

**General Terms and Conditions of Sale**  
**MC Metallhandel GmbH, Frankfurt**

**1. General**

- (a) The following terms and conditions shall apply exclusively to all deliveries and services, also to those under future contracts, unless expressly agreed otherwise in writing in a particular case. These terms and conditions are deemed to be accepted upon receipt of goods at the latest.
- (b) The invalidity of one or more of the following provisions shall not affect the validity of the other terms and conditions.

**2. Offers / Conclusion of Contract**

- (a) All offers are not binding.
- (b) Contractual arrangements of any kind shall only be legally binding if they have been confirmed by the Seller or if the contract has been performed.

**3. Shipment / Passing of Risk**

- (a) Unless otherwise agreed, goods shall be shipped uninsured, for the account and at the risk of the Buyer. Risk shall pass ex supplier's works or ex warehouse, upon loading of the goods onto the first means of transport at the latest.
- (b) In the absence of specific instructions given by the Buyer, the transport route and the means of transport shall be chosen by the Seller to the best of its judgment without any liability for the cheapest and fastest carriage of goods.
- (c) In the case of FOB, C&F and CIF deliveries as well as deliveries on a carriage paid and/or carriage paid and insured basis to the agreed place at destination, Incoterms in their latest version shall apply.

**4. Deliveries / Impairment of Delivery**

- (a) Partial deliveries and premature deliveries are permitted.
- (b) The delivery times stated are valid subject to force majeure (strike, industrial disputes, accidents, lack or shortage of means of transport, natural disasters, fire, explosion, war, war-like operations), punctual self-supply and sufficient licence and the maintenance thereof as well as undisturbed functioning of production and transport.
- (c) If the obstruction according to subparagraph b) continues for a longer time, the Seller shall be entitled to delay delivery accordingly or, at its option, to rescind the contract in whole or in part immediately or at a later point in time. The Buyer shall be entitled to rescind the contract if, at the Buyer's request, the Seller does not state whether it will rescind the contract or deliver within a reasonable period of time and if the execution of the contract has become unreasonable for the Buyer.

**5. Weights / Quality**

- (a) The measurements and data recorded and documented at the place of dispatch of the Seller or the Seller's supplier are relevant to the weights, quantities and qualities.
- (b) The Seller shall be entitled to deliver up to 5% more or less in so far as this is reasonable for the Buyer taking all circumstances into account or unless otherwise agreed.

**6. Acceptance**

- (a) If the Buyer delays acceptance/taking delivery in whole or in part, it is the Seller's choice either to deliver the outstanding quantities or to store the same at the Buyer's risk and expense and invoice them as delivered taking account of all costs incurred, or to rescind the contract setting a reasonable time-limit and/or to claim damages.
- (b) Upon delay of acceptance any duty of the Seller to effect advance performance which may have been agreed shall end and the Seller shall only be obligated to effect delivery against advance payment of the purchase price. The verbal offer shall suffice to give notice of default as regards each further partial quantity if the quantity delivered was actually ready for delivery at the time of the offer.

**7. Prices**

- (a) Unless otherwise agreed, prices shall be exclusive taxes (such as value-added tax) and customs duties.
- (b) If transport costs or similar incidental expenses (such as storage costs/cargo handling charges, etc.) are raised between conclusion of the contract and the performance thereof, or if additional and/or higher customs duties, taxes or other public charges are imposed on the goods, or if the Seller's cost price rises because of a price increase owing to governmental measures in the country of the Seller's supplier, the price shall increase accordingly.

**8. Claims Arising From Defects / Liability**

- (a) The Buyer has to examine the goods delivered for faultlessness and suitability for the intended purpose immediately, however, in any case before processing, among other things according to the Usancen und Klassifizierungen des Metallhandels (Habitual Practices and Classifications of the Metal Trade) (published by the Verein Deutscher Metallhändler e.V., Association of German Metal Traders) in their latest version. Notices of defect and complaints – also with regard to differences in weight – must be given/lodged in writing, by telegram or telex without delay in accordance with the aforementioned habitual practices as soon as goods are received or the fault is discovered. Any defects are to be described in detail and discernible reasons therefor and causes thereof must be stated. At the same time, required evidence has to be presented in coordination with the Seller.
- (b) The Buyer must give the Seller and its supplier the opportunity to satisfy themselves as to the justification of complaints. If the Buyer fails to do so, any and all claims arising from defects will cease to exist.
- (c) Goods in respect of which a notice of defect or a complaint has not been given/lodged in time or correctly shall be deemed to have been accepted. The Seller's silence in reply to a complaint shall not be deemed to be an admission. Partial defects cannot result in a complaint about the entire delivery.
- (d) Notices of defect and complaints shall be excluded as soon as the Buyer has begun treatment or processing, unless a hidden defect is concerned.
- (e) In the event of a justified complaint about goods, the Seller may choose to remedy the defect or deliver goods free of defects.
- (f) The Seller shall only be liable for damages, on whatever legal grounds, subject to the following conditions: (aa) To an unlimited extent on the merits and in terms of amount if the Seller or its executives is/are responsible for intent or gross negligence. (bb) On the merits in each case of culpable infringement of essential contractual obligations. (cc) On the merits in the event of an infringement of nonessential contractual obligations if the conduct resulting in the damage is attributable to intent or gross negligence of an ordinary vicarious agent of the Seller. (dd) Otherwise, liability shall be excluded.
- (g) With the exception of a liability according to subparagraph f (aa), liability shall be limited in terms of amount as follows: (aa) Reparation of any damage not affecting the sold goods themselves shall be excluded. (bb) In the case of default and impossibility, liability shall be limited to the amount of the additional expenses required for the purchase of goods in replacement. (cc)

Otherwise, liability shall be limited to reparation of the damage which the Seller anticipated as a possible result of the breach of contract upon conclusion of contract, or which the Seller should have anticipated taking into account the circumstances of which it was aware or should have been aware.

- (h) All claims under the German Product Liability Act shall remain unaffected thereby.
- (i) If the Buyer remedies a defect of quality itself or through a third party and if the Seller has agreed in writing to such an action in advance, the Buyer shall be entitled to demand reimbursement of the costs actually incurred, however, at the most such costs as the Seller or its supplier would have paid for remedying the defect.
- (j) All claims of the Buyer become statute-barred one year after delivery. The periods prescribed by law shall apply to cases of wilful or fraudulent conduct as well as in the event of claims under the German Product Liability Act.

**9. Payment**

- (a) If no periods for payment have been agreed, the purchase price will become due 8 days after arrival of goods. If the Buyer does not pay when payment is due, it shall be in default without any demand for payment being made. (Section 286, Subsection 2, Sentence 2 of the German Civil Code).
- (b) Agreed periods for payment shall apply as from arrival of goods, i.e. irrespective of receipt of the invoice by the Buyer.
- (c) The issuing of cheques and bills shall only represent a payment when these securities have been cashed finally. Discount charges and insurance fees shall be borne by the Buyer.
- (d) In the event of default in payment, or if after conclusion of contract the Seller learns about a substantial deterioration of the Buyer's economic situation, the Seller shall be entitled to demand advance payment or security because of matured and unmatured claims resulting from all existing contracts and to refuse performance until such advance payment or such security has been made/given. If the Buyer does not satisfy the demand for advance payment/security within a period of one week, the Seller shall be entitled, at its option, to rescind the contract or to claim damages for non-performance.
- (e) Late payment in connection with partial deliveries shall entitle the Seller to refuse to continue delivery of the quantity still to be delivered according to the order.

**10. Set-Off / Retention**

- (a) The Buyer shall only be entitled to rights of set-off and retention if its counterclaims have been recognized by declaratory judgment, if they have not been contested, or if they have been acknowledged by the Seller. Furthermore, the Buyer shall be entitled to exercise such a right of retention only in so far as its counterclaim is based on the same contractual relationship.

**11. Reservation of Title**

- (a) Delivery of the goods shall be effected subject to reservation of title according to Section 449 of the German Civil Code with the following additions.
- (b) The Seller shall retain title to the goods until all, also future, debts owed by the Buyer to the Seller resulting from the business relationship have been paid. The Buyer shall be entitled to process the goods only in the ordinary course of business. Each processing of the supplied goods by the Buyer shall be carried out for the Seller, so that the Seller will acquire ownership of the new item. During and also after processing of the goods the Buyer will be the depositary of same for the Seller. If the Buyer joins, mixes or processes any goods of the Seller and goods from other sellers or its own goods, the Seller shall at all events acquire co-ownership of the new item according to the above-mentioned constructive possession in the ratio of the value of the goods delivered by the Seller to the value of the other goods. The goods shall be deemed to be the reserved goods of the Seller.
- (c) The Buyer's claims resulting from the unmixed or unprocessed resale of the goods shall hereby be assigned to the Seller to the full amount, otherwise to the amount of a first partial amount corresponding to the value mentioned above in subparagraph b), sentence 5, irrespective of whether the reserved goods will be resold to one or more customers.
- (d) The Buyer shall only be entitled and authorized to effect a resale of the reserved goods with the proviso that the claim resulting from the resale according to subparagraph c) will pass to the Seller. The Buyer shall not be entitled to any other disposal than the resale in the ordinary course of business. The Buyer is in particular not allowed to pledge, assign by way of security or otherwise burden the reserved goods with third-party rights. If the goods are seized by a third party or if execution is otherwise levied against them, the Buyer shall be obligated to notify the Seller immediately. The costs arising out of the intervention shall be borne by the Buyer if the Seller cannot demand compensation from the third party effecting the seizure.
- (e) In spite of the assignment, the Buyer shall be authorized to collect the debt resulting from the resale in the ordinary course of business as long as the Buyer performs its contractual duties with regard to the Seller. The Seller's right to collect shall remain unaffected thereby. The Seller will waive all rights resulting from the extended reservation of title to which the Seller is entitled as soon as the Buyer fulfils all existing obligations under the business relationship with regard to the Seller. The Seller undertakes to release, at its option, the securities to which it is entitled in accordance with the above conditions as soon as the realizable value exceeds the claims to be secured by 20%.
- (f) In the event of default on the part of the Buyer as well as in the case of any cessation of payments or substantial deterioration of the Buyer's financial situation, the Seller shall be entitled to revoke both the resale and the right to collect. In that case, the Buyer shall be obligated to provide the Seller with all the necessary information in order to enable the Seller to collect the debt from the purchasers itself. In such cases, the Seller shall also be entitled to demand return of the reserved goods that are still in the Buyer's possession or to rescind the contract.
- (g) Notwithstanding Section 449, Subsection 2 of the German Civil Code, the Seller may also demand return of the item if the Buyer defaults on the purchase price.

**12. Other**

- (a) The packing material must be disposed of outside the public waste disposal at the Buyer's expense.

**13. Place of Performance / Place of Jurisdiction, Governing Law**

- (a) Place of performance and place of jurisdiction for both parties shall be Frankfurt. However, the Seller shall be entitled, at its option, to sue the Buyer also at the Buyer's usual place of jurisdiction. At the Seller's option, the courts of law or the arbitration tribunal of the Verein Deutscher Metallhändler e.V. according to its regulations in force at the time of conclusion of contract shall have jurisdiction. The Seller shall be obligated to make its choice not later than 7 days after written request of the Buyer; otherwise the courts of law shall have jurisdiction.

- (b) German law shall apply exclusively; the provisions of the UN Sales Convention shall be excluded. Subordinate to these terms and conditions of sale, the Usancen und Klassifizierungen des Metallhandels (UKM, published by the Verein Deutscher Metallhändler e.V., Bonn) in their latest version shall apply.

Drawn up in February 2009