

## General Terms and Conditions of Mercateo

### Preamble

Mercateo's business model combines a wide range of products and services meeting business and professional requirements with electronic procurement functions (e-procurement). Mercateo does not have its own warehouses. Instead, it forwards orders placed by customers to its suppliers. Deliveries are sent directly to customers by suppliers in drop shipments. This procurement platform is available in several countries, operated in each case by the local Mercateo subsidiary. An overview of the individual procurement platforms and Mercateo's national subsidiaries is available at <https://www.mercateo.com/corporate/info/contractual-partners/>.

These General Terms and Conditions are divided into Part A, which governs the conditions of use of the procurement platform as well as the general terms of the contractual relationship with the Acting Person/Customer, and Part B, which sets out the conditions of sale of the items displayed on the procurement platform.

### A General Part

#### 1 Contractual subject matter

Mercateo, acting as a one-stop shop, bundles the ranges of products and services of its various suppliers on a procurement platform on which customers can order items directly from Mercateo. In addition, Mercateo offers customers various modular e-procurement functions based on separate descriptions of services and/or conditions.

#### 2.2 Definitions

**2.1** 'Mercateo' means Mercateo's respective national subsidiary operating the procurement platform for the territory where delivery is to take place. An overview of Mercateo's national subsidiaries and the individual procurement platforms is available at <https://www.mercateo.com/corporate/info/contractual-partners/>.

**2.2** 'Procurement Platform' means the country-specific electronic platform where Customers can place orders for their business and professional requirements with Mercateo. An overview of the individual procurement platforms is available at <https://www.mercateo.com/corporate/info/contractual-partners/>.

**2.3** 'Contract Territory' means the territory in which the Mercateo subsidiary fulfilling the Contract is registered.

**2.4** 'Customer' means any Entrepreneur registered on the Procurement Platform.

**2.5** 'Entrepreneur' can mean a natural or legal person or incorporated partnership acting in exercise of their commercial or independent professional activity when entering into a legal transaction, as well as a freelancer, public authority, public corporation, or association.

**2.6** 'Supplier' means a commercial Company from which Mercateo purchases Items in order to fulfil its contractual obligations to the Customer and which organizes delivery to the Customer.

**2.7** 'Acting Person' means an actual user of the Procurement Platform.

**2.8** 'Party' can mean Mercateo, an Acting Person, or a Customer.

**2.9** 'Third Party' means any entity not covered by the term 'Party'.

**2.10** 'Affiliated Company' of a Party means any legal entity, person or organisation (each a 'Company') which ...

1. is controlled by the respective Party, or
2. controls the respective Party, or

3. is controlled by the same Company as that controlling the respective Party.

'Control' means the direct or indirect ownership of more than 50% of the voting rights in such a Company or the contractually or otherwise granted power to appoint the management of this Party.

**2.11** 'Items' are the goods and services presented by Mercateo on the Procurement Platform.

**2.12** 'Contract' means any agreement between the Parties referring to the Contractual subject matter.

### 3 Inclusion of the General Terms and Conditions

**3.1** Unless agreed otherwise, the contractual relationship between the Parties is exclusively governed by these General Terms and Conditions as amended. The General Terms and Conditions can be viewed and printed at <https://www.mercateo.com/corporate/info/contractual-partners/>.

**3.2** The inclusion of any general terms and conditions of the Acting Person/Customer standing in contradiction to Mercateo's Terms and Conditions is hereby expressly rejected.

### 4 Using Mercateo

**4.1** By using the Procurement Platform, the Acting Person/Customer signifies their acceptance of these General Terms and Conditions.

**4.2** By registering a Company on Mercateo, the Acting Person enters into a user relationship with Mercateo on behalf of the registered Company. The Acting Person declares and warrants that they have the authority to commit this Company to these Terms and Conditions. In rare cases when a Company is not properly represented when a Contract is concluded, the Company must approve the user relationship by the time it places its first order on Mercateo.

**4.3** The Customer is entitled to add Affiliated Companies under its customer number whose seat is located in the same Contract Territory as the Customer, and to include them in the user relationship. The Customer declares and warrants that it has the authority to commit these Affiliated Companies to these General Terms and Conditions.

**4.4** The Acting Person/Customer will ensure that any Third Party whose services it has retained (e.g. as a service provider in connection with the Procurement Platform) complies with and accepts these General Terms and Conditions as well as all other applicable contractual agreements concluded between the Acting Person/Customer and Mercateo. The Acting Person/Customer is responsible for any act or omission committed by a Third Party which is related to its appointment by the Acting Person/Customer and which constitutes a breach of these General Terms and Conditions.

**4.5** If, after the conclusion of a Contract, Mercateo becomes aware that the Customer is not an Entrepreneur but a consumer, Mercateo may withdraw from the Contract within a reasonable period of time.

**4.6** Natural persons acting as a Company or on behalf of a Company must be at least 18 years of age.

**4.7** Mercateo grants the Acting Person/Customer a worldwide, non-exclusive, free, non-transferrable, non-sublicensable licence to use the Procurement Platform in connection with the contractual subject matter for the duration of the user relationship and in accordance with these General Terms and Conditions.

**4.8** The Acting Person/Customer is responsible for ensuring that it has the required technological wherewithal – in particular suitable hardware and operating system software, an adequate internet connection, and a standard, up-to-date internet browser – to access the Procurement Platform. Mercateo will inform the Acting Person/Customer about the system requirements upon request.

## 5 Obligations of the Acting Person

**5.1** When using the Procurement Platform, the Acting Person/Customer undertakes not to breach any applicable legal regulations, these General Terms and Conditions, or any other contractual stipulations.

**5.2** The content provided by Mercateo on the Procurement Platform or via Third Parties such as texts, graphics, logos, images and video clips is protected by local and international copyright and database law, and may not be used without the express consent of the respective rights holder. The Acting Person/Customer may not use automated programs, such as data crawling or data extraction software, to extract any significant components from the Procurement Platform or the offerings of Affiliated Companies of Mercateo or services for the purpose of reuse without the express consent of the respective rights holder. In addition, the Acting Person/Customer may not create or publish their own database containing significant parts of the offering, services or terms of the Procurement Platform without the express consent of the respective rights holder. Furthermore, the Acting Person/Customer may not carry out any modification, reverse engineering, disassembly, reconstruction, decompiling or copying of the content provided on the Procurement Platform. The onus shall be on the Acting Person/Customer to demonstrate that consent has been received from the rights holder.

## 6 Electronic communication, responsibility for access data

**6.1** The Parties agree that, unless mandatory legal stipulations require a different type of communication, all contractually relevant declarations may be submitted in written or electronic form.

**6.2** The data required by and provided to Mercateo upon registration must be complete and correct. If the data submitted changes after registration, the Acting Person/Customer agrees to update these changes in its Customer account without delay.

**6.3** The Acting Person/Customer is responsible for keeping its login data required to access the Procurement Platform confidential. The Acting Person/Customer must not pass on login data to any Third Parties.

**6.4** The Actor/Customer is responsible for the actions performed under its Customer account and is liable according to the general rules by applicable law.

**6.5** The Acting Person/Customer shall inform Mercateo without delay if it suspects that an unauthorised Third Party has obtained its login data or used its login data without authorisation, or has reason to believe that such action may be anticipated.

## 7 Liability

**7.1** Mercateo cannot be held liable for any reduced capacity or availability of the Procurement Platform (e.g. system failure, non-accessibility, non-availability, data loss) not caused by Mercateo, particularly in cases due to circumstances which are beyond Mercateo's control (e.g. disruption or outage of the telecommunications network). Moreover, Mercateo cannot be held liable if such cases have been caused by technical or operational aspects which are within Mercateo's control but do not cause the number of hours of availability in any calendar year to drop below

99.5%. Maintenance work outside usual business hours as well as on weekends and statutory public holidays shall not be deemed an outage if advance notice has been given. Reduced capacity or availability shall not constitute breach of warranty by Mercateo.

**7.2** The Acting Person/Customer is responsible for establishing and maintaining appropriate data backup systems. Mercateo can be held liable for data losses only if the Acting Person/Customer could not have avoided these data losses despite using suitable data backup systems.

**7.3** Notwithstanding the above, Mercateo will be liable without limitation for any loss arising from death or personal injury resulting from a breach of its obligations committed by Mercateo or its legal representatives or vicarious agents.

**7.4** Furthermore, Mercateo will also be liable for any other loss or damage resulting from intentional or grossly negligent breach of obligations committed by Mercateo or its legal representatives or vicarious agents.

**7.5** In the event of other loss or damage attributable to ordinary negligence, Mercateo will be liable if it has infringed a material contractual obligation. However, its liability will be limited to the loss or damage foreseeable at the time when the respective Contract was concluded and typical given the nature of the Contract, i.e., no more than €5 million per year in total. Material contractual obligations are obligations whose performance is essential for the proper execution of a Contract, and on whose performance the Supplier may reasonably depend, the breach of which will jeopardise the achievement of the contractual purpose. Mercateo will not accept liability for any loss of profit.

**7.6** The above provisions apply equally to Affiliated Companies of Mercateo.

**7.7** Liability under product liability law as well as for fraudulent intent or warranties remains unaffected.

## 8 Embargo regulations

**8.1** Neither the Acting Person/Customer nor any of its Affiliated Companies or financial institutions are subject to sanctions, are included on any list of prohibited or restricted persons or companies, or are owned or controlled by any person named on such a list, including but not limited to the sanction lists maintained by the United Nations, the European Union or its Member States, as well as lists of prohibited or restricted parties and/or products maintained by the government of the United States of America.

**8.2** The legal transactions of the Acting Person/Customer to be processed via the Procurement Platform, including related capital and payment transactions, are not affected by any embargo measures.

**8.3** If these conditions are not met, the Acting Person/Customer will be barred from using the Procurement Platform, and Mercateo will be entitled in particular to terminate the Contract for good cause without notice as well as to refuse to execute the order.

## 9 Data protection

The Acting Person/Customer shall – within its purview and at its own expense – ensure compliance with applicable national and international data protection regulations, in particular the General Data Protection Regulation (GDPR), as well as any subsequent or supplementary regulations in force. The nature and scope of Mercateo's processing of personal data are governed by its Privacy Policy, which can be viewed and printed at <https://www.mercateo.com/corporate/info/contractual-partners/>.

## 10 Confidentiality

**10.1** 'Confidential Information' means all information and documents of the other respective Party and its Affiliated Companies which have been marked as confidential or must be regarded as confidential given the circumstances (particularly information about operational procedures, business relationships and know-how).

**10.2** The Parties agree to maintain secrecy about Confidential Information.

**10.3** This confidentiality obligation does not apply to any information which:

1. the Party or its Affiliated Companies were demonstrably aware of – or were made aware of – by a Third Party at the time the respective Contract was concluded with the respective Party, without this constituting a breach of any non-disclosure agreement, legal provisions, or official regulations;
2. was public knowledge at the time the respective Contract was concluded with the respective Party or was publicly disclosed afterwards, without this being attributable to a breach of the Contract with the respective Party;
3. is disclosed to Affiliated Companies, employees or authorised representatives of the other Party insofar as they require this information for the execution of the Contract with the respective Party. Recipients of disclosed information are to be sworn to confidentiality to the same extent;
4. must be disclosed due to legal obligations or by order of a court or a public authority. As far as permissible and possible, the Party obliged to disclose the information must notify the other Party of this obligation and give the other Party an opportunity to take action against this disclosure;
5. is disclosed by employees of the disclosing Party to the competent authorities in fulfilment of rights defined in compliance standards or legal regulations.

The onus is on the Party invoking such an exception to substantiate it.

## **11 Jurisdiction, governing law language**

**11.1** The exclusive place of jurisdiction for all disputes arising out of or in connection with any Contract between the Parties as well as its conclusion and validity shall be Mercateo's seat if the Acting Person/Customer is a business entity, a public sector corporation, or a public-law special fund.

**11.2** This Contract – in particular its conclusion, validity, form, execution, termination and settlement – shall be governed by the law in force at the seat of Mercateo. The United Nations Convention on Contracts for the International Sale of Goods is excluded. The same applies to any unilateral or implied legal transactions pertaining to the Contract.

**11.3** The contractual language is the national language spoken at the seat of Mercateo.

## **12 Amendments to the General Terms and Conditions**

The Customer will be notified of any reasonable changes to non-essential elements of these General Terms and Conditions. These changes shall be deemed to have been approved if the Acting Person/Customer continues to use the Procurement Platform after the changes have come into effect and does not terminate the Contract. Mercateo will draw attention to these consequences in its notification. Mercateo will only implement such changes for valid reasons, in particular due to new technical developments, changes in jurisdiction, or other reasons of similar importance.

## **B General conditions of sale**

### **1 Conclusion of contract**

**1.1** The Customer's order is an offer to Mercateo to conclude a sales contract on the terms and conditions indicated in the order.

**1.2** Mercateo will confirm receipt of an order as soon as it has received it. This confirmation does not yet constitute acceptance of the Contract.

**1.3** The Contract is concluded:

1. through an express declaration of acceptance by Mercateo, insofar as Mercateo has agreed with the Customer to issue such a declaration of acceptance,

or

2. upon receipt of the invoice and no later than the dispatch of the Items ordered.

**1.4** In the event of an incomplete delivery, the Contract shall only be concluded for the part of the order which has been shipped.

### **2 Item details**

**2.1** The illustrations on the Procurement Platform are not binding and do not constitute an agreement regarding the quality of the respective Items.

**2.2** Prices are quoted excluding statutory value added tax (sales tax) at the applicable rate unless the price quoted on the Procurement Platform is expressly indicated as a gross price.

**2.3** In the event of incorrect pricing or a significantly inaccurate description of Items on the Procurement Platform, both Mercateo and the Customer shall be entitled to withdraw from the Contract, notwithstanding any existing statutory right of appeal. Such withdrawal must be declared without delay once the reason for withdrawal has come to the respective Party's attention. In the event of withdrawal, claims for compensation (if legally permissible) are excluded.

### **3 Availability**

**3.1** The delivery periods and availabilities stated on the Procurement Platform are based on data which Mercateo has received from the suppliers and refer to business days from Monday to Friday. They constitute non-binding information on expected delivery periods and availabilities.

**3.2** If the delivery of an Item is delayed, Mercateo will notify the Customer without delay. In this case, the Customer is entitled to withdraw from the contract and no longer bound by the order unless the Customer agrees to accept delayed delivery.

**3.3** Mercateo will inform the Customer without delay if an Item is unavailable. In this case, both the Customer and Mercateo may withdraw from the contract and are no longer bound by the order. However, this applies to Mercateo only if Mercateo is not responsible for the non-availability of the Item.

**3.4** In the event of withdrawal under the provisions contained in this section, claims for compensation (if legally permissible) are excluded.

### **4 Right of return**

**4.1** Items may only be returned if the right of return has been provided in the respective description. The terms applying to returns are set out in the Item description. They do not apply to returns based on statutory or other contractual claims, to which the Customer continues to have recourse without restriction.

**4.2** The risk of damage to or loss of a returned Item shall be borne by the Customer until the Item has been handed over to a courier specified by Mercateo.

**4.3** If a Customer wishes to return an Item it has received, the Customer may use the online form for returns and complaints in the order archive. Mercateo will examine whether the Customer is entitled to return the Item.

**4.4** The acceptance of returned Items by Mercateo does not imply recognition of the Customer's right to return them.

## 5 Delivery terms

**5.1** Mercateo's marketplace-like business model means that delivery by instalments is inherent to the system. The Customer agrees to accept delivery by instalments unless it can demonstrate that this is economically unacceptable. In this case, the Customer may withdraw from the Contract.

**5.2** The costs for the shipment of Items vary from one Supplier to the next. The actual costs are shown in the shopping basket, displayed separately for each Supplier. The Items ordered will be shipped by a courier chosen by the Supplier organizing delivery.

**5.3** Delivery will take place in accordance with Incoterms 2020 DPU (Delivered at Place Unloaded), where the named place of destination is the mainland delivery address specified by the Buyer for the order, unless the Supplier has provided a different delivery instruction in the Item description. Contrary to Incoterms 2020 DPU, the Customer shall bear all costs of the transport of the Items to the named place of destination, including unloading costs.

**5.4** If Items are to be delivered to an island, additional costs may be incurred, which will be charged to the buyer. Please contact Mercateo's customer service team to find out the additional costs involved.

**5.5** Under certain circumstances, Items sold by Mercateo may be subject to export control regulations of the European Union, individual Member States of the European Union, and/or the USA. The Customer is responsible for compliance with these export control regulations. Compliance with export control regulations means that the Customer is not allowed to sell or deliver any goods purchased from Mercateo directly or indirectly to any Third Parties or countries if this would violate these export control regulations. It is the sole responsibility of the Customer to find out about relevant export control regulations. Mercateo can only guarantee compliance with the relevant regulations in the Contract Territory originally selected.

**5.6** Mercateo is not obliged to issue to or obtain for the Customer an individual supplier's or a long-term supplier's declaration.

## 6 Invoice and terms of payment

**6.1** Unless otherwise agreed, invoices are issued in electronic form. The Customer agrees that invoices may be transmitted electronically.

**6.2** A credit assessment carried out by Mercateo may, in individual cases, result in delivery only being made against advance payment. In such cases, Mercateo is entitled to refuse delivery until payment has been received.

**6.3** Payment shall be due immediately after invoicing without any deductions unless agreed otherwise between Mercateo and the Customer.

**6.4** In the event of late payment, all receivables shall become due immediately, including those for which Mercateo has granted the Customer a period of credit.

## 7 Reservation of title

**7.1** Items delivered remain the property of Mercateo until the purchase price has been paid in full.

**7.2** The Customer is not entitled to pledge Items under retention of title, to assign them as collateral, or to grant Third Parties any other rights of collateral to Items. Should a Third Party nevertheless acquire rights to an Item, the Customer here and now assigns all subsequent rights it acquires thereby to Mercateo, and Mercateo accepts such assignment. The Customer must inform Mercateo without delay if the Item concerned has been pledged, seized, or otherwise disposed of by a Third Party.

**7.3** The Customer is entitled to process and/or sell the Item in the ordinary course of business. If the Item is sold, at the time of the order the Customer will assign to Mercateo the claims arising from resale and any other claims taking the place of the Item or otherwise arising with regard to the Item to the amount of the Item's value. Mercateo accepts this assignment.

**7.4** The retained title or claim will be released by Mercateo once the realisable value exceeds the amount of the secured claim against the Customer by more than 10 %.

## 8 Duty of inspection, notification and rejection

**8.1** The Customer must inspect an Item without delay on receipt (to the extent that this is practical in the ordinary course of business). If a defect is discovered, it must be reported to Mercateo without delay, and no later than one week after the receipt of the Item.

**8.2** A Customer failing to provide such notification of a defect in good time shall be deemed to have accepted the Item, unless the defect in question could not have been discerned in such an inspection.

**8.3** If a defect subsequently appears, Mercateo must be notified without delay following its discovery. Otherwise, the Item will be deemed to have been accepted notwithstanding such a defect.

**8.4** Notification of defects must be submitted in good time to protect the Customer's rights. To contact Mercateo, the Customer can use the online form for returns and complaints in the order archive.

**8.5** If Mercateo has fraudulently concealed any defects, it may not invoke the provisions set out in this section.

## 9 Warranty

**9.1** Claims based on a defect in the Item sold will become barred under the statute of limitations one year after its delivery unless the Supplier has granted Mercateo a longer warranty period, in which case the warranty period that is the more favourable for the Customer will apply. If Mercateo has fraudulently concealed the defect in the Item, the statutory warranty period will apply.

**9.2** If the article is defective, Mercateo will, at its discretion, remedy the defect by:

1. repairing the Item,

oder

2. replacing the faulty Item with a non-faulty Item.

**9.3** If Mercateo delivers a non-faulty Item to the Customer by way of replacement, Mercateo may demand the return of the faulty Item from the Customer.

**9.4** If two replacement Items delivered within a reasonable period of time are also faulty, the Customer shall be entitled to withdraw from the Contract or to reduce the purchase price. Further claims by the Customer are excluded.

**9.5** This shall not affect warranty claims, in particular claims for compensation under the respective statutory requirements.

**9.6** Acceptance by Mercateo of an Item returned by the Customer does not imply recognition of the Customer's entitlement to a warranty claim. Mercateo will examine the circumstances to determine whether such entitlement exists.

**9.7** This shall have no effect on independent warranties issued by the manufacturer and/or the Supplier of Items delivered.

**9.8** Before asserting its warranty rights, the Customer may contact Mercateo's customer service team to agree on how to handle the matter and to enable any warranty claims to be dealt with swiftly.