

TERMS OF SALE AND DELIVERY OF METALLUX AG

(Version 01/2019)

1. Validity

- 1.1. Our terms and conditions shall apply only to persons acting in the exercise of their commercial or independent professional activity (entrepreneurs) at the time of conclusion of the contract, as well as to corporate bodies under public law and special estates under public law.
- 1.2. The following terms and conditions shall exclusively apply to all our deliveries and services, including future deliveries and services. Deviating or supplementary conditions of the customer are not binding for us, even if we do not object in each individual case, unless we accept them in writing. In this case they shall only apply to the respective individual contract. Special agreements made between us and the customer remain unaffected by this.

2. Conclusion of contract

- 2.1. Our offers are subject to change at any time.
- 2.2. The customer shall be bound by the order for two weeks from receipt by us.
- 2.3. Orders shall only be deemed accepted by us if we have confirmed them in writing. The receipt of a delivery note or an invoice by the customer and the execution of the delivery or service shall be deemed as confirmation. Verbal agreements shall only be valid if confirmed by us in writing.
- 2.4. Specifications given by the customer are not checked by us for correctness and suitability. The customer is responsible for checking our documentation for completeness, correctness and suitability for the intended purpose.
- 2.5. The documentation belonging to our offer, such as cost estimates, illustrations, drawings, weights and measurements, is only approximate unless expressly designated as binding. We reserve ownership rights and copyrights to the documentation; it may not be made accessible to third parties.

- 2.6. Data and dimensions contained in our offers and documentation reflect the product properties as determined by us under test conditions. The products may behave differently under the environmental and operating conditions provided by the customer. Therefore, the customer shall be obliged to independently verify the suitability of our products for the intended purpose.
- 2.7. The conclusion of the contract is conditional on the correct and timely delivery of the goods to us. This shall not apply if we are responsible for the non-delivery or incorrect delivery, in particular if we have not concluded a congruent covering transaction. We will inform the customer immediately of the non-availability of the goods, and will refund any payments made without delay.

3. Prices

- 3.1. Unless otherwise agreed, our prices are based on the list price valid on the day of conclusion of the contract plus the respective statutory value-added tax and are ex works, excluding packaging, transport, installation, assembly and other ancillary costs. Charges for ancillary costs shall be supported by evidence.
- 3.2. If our prime costs, in particular material prices, collectively agreed wages, statutory and collectively agreed social benefits and freight costs, increase after the date of conclusion of the contract, we shall be entitled to adjust our prices to the extent that the increase is not offset by other cost reductions. Furthermore, we shall be entitled to increase the price if the delivery is only to be made, or can only be made for reasons attributable to the customer, 4 months after conclusion of the contract.

4. Payment

- 4.1. Our claims are payable net within 14 days or as otherwise agreed, which must be confirmed in writing.
- 4.2. We reserve the option of accepting bills of exchange and cheques. Acceptance shall only be made on account of payment, taking into account all costs and expenses, and without any guarantee of timely presentation and protest.
- 4.3. If the customer is more than 30 days in arrears with a payment from a contract existing with us, if the customer has stopped payments, or if it becomes apparent after conclusion of the contract that our claims are at risk due to the customer's lack of ability to pay, we shall be entitled to make our claims from all contracts with the customer due for payment immediately; deferrals or other postponements of payment – including those due to acceptance of bills of exchange – shall end immediately. We shall be entitled to demand advance payment or provision of security for undelivered items and, after unsuccessful setting of a reasonable grace period, to withdraw from the contract and claim damages.

4.4. The customer shall only be entitled to set-off if his counterclaim has been legally established or is undisputed. This prohibition of set-off shall not apply to a counterclaim based on a defect which is based on the same contractual relationship as our claims. The customer is entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

5. Delivery

5.1. Delivery dates and periods are only approximate unless they have been agreed as binding. Delivery periods shall not commence before all technical and financial questions have been clarified and not before any documentation to be procured by the customer, including any necessary official certificates or approvals, has been provided and any agreed downpayment has been received. Our obligation to deliver / perform shall be suspended as long as the customer is not only insignificantly in arrears with a liability.

5.2. The delivery period shall be deemed to have been observed if the delivery item has left our works by the time it expires, or if the customer has received notification of our readiness for dispatch.

5.3. Events of force majeure as well as unforeseeable events, in particular disruptions in procurement, manufacture or delivery – at our premises or at those of our suppliers – shall release us from our contractual obligations for the duration of the disruption – even in the event of a delay already existing – and for a reasonable start-up period and to the extent of its effect, insofar as the disruption has not been caused intentionally or grossly negligently by us, our legal representatives or vicarious agents.

5.4. We shall be entitled to make partial deliveries – insofar as this is tolerable for the customer – which we can invoice separately in each case.

5.5. We will only take back duly delivered goods with our prior written consent. When a credit note is issued, we may deduct an appropriate lump sum for administrative costs, inspection and repackaging. Damaged goods will not be credited.

6. Special parts, assembly work

6.1. The customer shall make available to us in good time the specifications, documentation, information and data required for our performance as well as any plans and equipment required. This may also include test data, test specifications and test procedures. We are not obliged to inspect such provided material for defects.

6.2. The customer shall be obliged to create all the prerequisites so that assembly can begin immediately after delivery of the delivered goods, and can be carried out without interruption. Any costs arising from the non-fulfilment of this obligation shall be borne by the customer.

6.3. The customer must do everything at the installation site to protect persons and property from damage.

7. Passage of risk

- 7.1. Our deliveries are always made EX WORKS (EXW), Incoterms 2000.
- 7.2. If dispatch is delayed due to circumstances for which the purchaser is responsible, the risk shall pass to the purchaser from the day of readiness for dispatch. In this case, we shall be entitled at our discretion to store the goods at the expense and risk of the customer, and to demand payment of the agreed price. At the customer's request and expense, we shall take out the insurances requested by the customer. Possible returns also travel at the risk of the customer.
- 7.3. In the absence of written instructions from the customer, the mode, route and packaging of dispatch shall be chosen at our discretion. We only take out transport insurance upon request and in the name and for the account of the customer.
- 7.4. The customer must immediately notify the transport personnel of any discernable transport damage by making a note on the consignment bill, freight forwarding order or delivery note and have it signed; alternatively, the customer must draw up a damage report.

8. Reservation of title, security rights

- 8.1. We retain ownership of our delivered goods until full payment of all claims arising from the delivery contract, including all ancillary claims and all claims against the customer arising from other contracts at the time of conclusion of the delivery contract, and until unconditional crediting of cheques or payment of bills of exchange.
- 8.2. The retention of title also extends to the new items resulting from processing. When processing items supplied by us or combining them with items owned by third parties, we shall acquire co-ownership of the resulting items in the ratio of the invoice value of the items supplied by us to the invoice value of the items owned by third parties. The transfer of ownership is replaced by the customer storing the items created by processing or combination for us free of charge with the diligence of a prudent businessman.
- 8.3. The customer is entitled to sell delivered goods subject to our retention of title within the scope of the customer's proper business operations.
The seller already now assigns to us all rights arising from the sale including all ancillary rights. We accept the assignment.
- 8.4. The customer may not pledge the delivered goods or assign them as security. Access by third parties to the delivered goods that are subject to our retention of title as well as to claims, in particular seizures, must be declared by the customer in writing. The customer shall be immediately object to such access by making reference to our rights.
- 8.5. An application for the opening of insolvency proceedings shall entitle us to withdraw from the contract and to demand the immediate return of the delivered goods.

8.6. We undertake to release delivered goods subject to our retention of title at the customer's request, subject to selection, to the extent that the security value of the delivered goods subject to our retention of title exceeds the purchase price claim. The security value corresponds to the amount of the purchase price less 20% for declaration that the released delivered goods become the property of the purchaser.

9. Claims for defects

9.1. The goods are free of defects if they comply with the agreed condition. This is stated in our product description and the written order confirmation. Public or promotional statements and advertising by us, the manufacturer or agents are of no relevance to the condition of goods. All details regarding length and weight of the goods are non-binding; deviations of up to +/- 5% do not constitute a defect unless specific lengths or weights have been agreed upon.

9.2. Claims of the customer due to defects of the goods presuppose immediate inspection of the goods and notification of the defect after delivery – at the latest within one week – in the case of recognisable defects; in the case of not recognisable defects, within this period after their discovery. Goods that are subject to a complaint may not be unloaded without our consent.

9.3. The customer shall give us the opportunity to examine a complaint notification. If the complaint proves to be unfounded, the customer shall be obliged to reimburse us for the expenses incurred for the examination.

9.4. We shall only be obliged to effect delivery in Germany free of industrial property rights and copyrights of third parties (hereinafter referred to as "property rights"). Claims of the customer are ruled out if the infringement of property rights is caused by particular specifications of the customer, by an application not foreseeable by us, or by the goods being modified by the customer or being used in combination with products not supplied by us.

9.5. In the event of defects, we shall, at our discretion, either remedy the defect or carry out a new delivery (subsequent performance). In the event of failure, unacceptability or refusal of the subsequent performance, the customer may reduce the price or – in the case of not only insignificant defects – withdraw from the contract or claim damages in accordance with Section 11.

9.6. We shall only assume expenses in connection with subsequent performance if they are appropriate in the individual case, in particular in relation to the purchase price of the goods. We shall not assume any expenses arising from the fact that the sold goods have been taken to a place other than the agreed place of performance, unless this is in accordance with their contractual use.

9.7. The customer may not assign claims based on defects.

10. Liability for damages and reimbursement of expenses

- 10.1. We shall have unlimited liability for damages to life, limb and health caused culpably by us, our legal representatives, vicarious agents or agents.
- 10.2. Our liability for other damages due to slightly negligent violations of non- essential contractual obligations is excluded. In the event of a slightly negligent breach of essential contractual obligations – also by our legal representatives and vicarious agents – our liability shall be limited to the damage foreseeable and typical for this type of contract.
- 10.3. Damage of up to EUR 25,000.00 shall be deemed to be foreseeable and typical for this type of contract.
- 10.4. Our liability and the statute of limitations according to the Product Liability Act remain unaffected.
- 10.5. For the determination of the amount of the compensation claims to be fulfilled by us, our economic circumstances, type, scope and duration of the business relationship, possible contributions to causation and/or fault on the part of the customer in accordance with §254 BGB (German Civil Code) and particularly unfavourable installation conditions of the goods shall be reasonably taken into account in our favour. In particular, the compensation, costs and expenses which we are to bear must be in reasonable proportion to the value of the goods.
- 10.6. These limitations of liability shall also apply to our employees, representatives and vicarious agents.

11. Limitation period for claims based on defects and damages

- 11.1. The limitation period for claims of the customer due to a defect is one year. This shall not apply if mandatory longer periods are stipulated. This shall also not apply to claims for damages and reimbursement of expenses which are directed towards compensation for bodily injury or damage to health or are based on intent or gross negligence.
- 11.2. The limitation period for claims of the customer for damages and reimbursement of expenses which are not based on a defect in the goods is one year. The statutory limitation of claims due to intent or gross negligence as well as injury to body or health and based on the Product Liability Act shall remain unaffected.

12. Final provisions

- 12.1. Verbal agreements, additions and amendments to the contract require our written confirmation.
- 12.2. The place of performance shall be the registered domicile of our company.
- 12.3. In commercial business dealings, the agreed place of jurisdiction shall be our registered domicile. This shall also apply in cases in which the customer has no domestic general place of jurisdiction, the customer's place of residence or habitual residence has been relocated abroad after conclusion of the contract, or in which neither the customer's place of residence nor habitual residence is known at the time the action is filed. We shall also be entitled to sue at the customer's registered domicile.
- 12.4. German law shall apply exclusively; the application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 12.5. Should any provision of these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions.

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