

## **General Terms and Conditions of Metreg Technologies GmbH**

### **§ 1 General, Scope**

- (1) These general terms and conditions (GTC) apply to all our business relationships with our customers, if the customer is an entrepreneur (§ 14 BGB), a legal person under public law or a public special fund.
- (2) The terms and conditions shall apply in particular to contracts for the sale and/or delivery of movable goods (hereinafter also: "goods"), without regard to whether we produce the goods ourselves or buy them from suppliers (§§ 433, 651 BGB). The terms and conditions are valid in their respective version as a framework agreement also for future contracts for the sale and/or supply of movable goods with the same customer, without us again having to reference them in each case; we will inform the customer immediately in the case of changes to our terms and conditions.
- (3) Our general terms and conditions apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the customer only become part of the agreement when and as far as we have expressly consented to their validity. This requirement of consent applies in every case, for example, even if we carry out the delivery to the customer unconditionally with awareness of the terms and conditions of the customer.
- (4) In certain cases individual agreements with the customer (including ancillary agreements, additions and changes) take precedence in each case over these terms and conditions. A written contract or our written confirmation is authoritative for the content of such agreements.
- (5) Legally relevant declarations and notices that are to be submitted to us by the customer after conclusion of the contract (e.g. deadlines, defects, declaration of withdrawal or reduction) require the written form for their effectiveness.
- (6) Notes on the applicability of statutory provisions are only for guidance. Even without such clarification, the statutory provisions shall apply insofar as they are not directly changed or expressly excluded in these terms and conditions.

### **§ 2 Conclusion of contract**

- (1) Our offers are non-binding and without obligation. This also applies if we provide the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, estimates, references to DIN standards), other product descriptions or documents - also in electronic form. We reserve the property rights and copyrights for the aforementioned documents. After conclusion of the contract or if the contract fails to be concluded, they are to be released to us or destroyed, if there are copies or electronic files.

(2) The order of the goods by the customer is considered to be a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 14 days of its receipt by us.

(3) The acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the customer.

### **§ 3 Delivery and delay in delivery**

(1) The delivery time is agreed individually or specified by us upon acceptance of the order. If this is not the case, the delivery period is approximately [...] weeks after the conclusion of the contract. The delivery time begins at the earliest upon receipt of all information, documents, approvals, permits, releases, power of attorney documents or other documents or information that we need to be granted by the customer for the execution of the order, or we cannot be expected to carry out the order in the absence of these. If the customer is obliged to provide material for the manufacture of the goods, then the delivery period begins no earlier than the delivery of the material.

(2) If we cannot observe binding delivery times for reasons, for which we are not responsible, (unavailability of performance), we will inform the customer of this immediately and at the same time communicate the prospective new time for delivery. If the performance is also not available within the new delivery period, we shall be entitled to withdraw fully or partially from the contract; we will refund already rendered consideration of the customer. As a case of unavailability of performance in this sense the following shall apply: late delivery by our suppliers, if we have completed a congruent covering transaction, neither we nor our suppliers is at fault or we are not obliged to the procurement in a particular case.

(3) The occurrence of our default in delivery shall be determined according to the legal regulations. However, in any case, a written warning by the customer is required.

(4) The rights of the customer pursuant to § 8 of these terms and conditions and our legal rights, especially in the case of an exclusion of the obligation of performance (e.g. due to impossibility or unreasonableness of the performance and/or subsequent performance), remain unaffected.

### **§ 4 Delivery, transfer of risk, acceptance, default acceptance**

(1) The delivery shall take place ex warehouse, which is also the place of performance. At the request and expense of the customer, the goods will be sent to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we shall be entitled to determine by ourselves the type of shipping (in particular transport companies, shipping packaging).

(2) The risk of accidental loss and accidental deterioration of the goods is passed to the customer at the latest on delivery. In the case of sale by delivery to a place other than the place of performance however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay is already transferred at the handover of the goods to the forwarding agent, the carrier or another person or institution appointed to carry out said delivery. As far as acceptance is agreed, this is crucial for the transfer of risk. In addition the statutory provisions shall also apply accordingly for an agreed acceptance of work contract law. If the customer is in default of acceptance, this is equivalent to delivery or acceptance.

(3) We are entitled to partial deliveries, if

- the partial delivery is suitable for the customer in the context of the intended purpose of the contract,
- the delivery of the remainder of the ordered goods is ensured and
- the customer incurs no significant additional expenses or additional costs (unless we agree to take over these expenses).

(4) If the customer is in default of acceptance, he refrains from an act of participation or our delivery is delayed due to others reasons for which the customer is responsible, we shall be entitled to demand compensation for resulting damage including additional expenditures (e.g. storage costs). For this, we charge a flat-rate compensation in the amount of 1% of the net order amount per calendar day, but not more than € 500.00, but at least € 50.00, starting with the delivery date or - in the absence of a delivery period - with the notification of readiness for dispatch of the goods. If the goods will be picked up or should be installed by us, the date of collection or installation is at this point. The proof of a higher damage and our statutory rights (in particular refund of additional expenses, appropriate compensation, termination) shall remain unaffected; the flat-rate is however to be offset against further monetary claims. We are entitled to prove to the customer that no or only substantially lower damages have arisen than the above mentioned flat rate.

## **§ 5 Prices and payment terms**

(1) Unless otherwise agreed in individual cases, our current prices at the time of the conclusion of the contract, from the warehouse, plus sales tax shall apply.

(2) In the case of sale by delivery to a place other than the place of performance (§ 4 para 1) the customer shall bear the cost of transport from storage and the cost of transport insurance if required by the customer.

If we do not invoice the transport costs actually incurred in each individual case, a transport expenses flat rate will apply (excluding transport insurance) in the amount of € 100.00 as agreed. The customer shall bear any duties, fees, taxes and other public charges. We do not take back transport and all other packaging in accordance with the provisions of the packaging ordinance, they become the property of the customer; with the exclusion of pallets.

(3) The purchase price is due and payable within 14 days from invoicing and delivery or acceptance of the goods. For contracts with a delivery value of more than € 10,000.00 we are however entitled to request a down payment in the amount of 10% of the purchase price. The down payment is due and payable within 14 days from the date of issue of the invoice.

(4) With the expiry of the above payment deadline, the customer is in default. The purchase price will have interest applied to it during the delay at the respectively applicable statutory default interest rate. We reserve the right to claim further damages caused by delay. Our claim to commercial maturity interest (§ 353 HGB) with regard to business people remains unaffected.

(5) The customer is entitled to set-off or retention rights only to the extent that his claim is legally established or undisputed. In case of defects of the delivery the opposing rights of the customer remain unaffected, in particular pursuant to § 7 paragraph 6 clause 2 of these GTC.

(6) If it becomes apparent after conclusion of the contract that our claim to the purchase price is vulnerable due to lack of capability of the customer (e.g. through application for opening of insolvency proceedings), we are entitled to withdraw from the contract according to the legal regulations on refusal of performance and - where appropriate after setting deadline - (§ 321 BGB). In contracts for the manufacture of non-fungible goods (custom-made products), we can withdraw immediately; the statutory regulations concerning the dispensability of the deadline shall remain unaffected.

## **§ 6 Retention of title**

(1) Up to the complete payment of all our current and future claims arising from the purchase agreement and an ongoing business relationship (secured claims), we reserve ownership of the goods sold.

(2) Goods under reservation of ownership prior to full payment of the secured claims may be neither pledged to third parties, nor assigned as security. The customer must notify us immediately in writing if and to the extent that third parties gain access to the goods belonging to us.

(3) For breach of contract by the customer, in particular for non-payment of the due purchase price, we are entitled under the statutory provisions, to withdraw from the contract and to demand the goods on the basis of the retention of title and the withdrawal. If the customer does not pay the due purchase price, we may only assert these rights if we previously unsuccessfully set a reasonable deadline for the customer to pay or such a deadline is not necessary according to the statutory regulations.

(4) The customer is entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following additional provisions apply:

- (a) The retention of title covers the full value of products arising from the processing, mixing or combining of our products, whereby we are deemed the manufacturer. If retention of title rights of third parties remain after processing, mixing or combining with their goods, we shall acquire co-ownership in the ratio of the invoice value of the processed, mixed or combined goods. In addition, the same applies to the resulting product as for the goods delivered under retention of title.
- (b) The customer assigns any claims against third parties arising from the resale of the goods or of the product already now completely or in the amount of our co-ownership share referred to in the preceding paragraph to us as security. We accept the assignation. The obligations of the customer referred to in paragraph 2 shall also apply in consideration of the assigned claims.
- (c) The customer remains entitled to collect the claim as well as us. We commit ourselves not to collect that claim, as long as the customer complies with his payment obligations towards us, does not become in default of payment, there is no application to open insolvency proceedings and no other deficiency of his capability. If this however is the case, then we can require that the customer discloses to us the assigned claims and their debtors, all information necessary for the collection, corresponding documents and notifies the debtors (third parties) of the assignment.
- (d) If the realisable value of the securities exceeds our claims by more than 10%, we will release collateral at our discretion at the request of the customer.

## **§ 7 Warranty claims of the customer**

(1) For the rights of the customer for material and legal defects (including false and short delivery and improper installation or poor assembly instructions), the statutory provisions shall apply, unless otherwise provided in the following. The statutory special regulations for final delivery of the goods to a consumer shall remain unaffected in all cases (supplier recourse pursuant to (§§ 478, 479 BGB).

(2) The basis for our liability for defects is principally the agreement about the nature of the goods. The designated product descriptions (also of the manufacturer), which were made available to the customer before his order or included in the same way as these terms and conditions in the contract, are considered to be the agreement on the nature of the goods.

(3) As far as the quality is not agreed, it is to be assessed whether a defect exists or not based on the statutory legislation (§ 434 paragraph 1 Clauses 2 and 3 BGB). We assume no liability for public statements of the manufacturer or other third parties (e.g. advertising). Changes in the shape, design or appearance, as well as the exchange of certain components of our goods, which offer the customer the same or better functionality and quality, represent no defects. If certain characteristics have been agreed with the customer, which have been changed on our goods due to technical progress, we will promptly inform the customer of this. If he does not immediately raise objections to the change, at the latest however within 7 days, the change in the nature of the goods is deemed to be approved.

(4) The warranty claims of the customer require that he has fulfilled his statutory examination and complaint obligations (§§ 377, 381 HGB). If a defect is noticed on investigation or later, this must be notified to us immediately in writing. The notification is considered immediate, if it is made within 5 days, whereby timely dispatch of the notification is enough to meet the deadline as far as the notification proceeds to us without delay. Delayed or lack of receipt of notification will be at the expense of the customer, even if he is not responsible for this (in particular for loss by the carrier). Regardless of this duty to inspect and give notice of defects, the customer has to notify of obvious defects (including incorrect and short delivery) within two weeks after delivery in writing, whereby again the timely dispatch of the display is sufficient for meeting the deadline. If the customer misses the proper examination and/or defect notification, our liability for the non-disclosed defect is excluded.

(5) If the supplied goods are defective, the customer may demand as supplementary performance firstly at his discretion rectification of the defect (repair) or delivery of faultless goods (replacement delivery). If the customer does not declare which of the two rights he chooses, then we can set him a reasonable time limit. If the customer does not make a choice within the time limit, the right to choose expires at the end of the period.

(6) We are entitled to make the supplementary performance dependent on the customer paying the due purchase price. The customer is however entitled to withhold a reasonable portion of the purchase price in relation to the defect.



(7) The customer must give us the time and opportunity required for supplementary performance, in particular to hand over the goods for inspection purposes. In the case of a replacement delivery, the customer must return to us the defective item according to the legal regulations. Supplementary performance includes neither the removal of the defective item nor its reinstallation, if we were not originally required to perform the installation.

(8) We shall bear the expenses required for the purpose of testing and supplementary performance, in particular transport, tolls, working and material costs (not: removal and installation costs), if indeed a defect exists. If however a deficiency removal request of the customer turns out to be unjustified, we can demand reimbursement for the costs thereof from the customer.

(9) In urgent cases such as danger to operational safety or to prevent excessive damage, the customer has the right to eliminate the defect himself and to demand compensation of the objectively necessary expenses from us. We must immediately be notified of such a self-remedy beforehand if possible. The self-remedy right (or a claim of the customer arising from this) does not exist if we would be entitled to refuse a corresponding subsequent performance under the statutory provisions.

(10) If the supplementary performance has failed or a reasonable period for subsequent performance set by the customer has unsuccessfully expired or is unnecessary under the statutory provisions, the customer can withdraw from the contract or reduce the purchase price. In the case of an insignificant deficiency, there is no right of withdrawal.

(11) Claims of the customer to damages or compensation for futile expenses exist only in accordance with § 8 and are otherwise excluded.

## **§ 8 Other liability**

(1) Unless otherwise stated in these terms and conditions including in the following provisions, we shall be liable for a breach of contractual and non-contractual obligations only according to the relevant statutory regulations.

(2) We are liable for damage compensation - for whatever legal reason - in case of intent and gross negligence. In case of ordinary negligence, we shall be liable only

- a) for damages resulting from the injury of life, body or health;
- b) for damages resulting from the breach of an essential contractual obligation (obligation, whose fulfilment is made possible by the proper implementation of the contract and on whose compliance the contractual partner can regularly rely); in this case however, our liability is limited to the replacement of the foreseeable, typically occurring damage.

(3) The limitations of liability arising from para. 2 do not apply if we have fraudulently concealed a defect or have assumed a guarantee for the condition of the goods. The same applies to the customer's claims under the Product Liability Act.

(4) Because of a breach of duty which does not consist of a defect, the customer can only withdraw or terminate if we are responsible for the breach of duty. If the customer is entitled to the right of free termination (§ 649 BGB and §§ 651, 649 BGB), § 649 clause 3 BGB applies, provided that in the case of cancellation 24 hours prior to start of production, 50%, 10 days before start of production 35% and otherwise 10% of the agreed compensation attributable to the non-fulfilled part of work performance is due. In addition, the statutory requirements and legal consequences, in particular the opportunity to prove an actually higher or lower fee shall apply. If not we but our suppliers or subcontractors carry out the manufacture or adaptation, a termination is excluded, if we have already concluded the contract for the delivery, manufacture or adjustment of the goods with these. In addition, the statutory requirements and legal consequences shall apply.

## **§ 9 Limitation period**

(1) By way of derogation from § 438 paragraph 1 No. 3 BGB, the general limitation period for claims arising from property damage and defects of title is one year after delivery to the customer or the person that is specified for the transport. As far as acceptance is agreed, the limitation period begins upon acceptance.

(2) If the product is a building or a thing that has been used as a building according to its customary use and has caused its defectiveness (building materials), the period of limitation is five years after delivery in accordance with the statutory legislation (§ 438 paragraph 1 No. 2 BGB). Statutory exemptions for third party claims for return (§ 438 para. 1 No. 1 BGB), fraud of the seller (§ 438 para. 3 BGB) and for claims in the recourse against the supplier for final delivery to a consumer (§ 479 BGB) also remain unaffected.

(3) The foregoing limitation periods of commercial law also apply to contractual and non-contractual primary, secondary and tertiary claims of the customer, unless the application of the regular statutory limitation (§§ 195, 199 BGB) would lead to a shorter statute of limitations in individual cases. The limitation periods of product liability law as well as for damages resulting from the injury of life, body or health remain unaffected.



## § 10 Proprietary rights

(1) If the goods are to be manufactured according to drawings, models, patterns or using material provided by the customer, then the customer is responsible, that rights of third parties are not violated by this. In case of a breach of this obligation, the customer must assist us in our defence against third party claims, indemnify us on first request from all related claims of third parties and reimburse us for any damage including any court and lawyer's fees incurred for legal defense. We will notify the customer, insofar as we are aware of such rights of third parties. If a third party in the case of para. 1 clause 1 maintains that the goods to be manufactured by us infringe a proprietary right related to him, we shall be entitled to interrupt further production without examination of the legal situation; in the case of an agreed delivery period, this is extended during this time. The customer bears the costs for the interruption, even if the third party was not entitled to the rights claimed by him. However, we will assign to the customer any claims we have against the third party. If the legal situation between the customer and the third party has not been clarified after a reasonable period of time and in our view it cannot be ruled out that the claims asserted by the third party are valid, we can withdraw from the contract and recover damages according to the statutory provisions. The customer is not entitled to damages in this case, even if the claim of the third party was ultimately not valid.

(2) Each contractual partner will notify the other contractual partner immediately in writing, if claims have been asserted against him for the violation of such rights.

(3) If the goods are manufactured on the basis of models, forms and devices designed by us, we are entitled to copyright and possibly other intellectual property rights on the designed models, forms and devices, drafts and drawings. The customer must indicate our copyright upon resale and in relevant catalogues, as well as other pictures or descriptive representations by attaching a copyright notice.

(4) In the event that the goods, which were manufactured on the basis of models, forms and devices designed by us, should violate an industrial copyright or intellectual property right of a third party, then we will amend or replace the goods at our discretion, so that the rights of third parties are no longer violated and the goods continue to fulfill the contracted functions or give the customer the right of use through conclusion of a licence contract. If we do not succeed in doing this within a reasonable period of time, the customer is entitled to withdraw from the contract or to reduce the purchase price. Any claims for damages of the customer are subject to the restrictions of § 9 of these terms and conditions.

## § 11 Claims of third parties

Should third parties raise claims against one party which may lead to claims for compensation against the other party, then the affected party is obliged to inform the other party in good time, to declare the reasons for this claim, and give him the opportunity to defend these claims. No party is entitled without the consent or participation of the other party to submit an acknowledgement, to conclude a settlement or to make payment. A breach of this obligation leads to the exclusion of the claim of compensation, unless the other party has rejected the participation or refuses consent without reasonable grounds.

## § 12 Confidentiality

- (1) "Confidential information" is all information and documents of the respective other party that are marked as confidential or from the circumstances are to be seen as confidential, in particular information on operational processes, business relationships and expertise.
- (2) The parties agree to maintain the strict confidentiality of such confidential information. This obligation continues for a period of five years after the end of this contract.
- (3) Excluded from this obligation is confidential information,
  - (a) which was provably already known to the receiver at the conclusion of the contract or thereafter became known from a third party, without damaging a confidentiality agreement, statutory regulations or official ordinances;
  - (b) which is publicly known at the conclusion of the contract or is subsequently made public, as far as this does not constitute a breach of this agreement;
  - (c) which must be disclosed due to legal obligations, or on the order of a court or a public authority. As far as is permissible and possible the receiver committed to the disclosure will inform the other party in advance and give him the opportunity to take action against the disclosure.
- (4) The parties will only grant consultants access to confidential information, who are subject to the obligation of professional secrecy or on whom the corresponding obligations of the confidentiality requirements herein have previously been imposed. In addition the parties will disclose the confidential information only to those employees, who need to know it for the execution of this contract, and these employees are committed to the confidentiality obligation also for the time after their departure to the extent legally permissible under industrial law
- (5) In the case of breach of the above confidentiality obligations, the acting party is required to compensate for the loss incurred.

### **§ 13 Final provisions**

(1) These terms and conditions and all legal relationships between us and the customer are subject to the law of the Federal Republic of Germany under exclusion of international uniform law, in particular of the UN-purchase law. Conditions and effects of the retention of title pursuant to § 6 are subject to the law of the respective location of the item as far as thereafter the choice of law in favour of German law is inadmissible or ineffective.

(2) If the customer is a businessperson in the context of the commercial code, legal entity under public law or a special fund under public law, the exclusive - also international - jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our place of business in 15517 Fürstenwalde. We are however also entitled to take legal action at the general place of jurisdiction of the customer.

(3) As far as the validity of § 126, § 126a or § 126b BGB, in particular the requirement for written form, is constitutively agreed by these terms and conditions or otherwise, between the parties, the presumption provided in § 127 BGB fundamentally applies. This specifically applies to defects and complaints (§§ 377, 381 HGB) by the customer. By derogation, § 127 BGB is however excluded for constitutive declarations of the customer, in particular reductions, cancellations, declarations of avoidance or revocation as well as all kinds of deadlines and requests for payment of the customer, in particular if the course of interest rates or the observance of time limits is connected with these.

(4) If any provision of a contract concluded with the customer should be or become invalid, impossible or unenforceable, the contract remains effective. The parties undertake to agree an effective regulation in place of the invalid provision, which comes economically closest to the purpose of the invalid provision. The same applies to the case that the contract contains a loophole.

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