

General Terms and Conditions of Business of Metabowerke GmbH

Version of 1 February 2018

§ 1 General provisions

- (1) The present General Terms and Conditions of Business (AGB) apply to all our business relationships with our customers ("Customer"), in particular to contracts for the sale and/or supply of movable things ("Goods"). The AGB shall only apply if the Customer is an entrepreneur (sec 14 German Civil Code (BGB)), a public law legal entity or a public law special fund.
- (2) Save as otherwise agreed, the AGB in the version valid at the time when the Customer places the purchase order or in any event in the version last notified to the Customer in text form shall also apply to additional future contracts of a similar kind without our having to refer to the AGB again when entering into each similar type of contract.
- (3) Solely our AGB apply in the relationship to our Customers. Any general terms and conditions of business of the Customer conflicting, deviating from or supplementing our AGB shall only form part of the contract if and insofar as we have explicitly consented to the application thereof. This requirement for consent shall apply in any case, also and in particular if we execute a contract without expressing a reservation despite knowing of the general terms and conditions of business of the Customer.
- (4) Individual agreements reached with the Customer in an individual case (including ancillary agreements, supplements and modifications) prevail over these AGB. A contract in writing or written confirmation is decisive in respect of the content of such agreements, subject to proof to the contrary.
- (5) Statements and notifications to be made to us by the Customer after conclusion of the contract (e.g. setting time limits, notifications of defects, declaration of rescission (*Rücktritt*) or of reduction of the purchase price (*Minderung*)) must be made in written or text form in order to be effective.
- (6) References to the application of provisions of statute shall only be significant in terms of clarification. The provisions of statute shall therefore apply even in the absence of such clarification except insofar as they are amended by or explicitly excluded in these AGB.

§ 2 Conclusion of the contract

- (1) Our quotations are subject to change and non-binding. This also applies if we provide the Customer with catalogues, technical documentation (e.g. drawings, plans, calculations, costing, references to DIN standards), other product descriptions or documents – including in electronic form – to which we reserve ownership rights and copyrights.
- (2) The Customer's purchase order for the Goods is deemed to constitute a binding offer to enter into a contract. Unless otherwise set forth in the purchase order, we have the right to accept this offer to enter into a contract within 2 weeks after receiving it. Our acceptance can be given either in writing (e.g. by means of an order confirmation), in text form or by delivering the Goods to the Customer.

§ 3 Delivery period and default in delivery

- (1) Information from us on the delivery time is not binding unless a delivery period is agreed individually or specified by us on acceptance of the purchase order.
- (2) Insofar as we are unable to adhere to binding delivery periods for reasons for which we are not responsible (unavailability of performance), we shall inform the Customer thereof in the ordinary course of business, simultaneously advising of the anticipated new delivery period. If performance is not available during the course of the new delivery period either, we have the right to withdraw from the contract in whole or in part; we shall reimburse without undue delay any payment already made by the Customer. A case of unavailability of performance within the meaning of this subsection is deemed to be, in particular, our own supplier's failure to deliver to us if we have entered into a matching-cover transaction (*kongruentes Deckungsgeschäft*), if neither we nor our subcontractor are/is at fault or if we are not obliged to procure in an individual case.
- (3) The occurrence of default in delivery by us shall be governed by the provisions of statute. In any case a reminder is required from the Customer, however.
- (4) The Customer's rights pursuant to section 8 of these AGB and our statutory rights, in particular in the event of exclusion of the obligation to perform (e.g. because of impossibility of performance or because performance is not reasonable and/or due to supplementary performance), shall remain unaffected.

§ 4 Delivery, transfer of risk, default of acceptance

- (1) Delivery shall be effected ex works; the factory is also the place of performance of the supply and of any supplementary performance. The Goods shall be dispatched to a different place of destination (sale involving the carriage of Goods) at the Customer's request and expense. Except as otherwise agreed, we have the right to determine the type of shipping (in particular the carrier, shipping route, packaging) ourselves.
- (2) If the Customer is in default of acceptance, fails to carry out collaborative action, or if our supply is delayed for other reasons for which the Customer is responsible, we have the right to demand compensation of the damage arising as a result, including additional expenses (e.g. storage costs).

§ 5 Prices and terms of payment

- (1) Unless otherwise agreed in an individual case, our dealer purchase prices valid on the date on which the contract is concluded shall apply; these are the ex-works prices exclusive of value added tax (VAT) and packaging.
- (2) If the Customer wishes to have the Goods shipped (sale involving the carriage of Goods, cf. sec. 4 (1) above), the Customer shall bear the transport costs from the factory and the costs of any transport insurance desired by the Customer. Any customs, charges, taxes and other public levies shall be borne by the Customer.
- (3) The purchase price shall fall due and be payable within 30 days of the date of the invoice and delivery of the Goods with no deduction. A discount is granted only according to explicit written agreement. Supplies of spare parts and repair work are payable immediately upon supply of the spare parts or of the repaired Goods with no deduction. We have the right at any time to effect delivery in whole or in part against advance payment only, even in the context of a current and on-going business relationship. We shall make a corresponding reservation in the order confirmation at the latest.
- (4) If the Customer is in default of payment of an invoice, all our receivables under the business relationship with the Customer shall become due for immediate payment.
- (5) Bills of exchange and cheques shall only be accepted on the basis of an explicit agreement and only as payment and subject to acceptance in each case. There is no right to deduct a discount if payment is made by bill of exchange. Any costs or other charges shall be borne by the Customer and are due for payment immediately.
- (6) The Customer shall be in default of payment immediately upon expiry of the above payment period. Interest at the statutory rate of default interest applying at the time shall be payable on the purchase price during the period of default. We reserve the right to claim further default damage. Our right to claim commercial interest from the due date (sec. 353 German Commercial Code (HGB)) from merchants shall remain unaffected.
- (7) The Customer only has the right of offset or the right of retention insofar as the Customer's claim has been decided by a final and non-appealable judgment of a court of law or is undisputed. In the event of defects in the supply, the rights on the part of the Customer, in particular those pursuant to sec. 7 (3) sentence 2 of these AGB, shall remain unaffected.
- (8) If, after the contract has been concluded, it should become apparent (e.g. due to an application to open insolvency proceedings) that our claim to payment of the purchase price is in jeopardy due to the Customer's lack of ability to pay, then in accordance with the provisions of statute we have the right to refuse to perform and to rescind the contract (sec. 321 BGB) – if appropriate after setting a time limit.

§ 6 Retention of title

- (1) Pending payment in full of all our current and future claims under the purchase contract and an on-going business relationship (secured claims) we reserve the title in and to the Goods sold.

- (2) Prior to being paid for in full, the Goods subject to retention of title may neither be pledged to third parties nor transferred as security. The Customer shall advise us in writing without undue delay if an application has been filed to open insolvency proceedings or insofar as third parties have attached the Goods belonging to us (e.g. seizures).
- (3) In the event of behaviour by the Customer in breach of contract, in particular if the Customer fails to pay the purchase price due, we have the right to rescind the contract in accordance with the provisions of statute and to demand that the Goods be surrendered by virtue of the retention of title and the rescission. If the Customer fails to pay the purchase price due, we may only assert these rights if we have already set the Customer a reasonable period of time for payment which expired to no avail, or if setting such a time limit is dispensable in accordance with the provisions of statute.
- (4) Pending revocation pursuant to subsec. (c) below, the Customer has the right to re-sell and/or process the Goods subject to retention of title in the ordinary course of its business. In this case the provisions set forth below shall also apply.
 - (a) The retention of title shall cover the full value of the products created through processing, mixing or combining our Goods, whereby we shall be considered to be the manufacturer. If, in the event of the Goods being processed, mixed or combed with products of third parties, their property right remains upheld, we shall acquire joint title in proportion to the invoice values of the Goods processed, mixed or combined. In all other respects the same shall apply to the product then created as applies to the Goods supplied subject to retention of title.
 - (b) The Customer assigns to us as security now already the claims against third parties arising from the resale of the Goods or of the product created, in full or in the amount of our joint ownership share in accordance with the above subsection. We accept the assignment. The obligations of the Customer named in sub-section 2 shall also apply with regard to the claims assigned.
 - (c) The Customer shall remain entitled to collect the claims in addition to us. We undertake not to collect the claim as long as the Customer complies with its payment obligations to us, provided that there is no lack of financial capability on the Customer's part and we do not assert our claim to retention of title by exercising a right pursuant to sub-section 3. If this is the case, however, we can demand that the Customer advise us of the claims assigned and the debtors thereof, provide all the information required for the collection, hand over the corresponding documents and notify the debtors (third parties) of the assignment. In addition, in such a case, we have the right to revoke the Customer's authorization to continue to re-sell and process the Goods subject to retention of title.
 - (d) If the realizable value of the security exceeds our claims by over 10%, we shall release security of our choice if the Customer so requests.

§ 7 Claims on account of defects

- (1) The rights of the Customer in the event of defects as to quality and defects of title shall be governed by the provisions of statute except insofar as otherwise provided below.
- (2) The precondition for defect claims by the Customer is for the Customer to have complied with its statutory duties to examine the Goods and object to defects (§§ 377, 381 HGB). We must be notified in writing without undue delay if a defect becomes apparent during the examination or at a later date. Notification is deemed to be without undue delay if made within one week whereby the time limit is deemed met if the notification is dispatched on time. Notwithstanding this duty to examine the Goods and object to defects, the Customer shall give notification of any obvious defects (including incorrect deliveries and short shipment) in writing within one week of delivery whereby here too the time limit is deemed met if the notification is dispatched on time. If the Customer fails to conduct a proper examination and/or notify of the defect, our liability shall be excluded in respect of the non-notified defect.
- (3) We have the right to make the supplementary performance owed conditional upon the Customer's payment of the purchase price due. However, the Customer has the right to withhold an appropriate portion of the purchase price corresponding to the defect.
- (4) The Customer shall accord to us the time and opportunity necessary to conduct the supplementary performance owed; in particular the Customer shall deliver to us for examination purposes the Goods complained of. If substitute Goods are supplied, the Customer shall return the defective thing to us in accordance with the provisions of statute.
- (5) Even in the event of defects, claims by the Customer for damages or compensation of wasted expenditure shall only exist in accordance with the provisions of sec. 8 and are otherwise excluded.
- (6) Returning Goods that have been ordered and delivered shall be governed by the provisions of statute.

§ 8 Other liability

- (1) In the event of a breach of contractual or non-contractual obligations, our liability shall be in accordance with the provisions of statute except insofar as otherwise provided in these AGB, including the terms set forth hereinbelow.
- (2) We are liable for damages – regardless of the legal ground – with respect to fault-based liability in the event of intent and gross negligence (*Vorsatz und grobe Fahrlässigkeit*). In case of minor negligence (*einfache Fahrlässigkeit*) we shall be liable only as follows, subject to a less severe liability standard in accordance with statutory provisions (e.g. for care in one's own matters (*diligentia quam in suis rebus*):
 - (a) for damage resulting from injury to life or limb or impairment to health,
 - (b) for damage resulting from a not inconsiderable violation of a material contractual obligation (an obligation which, when performed, makes the proper execution of the contract at all possible and which the contract partner may and does regularly rely on compliance with); in this case our liability is, however, limited to compensation of the foreseeable damage which can typically occur.
- (3) The limitations of liability ensuing from sub-sec. 2 above shall also apply in the event of violations of duty by or in favour of persons whose fault we are responsible for in accordance with the provisions of statute. They shall not apply insofar as we have maliciously concealed a defect or have provided a guarantee for the quality of the Goods, nor shall they apply to claims by the Customer under the German product liability act.
- (4) The Customer may only withdraw from or cancel a contract on account of a violation of duty which does not consist of a defect if we are responsible for the violation of duty. In all other respects the statutory requirements and legal consequences shall apply.

§ 9 Statute of limitations

- (1) In derogation from sec. 438 (1) no. 3 BGB, the general limitation period for claims resulting from defects as to quality and defects of title shall be one year from the date of the passing of risk.
- (2) The above limitation period of sales law shall also apply to contractual and non-contractual claims for damages by the Customer which are based on a defect in the Goods unless the application of the normal statutory limitation period (secs. 195 and 199 BGB) would lead to a shorter limitation period in an individual case. Claims for damages by the Customer pursuant to sec. 8 (2) sentence 1 and sentence 2 a) and under the German product liability act shall, however, be solely subject to the statutory limitation periods.

§ 10 Choice of law and jurisdiction

- (1) The laws of the Federal Republic of Germany shall apply to these AGB and to the contractual relationship between the Customer and us, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
- (2) If the Customer is a merchant within the meaning of the German Commercial Code, a public law legal entity or a public law special fund, the courts with jurisdiction at our registered office in Nürtingen, Germany, shall have exclusive and international jurisdiction for all disputes arising directly or indirectly from the contractual relationship. This shall apply *mutatis mutandis* if the Customer is an entrepreneur within the meaning of sec. 14 BGB. However, in all cases, we also have the right to bring an action at the place of performance of the supply obligation in accordance with these AGB or with a prior-ranking individual agreement or at the Customer's general place of jurisdiction. Provisions of statute having priority, in particular governing exclusive jurisdiction, shall remain unaffected.