

# General Terms and Conditions of Inter Metals GmbH

## § 1 General, scope

(1) All deliveries, services and offers from Inter Metals GmbH (hereinafter also referred to as "Metals" or "the Seller" or "we") will only take place on the basis of these General Terms and Conditions (hereinafter also referred to as: "GTCs"). These GTCs form an integral part of all contracts which Metals concludes with its contractual partners (hereinafter also referred to as "the Customer" or "the Buyer" or "the Orderer") in relation to the deliveries or services which it offers. They also apply to all future deliveries, services and offers made to the Customer, even if they were not agreed separately.

(2) The GTCs particularly apply to contracts for the sale and/or delivery of movable objects (hereinafter also referred to as: "Goods") and other services, without regard to whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 651 of the German Code of Civil Procedure ("GCCP")).

(3) Only the GTCs of Metals apply. Any different, conflicting or supplemental General Terms and Conditions of the Orderer will only apply as an integral part of the contract if we have explicitly consented to their applicability. This consent requirement applies in all cases, for example also if we unconditionally perform the delivery to the Orderer, having taken note of the general terms and conditions of the Orderer. Even if Metals refers to a written communication containing the general terms and conditions of the Customer or a third party or makes reference to such general terms and conditions, this does not constitute any agreement with the applicability of any such general terms and conditions.

(4) In any event individual agreements made with the Orderer in particular cases (including sub-agreements, supplements and amendments) will take precedence over these GTCs.

(5) Any material statements and reports which the Orderer submits to Metals after the contract has been concluded (e.g. deadlines, notice of defects, statement of cancellation or reduction) will only be effective if they are submitted in writing.

(6) Any references to the applicability of statutory provisions are only made for the purpose of clarification.

(7) The GTCs only apply if the Ordering Business Owner (§ 14 of the German Code of Civil Procedure ("GCCP")), is a juridical person under public law or a special fund under public law.

## § 2 Conclusion of the contract

(1) All offers from Metals are subject to change and non-binding, insofar as they are not characterised as binding or do not contain a certain term of acceptance. This also applies if we have furnished the Orderer with catalogues, technical documentation (e.g. drawings, plans,

calculations, estimates, references to DIN standards), other product descriptions or documents – also in digital format – for which we have reserved our right of ownership and copyright.

(2) The Orderer's order is deemed to be a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 14 days of receiving it.

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

(4) Only the written, concluded contract, including these General Terms and Conditions are decisive with regard to the legal relationships between the Seller and the Orderer. This represents all agreements, in full, made between the contractual parties with regard to the object of the contract. Any oral commitments made by the Seller prior to conclusion of this contract are not legally binding and any oral agreements made between the contractual parties are replaced by the written contract, unless it has been stated explicitly that they will continue to be binding.

(5) Any supplements or amendments to the agreements made, including these GTCs, will only be effective if they are made in writing. With the exception of directors or authorised signatories, the Seller's employees are not entitled to make any oral agreements which deviate from this.

(6) Any details concerning the Seller for the purpose of delivery or services (e.g. weights, sizes, usage values, loading capacity, tolerances and technical data) or representations of same (e.g. drawings and diagrams) are only roughly decisive, insofar as their usefulness in terms of the contractually intended purpose does not assume an exact correspondence. They are not guaranteed properties but rather descriptions or labelling for deliveries and services. Any usual deviations and any deviations which arise due to legal provisions or constitute technical improvements, such as the replacement of components with equivalent parts, are permissible, insofar as they do not affect the usefulness in terms of the contractually intended purpose.

(7) Metals will retain ownership of and copyright to all offers and estimates which it issues and to any drawings, diagrams, calculations, brochures, catalogues, models, tools and other documents and resources provided to the Customer. The Orderer is not permitted to make these objects and/or publications or any part thereof available to third parties, to use or reproduce them or to have them used or reproduced, without Metals' explicit consent. The documents must be kept secret from third parties, even after termination of the contract. The confidentiality obligation will only expire if and insofar as the knowledge contained in the disclosed documents has become public knowledge. The foregoing applies mutatis mutandis to resources and materials and to tools, templates, models and other objects which we provide to the Orderer for the purpose of manufacture. It must return these objects to us in full, at our request, and destroy any copies that were made, if it no longer requires them in its ordinary business activities or if negotiations do not lead to the conclusion of a contract.

### § 3 Delivery deadline and delayed delivery

(1) Agreed deadlines and dates for deliveries and services are non-binding and are only ever deemed to be an approximation, unless a commitment or agreement is made for a fixed deadline or a fixed date. Insofar as an agreement was made on shipment, delivery deadlines and delivery dates refer to the time of delivery to the forwarding agent, the carrier or other third parties tasked with the transport.

(2) Metals is not liable for the inability to deliver or for delayed delivery, insofar as they are caused by acts of God or other events which were unforeseeable at the time of concluding the contract (e.g. operating disruptions of any kind, difficulty in obtaining materials or power, transport delays, industrial action, lawful lock-outs, absence of labour force, energy or raw materials, difficulty in obtaining the necessary administrative permits, administrative measures or absent, incorrect or tardy delivery by the Supplier) and which are not attributable to Metals. Insofar as such events make it difficult or impossible for Metals to provide the delivery or the service and the impediment is not just of a temporary duration, then Metals is entitled to cancel the contract. In the event of impediments of a temporary nature, the delivery or service deadlines will be extended or the delivery or service dates will be moved forward by the length of time of the impediment, in addition to a reasonable start-up period. Insofar as the Orderer is not expected to purchase the delivery or the sale as a result of the delay, it can withdraw from the contract by way of an immediate written statement to the Seller.

(3) Delivery and service deadlines will be extended by the amount of time for which the Orderer was in arrears pursuant to the contract.

(4) If the contractual partners subsequently agree on different or additional services which affect the agreed deadlines, then these deadlines will be extended by a reasonable period of time.

(5) Warnings and deadlines set by the Orderer are only effective if they are made in writing. Grace periods must be reasonable. A period of less than two weeks is only reasonable if there is a special need for urgency.

#### § 4 Delivery, passing of risk, acceptance, delay in acceptance

(1) Deliveries are made from the warehouse, which is also the place of performance. The goods will be sent to a different destination (sales shipment) at the Orderer's request and expense. Unless otherwise agreed, we are entitled to determine the type of shipment ourselves (in particular, the transport company, transport route, packaging).

(2) The risk of the accidental perishing and the accidental deterioration of the goods will be transferred at the latest on transfer to the Orderer. This also applies if partial deliveries are made or if the Seller has assumed further services (e.g. shipment or installation). If the shipment or the transfer is delayed as a result of a circumstance whose cause lies with the Orderer, the risk is transferred to the Orderer on the day on which the delivery item is ready for shipment and the Seller has notified the Orderer of this.

(3) The Customer will bear the storage costs after the risk has been transferred. If the Seller stores the goods, then the storage costs will be 1% of the invoice amount for the delivery items to be stored for each full week that passes. The right to enforce and verify further or lower storage costs is reserved.

(4) The Seller will only insure the shipment against theft, damage from breakage, transport, fire and water or other insurable risks at the explicit request of the Orderer and at its expense.

(5) Insofar as acceptance must take place, the following applies:

(a) The Customer must inspect the performance results at the latest within 14 days of such a request by Metals and to declare its acceptance or to communicate any identified defects in our performance with an exact description and specification of the complaint. Minor defects are not cause to refuse acceptance.

(b) the service will be deemed to be accepted, if

- the delivery and, insofar as the Seller is also responsible for the installation, the installation has been completed, and

- 14 work days have passed since the delivery or installation or the Customer has started using the item (e.g. put into use the system that was delivered) and in this case, 14 work days have passed since the delivery or installation, and

- the Customer refused acceptance within this period for a reason besides a shortcoming reported to the Seller which makes impossible or significantly affects the use of the object.

(c) Partial acceptance by the Customer may be carried out on request, in accordance with the progress of the project.

(d) If partial jobs/milestones are defined in a service contract, then Metals may present partial jobs for acceptance. In the case of subsequent acceptance, only the effectiveness of the new partial job and the correct interaction of the previously accepted partial jobs with the new partial job will be inspected.

(e) If the contract contains the drafting of a concept, then Metals can demand separate acceptance for the concept.

(6) If the Customer is in default of acceptance, if he fails to cooperate or if our delivery is delayed for other reasons attributable to the Customer, then we are entitled to demand reimbursement of the ensuing damages, including additional costs (e.g. storage costs).

This will not affect the evidence of greater damage and our statutory claims (in particular, the reimbursement of additional costs, reasonable compensation, termination).

(7) Metals may perform partial services, insofar as the services and goods provided can be fully used by the Customer.

## § 5 Prices and payment terms

(1) Unless otherwise agreed in particular cases, the relevant prices at the time of concluding the contract apply, from the warehouse, in addition to statutory VAT.

(2) In the case of sales shipment (A. § 4 (1)), the Orderer will bear the transport costs from the warehouse and the cost of a transport insurance policy requested by the Orderer, where applicable. Any tolls, fees, taxes and other public charges will be borne by the Buyer. In accordance with the German Packaging Ordinance, we will not take back transport or any other packaging; with the exception of pallets, they become the property of the Buyer.

(3) The purchase price is due and must be paid within 14 days of the invoice date and delivery and/or acceptance of the goods.

(4) We are entitled to demand a down payment in the amount of 30% of the purchase price. The down payment is due and must be paid immediately on the issue of the invoice.

(5) The Orderer will be in default on expiry of the above-mentioned payment term. With regard to merchants, this will not affect our claim for commercial late interest (§ 353 of the German Commercial Code ("GCC")).

(6) The Orderer is only entitled to the rights of set-off and retention insofar as its claim is deemed to be legally valid or undisputed. In the case of delivery defects, the Orderer's reciprocal rights will remain unaffected, particularly in accordance with § 7 (5) (2) of these GTCs.

(7) If, after the contract has been concluded, it becomes apparent that our claim for reimbursement or the purchase price is jeopardised due to defective performance on the part of the Orderer e.g. by application for the initiation of insolvency proceedings), then we are entitled to refuse service and – as the case may be, according to the set deadline – to cancel the contract, all this in accordance with the statutory provisions (§ 321 GCCP). In the case of contracts involving the manufacture of specific goods (custom-made products), we can communicate the cancellation immediately – this will not affect the statutory regulations on the dispensability of setting deadlines.

## § 6 Retention of title

(1) We reserve the ownership of the sold goods until all of our current and future claims pursuant to the purchase contract and/or supply contract have been paid in full and from any on-going business relationship (secured claims).

(2) The goods which are subject to retention of title may not be pledged to third parties nor transferred as security prior to full payment of the secured claims. The Orderer must notify us in writing immediately, if and insofar as third parties access the goods belonging to us.

(3) In accordance with the statutory provisions, if the Orderer acts in breach of the contract – in particular, if it fails to pay the purchase price due – then we are entitled to withdraw from

the contract and/or to demand the return of the goods on the basis of the retention of title. At the same time, the request to return the goods does not contain the statement of cancellation; rather, we are only entitled to demand the return of the goods and reserve the right to cancel the contract.

(4) The Orderer is authorised to re-sell and/or further process the goods with retention of title in the ordinary course of business. In that case the following additional provisions apply.

(a) The retention of title pertains to the full value of products created by processing, mixing or connecting our goods, in which respect we are deemed to be the manufacturer. In the case of processing, mixing or connecting goods, if the right of ownership of third parties continues to exist, then we will acquire co-ownership in proportion to the invoice value of the processed, mixed or connected goods. Incidentally, the same applies to the product that is created as for the good delivered with retention of ownership.

(b) By way of security, the Orderer now assigns to us in advance the full amount of those claims against third parties which arise from the re-sale of the goods or the creation and/or the amount of our share of co-ownership, in accordance with the above paragraph. We accept the assignment. The Orderer's duties, as referred to in paragraph 2, also apply with regard to the assigned claims.

(c) Together with us, the Orderer will remain authorised to collect the claim. We undertake that we will not collect the claim as long as the Orderer fulfils its payment obligations to us, does not default on payment, does not file for the initiation of insolvency proceedings and there is no other defect in its performance. However, if this is the case, we may demand that the Orderer notifies us of the assigned claims and their debtors, provides all details required for collection, furnishes the accompanying documents and notifies the debtors (third parties) of the assignment.

(d) If the value that can be obtained from the securities exceeds our claims by more than 10%, we will release securities at the Orderer's request, all this at our discretion.

#### § 7 Claims for defects by the Orderer

(1) In the event of material defects and defects of title (including incorrect delivery and under-delivery), the statutory provisions apply to the Orderer's rights, unless otherwise provided below. Under no circumstances will this affect the special statutory provisions on final delivery of the goods to a consumer (supplier's recourse in accordance with §§ 478, 479 GCCP)

(2) Insofar as a defect was not agreed upon between parties after the defect occurred, the statutory rules must be used to determine whether or not there is a defect. Metals does not accept any liability with regard to public statements by the manufacturer or other third parties (e.g. advertising statements).

(3) The Orderer's claims for defects presume that it complied with its statutory obligations of inspection and reporting (§§ 377, 381 GCC). The objects delivered must be carefully inspected immediately after delivery to the Customer or to the third parties which it specified. The inspection and reporting obligations apply to obvious defects or other defects which would have been identifiable in the event of an immediate, careful inspection by the Orderer, if the Seller does not receive a written report on the defect within seven work days of delivery. With regard to other defects, the delivery items will be deemed to have been approved by the Orderer if the Seller does not receive a written report on the defect within seven work days of such time as the defect was apparent; however, if the defect was identifiable for the Customer during normal use at an even earlier point in time, then this earlier point in time is decisive with regard to the commencement of the reporting period. A disputed delivery item can be returned to the Seller, postage paid, at the Seller's request. If the defect report is justified, the Seller will reimburse the cost of the most inexpensive transport route; this does not apply insofar as the costs increase because the delivery item is situated at a different location than the location for the intended use.

(4) If the delivered item is defective, we can first decide whether we wish to subsequently perform the contract by remedying the defect (subsequent improvement) or by delivering an item free from defects (replacement delivery). This does not affect our right to refuse subsequent performance pursuant to the statutory provisions.

(5) We are entitled to make the subsequent performance which is owed subject to the Orderer paying the purchase price due and/or the fee due. However, the Orderer is entitled to retain a reasonable portion of the purchase price and/or the fee, in proportion to the defect.

(6) The Orderer must give us the time and opportunity required for the subsequent performance which is owed, particularly in order to provide the disputed item for inspection purposes.

(7) In the event of defects in components from other manufacturers which the Seller cannot remedy on legal licensing or factual grounds, the Seller will enforce its warranty claims against the manufacturer and the suppliers, at the Customer's expense, or assign them to the Customer, all this at the Seller's discretion. Warranty claims against the Seller only exist in the case of those defects, under the other preconditions and in accordance with these General Terms and Conditions of Delivery, if the legal enforcement of the above-mentioned claims against the manufacturer and the supplier were unsuccessful or prospectless, for example due to insolvency. The limitation of the relevant warranty claim by the Customer against the Seller will be postponed for the duration of the legal dispute.

(8) The warranty will be dispensed with if the Orderer modifies the delivery item or has third parties modify it, without the Seller's consent, and as a result, the defect is impossible or unacceptably difficult to remedy. In any event the Customer must bear the additional costs for remedying the defect which arise due to the modification.

(9) We will bear those costs which are necessary for the purposes of inspection and subsequent performance, particularly transport costs, road costs, labour costs and the cost of materials (but not: removal and installation costs), if there actually is a defect. However, if a demand made by the Orderer to remedy the defect should prove to be unwarranted, then we may demand that the Orderer reimburses the ensuing costs.

(10) A delivery agreed with the Customer in a particular case of used items is made without the possibility of any warranty for defects in the items.

(11) The Buyer only has a claim for compensation of damages and/or reimbursement of wasted expenditure in accordance with § 8 of these GTC's.

#### § 8 Other liability

(1) Metals' liability for compensation of damages, for any legal reason whatsoever, particularly due to impossibility, default, defective or incorrect delivery, breach of contract, violation of duties in the case of contractual negotiations and unauthorised action, insofar as these involve culpability, is limited in accordance with this § 8.

(2) The Seller is not liable in the event of simple negligence on the part of its organisation, legal representatives, employees or other agents, insofar as this does not involve a violation of significant contractual duties. Significant contractual duties include the obligation of prompt delivery and installation of the delivery item, its freedom from defects which affect its operability or its fitness for purpose more than just negligibly, such as duties of advice, protection and custody, which should enable the Orderer to use the delivered item in accordance with the contract or which aim to protect the life and limb of the Customer's staff or its property from significant damage.

(3) Insofar as the Seller is essentially liable for compensation pursuant to § 8 (2), this liability is limited to those damages which, on conclusion of the contract, the Seller foresaw as a potential consequence of breaching the contract or which it should have foreseen, had it exercise due care. Furthermore, indirect damages and consequential loss which are the result of defects in the delivered item are only eligible for compensation insofar as such damage can be typically expected with the proper use of the delivered item.

(4) However, in the event of a liability for simple negligence, the Seller's obligation to pay compensation and any further resulting damage to assets is limited to a sum in the amount of €100,000,-- per incident (which corresponds to the current insured amount on the liability insurance policy), even if it involves a breach of significant contractual obligations (obligation whose performance first of all actually facilitates the proper performance of the contract and on whose observance the contractual party regularly relies and may rely).

(5) The above-mentioned liability disclaimers and limitations apply to the same extent in favour of the Seller's organisation, legal representatives, employees and other agents.



(6) Insofar as the Seller provides technical information or performs an advisory role and this information or advice is not part of the agreed scope of service owed by him pursuant to the contract, this will take place for no consideration and under the exclusion of all liability.

(7) The limitations contained in this § 8 do not apply to the Seller's liability on account of intentional behaviour, for guaranteed properties, on account of injuring life, limb or health or pursuant to the German Product Liability Act.

(8) On account of a breach of duty which is not a defect, the Buyer can only cancel or give notice to terminate the contract, if the breach of duty is attributable to us.

#### § 9 Limitation period

(1) In derogation of § 438 (1) (3) GCCP, the general limitation period for claims involving material defects and defects of title is one year from delivery. Once a sale has been agreed, the limitation period commences with the sale.

(2) However, if the good involves a construction site or an item which, in accordance with its usual manner use, is used for a construction site and caused its defectiveness (construction material), the limitation period is 5 years from delivery, in accordance with the statutory rule (§ 438 (1) (2) GCCP). Nor will this affect special statutory rules on third-party claims in rem for the restitution of property (§ 438 (1) (1) GCCP), in the case of bad faith on the part of the Seller (§ 438 (3) GCCP) and for claims in the context of supplier's recourse on final delivery to a consumer (§ 479 GCCP)

(3) The above-mentioned limitation periods for the right of purchase also apply to the Orderer's contractual and extra-contractual claims for compensation of damages founded on a defect in the item, unless the application of the regular statutory limitation period (§§ 195, 199 GCCP) would lead to a shorter limitation period in particular cases. In any event this will not affect the limitation periods pursuant to the German Product Liability Act. For the rest, only the statutory limitation periods apply to the Orderer's claims for compensation of damages in accordance with § 8.

#### § 10 Customer's duty to cooperate

The Customer must comprehensively support and promote the performance of the contract for the entire contractual term. In particular, it must furnish Metals with all documents which are necessary to perform the assignment, without being asked, in full and as promptly as possible, so that Metals has a reasonable processing time at its disposal. The same applies for the instructions on all processes and circumstances which may be relevant to performing the assignment.

#### § 11 Applicable law and legal venue

(1) These GTCs and all legal relationships between Metals and the Orderer are governed by the law of the Federal Republic of Germany, excluding international uniform law, in

particular the UN Convention on the International Sale of Goods. The prerequisites and effects of retention of ownership in accordance with § 6 are governed by the law of the relevant storage location for the item, insofar as the applicable law is inadmissible or ineffective, in favour of German law.

(2) If the Orderer is a merchant, as defined in the German Commercial Code or a juridical person under public law or a special fund under public law, the sole legal venue for all disputes arising indirectly or directly from the contractual relationship – also internationally – is the domicile of the Inter Metals. However, we are also entitled to lodge complaints in the Orderer's regular legal venue.

(3) This translation of the German original GTCs is provided as a service only: in case of dispute, the original German version always takes precedence.

**Note:**

The Orderer has noted that Metals, in accordance with § 28 of the German Data Protection Act, stores data from the contractual relationship for the purposes of data processing and Metals reserves the right to disclose this data to third parties when necessary for carrying out the contract,