

GENERAL TERMS AND CONDITIONS OF PROCUREMENT OF METALLUX AG

1. Application

1.1. These General Terms and Conditions of Procurement only apply to entrepreneurs in performance of their commercial or freelance activities and to legal persons under public law. They apply to all transactions between METALLUX AG (hereinafter “**METALLUX**”) and the supplier, even if they are not referred to in subsequent contracts. They also apply to work and services. Acceptance of the delivered products shall be replaced by acceptance in the case of work performances and by receipt of the service in the case of services.

1.2. General terms and conditions of procurement of the supplier that are contrary or make additions to or differ from these General Terms and Conditions of Procurement will not be part of the contract, unless METALLUX agrees to their application in writing. These General Terms and Conditions of Procurement will also apply if METALLUX unconditionally accepts a delivery of the supplier in knowledge of the supplier’s contrary, additional or differing terms and conditions.

1.3. General terms and conditions of procurement of the supplier that are contrary or make additions to or differ from these General Terms and Conditions of Procurement and are agreed between METALLUX and the supplier for the performance of the contract must be in writing. The same applies to any waiver of this written form requirement.

1.4. Rights to which METALLUX is entitled by law or other agreements beyond these General Terms and Conditions will remain unaffected.

2. Contract Conclusion

2.1. Offers of the supplier are non-binding and free of charge for METALLUX.

2.2. Orders will only become binding when placed by METALLUX in writing or, if placed orally, properly confirmed by the supplier in writing. Orders prepared automatically without signature or a name will be considered to have been placed in writing. Orders with obvious spelling or calculation errors are non-binding for METALLUX.

2.3. The supplier must confirm orders in writing by specifying the price and delivery period without undue delay, at the latest, within 1 week of receipt. Differences between order confirmations and orders will only be agreed when confirmed by METALLUX in writing. The same applies to subsequent contract changes.

2.4. METALLUX's silence concerning orders, requests or other statements of the supplier will only be considered affirmation if agreed in writing in advance.

2.5. METALLUX will retain title, copyrights and other property rights to all documents. Such documents may only be used for production based on METALLUX's orders and may not be provided to third parties without METALLUX's prior written permission. If requested by METALLUX, the supplier must hand over any of METALLUX's documents to METALLUX without undue delay if they are no longer needed for the ordinary course of business. The same applies especially to any drafts, samples, designs and models of METALLUX.

2.6. In case of significant deterioration of the supplier's assets or if a legitimate application for insolvency or comparable proceedings for the supplier's assets is rejected due to lack thereof, METALLUX may fully or partially withdraw from the contract.

3. Delivery Scope, Changes and Quality Requirements

3.1. The content, type and scope of orders is determined by METALLUX's written orders, the specifications and production documents (drawings, designs, etc.) provided by METALLUX during contract conclusion and specifications and production documents provided to METALLUX by the supplier if confirmed by METALLUX in writing. The supplier's obligation to review whether order and other contract documents correspond to agreed specifications, etc., (accuracy and suitability for the intended purpose) and their completeness and to report any inconsistencies and errors to METALLUX without undue delay and the supplier's independence during performance will remain unaffected.

3.2. If differences to originally-agreed specifications become necessary or useful during contract performance, the supplier must notify METALLUX in writing without undue delay and suggest changes. METALLUX will inform the supplier whether and, if so, which changes the supplier must make to the original order. METALLUX may make reasonable changes to orders, especially concerning the construction and preparation of products, at any time. In these cases, the supplier must be granted an appropriate period for necessary production changes. If these changes change the costs incurred by the supplier for contract performance, the contract parties must negotiate corresponding price adjustments. If no agreement on price adjustments is reached within 8 weeks of a written request for negotiations, METALLUX may terminate the contract without notice.

3.3. Any delivered objects must be delivered in flawless condition with the most suitable material and tools and comply with applicable standards (especially European and German standards, laws, trade association requirements, accident prevention regulations, work safety rules and generally recognized safety and occupational-medical provisions) and similar requirements. The same is required for deliveries without express quality standard agreements.

3.4. The supplier must regularly review and improve the quality of delivery objects.

3.5. The supplier must ensure proper supply from pre-suppliers insofar as necessary for the supplier's obligations to METALLUX. The supplier may especially not invoke the defense of improper supply of the supplier.

4. Delivery Times

4.1. Delivery times stated on the order or otherwise (delivery periods and dates) are binding. Delivery periods will commence upon receipt of an order. Products must be received at the delivery address specified by METALLUX during the delivery period or on the agreed delivery date. Compliance with agreed delivery times is such an essential part of the contract for METALLUX that METALLUX's continued interest in a delivery depends on compliance with delivery times.

4.2. If it becomes foreseeable for the supplier that delivery times cannot be met, the supplier must notify METALLUX in writing without undue delay stating the reasons and projected length of delay.

4.3. In case of delayed delivery, METALLUX may withdraw from the contract after an appropriate grace period granted by METALLUX, irrespective of whether the supplier is at fault. In case of delay by the supplier, METALLUX may impose a contractual penalty of 0.5 % of the net order value for every week of delay that started, though no more than 5% of the net order value, unless the supplier is not responsible for the delay. If METALLUX accepts the service, METALLUX must waive the contractual penalty, at the latest, until the final payment. Cases of force majeure are excluded. Further claims of METALLUX will remain unaffected. METALLUX's delivery claim will only cease to apply when the supplier, at METALLUX's request, provides compensation instead of the delivery. Acceptance of a late delivery does not represent a waiver of claims to compensation for damages or of the contractual penalty.

4.4. Deliveries of the supplier received by METALLUX more than 7 business days before the delivery date without prior written approval from METALLUX may be returned to the supplier by METALLUX at the supplier's expense. In this case, the supplier must accept the return and perform the delivery on time.

4.5. Partial deliveries of the supplier require METALLUX's prior written permission.

5. Packaging and Shipment

5.1. The supplier must try to use environmentally-friendly packaging. If requested by METALLUX, the supplier must take back packaging from METALLUX or the delivery destination specified by METALLUX free of charge ex works.

5.2. The supplier must report readiness for shipment of delivery objects to METALLUX in time before their shipment.

5.3. With every delivery, the supplier must include a delivery note stating the order number, ID number or item number, quantity, delivery destination, goods description and METALLUX's QR code if specified by METALLUX in the order. To track delivered goods, the supplier must also state the product batch number on the delivery note. If the supplier acts as a reseller, the batch number of the producer must be stated.

6. Prices, Determination and Payment

6.1. The price stated in the order is binding. The price is "free delivery to the point of use" and especially includes the costs of packaging, transportation, insurance to the delivery address specified by METALLUX, customs and other public charges. VAT is not included in the contract price and will be stated separately on the invoice at the amount applicable on the invoice date.

6.2. A single copy of the invoice stating the invoice number, packaging, number of packages, quantity and gross or net weight of the delivery must be submitted to us upon our receipt of the delivery. If specified by METALLUX for the order, the order number and METALLUX's ID number must be stated for every invoice item. If an invoice is for deliveries from different orders, which order was delivered with which delivery must be stated. For proper submission, sending the invoice as a PDF file by email to the following address suffices: buchhaltung@metallux.de. METALLUX expressly agrees to electronic invoice submission.

6.3. Payment will be provided within the agreed payment period after receipt of the delivery objects and the invoice. Payments will be made conditional on invoice review. In case of a defective delivery, METALLUX may retain payment without discounts or other price reductions until proper performance. The payment period will commence upon completion of defect rectification.

6.4. METALLUX may pay via check and transfer.

6.5. In case of significant changes to the market situation for us or if a significant drop in prices of our products becomes foreseeable, the supplier must negotiate price adjustments with us. If negotiations fail, we may terminate existing contracts (especially framework agreements) with a notice period that properly considers both parties' interests. In this case, the supplier may only bill the costs actually incurred for material that cannot be used otherwise. We will also be entitled to such termination rights if the supplier's prices exceed market levels or are at least 3% higher than those of a comparable competitor and the supplier cannot offer more competitive prices to us within 1 month of a written request.

7. Transfer of Risk

The supplier will bear the risk of accidental destruction or deterioration of delivery objects until their handover to METALLUX. This also applies if METALLUX bears certain costs, e.g., transportation costs.

8. Defect Liability and Guarantees

8.1. The supplier guarantees that delivered products comply with agreed specifications, approved designs and any applicable laws, requirements and standards of authorities or trade associations and applicable DIN standards.

8.2. METALLUX will report any obvious (detected or detectable) defects to the supplier without undue delay after the delivery and hidden defects without undue delay upon detection. Reports will be submitted without undue delay if submitted within 2 weeks of the delivery for obvious defects or within 2 weeks of detection for hidden defects. If deliveries consist of several of the same objects, METALLUX will review an appropriate number of delivered objects for defects. If a review makes delivered objects unsellable, the number to be reviewed will be appropriately reduced. If single samples of a delivery are defective, METALLUX may, at its discretion, have the supplier remove the defective objects or may exercise defect claims for the entire delivery as permitted by law. If defects of delivered objects require reviews exceeding normal incoming goods inspections, the review costs must be borne by the supplier. If reports are late or lost, on-time sending will suffice.

8.3. If delivered objects are defective, METALLUX may, at its discretion and irrespective of its legal defect claims, have the supplier rectify the defect or supply defect-free objects without undue delay as a remedy. The supplier must bear any necessary remedy costs. This also applies if, in accordance with their intended use, delivered objects are, after delivery, brought to a location other than the delivery address specified by METALLUX.

8.4. If the supplier fails to comply with remedy obligations within an appropriate grace period granted by METALLUX, METALLUX may perform or have the necessary measures performed by a third party at the risk and expense of the supplier, unless the supplier is not responsible for the non-performance when the grace period expires. A grace period is especially not necessary if the supplier refuses both remedy forms or if the remedy fails or is unreasonable for METALLUX. Remedies are especially unreasonable for METALLUX if METALLUX already supplied the defective objects to third parties. A grace period is also not necessary if the supplier finally and irrevocably refuses performance or in case of special circumstances that, considering both parties' interests, justify exercising defect claims immediately. Special circumstances are especially present if the supplier's remedy is unlikely to cure the adverse effects incurred by METALLUX. If the grace period may be waived, METALLUX may have the necessary measures performed at the supplier's risk and expense, even without the grace period's unsuccessful expiration, if METALLUX informs the supplier about this. Further claims of METALLUX will remain unaffected.

8.5. Acceptance of delivered objects and processing, payment for and additional orders of delivered objects not yet recognized as defective does not represent approval of the delivery or a waiver of defect claims by METALLUX.

8.6. The statute of limitations for METALLUX's defect claims lasts 36 months as of the delivery of the objects. This does not apply to defects fraudulently concealed by the supplier. If defective delivery objects are used as intended for a building and cause its defectiveness or in case of defects of a building, the statute of limitations will last 5 years. Claims for defects reported by METALLUX within the statute of limitations will expire, at the earliest, 6 months after being reported.

8.7. Legal provisions in case of consumer goods purchases (i.e., if the end customer is a consumer) will remain unaffected.

8.8. Further guarantees of the supplier will remain unaffected.

8.9. The supplier must deliver objects that have been fully reviewed. Unless agreed otherwise, outgoing goods inspection records and an acceptance certificate 3.1 under DIN EN 10204 must be included with every delivery or emailed to qm@metallux.de. We will conduct sample reviews of delivered objects in accordance with DIN 4080 or comparable organizational plans. If the AQL (acceptable quality limit) that was agreed or that results from applicable standards is exceeded during sample reviews, the entire delivery will be defective.

9. Product Liability, Holding METALLUX Harmless and Insurance

9.1. The supplier must hold METALLUX harmless of any third-party claims based on domestic or foreign product liability, unless the supplier is not responsible for the product error under product liability law. Further claims of METALLUX remain unaffected.

9.2. As part of this obligation to hold METALLUX harmless, the supplier must especially reimburse METALLUX for any expenses incurred due or in relation to legitimate warning, exchange or recall campaigns by METALLUX. METALLUX will, as far as possible, inform the supplier about the content and scope of the measures to be performed and allow the supplier to issue a statement. The supplier must assist METALLUX with these measures to the best of the supplier's ability and implement any reasonable measures ordered by METALLUX.

9.3. The supplier must provide and maintain comprehensive business and product liability insurance and recall cost insurance with worldwide coverage and, for delivered objects, appropriate coverage of at least EUR 5 million for personal damages for each person, at least EUR 5 million for material damages and at least EUR 5 million for asset damages. The supplier already hereby assigns any claims under this comprehensive business and product liability insurance and recall cost insurance to METALLUX with all ancillary rights. METALLUX hereby accepts this assignment. If such assignment is not permitted by the insurance policy, the supplier hereby instructs the insurer to only make payments to METALLUX. Further claims of METALLUX remain unaffected by this. If requested, the supplier must prove the obtainment and maintenance of the extended business and product liability insurance and recall cost insurance to METALLUX. The supplier must refrain from any act and omission that may threaten this insurance coverage.

9.4. If the supplier fails to properly comply with obligations under Section 9.3, METALLUX may, but is not required to, obtain extended business and product liability insurance and recall cost insurance at the supplier's expense.

10. Third-Party Property Rights

10.1. The supplier guarantees that the delivery and use of delivered objects does not infringe on domestic or foreign patents, registered designs, licenses or other third-party property rights or copyrights. This does not apply to delivered objects developed by METALLUX or produced by the supplier according to technical drawings, drafts, formulas or specifications of METALLUX.

10.2. If claims are exercised by third parties against METALLUX or its customers based on infringements of such rights due to the delivery or use of delivered objects, the supplier must hold METALLUX harmless of these claims. This obligation to hold METALLUX harmless applies to all expenses METALLUX incurs in relation to the exercise of such claims. METALLUX may especially, at the supplier's expense, obtain the third party's permission for use of the delivered objects. Obligations to hold METALLUX harmless do not apply if the supplier is not responsible for the infringement on the third party's rights.

11. Force Majeure

11.1. If force majeure prevents METALLUX from the performance of contractual obligations, especially delivery object acceptance, METALLUX will be exempt from performance obligations for the length of the hindrance and an appropriate lead time without owing compensation to the supplier. The same applies if unforeseen circumstances for which METALLUX is not responsible, especially labor disputes, official measures, power shortages or significant operational disruptions, make performance unreasonable or temporarily impossible for METALLUX. METALLUX may refuse acceptance of delivered objects received when METALLUX defaults on acceptance.

11.2. METALLUX may withdraw from the contract if a hindrance lasts more than 4 months due to which METALLUX has no further interest in the performance of the framework procurement agreement. If requested by the supplier, after this period expires, METALLUX will state whether METALLUX will exercise its withdrawal rights or accept the delivered objects within an appropriate period.

12. METALLUX's Liability

12.1. METALLUX is unlimitedly liable for damages resulting from breaches of a guarantee or injuries to life, limb or health. The same applies to intent and gross negligence and if METALLUX assumed procurement risk. METALLUX will only be liable for simple negligence in case of violations of essential contractual obligations resulting from the nature of the framework procurement agreement and that are particularly necessary for the achievement of the contractual purpose. In case of violations of such obligations, default or impossibility,

METALLUX's liability is limited to damages that must be typically expected for the framework agreement. Mandatory legal liability for product defects remains unaffected.

12.2. Where METALLUX's liability is excluded or limited, this also applies to the personal liability of METALLUX's employees, representatives and vicarious agents.

13. Providing Production Material

13.1. METALLUX reserves all rights, especially property rights and title, to dies, measuring and testing equipment (e.g., gages), tools, devices, models, designs, matrices, templates and the like and to drawings, other work documents and material METALLUX provides to the supplier for the production of ordered products or for other reasons; the same applies to tools the supplier makes to produce ordered products as specified by METALLUX. Upon completion, METALLUX will obtain title to the tools produced by the supplier for METALLUX. If the supplier purchases tools to produce ordered products, METALLUX will obtain title upon paying for the purchased tools. If purchased tools are paid for in instalments or as part of the price of the ordered products, METALLUX will acquire joint title to the purchased tools for the ratio of payments made to the tool's value. Dies, measuring and testing equipment (e.g., gages), tools, devices, models, designs, matrices, templates and the like and drawings, other work documents and material and tools produced by the supplier will be referred to hereinafter as "production material." Production material will be provided to the supplier by METALLUX for the production of ordered products.

13.2. The supplier may not provide provided production material to third parties. The supplier may especially not make copies, replicas or other reproductions thereof.

13.3. The supplier must perform necessary maintenance, inspection and repair work for provided production material on time at the supplier's expense. Any damage must be reported to METALLUX in writing without undue delay.

13.4. The supplier may not pledge, use as collateral or otherwise dispose of provided production material in a manner that may threaten METALLUX's ownership. In case of attachment or other third-party intervention, the supplier must notify METALLUX in writing without undue delay, provide any information necessary to inform the third party about METALLUX's ownership and assist METALLUX's measures to protect the production material. If the third party is unable to refund METALLUX's court and out-of-court costs for enforcing METALLUX's ownership, the supplier must compensate METALLUX for any resulting damages, unless the supplier is not responsible for the breach of duty.

13.5. The supplier must treat and store provided production material diligently. The supplier must insure provided production material at fair value against fire and water damage and theft at the supplier's expense. The supplier already hereby assigns any compensation claims under this insurance policy to METALLUX. METALLUX hereby accepts this assignment. If such assignment is not permitted by the insurance policy, the supplier hereby instructs the insurer to only make payments to METALLUX. Further claims of METALLUX remain unaffected by this. If requested, the supplier must prove the obtainment and maintenance of this insurance policy to METALLUX. If the supplier fails to properly comply with obligations under Sentences 2 – 4, METALLUX may, but is not required to, obtain this insurance coverage at the supplier's expense.

13.6. Any processing or modification of production material by the supplier will be performed for METALLUX. METALLUX's title to this production material will continue to apply to the processed or modified object. If provided production material is processed or modified with other objects not owned by the supplier, METALLUX will obtain co-ownership of the new object at the ratio of the production material's value to the other processed objects at the time of processing or modification. The same applies if production material is combined or mixed with other objects not owned by the supplier so that METALLUX loses its title. The supplier must keep these new objects for METALLUX. The same provisions apply to objects created through processing, modification, combination or mixing as to the production material.

13.7. If requested by METALLUX, the supplier must prepare inventories of the production material kept by the supplier.

13.8. The supplier may only use provided production material to produce and deliver ordered products or as otherwise specified by METALLUX.

13.9. Products the supplier produces fully or partially according to METALLUX's specifications or using METALLUX's production material may only be used or offered, delivered or otherwise provided to third parties by the supplier with METALLUX's prior written permission. This also applies to products METALLUX legitimately did not accept. In case of violations, the supplier must pay a contractual penalty of the respective product's value plus 10% of the net value to METALLUX, unless the supplier is not responsible for the violation. Further claims of METALLUX remain unaffected.

13.10. The supplier must compensate METALLUX for any damages METALLUX incurs due to the loss or destruction of or other damage to provided production material, unless the supplier is not responsible for the loss or destruction of or other damage to provided production material. The supplier must inform METALLUX in writing about any loss, destruction or other damage without undue delay.

13.11. The supplier must return provided production material to METALLUX without undue delay when the contract expires. The same applies if providing the production material is no longer necessary. Production material must be returned to METALLUX at the risk and expense of the supplier. The supplier must compensate METALLUX for any wear or other deterioration of provided production material that exceeds natural wear, unless the supplier is not responsible for the wear exceeding natural wear or other deterioration.

14. Confidentiality and Marketing Purposes

14.1. Any information made available to the contract parties and that is designated as confidential or recognizable by the circumstances as a trade or industrial secret must be kept confidential by the contract parties for 5 years after the contract expires and, unless offered for a business relationship, may not be recorded, transferred or exploited.

14.2. These confidentiality obligations do not apply to information that

- a) was demonstrably known the recipient party or public knowledge or publicly accessible before establishing the business relationship or
- b) becomes public knowledge or publicly accessible without fault of the recipient party or
- c) the recipient party must disclose by law, administrative act, other legal act or court order; in this case, the contract party subject to such disclosure obligations must inform the contract party whose confidential information is concerned about the disclosure request in writing without undue delay; disclosure must be limited to the respective court or administrative proceedings.

The burden of proof will be borne by the recipient party.

14.3. The contract parties must conclude appropriate contractual agreements with their employees and agents, especially freelancers and contractors, to ensure that they will refrain from any own exploitation, transfer or unauthorized recording of such trade or industrial secrets for 5 years after the contract expires.

14.4. Any confidential information provided to a contract party by the disclosing contract party will remain the property of the disclosing party. If requested by the other contract party in writing, the contract parties agree to surrender or irretrievably destroy any disclosed confidential information without undue delay, at the latest, when the contract expires. This especially also applies to copies and other reproductions. The recipient party is not entitled to rights of retention for confidential information. The obligated contract party must report the irretrievable destruction to the disclosing party in writing without undue delay.

14.5. The supplier may only refer to the business relationship with METALLUX for marketing purposes with METALLUX's prior written permission.

15. Data Protection

15.1. The contract parties must comply with legal provisions concerning data protection, especially the EU General Data Protection Regulation ("GDPR"), when performing the framework purchase agreement and must require such compliance of their employees.

15.2. Received personal data (names and contact details of contact persons) may only be processed for performance of the framework procurement agreement and must be protected by the contract parties through state-of-the-art security measures (Article 32 of the GDPR). The contract parties must erase personal data when its processing is no longer necessary. Legal storage obligations remain unaffected.

15.3. Should a contract party process personal data for the other contract party as part of the order, the contract parties must conclude a processing agreement in accordance with Article 28 of the GDPR.

16. Rights of Retention and Offsetting

16.1. The supplier may only exercise rights of retention through counterclaims based on the same contractual relationship.

16.2. The supplier may only use claims for offsetting that are uncontested or have been legally established.

17. Final Provisions

17.1. The supplier may only transfer rights and obligations to third parties or have the delivery or essential parts thereof performed by third parties with METALLUX's prior written permission.

17.2. Suppliers of the supplier are considered the supplier's vicarious agents. These vicarious agents must be reported to METALLUX in writing without undue delay if requested.

17.3. The legal relationship between the supplier and METALLUX is governed by the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

17.4. If the supplier is a merchant within the meaning of the German Commercial Code [Handelsgesetzbuch, HGB], legal person under public law or a special fund under public law, the exclusive place of jurisdiction for any disputes under the business relationship between METALLUX and the supplier is METALLUX's registered office. METALLUX may also take legal action at the supplier's registered office and any other permitted place of jurisdiction.

17.5. The place of performance for any delivery and remedy obligations of the supplier is the delivery destination specified by METALLUX. Apart from that, the place of performance for any services of METALLUX and the supplier is METALLUX's registered office, unless agreed otherwise in writing.

17.6. The contract language is German.

17.7. Should a provision of these General Terms and Conditions of Procurement be or become fully or partially ineffective or unenforceable or in case of a gap in these General Terms and Conditions of Procurement, this will not affect the validity of the remaining provisions. In place of the ineffective or unenforceable provision, an effective and enforceable provision must be agreed that most closely approximates the purpose of the ineffective or unenforceable provision. In case of a gap, the provision that most closely approximates what the contract parties would have agreed based on the purpose of these General Terms and Conditions of Procurement had the contract parties considered this matter from the start must be concluded.

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