

1. General

1.1.

These General Conditions of Purchase apply to all our purchases, unless otherwise agreed in writing.

1.2.

Deviating or supplementary conditions of Supplier shall only be binding if accepted by us in writing and not merely by our taking possession of the Goods without reservation.

1.3.

In case of discrepancies between the contract documents the following documents shall govern the contract in descending order of precedence:

1. mutually signed contract or tacitly accepted confirmation of order
2. our Order
3. our General Conditions of Purchase
4. Supplier's Offer
5. our Request for Proposal
6. Supplier's Conditions of Sale

1.4.

Any communication transmitted via facsimile or electronically (e.g., via the Internet, including but not limited to EDI, cXML, e-mail) shall be considered to have been made "in writing."

2. Formation of Contract, Changes and Amendments

2.1.

Supplier's Offer shall be prepared free of charge. It shall explicitly point out any deviations from our Request for Proposal as well as any ambiguities, gaps or technical specifications contained therein which may impair or make impossible the suitability of the Goods for the purpose for which they are intended or with regard to the latest state of the art or applicable laws and regulations.

2.2.

Our Orders or any changes or amendments thereto are binding only if made or confirmed by us in writing. Sketches, drawings, specifications etc. referred to in the Order shall form an integral part thereof.

2.3.

If the Order is not accepted by Supplier within three (3) working days in writing, we shall be entitled to withdraw the Order. Such withdrawal shall not entitle the Supplier to raise any claims.

2.4.

The Confirmation of Order shall explicitly point out any deviations from the Order. Such deviations shall only form part of the contract if accepted by us in writing.

2.5.

After conclusion of the contract we shall remain entitled to request reasonable changes with regard to the specifications of or the manufacture of the Goods or with regard to the date of delivery.

To the extent such changes result in an increase or decrease of Supplier's costs or in a change of the date of delivery, Supplier shall inform us latest within a calendar week. The resulting variation order shall be mutually agreed between the Parties.

3. Subcontracting

3.1.

Any subcontracting of the design or manufacture of the Goods, in whole or to a significant extent, as well as the subcontractors chosen by the Supplier, shall require our prior approval.

3.2.

Such subcontracting shall not relieve Supplier from its liability for the proper fulfilment of the Contract.

4. Price

4.1.

Unless otherwise provided in the Order, all Prices are understood DAP Industriering 5, CH-4912 Aarwangen, Switzerland (Incoterms 2010 or latest edition), including packing.

4.2.

Price changes shall be valid only if mutually agreed between the Parties in writing.

5. Invoicing, Terms of Payment

5.1.

Unless otherwise agreed and subject to the proper delivery of the Goods and the pertinent documents, payment shall be made within 60 days from receipt of a properly prepared invoice, (except in case of advance payments) however earliest from the proper receipt of the Goods.

5.2.

In case of payment of the invoiced amount within 14 days from receipt of the invoice and the Goods we shall be entitled to a cash discount of 2 %.

5.3.

If the Supplier is in arrear with the proper fulfilment of its obligations, e.g. with his delivery or warranty obligations or with the submission of shipping documents for customs clearance, in particular proper certificates of origin or

the like, we shall be entitled to withhold a reasonable part of the Contract Price, at least however 10%, until the respective obligations or undertakings have been properly fulfilled.

5.4.

Advance payments shall be subject to the prior submission of a pertinent irrevocable guarantee, payable on first demand, of a first class bank in Switzerland.

6. Free Issue Material

6.1.

Material placed at Supplier's disposal in connection with the execution of the Order shall, irrespective of any machining or processing, remain our property. It shall be marked as such and be stored separately until processed, assembled or installed.

6.2.

Unused or remaining material, scrap and the like shall, at our request, be either returned or, at market prices, credited towards the Contract Price.

7. Term of Delivery, Delays, Rescission by Purchaser

7.1.

The agreed term of delivery shall be deemed to have been met upon receipt of the Goods at the agreed date and place of delivery. Otherwise the Supplier shall automatically be deemed in arrear.

7.2.

Partial deliveries or early deliveries of more than three working days shall require our prior consent.

7.3.

Supplier shall inform us immediately of any circumstances occurred or likely to occur, which may jeopardize the agreed delivery date, as well as of the estimated period of delay. The Supplier shall exert its best efforts to minimize the delay or to procure replacements from third parties.

7.4.

Delays occasioned by missing information, documents or items to be supplied by us shall be excused only to the extent Supplier has requested the submission of said documents or items in due time, or in case of timely reminders.

7.5.

Except in case of Force Majeure, for the rest however by the sole fact of delay and irrespective of any evidence of damages incurred, the Supplier shall pay a penalty of 1% for each commenced week of delay, maximum 10 % of the Contract Price. Shortage of raw material or delays by subcontractors or sub-suppliers shall not exonerate Supplier, unless such delays were equally caused by Force Majeure. Our statutory right to claim damages which exceed the penalties remains reserved.

7.6.

If the agreed date of delivery is exceeded by more than 4 weeks, we are entitled to rescind the contract forthwith.

7.7.

If it is foreseeable that the agreed date of delivery will not be met, we may rescind the contract prematurely. In this case Supplier shall – in addition to our rights at law - reimburse us all payments already made, plus 5 % interest per annum.

7.8.

We further reserve the right to terminate the contract at any time for convenience. In such case we shall pay all costs incurred by Supplier up to the date of termination, plus 5 % of the Contract Price for loss of profit, such payment to be set off against any payments of the Contract Price already made. As far as permitted by applicable law, any further claims of Supplier are excluded.

8. Packing, Despatch and Notification of Despatch

8.1.

The packing must protect the Goods against any damage or corrosion during transport and storage.

8.2.

The Supplier shall mark the Goods according to our instructions.

8.3.

The Supplier shall be liable for all costs and expenses incurred resulting from his failure to observe our instructions regarding transport or customs clearance.

8.4.

We may give instructions regarding the mode of transport or the carrier to be charged. Failing such instructions, the Supplier shall choose the cheapest mode of transport.

8.5.

The Supplier agrees to take back packing material and issue a pertinent credit note.

9. Mandatory Data on Shipping Documents and Invoices

9.1.

Each delivery has to be accompanied by a detailed delivery note containing the data indicated below. The invoices are to be sent separately.

9.2.

All documents (letters, notices, delivery notes, invoices etc.) must contain at least the following data: our Order Number, Date of Order, Item Number, Quantity, Gross/Net Weight, Country of Origin, Customs Tariff Number and Type of Packing.

9.3.

Invoices must comply with applicable VAT regulations. The invoice address is: Metacod AG, Industriering 5, CH-4912 Aarwangen, Switzerland.

9.4.

Invoices failing to comply with the aforementioned requirements shall not be processed and the pertinent payment withheld until submission of a properly prepared invoice.

10. Certificates of Origin

10.1.

Supplier shall timely submit all necessary proof-of-origin documents for the Goods.

10.2.

In case of any failure or delay in providing these documents the Supplier shall indemnify and keep us harmless from any damages or costs we may incur as a result of such failure or delay.

11. Product Safety, Documents, Acceptance

11.1.

Unless otherwise agreed, protective devices form part of the scope of supply. Missing devices shall immediately be supplied and/or affixed.

11.2.

Assembly-, operating- and maintenance instructions, spare parts lists as well as any other documents required for the safe operation of the Goods or required by law shall equally form part of the scope of supply.

11.3.

In case of Goods manufactured according to our specifications we shall, upon reasonable advance notice, be entitled to inspect the progress of their design or manufacture and to conduct factory acceptance tests.

11.4.

In case of work performed on our premises our Safety at Work Instructions must be complied with.

12. Passing of Property and Risk

12.1.

Title to the Goods shall pass to us as provided by applicable law.

12.2.

The risk in the Goods shall pass to us pursuant to the Incoterm agreed in the Order; in the absence of an agreed Incoterm, it shall pass to us according Incoterm DAP. In case acceptance tests in our works have been agreed, passing of risk shall occur upon successful completion of said tests.

12.3.

In case of faulty or missing shipping documents, we shall store the Goods at Supplier's cost and risk until proper delivery of the documents.

13. Inbound Inspection, Warranty and Liability for Defects, Insurance

13.1.

Upon receipt and in the ordinary course of business we shall inspect the Goods with regard to transport and other apparent defects as well as with regard to identity and quantity. No further inbound inspection shall be required. Defects shall be notified to Supplier within one calendar week after detection. To this extent Supplier waives any objection that we have been in delay in notifying a defect.

13.2.

Supplier warrants that the Goods comply in all respects with the terms of the contract and the agreed specifications, achieve the agreed performance parameters, are new and state-of-the art and fit for the purpose for which they have been purchased. The Goods shall comply with all applicable standards, laws and regulations, including, without limitation, those dealing with environmental issues, health and safety, in force at the final place of delivery indicated in the Order.

13.3.

In case of breach of the above warranty the Supplier undertakes, without delay and at our election, to either remedy the defect or have it remedied or to replace the defective Goods or parts free of charge. All costs incurred in connection with the repair or replacement, in particular costs of transport, dismantling and reassembly or reinstallation, shall be for Supplier's account.

13.4.

If Supplier is in arrear with the remedy of the defects or in case of urgency, we are entitled to remedy or have remedied the defect at Supplier's cost and risk.

13.5.

Defective Goods or parts shall remain in our possession and may be used by us until remedied or replaced or, if we rescind the contract, until removed by Supplier.

13.6.

Unless otherwise agreed, the Goods are warranted for a period of 24 months, commencing upon receipt at the agreed place of destination, or, if an acceptance test has been agreed, upon successful acceptance of the Goods.

13.7.

The warranty period shall be prolonged by the period, during which the Goods, as a result of their repair or replacement, cannot be used.

13.8.

In case of differences regarding the existence or the root cause of a defect, the opinion of a neutral technical expert shall be binding. The pertinent costs shall be borne by the succumbing Party.

13.9.

The warranty period for replacements or repairs shall be 12 months from the date of re-placement or successful repair, provided however that it shall not expire prior to the original warranty period for the Good in question.

13.10.

If the repair or replacement is impossible, not effected during a reasonable period or finally refused by Supplier, we may avail itself of any remedy available at law.

13.11.

Supplier shall be liable for consequential damages, including any costs for mitigating damages, in particular costs for the preemptive exchange of dangerous Goods or parts thereof or for any recalls required by statutory law.

13.12.

Supplier shall procure and maintain - for at least 5 years from delivery of the Goods - at its sole expense - adequate product liability insurance with world-wide coverage with a reputable and financially sound insurance company and shall, at our request, provide a pertinent insurance certificate.

14. Infringement of Third Party Industrial Property Rights

14.1.

Supplier warrants that the Goods do not infringe third party industrial property rights in the agreed places of destination and shall indemnify us from and against any such claims.

14.2.

Supplier shall not be liable to the extent that the infringement results from the design and manufacture of the Goods in accordance with our specifications, drawings or patterns and Supplier (having taken all reasonable precautions) could not know that the Goods so designed and manufactured would infringe third party industrial property rights.

15. Samples, Drawings, Tools and Patterns

15.1.

Documents and all means of production, such as samples, drawings, patterns and the like, placed by us at Supplier's disposal or sourced or manufactured by Supplier at our cost, remain respectively become our property as soon as sourced or produced. We shall own all rights in them. If no longer used for the execution of our Orders, they shall, at our election, be either returned to us free of charge or disposed of, such disposal to be confirmed by Supplier in writing. They must not be made available to third parties or used for the manufacture of products for third parties.

15.2.

Means of production which we placed at Supplier's disposal or which were manufactured according to our specifications, may neither be duplicated, sold, pledged, assigned by of a collateral, be disposed of or in any other way be encumbered or used in favor of third parties.

16. Spare Parts

16.1.

Supplier undertakes to supply to us - based on individual purchase orders, at competitive conditions and for a period of at least ten (10) years following delivery of the Goods – spare parts required therefor.

16.2.

Should Supplier intend to discontinue the manufacture of the respective spare parts, he shall notify us forthwith, latest however three (3) months prior to the shutdown of their production. Within one month following receipt of such notice, we shall be entitled to place a final order for the delivery of spare parts at customary market conditions.

16.3.

We shall be entitled to procure spare parts, not covered by Supplier's industrial property rights, also directly from Supplier's sub-supplier or any third parties.

16.4.

Supplier shall exert his best efforts to bind its subcontractors and sub-suppliers accordingly.

17. Confidentiality

17.1.

The Supplier undertakes not to disclose to third parties and to use solely for the execution of the Order all confidential information of which he gains knowledge in the course of his dealing with us, in particular technical

information, business secrets and details of the Order, such as quantities, technical specifications, commercial terms of the Order, etc. as well as any knowledge derived from said information.

17.2.

The Supplier shall ensure that any subcontractors or sub-suppliers to whom confidential information is disclosed for the purpose of executing the subcontract or sub-order, agree to be bound by these terms

17.3.

Without our prior consent, Supplier shall not publish the fact that he has contracted with us or to use our Order for publicity purposes.

18. Protection of Personal Data

The processing, use, storage and forwarding of personal data shall be carried out in compliance with the relevant statutory provisions, including the EU General Data Protection Regulation ("GDPR"), the Swiss Data Protection Act ("DPA") and the revised Swiss Data Protection Act ("revDSG"). Accordingly, the Parties shall use and process any personal data of which they become aware in connection with their business relationship exclusively for the purposes necessary for the transaction of the business and shall only make such data available to third parties in Switzerland or abroad to the extent necessary.

The parties shall store the personal data concerned securely and take appropriate technical and organizational measures to protect it against misuse or loss. Any loss of data (by hackers etc.) must be reported to the other party immediately. Furthermore, the regulations according to the privacy policy of Metacod AG on [<https://www.metacod.ch>] shall apply.

19. Severability

If any one or more of the provisions of these terms and conditions shall be determined to be invalid, illegal, or unenforceable, in whole or in part, or if an unintentional gap in the provisions of these terms and conditions becomes apparent, the validity, legality, and enforceability of any of the remaining provisions or portions thereof shall not in any way be affected thereby and shall nevertheless be binding between the Parties hereto. Any such invalid, illegal, or unenforceable provision or portion of these terms and conditions shall be changed and interpreted, and any unintentional gap filled, so as to best accomplish the objectives of such provision or portion thereof in light of the purpose of these terms and conditions and within the limits of applicable law.

20. Applicable Law, Jurisdiction

20.1.

The contract shall be governed and construed under Swiss law, contracts with foreign suppliers shall, in addition, be governed by the Convention on Contracts for the International Sale of Goods (CISG).

20.2.

Jurisdiction for all claims out of or in connection with this contract shall revert to the competent courts at our place of business in CH-4912 Aarwangen, Switzerland. We remain entitled to bring action in any other competent court.

Aarwangen, 22.08.2023

Metacod AG
Industriering 5 | CH-4912 Aarwangen