either belong to the Customer or that he has been authorized in other ways to use them and that he will provide verification of his right to Mitutoyo upon request.

## 10. Additional Work, Spare Parts

### 10.1.

The services to be performed by Mitutoyo are defined by the agreed scope; in the absence of such agreement, they will be performed in the usual scope within the framework of the commissioned services. Any performances in excess of this scope will be billed separately according to their type and scope at the general rates charged by Mitutoyo.

### 10.2.

Any spare parts required will be billed according to the currently valid Mitutoyo price lists plus the applicable statutory value-added tax.

## 11. Cost Estimate and Cost Limit

### 11.1.

Cost estimates do not represent a binding confirmation for the binding compensation to be paid for the performance unless the compensation owed by the Customer in the event of performance is designated as binding.

### 11.2.

In the event of the award of a contract, Mitutoyo may exceed the cost estimates by up to 10% without requiring the Customer's agreement. The above provision does not apply if and when Mitutoyo has expressly designated a certain cost amount or compensation as agreed to be binding.

### 11.3.

The above provision shall also apply if and when a cost limit set by the Customer when the order was accepted by Mitutoyo is exceeded by less than 5% due to unforeseeable reasons.

### 11.4.

The performance of additional work shall be subject to the Customer's consent at all times.

## 12. Non-performable Services

### 12.1.

In the event of technical and/or commercial impossibility and/or unreasonableness, Mitutoyo shall not be obligated to restore the original condition of the object which is the subject of the service. The above provision also applies if a request by the Customer is to be assessed as an incorrect right orientated execution.

### 12.2.

The Customer is obligated to reimburse the verified expenditures if the service cannot be performed due to reasons for which he is accountable, especially because

- the Customer has neglected to carry out necessary cooperative actions;
- the Customer terminates the contract during the performance of the service.

## 13. Proviso of Own Supply, Force Majeure and Other Hindrances

### 13.1.

If, despite proper provision, Mitutoyo does not receive, does not receive correctly, or does not receive in due time a delivery of materials or services from its sub-suppliers due to reasons for which it is not accountable, or if events of force majeure occur, Mitutoyo shall notify its Customer in good time in writing. In this case, Mitutoyo is entitled to postpone the performance for the duration of the hindrance or to cancel, in whole or in part, the portion of the contract that has not yet been fulfilled, provided that Mitutoyo has met its above obligation of disclosure and has not assumed any procurement risk. Force majeure includes strikes, lock-outs, government intervention, energy or raw material shortages, transportation bottlenecks and/or operational hindrances through no fault on the part of Mitutoyo, such as due to fire, water or damage to machinery, and any and all other hindrances, for which, upon objective consideration, Mitutoyo is not responsible.

### 13.2.

If a performance and/or completion date has been agreed as binding, and if the agreed performance and completion date is exceeded due to events as described in Clause 13.1., the Customer shall be entitled, following the fruitless expiration of a reasonable subsequent period which he has set for Mitutoyo in writing, to cancel the part of the contract which has not been fulfilled, if and when the continued adherence to the contract is objectively unreasonable for him. More extensive claims on the part of the Customer, in particular claims for damage compensation, are in such cases excluded.

## 14. Shipment and Transfer of Risk, Insurance

### 14.1.

Unless otherwise agreed in writing, objects which are the subject of Mitutoyo services will be shipped, uninsured, at the risk and the expense of the Customer from the Mitutoyo branch office. Partial deliveries are permissible and may be billed separately.

### 14.2.

Selection of the transport route and the transport means shall be at Mitutoyo's discretion. However, Mitutoyo will strive to take into consideration any requests made by the Customer regarding type and route of shipment; any additional costs incurred in these cases – even if freight-free delivery has been agreed – shall be at the Customer's expense. If and when dispatch has been delayed at the request or due to the fault of the Customer, the merchandise will be stored at the Customer's expense and risk. In this case, the notification of the readiness for shipping shall be deemed the equivalent of shipment.

### 14.3.

The risk of accidental loss or accidental deterioration shall transfer to the Customer upon handover of the goods being delivered to the Customer, the forwarding agent, the freight carrier or any other company designated to carry out the shipment, but no later, however, than upon the merchandise leaving the Mitutoyo branch office or 14 days after it has been made available to the Customer when pick-up has been agreed..

### 14.4.

If and when shipment is delayed because Mitutoyo, due to full or partial default of payment by the Customer, has exercised its right of retention, or owing to any other reason for which the Customer is accountable, the risk shall transfer to the Customer no later than on the date of notification of readiness for shipping.

### 14.5.

If the object of the service is to be picked up by the Customer or a third party he has designated, the dates/times for the pick-up shall be agreed in due time with Mitutoyo.

## 15. Complaints of Defects, Breach of Obligation, Warranty

### 15.1.

The Customer shall submit written complaint of discernible breaches of obligation due to poor performance immediately, but no later than 12 days after performance, also with respect to a part of the performance usable by the Customer; written complaint of hidden defects shall be submitted immediately, but no later than within the warranty period defined in Clause 15.8. Any warranty claims for the Customer shall be excluded if complaints are not submitted in compliance with defined periods.

In the event of defects or damage discernible at the time of delivery, complaint must also be made to the transport company, and the latter must be requested to record the defects / damage. Complaints of defects must contain the most detailed description of the defects possible.

### 15.2.

Before asserting any further rights, the Customer shall issue without delay a written warning regarding any other breaches of obligation, establishing a reasonable period of time for remedy.

### 15.3.

The Customer will be charged in accordance with the general compensation rates of Mitutoyo, plus current statutory value-added tax, for complaints for which the Customer himself is accountable or for unjustified complaints, if and when they trigger activities on the part of Mitutoyo.

### 15.4.

If Mitutoyo is responsible for a defect, it shall be remedied, at Mitutoyo's discretion, by way of repair or replacement delivery free of charge; Mitutoyo

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shall be granted two attempts at subsequent performance of services. Mitutoyo will remedy any defects for which the Customer himself is responsible and unjustified complaints, provided that the Customer is a merchant, on the Customer's order and at his expense.

## 15.5.

If complaints of defects are raised, the Customer's payments may be retained solely in a scope which is in reasonable ratio to the material defects which have occurred.

## 15.6.

Mitutoyo's warranty is excluded if and when defects and related damage are not verifiably a consequence of defective material or defective execution.

Moreover, no claims due to defects shall exist for merely minor deviation from the agreed or usual properties or usability of the merchandise or service which is the subject of the contract.

## 15.7.

In the event of breach of obligations within the framework of services, Mitutoyo grants a one-year warranty, commencing upon the day of the statutory limitation period, unless otherwise expressly agreed, unless there is a case as defined in Sections 478, 479 BGB (supplier regress), or unless there is a damage compensation claim due to injury to body, life, or health, and/or unless there is fraudulent or willful conduct on the part of Mitutoyo, or unless another compulsory, longer limitation period is provided by law.

## 15.8.

Further claims by the Customer due to or associated with defects or consequential damage due to defects, regardless of the reason, shall only exist in accordance with the provisions in Clause 17, unless they are damage compensation claims arising from a performance guarantee. But Mitutoyo shall be liable only for typical and foreseeable damage or loss in this case as well.

## 15.9.

No acknowledgement of poor performance shall be deemed binding unless in writing.

## 15.10.

No reversal of the burden of proof shall be associated with the above provisions.

## 16. Retention of Title

### 16.1.

Mitutoyo retains title of ownership to any and all equipment and merchandise which it has delivered (hereinafter known collectively as "reserved goods") until such time as any and all of Mitutoyo's receivables from the business relationship with the Customer, including claims arising in the future from contracts concluded at a later time, have been settled. The above provision shall also apply to a balance in Mitutoyo's favor if and when single or all accounts due to Mitutoyo have been included in a current account and the balance has been drawn.

### 16.2.

The Customer shall insure the reserved goods adequately, in particular for loss or damage due to fire and theft. Any and all claims against the insurer from an insured event affecting the reserved goods are here and now assigned to Mitutoyo in the amount of the value of the reserved goods.

### 16.3.

The Customer is entitled to sell the delivered merchandise further in the ordinary course of business. Any other disposal, in particular pledges or pledged property rights, is not permitted. If payment is not received immediately for the reserved goods when they are sold further to third parties, the Customer is obligated to sell the goods further solely subject to retention of title. The right to sell further the reserved goods shall expire immediately if and when the Customer suspends payments or is default of payment with respect to Mitutoyo. In this case, Mitutoyo is immediately entitled to disclose the assignment and to collect the receivables.

### 16.4.

The Customer here and now assigns to Mitutoyo any and all receivables due from the final customer or third parties, including securities and ancillary rights, resulting with respect to the further sale of reserved goods. He may not conclude any agreements with his customers which would in any way exclude or impair Mitutoyo's rights or negate the advance assignment of the claim. In the event of the sale of reserved goods in combination with other goods, the receivable due from the third party shall be deemed assigned to Mitutoyo in the amount of the supply price agreed between Mitutoyo and the Customer unless the amounts attributable to the individual goods can be determined on the basis of the invoice.

### 16.5.

The Customer shall be entitled to collect the accounts assigned to Mitutoyo until Mitutoyo revokes the authorization, which is possible at any time. Upon request by Mitutoyo, he is obligated to provide to Mitutoyo the information and documents required for collection of the assigned accounts and, unless Mitutoyo does so itself, to notify his customers immediately of the assignment to Mitutoyo.

### 16.6.

In the event of a breach of contract, in particular of default of payment, Mitutoyo is entitled – without previously having to cancel the contract – to request return of all installed spare parts; the Customer is obligated to

surrender the parts without further ado. The return of the parts shall be interpreted as cancellation of the contract only if and when Mitutoyo has expressly so stated in writing or mandatory legal regulations provide for this interpretation. The Customer shall notify Mitutoyo in writing without delay of any and all attachments by third parties of reserved goods or of receivables which have been assigned to Mitutoyo.

## 16.7.

Processing and working of the reserved goods shall be undertaken on behalf of Mitutoyo as manufacturer in the sense of Section 950 BGB, but shall not obligate Mitutoyo in any way. If the reserved goods are processed or inseparably combined with other objects not belonging to Mitutoyo, Mitutoyo shall acquire co-ownership in the new object in the ratio of the invoice value of Mitutoyo's goods to the invoice values of the other processed or combined objects. If Mitutoyo's goods are combined with other movable objects into a single object which is deemed the main object, the Customer assigns here and now co-ownership in the same ratio to Mitutoyo. The Customer shall safeguard the ownership or co-ownership on behalf of Mitutoyo at no charge. The co-ownership rights which arise consequently shall be deemed reserved goods. Upon Mitutoyo's request, the Customer is obligated at any time to provide to Mitutoyo the information required to pursue its ownership or co-ownership rights.

## 17. Exemptions and Limitations of Liability

### 17.1.

Mitutoyo shall not be liable particularly for claims by the Customer for damage compensation, regardless of the legal claim, particularly in the event of breach of obligation from the contractual obligation or torts.

This shall not apply if the liability is compulsorily prescribed by law, particularly:

- in case of fraudulent, purpose or grossly negligent on the part of Mitutoyo, Mitutoyo's legal representatives or vicarious agents;
- for any breach of major contractual obligations (i.e., contractual obligations which the contract partner must be able to expect Mitutoyo to fulfill without reservation due to the nature of the legal transaction) and in the event of impossibility for which Mitutoyo is accountable and significant breach of obligation;
- if, in the case of a breach of other obligations in the sense of Section 241, Subsection 2 BGB, the Customer can no longer reasonably be expected to accept Mitutoyo's performance;
- in the event of injury to body, life, or health by Mitutoyo or its legal representatives or vicarious agents;
- if Mitutoyo has warranted the properties of a product or the successful performance of services, or has assumed a procurement risk, as well as in the case of liability in accordance with the German Product Liability Act.

### 17.2.

In other cases, Mitutoyo shall be liable for any and all claims for damages aimed at Mitutoyo or reimbursement for expenses incurred from this contractual relationship due to culpable breach of obligation, regardless of the legal claim, but not in the case of slight negligence.

### 17.3.

In the case of existing liability pursuant to Clause 17.2 and no-fault liability, particularly in the event of initial impossibility and defects in title, Mitutoyo shall only be liable for typical and foreseeable loss or damage.

### 17.4.

Mitutoyo shall be liable from the assumption of a procurement risk solely if and when Mitutoyo expressly assumed the procurement risk on the basis of a written agreement.

### 17.5.

Liability for losses of data shall be limited to typical expenditures required for restoration which would be required if backup copies have been regularly prepared as appropriate for the risk.

### 17.6.

The total amount of liability of Mitutoyo, with the exception of the cases listed in Clause 17.1, which are cases of compulsory liability, regulated by law, shall be limited to the scope of coverage provided by its manufacturer's liability insurance.

Upon the Customer's request, Mitutoyo shall at any time provide at no charge a copy of the relevant insurance policy.

In the event the insurer is exempted from paying benefits (e.g., due to breaches of obligations on the part of Mitutoyo, reaching the maximum annual coverage, etc.), Mitutoyo promises to pay benefits to the Customer from its own funds solely to a maximum amount of €100,000.00 per individual insured event, excepting, however, the case of compulsive liability regulated by law, which are listed in Clause 17.1.

### 17.7.

Liability for indirect damage and damage from consequential defects is excluded, unless Mitutoyo is in breach of a major contractual obligation or Mitutoyo, its executives, or vicarious agents are responsible for a willful or grossly negligent breach of obligation.

### 17.8.

Any further liability shall be excluded.

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## 17.9.

The exemptions or limitations on liability pursuant to Clauses 17.2 to 17.8 above shall apply in equal scope to executive and non-executive employees and other vicarious agents as well as to subcontractors of Mitutoyo.

## 17.10.

The above regulations shall not result in a reversal of the burden of proof.

## 18. Prices, Terms of Payment, Defense of Uncertainty

### 18.1.

All prices are always shown in euros plus the value-added tax to be borne by the Customer in the currently applicable amount.

### 18.2.

Performances which are not components of the agreed scope of the delivery will, in the absence of deviating agreements, be carried out on the basis of the currently applicable Mitutoyo general price lists.

### 18.3.

Mitutoyo is entitled to raise unilaterally the compensation by a reasonable amount (Section 315 BGB) in the event of an increase in material procurement costs, labor and labor ancillary costs, energy costs, and costs due to environmental requirements, if there is a period of more than four months between the conclusion of the contract and the agreed performance date. An increase in the sense of the above provisions shall be excluded if and when the cost increases in the above-mentioned factors are compensated by cost reductions in other of the mentioned factors with respect to the total cost burden for the delivery.

### 18.4.

Mitutoyo invoices are due and payable without cash discount and other discounts within 30 days of the invoice date.

### 18.5.

The Customer shall be in default of payment, even without the issue of a dunning notice, 30 days after the invoice date and – in the event of maintenance or repair service – after the return of the object of the maintenance/repair.

### 18.6.

Default interest in the amount of 8% above the current base rate will be charged from the time the Customer is in default of payment. The date of the receipt of the money by Mitutoyo or the crediting of the amount to Mitutoyo's account shall be deemed the date of payment. The above provisions are without prejudice for the assertion of more extensive loss or damage.

In other respects, the default in fulfillment of a receivable shall result in all other accounts due to Mitutoyo from the business relationship becoming due and payable immediately.

### 18.7.

If the Customer is not in compliance with the terms of payment, or if circumstances become known or discernible which, based on Mitutoyo's prudent commercial judgment, give rise to legitimate doubts regarding the customer's creditworthiness, including any circumstances which existed at the time of the conclusion of the contract, but which were not known or would not have been obvious to Mitutoyo at that time, Mitutoyo is, without prejudice for more extensive statutory rights, entitled in such cases to suspend the work on orders in progress or to suspend deliveries and to request advance payment or the provision of security acceptable to Mitutoyo for outstanding deliveries and, after fruitless lapse of a reasonable subsequent period for the provision of such security – without prejudice for further legal rights – to cancel the contract. The Customer is obligated to compensate Mitutoyo for any and all losses and damage resulting from the non-performance of the contract.

### 18.8.

If and when payments are deferred and later effected as agreed, interest in the amount of 8% above the base interest rate at the time of the conclusion of the deferment agreement will be charged for the deferment period without requiring any notice of default.

### 18.9.

The Customer shall have a right of retention or setoff solely with respect to counterclaims which are undisputed or which have been finally determined by a court of law, provided that the counterclaim is not based on a breach of a material contractual obligation on the part of Mitutoyo. The Customer may exercise a right of retention only if and when his counterclaim is based on the same contractual relationship.

### 18.10.

Mitutoyo will accept offered bills of exchange only in exceptional cases pursuant to express agreement and only on account of performance. Mitutoyo will charge discount expenses from the due date of the invoice until the expiration date of the bills of exchange as well as bill expenses. The Customer shall bear any interest and expenses for the discounting or the redemption of the bill. The day of the redemption of bills of exchange and checks shall be deemed the day of payment. In the event that the principal bank of Mitutoyo refuses to discount the bill of exchange, or in the event that there is reasonable doubt that a discount of the bill will occur during the term of the bill, Mitutoyo is entitled to request cash payment immediately by returning the bill.

## 19. Utilization of Software

If and when the Customer receives software from Mitutoyo within the scope of the service, in particular with regard to partial program creation and remote maintenance services, the "General Terms and Conditions of Licensing for the Use of Computer Programs (Software) of Mitutoyo Europe GmbH" shall apply as a supplement.

## 20. Reference to Supplementary Terms and Conditions of Business

Depending on the character of the individual contract, the following special GTB may apply as supplements:

- 1.) General Terms and Conditions of Business (GTB) for Maintenance and Repair Services of Mitutoyo Europe GmbH
- 2.) General Terms and Conditions of Business (GTB) for Remote Maintenance Services of Mitutoyo Europe GmbH
- 3.) General Terms and Conditions of Business (GTB) for the Development of Partial Programs of Mitutoyo Europe GmbH
- 4.) General Terms and Conditions of Business (GTB) for Calibration Services of Mitutoyo Europe GmbH
- 5.) General Terms and Conditions of Business (GTB) for Subcontracting Measurements of Mitutoyo Europe GmbH
- 6.) General Terms and Conditions of Business (GTB) for Training and Instruction Services of Mitutoyo Europe GmbH

The GTB mentioned above can be viewed by logging onto [www.mitutoyo.eu](http://www.mitutoyo.eu).

## 21. Place of Performance, Jurisdiction, Proper Law

### 21.1.

Place of performance for any and all contractual obligations is the registered office of Mitutoyo. To the extent legally permissible, the courts of Neuss have sole jurisdiction for any and all disputes. However, Mitutoyo is also entitled to file suit against the Customer at courts having general jurisdiction over him.

### 21.2.

Proper law governing any and all legal relationships between the Customer and Mitutoyo shall be solely and exclusively the law of Germany, excluding in particular the application of the UN CISG.

## 22. Export Control, Right to Withhold Services

### 22.1.

The export of certain goods (including services) may be subject to authorization due to, for instance, the type or intended use or final destination of the goods. The Customer is himself responsible for strictly observing the export regulations and embargos relevant to these goods, in particular the regulations and embargos of the European Union (EU), Germany and/or other EU member states, and, if applicable, those of the USA.

### 22.2.

In the event that the Customer plans to export the merchandise himself, he shall determine and insure that

- goods transferred to the customer are not designated for arms-related use or use in nuclear or weapon technology;
- no entity or person named in the US Denied Person's List (DPL) will be supplied with goods, software, or technology that originated in the US;
- no entities or persons named on the US Warning List, US Entity List, or US Specially Designated Nationals List will be supplied without the relevant authorization with goods originally produced in the US;
- no goods will be supplied to entities or persons on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists, or the European Union list of terrorist organizations;
- no goods will be supplied to military recipients;
- the early warning signs provided by the relevant German or national authorities of the particular country of origin for the delivery will be observed.

### 22.3.

Mitutoyo has the right to withhold services in the event that prior to or during performance of services, in particular during inspection of the business premises, new legal export control-related facts emerge suggesting that, from an objective point of view, there has been a violation of the embargos, or that one of the cases mentioned in Clause 22.2. exists, or that the prerequisites for an existing export authorization have not been met or have led to a new export authorization requirement.

### 22.4.

Before the start of works or services, and upon the written request of Mitutoyo, the Customer shall be obligated to provide Mitutoyo, truthfully, unsolicited and free of charge, with all of the information which Mitutoyo requires to conduct an inspection with regard to the aforementioned right to withhold services.

### 22.5.

Upon initial request, the Customer shall be obligated to indemnify and hold harmless Mitutoyo from and against any and all losses or damage suffered by

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Mitutoyo as the result of receiving incomplete or faulty information from the Customer with regard to exercising the right to withhold services in accordance with Clauses 22.3. and 22.4. above and/or due to failure to provide Mitutoyo with relevant information.

## 23. Access of E-mails

Mitutoyo is not required to retrieve incoming e-mails more than once on each business day. E-mails which are received at Mitutoyo in the time between 9:00 a.m. and 5:00 p.m. shall be deemed received at 5:00 p.m. unless the earlier receipt is verified. E-mails which Mitutoyo receives outside of these periods shall be deemed received at 5:00 p.m. on the next business day unless the earlier receipt is verified. E-mails must be sent solely and exclusively to the e-mail address given below.

[zentrale@mitutoyo.de](mailto:zentrale@mitutoyo.de)

## 24. Amendments of the GTB, Final Provisions, Remark

### 24.1.

The Customer will be notified in writing of any and all amendments to these terms and conditions of business. In addition, they may also be viewed on the Internet on the site [www.mitutoyo.eu](http://www.mitutoyo.eu). The GTB shall be deemed as accepted by the Customer if the Customer does not raise an objection in writing within the defined objection period. Mitutoyo must specifically refer to this legal consequence in the notification of the change. The Customer must send the objection to Mitutoyo within six weeks of the receipt of the notification of change.

### 24.2.

The filing of a petition for the opening of bankruptcy or composition proceedings by the Customer or his suspension of payments which is not based on rights of retention or other rights shall entitle Mitutoyo to cancel the contract at any time or to make the delivery of the purchased merchandise subject to the prior fulfillment of the payment obligation. If the purchased merchandise has already been delivered, the purchase price shall be immediately due and payable in the above-mentioned cases. Mitutoyo is also entitled to request return of the purchased merchandise in the above-mentioned cases and to retain possession until the purchase price has been paid in full.

### 24.3.

The Customer is not entitled to transfer his contractual rights without the consent of Mitutoyo.

### 24.4.

In conformity with the provisions of the German Federal Data Protection Act, Mitutoyo hereby points out that the company's accounting is processed with the aid of a computer system and that Mitutoyo in this context also saves the data obtained from the Customer in the course of the business relationship.

### 24.5.

If a current or future provision of the concluded contract should be or become, in whole or in part, invalid/void or unenforceable for reasons other than those of Section 305 – 310 BGB, the validity of the remaining provisions of the contract shall not be affected.

The same applies in the event that oversights or exclusions are found after conclusion of the contract. The Parties shall replace the invalid/void/unenforceable provision or oversight/exclusion with a valid provision that contains the legal and economic import of the invalid/void/unenforceable provision and takes into account the entire content of the contract. The application of Section 139 BGB (Partial Invalidity) is expressly excluded.