

Standard Terms and Conditions of Metalltechnik Menges GmbH for Sale, Delivery and Payment

§ 1 General

1. The following terms and conditions apply to all deliveries to the ordering party (hereinafter: "**Customer**"). These terms and conditions apply exclusively. We do not recognize any conflicting or deviating terms and conditions of the Customer unless we have consented to their validity. Nor do we recognize deviating terms and conditions if, having knowledge of terms and conditions that conflict or deviate from our terms and conditions, we fulfill the order without reservation.

§2 Offers

1. If our offers do not expressly state that they are "binding", then they are nonbinding and subject to change. An order is deemed accepted when we confirm the order in writing. Our confirmation governs the content of the order.
2. We reserve all property and copyrights in any illustrations, drawings, computations and other documents; they may not be made accessible to third parties without our express written consent. The Customer must have our express written consent before they may be communicated to third parties.

§3 Prices

1. Unless otherwise agreed, the prices stated on our pricelist in effect at the time of delivery shall apply.
2. Unless otherwise agreed, our prices are quoted in Euro ex seller's works (*ab Lieferwerk*) without value-added tax, customs, freight, shipping, packaging, insurance etc. The Customer bears these additional costs.
3. Any prompt payment discount (*Skonto*) requires our separate written agreement.
4. Unless otherwise agreed in writing, our invoices must be paid without discount within 30 days after receipt. Payments will always be applied first to the oldest outstanding invoice.
5. The Customer may set off only those of its claims that are undisputed or legally final.
6. We accept payments made other than in cash only on account and not in lieu of payment. All payments must be free of any charges to us. The Customer bears the cost of bank, discount and collection fees even without express agreement.
7. If payment is past due, we have the right to charge late payment interest in the statutory amount even without prior warning. This interest rate will be set at a higher level if we can demonstrate that our interest rate burden is higher.

8. If after concluding the contract we experience reductions or increases in costs, in particular due to the conclusion of collective bargaining labor contracts, materials price changes or currency fluctuations, we reserve the right to change our prices commensurately. We will substantiate these to the Customer upon request.
9. If after an order is placed the Customer's financial condition substantially deteriorates or if a previous worsening is not made known to us until after the order is placed, we may, at our option, require either payment in advance or the posting of security. Payments may be made only to us or to persons expressly authorized by us in writing or credentialed by a collection agency.
10. Alloy surcharges are not included in the prices and will be computed at their current value as of the date of delivery.

§ 4 Packaging

1. We will choose suitable packaging for shipping. Packaging for shipping will be included in our prime costs.

§ 5 Shipping

1. Shipping shall always be at the expense and risk of the Customer. In exceptional cases where we assume the cost of carriage, this shall continue to apply with respect to the risk of loss. Unless otherwise agreed, we will determine the mode of transportation and routing.
2. Special needs of the Customer (e.g. accelerated shipping mode, special packaging, using a particular freight forwarder) will be taken into consideration as far as possible against a charge for any additional costs.
3. Risk of loss passes to the Customer when we deliver the goods to the carrier.

§ 6 Delivery

1. Delivery times are nonbinding unless a binding delivery schedule is expressly agreed. A binding delivery deadline is deemed met when the goods timely leave our plant or, in the case of customer collection, when notice of readiness for pickup is given.
2. If meeting a binding delivery time is not possible due to circumstances beyond our control such as e.g. force majeure, natural catastrophe, war, riot, governmental intervention, power loss, or industrial action affecting us or our suppliers, the delivery date will be extended automatically by the duration of such circumstances. Should such circumstances last longer than three months either contracting party may rescind the contract.

§ 7 Complaints and notices of defect

1. Complaints of obvious defects or of obviously incomplete or incorrect deliveries must be communicated to us promptly in writing but no later than seven days after receipt of goods. Other defects shall be promptly communicated to us in writing when discovered.
2. Where notice of complaints or defects are untimely the delivery is deemed accepted. Where notice is timely, warranties are governed by § 8.

§ 8 Liability for defects in quality

1. We reserve the right to make changes in construction or execution that impair neither the functionality nor the value of the goods. To the extent they do not impair utility for the contractually intended purpose, such changes are not defects.
2. Where there is a defect we have the right to cure the defect or make a substitute delivery of a defect free item. The choice of cure or substitute delivery is ours to make. Our right to refuse to cure or substitute delivery altogether due to unreasonably high cost (§ 439 Para. 3 of the German Civil Code (BGB)) remains unaffected. The Customer, however, may, at its option, withdraw from the contract or demand a reduction in the purchase price if the effort to cure - in particular due to impossibility – fails, could not be done within a reasonable period of time, was refused by us or was culpably delayed by us.
3. Parts we replace become our property.
4. We assume no warranty for damages arising after passage of risk of loss to the Customer that are due to unsuitable or improper shipment, defective assembly or commissioning by the Customer or third parties, modifications and add-ons not expressly approved by us, ordinary wear and tear, defective or negligent handling by the Customer or third parties, improper storage, weathering and the like.
5. The Customer must provide us the time and opportunity we need to cure or make substitute delivery. Otherwise, we shall be released from warranty liability.
6. We may refuse to cure or substitute delivery so long as the Customer has not fulfilled all its obligations which are not related to the defective portion of the goods.
7. The liability for defects in quality period is for 12 months from the date the item is delivered.
8. Customer's claims for damage and reimbursement of expenses due to defect are governed by § 9 of these terms and conditions.

§9 Claims for damages and reimbursement of expenses

1. If our breach of duty causes damage we shall not be liable to compensate for damages or expenses if we demonstrate that we were not at fault for the breach of duty. Unless otherwise provided in Subsection 2. and 3. below, if we are at fault for the breach of duty, we will be liable as provided by law to compensate for damages or expenses.
2. In cases of ordinary negligence our liability to compensate for damages or expenses is excluded. We shall not be liable in particular for Customer's loss of profits and other financial injury due to ordinary negligence.
3. The exclusion of liability pursuant to Subsection 2. shall not apply to claims arising under a guarantee, for death or bodily injury, to claims arising under the Product Liability Act (*Produkthaftungsgesetz*) or to claims for ordinarily negligent breach of contractual duties. In the case of contractual duties whose fulfillment is a prerequisite to the proper execution of the contract and upon whose fulfillment the contracting partner may normally rely (material contractual obligation), our liability to compensate is, however, limited to those elements of damages that were typically foreseeable at the time of the conclusion of the contract.
4. If our liability is excluded or limited, such exclusion or limitation shall also apply to the personal liability of our employees, representatives or vicarious agents.

§10 Withdrawal due to breach of contract

1. The Customer shall have no right to withdraw from the contract on grounds of non-performance or contractually non-conforming performance of a duty owed by us for which breach of contract we were not responsible.
2. § 10 Subsection 1 shall not apply if the Customer's right to withdraw derives from a special agreement (e.g. where time is of the essence) that grants a right of withdrawal regardless of fault. In addition, § 10 Subsection 1 does not apply in the case of defects in goods; in which case the provisions of the law of sales (*Kaufrecht*) shall apply unless these terms and conditions provide otherwise.

§11 Reservation of title

1. The goods delivered by us remain our property until the Customer has paid all claims due to us under the current business relationship. Bills of exchange and checks will not be deemed payment until they are honored.
2. The Customer may alienate the goods in which we have reserved title in the course of normal business operations provided that it is neither delinquent in payment nor has suspended payments. He may not pledge or post title to the goods as collateral.
3. We must be promptly notified of attachments of goods in which we have reserved title to include a copy of the attachment protocol.

4. If there exist claims against third parties arising from the damage or loss of goods that have not yet been fully paid, the Customer does now herewith assign to us its rights to payment thereunder. If the Customer sells the goods then the Customer does now hereby assign to us all its rights against its purchaser with all ancillary rights and security interests until payment in full of our claims against it. If the Customer's receivables from the resale of goods in which we have reserved title are received in a current account then the Customer does now herewith assign its rights to payment in the respective amount acknowledged owed up to the amount of our claim against the Customer. We accept the assignment. The Customer may collect the receivables assigned to us unless he is delinquent in payment or has suspended payments.
5. The Customer warrants that it will cooperate with obtaining official permits or arranging other formalities whenever required.
6. If the value of the collateral granted to us exceeds our claims against the Customer by more than 20%, then we must release such excess collateral at the request of the Customer.
7. If in the case of deliveries abroad certain measures are required of us in the country of import to validate the reservation of title described in this section or the other rights described therein, the Customer shall apprise us of such requirements and undertake them at its own cost. If the law of the importing state does not permit reservation of title, but allows the seller to reserve other rights in the goods delivered, we may exercise all such rights. If equivalent security for our claims against the Customer cannot be achieved thereby, the Customer is obligated at its cost to provide us other security in the goods delivered or post other collateral.

§12 Place of performance, jurisdiction and venue

Unless otherwise agreed, the following apply:

1. Place of performance for deliveries, services and payments is Gau-Algesheim.
2. German law applies to all relationships between the Customer and us. The UN Sales Convention shall not apply.
3. Where legally permissible the agreed exclusive jurisdiction and venue for all disputes including those arising under bills of exchange or checks is our registered office at Gau-Algesheim.