

1. General

1.1

These General Conditions of Sale shall apply to all supplies of products and services of Metacod AG, Industriering 5, CH-4912 Aarwangen („METACOD“) to Customer. They shall also apply to all future contracts even when no express reference is made.

1.2

Deviating or supplementary conditions, such as customer's general conditions of purchase, or verbal agreements shall only be binding if accepted by Metacod in writing. Any communication transmitted via facsimile or electronically (e.g., via the Internet, including but not limited to EDI, cXML, e-mail) shall be considered "in writing".

2. Formation of Contract, Minimum Purchase, Product Changes

2.1

Metacod shall be bound only to offers specifying a period for acceptance. Customer's order must be firm for at least 10 days after receipt by Metacod.

2.2

In case of order values (exclusive of taxes, other dues and costs of transport) below CHF 500.--, Metacod reserves the right to charge a handling fee of CHF 40.--.

2.3

Metacod's confirmation of order shall govern the scope and execution of the contract.

2.4

Metacod may deviate from the agreed specifications and supply technically improved Products, as long as the improved Products have no negative impact on price, function and quality of the Products.

3. Technical Documents, Copyright

Metacod reserves all intellectual property rights in the documents supplied to customer. Without Metacod's consent these documents may neither be made available to third parties or used to manufacture copies of the Products. At its request, technical documents which had been made available in tangible form are to be returned to Metacod.

4. Local Laws and Regulations

Customer shall in due time bring to Metacod's attention any laws or regulations at the place of destination, in particular relating to safety, health or regulatory approvals required for the Products.

5. Price, Terms of Payment, No Set-Off

5.1

The prices are based on the agreed Incoterm (2010 or latest edition); in the absence of an agreed Incoterm they are understood Ex-Works place of production.

5.2

Payments are to be effected at the agreed dates, failing such agreement, within 10 days following notification of readiness of despatch (prepayment).

5.3

If Customer is more than 14 calendar days in arrear in effecting payment or in providing an agreed security, the balance of the total contract price shall become due.

5.4

Customer may only withhold or set-off payments against counter claims which are either expressly acknowledged by Metacod or judicially awarded to customer by final judgment. Provided it has no material impact on the use of the products, the delay of an insignificant part of the supplies does not entitle the customer to defer payments.

6. Reservation of Title

6.1

Until payment in full the products shall remain Metacod's property. Metacod shall be entitled to register and do all things necessary to preserve its property rights. Prior to the transfer of title, Customer shall not be entitled to pledge, grant security interests, process or alter the products.

6.2

Should the customer resell products to which title is reserved in the ordinary course of business, he shall be deemed to have tacitly assigned to Metacod the receivables deriving from their sale, together with all collaterals, securities and reservations of title until all of Metacod's claims towards customer have been settled. Up to Metacod's revocation, this assignment shall not preclude customer's right to collect the assigned receivables. To the extent the value of the products to which title is reserved together with any other col-lateral exceeds Metacod's claims against the customer by more than 20%, Metacod shall re-assign the above receivables to customer at his request.

6.3

If Customer is in arrear with its payments by more than 14 calendar days, Metacod may cancel the contract and request the return of the product at customer's cost and claim damages for breach of contract in the amount of at least 25 % of the price of the product.

As long as title is reserved to Metacod, customer shall insure the products at its cost and naming Metacod as

beneficiary against theft, breakage, fire, water and similar calamities and risks. In addition, he will take all other measures reasonably required to protect Metacod's property.

7. Delivery Period, Delays in Delivery and Acceptance

7.1

The term of delivery shall commence as soon as the contract has been concluded, all regulatory approvals, such as export-, import- and payment permits have been obtained, any advance- or prepayments or the notification of the issue of the letter of credit have been received by Metacod and soon as all technical documents agreed between the Parties have been supplied or approved by customer.

7.2

Delivery is subject to the following conditions, i.e. the term of delivery shall be reasonably extended a)if Metacod is prevented from performing the contract by Force Majeure. Force majeure shall equally be deemed to be any unforeseeable event beyond Metacod's control which renders Metacod's performance commercially unpractical or impossible, such as delayed or defective supplies from sub-contractors or sub-suppliers, labour disputes, governmental orders or regulations, shortage in materials or energy, serious disruptions in Metacod's works, such as total or partial destruction of plant and equipment or the breakdown of essential production facilities, serious disruptions in transport facilities, e.g. impassable roads. Should the effect of Force Majeure exceed a period of three (3) months, either Party may terminate the contract forthwith. In such case Customer may not claim damages.

b) if Customer is in delay with the fulfilment of his obligations under the contract, in particular, if he does not adhere to the agreed terms of payment or if he has failed to timely provide the agreed security.

7.3

If for reasons attributable to Metacod the agreed term of delivery or a reasonable extension of not less than one month granted by Customer is exceeded, Customer may exert its rights at law. Subject to Clause 11, damage claims shall be limited to maximum 10% of the Price of the Products in delay.

7.4

Part shipments shall be permitted and Metacod may invoice each part shipment. If Customer fails to take delivery of the Products notified as ready for despatch or if he cancels the order without cause and if he fails to remedy such breach within latest 7 days' from Metacod's notice, Metacod shall be entitled to rescind the contract and claim damages pursuant to Clause 6.3.

8. Packaging, Shipping, Transfer of Risk

8.1

If the products are to be provided with additional packing above the standard packing, such packing shall be charged additionally.

8.2

Unless agreed otherwise in the contract, the products shall be shipped EXW place of production (Incoterms 2023 or latest edition). This equally applies if the transport is arranged by Metacod.

8.3

Transport insurance shall be for customer's account. The same applies if transport insurance is taken out by Metacod on behalf of Customer.

8.4

Customer shall timely, at least one (1) week prior to the agreed dispatch date, notify special requests regarding carriage and insurance. Otherwise Metacod shall, at its discretion but without liability, arrange for the quickest and cheapest carriage possible.

8.5

In case of Incoterms DPA, transport arrangements shall be made by Metacod. Additional costs resulting from special requests by customer shall be for customer's account.

8.6

Transport damages, missing or wrong items must be noted on the notice of receipt and documented by photo records.

9. Inspection, Notification of Defects

9.1

During manufacture the Products will be subject to Metacod's standard inspections.

9.2

Additional tests must be required by customer in due time and shall be charged separately.

9.3

Customer shall inspect the products within one week after receipt with regard to readily identifiable discrepancies from the contract specifications, in particular regarding function and performance and shall notify Metacod any such defects or deficiencies latest within another week.

10. Warranty, Statute of Limitations

10.1

In case of wrong deliveries, the delivery of defective s or in case of defects resulting from false commissioning-,

operation- or maintenance instructions customer may, at metacod's election and cost, either request repair or replacement, provided that the remedy offered by Metacod is not unduly burdensome on customer. Replaced products or parts shall, at its request, become again Metacod's property.

10.2

For products which are manufactured to specifications, drawings or patterns supplied by customer, Metacod's warranty shall be limited to proper materials and workmanship.

10.3

Customer shall be entitled to rescind the contract or to demand a reduction of the price if

- the repair or replacement of the defective product is impossible;
- Metacod refuses the repair or replacement or if for reasons attributable to Metacod the repair or replacement is delayed.

10.4

The warranty given hereunder shall not apply to defects or damages resulting from normal wear and tear, improper storage and maintenance, failure to observe the commissioning- or operating instructions, overstressing or overloading, unsuitable operating media, improper re-pairs or alterations by customer or third parties, defects resulting from the use of other than original spare parts or other reasons beyond Metacod's control.

10.5

No action or claim may be brought by customer on account of any alleged breach of warranty or any other obligation or liability of Metacod after the expiration of twelve (12) months from receipt of the products by the end user or at the latest within eighteen (18) months from the receipt of the Products by Metacod. The warranty for repaired or replaced parts or products expires 6 months from the date of replacement or repair, at the earliest however upon expiry of the original warranty period for the product. Reservation is being made for longer statutes of limitation under mandatory law.

11. Limitation of Liability

The rights and remedies of customer are exclusively governed by these General Conditions of Sale and shall be in lieu of any remedies at law. All further claims for damages, reduction of the Price, termination of or rescission of the contract are excluded. Customer shall not be entitled to claim damages for loss of production, loss of use, loss of orders, loss of profit, loss of anticipated savings, loss of data, costs for dismantling or reinstallation of the Product or handling costs for claims management, as well as for claims of third parties for such damages or costs. Metacod's liability for damage to property shall be limited to CHF 10'000 per occurrence and calendar year. This limitation of liability equally applies to the extent Metacod is liable for acts or omissions of its employees or third parties engaged in the performance of its obligations. It does not apply to the extent Metacod's liability is mandatory, in particular in case of unlawful intent or gross negligence on the part of Metacod and its employees or third parties engaged in the performance of the contract, in case of fraudulent concealment of a defect, for personal injury or death or under Metacod's mandatory liability under applicable product liability acts.

12. Protection of Personal Data

12.1

In compliance with the provisions of the Data Protection Act and the Privacy Policy of Metacod AG on [<https://www.metacod.ch>], Metacod processes personal data that the Customer transmits to Metacod in connection with this contract. Further details and information on data protection, in particular on the rights of data subjects, can be found on Metacod's data protection declaration [<https://www.metacod.ch>].

13. 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.

14. Place of Fulfilment, Applicable Law, Jurisdiction

14.1

Unless otherwise agreed in a purchase order the place of fulfilment shall be Aarwangen, Switzerland.

14.2

The contract shall be governed and construed under Swiss law, its conflicts of law provisions and the Convention on the International Sale of Goods (CISG) being excluded.

14.3

Exclusive jurisdiction for all claims out of or in connection with this contract shall revert to the competent courts at Metacod's place of business in Aarwangen, Switzerland. Metacod shall be entitled to bring action in any other competent court. The contractual relationship is subject to Swiss law.

Aarwangen, 01.01.2019

Metacod AG
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