

General Terms and Conditions of Business (GTB) for Remote Maintenance Services of Mitutoyo Europe GmbH

1. Scope of Application

1.1. The following Terms and Conditions apply supplementarily to the General Terms and Conditions (GTB) for Works and Services of Mitutoyo Europe GmbH as sole authority governing the business relationships of Mitutoyo Europe GmbH (hereinafter known as "Mitutoyo") and its Customers, including information and consulting related to maintenance and repair by Mitutoyo.

1.2. These Terms and Conditions apply solely and exclusively to companies in the sense of Section 14 BGB (German Civil Code).

2. Right of Retention, Commencement of Service

2.1. The commencement of the remote maintenance service shall always be determined in accordance with the content of the concluded software service agreement. In the absence of deviating regulations, the service will otherwise commence 14 days after installation and configuration of the required remote maintenance equipment.

2.2. If the Customer's information required for the performance of the agreement (e.g., regarding the internal network structure) proves to be incorrect, Mitutoyo is entitled to suspend performance of the service until the Customer has provided the correct information.

3. Industrial Property Rights and Copyrights, Legal Defects

3.1. Unless otherwise agreed, Mitutoyo is obligated to perform delivery and service free of industrial property rights and third-party copyrights (hereinafter known as property rights) solely in the country of the contractually agreed place of performance. If and when a third party raises legitimate claims against the Customer regarding the violation of property rights by deliveries performed by Mitutoyo and used in accordance with the contract, Mitutoyo shall be liable with respect to the Customer solely and exclusively pursuant to Clauses 3.2. to 3.5.

3.2. Mitutoyo will, at its discretion, either contract a usufruct for the relevant deliveries/services at its expense, change the delivery/service in such a manner that it does not violate the property right, or replace the delivery/service. If this is not possible for Mitutoyo under reasonable conditions, the Customer shall be entitled to legal rights of cancellation or reduction of the price. The Customer cannot request compensation for fruitless expenses.

3.3. The above-mentioned obligations of Mitutoyo shall exist only if and when the Customer has notified Mitutoyo immediately in writing of the claims asserted by the third party, has not acknowledged a violation, and Mitutoyo retains the right to conduct any and all defense measures and settlement negotiations. If the Customer suspends the use of the delivery/service to minimize the loss or damage or for other reasons, he is obligated to point out to the third party that the suspension of use does not entail any acknowledgement of a violation of the property right.

3.4. Customer's claims shall be excluded if and when he is accountable for the property right violation.

3.5. Moreover, Customer's claims shall be excluded if and when the violation of the property right was caused by specific instructions on the part of the Customer, by a use which was not intended by Mitutoyo, or if it was a result of the Customer modifying the software provided to the Customer within the framework of the remote maintenance or of his using the software with products which were not delivered by Mitutoyo, if this was not done in accordance with agreements.

4. Changes of Terms and Conditions of Business, Severance, Reference

4.1. The Customer will be notified in writing of any and all amendments to these terms and conditions of business. They 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.

4.2. If individual provisions of the contract should be invalid, the remaining provisions shall remain fully valid. A regulation which comes closest to the original intent within the scope of what is legally permissible shall apply without further ado in lieu of the invalid provision.

The same applies in the event that oversights or exclusions are found after conclusion of the contract. The Parties shall replace an invalid/void/unenforceable provision or an 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.

4.3. In conformity with the provisions of the German Federal Data Protection Act, Mitutoyo hereby points out that the company is managed 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.