

## General Terms and Conditions to the Contract on the Sale of Workpieces

**General Business Terms and Conditions (Terms and Conditions) of Metlog GmbH & Co. KG governing the delivery and surrender of workpieces**  
 - Corporate Customers -

### 1. In General

**1.1** The following General Terms and Conditions of Delivery and Payment (Terms and Conditions) shall provide the legal framework for supplies and services by Metlog GmbH & Co. KG (hereinafter referred to as “METLOG”) and entrepreneurs, as defined in Section 14 of the German Civil Code (*BGB*) (hereinafter referred to as “Customer”). Entrepreneurs within the meaning of said statutory provision are defined as natural or legal persons or partnerships with legal capacity who, upon contract conclusion, act in preparation or in the exercise of their commercial or independent professional activities.

**1.2** METLOG shall provide all supplies and services exclusively on the basis of these Terms and Conditions. Terms and conditions of the Customer shall not apply, even if METLOG has not explicitly objected thereto.

**1.3** These Terms and Conditions shall also apply if METLOG provides goods and services without any reservation in spite of being aware of contradicting or deviating terms and conditions of the Customer. In such cases, the acceptance of the goods and services by the Customer shall constitute an approval of these Terms and Conditions and, at the same time, an already now accepted waiver of the applicability of its own terms and conditions on the part of the Customer.

### 2. Offers and Prices

**2.1** Offers shall in any case be unbinding. In the absence of a written agreement, a contract shall come into being no earlier than upon written order confirmation by METLOG. In the event that METLOG provides goods and services without having given the Customer a prior order confirmation, the contract shall come into being upon commencement of delivery or order execution.

**2.2** Packaging, freight, postage, road charge and other shipping costs shall not be included. Packages for transportation or other purposes according to the packaging regulations shall not be taken back. Costs for the disposal of the packaging shall be borne by the Customer.

**2.3** Orders shall be executed at the prices and under the special conditions set forth in the respective purchase contract. The prices set forth therein shall be binding.

**2.4** If there will be a major change in the cost structure after conclusion of the contract e.g. due to a price change of the pre-supplier, METLOG / the customer is entitled to make an appropriate adjustment of the prices for deliveries which will be made later than four month after conclusion of the contract. If the price increase will be more than 10%, the customer reserves the right to cancel the entire contract.

**2.5** Unless otherwise agreed upon on a case-by-case basis, prices shall be net prices exclusive of the statutory VAT owed in each case at the rate valid at the time being, currently 19 %.

### 3. Purpose of Contract, Supplies and Services, Rights of Use

**3.1** Unless otherwise agreed upon on a case-by-case basis, the contents/quality and scope of the supplies and services owed by METLOG shall result from the respective contract or, in the absence of such contract, the order confirmation, in each case with the respective product description, in the aforementioned sequence. Product descriptions may be inspected with METLOG at any time prior to contract conclusion.

**3.2** The contract shall be based on the Customer’s technical and functional requirements, as specified by the latter.

**3.3** In case of direct deliveries to the Customer, the price and performance risk shall immediately pass over to the Customer as from the delivering plant or distribution centre respectively.

**3.4** Any analytical, planning services and consulting services related thereto as well as technical calculations shall be performed by METLOG on the basis of a separate contract only.

### 4. Delivery Dates and Deadlines

**4.1** Dates and deadlines shall be binding if they have been bindingly agreed upon in writing between METLOG and the Customer on a case-by-case basis. Unless otherwise agreed upon, the performance period shall commence upon contract conclusion or upon dispatch of the order confirmation.

An agreement on a fixed performance date shall be subject to the condition that METLOG receives the supplies and services required by it from its respective sub-suppliers in due time and according to the contract.

**4.2** In the event that a performance period agreed upon fails to be observed due to circumstances METLOG cannot be made liable for (inclusive of strike or lockout), performance dates shall be postponed by the period of the interruption, inclusive of a reasonable start-up phase.

**4.3** In case of a delay caused by METLOG a minimum grace period of 15 working days will be agreed even more in the case of compensation or the threat of cancellation of the contract.

**4.4** In the event of a delay in performance, the Customer shall be entitled to rescind the contract according to statutory provisions only if the delay is due to reasons METLOG is responsible for.

### 5. Duties of the Customer/Delay in Acceptance

**5.1** The Customer shall be obliged to inspect the deliveries without any delay as to completeness, compliance with delivery documents and externally visible defects and to immediately assert all identifiable discrepancies and defects.

Transport damage or shortfalls which can be recognised at the time of delivery must also be reported in the acknowledgement of receipt of the forwarding agent. If no complaint is made within a term of two weeks after receipt by the Customer the respective delivery is deemed to comply with the contract, unless the non-compliance could not be recognised in spite of a careful inspection. The Customer shall give METLOG notice of any damage not yet visible upon receipt within two weeks after having become aware of it.

The provision according to Section 377 of the German Commercial Code (*HGB*) shall remain unaffected.

**5.2** In the event that the customer fails to take delivery of the supplies and services in due time, METLOG shall be entitled to grant the Customer a reasonable period of time for taking delivery of the supplies and services and, after fruitless expiry of such period, request the Customer to pay a lump-sum compensation in the amount of 20 % of the value of the supplies and services which failed to be accepted. The Customer shall be free to provide evidence that METLOG did not incur any damage at all or that the damage incurred is below the aforementioned amount. If so, the compensation shall be reduced in line with the respective evidence or, as the case may be, excluded.

**5.3** The Customer shall give METLOG the name of a qualified contact person authorised to take binding decisions on the Customer’s behalf during contract implementation. Said person shall make himself or herself available for exchanging necessary information and participate in decisions required for contract performance. Required decisions of the Customer shall immediately be brought about by the contact person and jointly documented by the parties in writing immediately after having been taken.

**5.4** The Customer shall ensure that any documents, information and data necessary for providing the goods and services are made available to METLOG to their full extent, in their correct versions, in due time and without charge, unless they are owed by METLOG. METLOG may rely on the completeness and correctness of such documents, information and data, unless it becomes aware or ought to become aware of the contrary.

### 6. Payments, Setoffs and Retentions

**6.1** Unless otherwise agreed upon on a case-by-case basis, payments shall categorically become due without any deductions within seven calendar days after invoice date.

**6.2** Remunerations shall be paid to one of the accounts of METLOG, as designated in the purchase contract or in METLOG’s order confirmation or invoice. Payment shall be deemed to have been made if it has been credited to one of the bank accounts of METLOG. In case of delay, METLOG shall be entitled to charge interest at a rate of 9 percentage points above the basic interest rate. The right of METLOG to claim higher damages shall remain unaffected.

**6.3** A payment term granted to the Customer shall in case of each individual order be subject to the existence of a sufficient credit limit. In the event that the respective order exceeds the credit limit available, METLOG shall be entitled to execute this and any other order exclusively against advance payment or against provision of a security in form of a performance bond issued by a financial institution or credit insurer registered in the European Union. The same shall apply if, after order confirmation, METLOG becomes aware of circumstances justifying doubts concerning the Customer’s creditworthiness.

**6.4** In the event that the Customer fails to settle a justified claim by the due date agreed upon either in total or in part, METLOG shall be entitled to withhold the goods and services forming the subject matter of other orders. In addition, METLOG shall be entitled to revoke any cash discounts and payment terms agreed upon with respect to all other claims outstanding at the time in question and demand immediate payment in this respect. Apart from that, METLOG shall have the right to deliver any further goods and services exclusively against advance payment or provision of a security in form of a performance bond issued by a financial institution or credit insurer registered in the European Union.

**6.5** In the event that the Customer is economically unable to fulfil its obligations towards METLOG or files an insolvency application, METLOG shall have the right to rescind the contract with the Customer. Section 321 of the German Civil Code (*BGB*) and Section 112 of the German Insolvency Code (*InsO*) shall remain unaffected. The Customer shall give METLOG early notice of an imminent insolvency.

**6.6** The Customer shall only be permitted to make setoffs or to retain payments on the grounds of defects if the Customer is actually entitled to assert such claims for material defects and/or defects in title. A retention of payments by the Customer on the grounds of defects shall only be admissible if the amount withheld is in an appropriate proportion to the defect, and if so, only if the defect exists beyond any doubt. Clause 8.2 shall apply *mutatis mutandis*. In the event that the claim for defects has become statute-barred, the Customer shall have no right of retention. Apart from that, the Customer may only offset against claims or exercise its right of retention with respect to claims that are undisputed or have been established with legal effect. The exercise of a right of retention on the part of the Customer due to a counterclaim not based on a right arising from a contract underlying these General Business Terms and Conditions shall be excluded. The Customer's rights arising from Section 478 of the German Civil Code (*BGB*) shall remain unaffected.

## **7. Reservation of Title**

**7.1** The delivered goods shall remain the property of METLOG until complete payment of all claims arising from the business relationship, inclusive of ancillary claims, claims for damages and honouring of cheques and bills of exchange. Justified retentions due to defects according to clause 8.5 sentence 2 shall be taken account of. The reservation of title shall continue to exist even if individual claims of METLOG have become part of an open account and the balance has been drawn and recognised.

**7.2** In the event that the Customer processes goods subject to title reservation to create a new movable item, such processing shall be made for the benefit of METLOG without any obligations arising therefrom for the latter. The new item shall become the property of METLOG. If the goods under reservation of title are processed, mixed or combined with goods not belonging to METLOG, the latter shall acquire co-ownership in the new item in the proportion of the invoice values of the goods under title reservation to the total value. The Customer shall be entitled to resell or to install the goods under title reservation, always provided that the claims according to clause 7.3 are actually assigned to METLOG. The Customer's rights to sell, process or install goods under title reservation in the course of orderly business practices shall cease upon revocation on the part of METLOG due to a lasting deterioration of the financial situation of the Customer, but in no case later than upon the Customer's suspension of payments or its application for the institution or the actual opening of insolvency proceedings regarding its assets.

**7.3** The Customer hereby assigns the claims, inclusive of ancillary claims, arising from a resale of goods under title reservation - inclusive of outstanding balances - to METLOG and METLOG hereby accepts such assignment. If the goods were processed, mixed or combined and METLOG has acquired co-ownership thereto in the amount of the respective invoice values METLOG shall be entitled to claim the purchase price in proportion to the value of its rights in the respective items. In the event that the Customer has sold the claim within the framework of real factoring, the claim of METLOG shall immediately become due and the Customer shall assign the claim taking its place against the factor to METLOG and forward its sales proceeds to METLOG without any delay. METLOG accepts the assignment made in this respect already now.

**7.4** The Customer shall be authorised to collect the assigned claims as long as it comes up to its payment obligations. The authorisation to collect shall lapse upon revocation, but in no event later than upon occurrence of a default by the Customer or in case of a significant deterioration of the Customer's financial situation. For this case, the Customer hereby authorises METLOG to give the purchasers notice of the assignment and to collect the claims itself.

Upon request, the Customer shall be obliged to provide METLOG with a precise list of the claims owed to the Customer together with names and addresses of the purchasers, the amount of the individual claims, the date of invoice etc. as well as with any information necessary for asserting the assigned claims and to permit such information to be audited.

**7.5** If the value of the securities provided to METLOG exceeds the latter's claims by more than 20 % METLOG shall to this extent and upon request of the Customer or a third party affected by such overcollateralisation be obliged to release securities of its choice.

**7.6** A pledging or transfer of the goods under title reservation or of the assigned claims by way of security shall be inadmissible. METLOG must be given immediate written notice of any pledge, inclusive of the name of the pledgee.

**7.7** In the event that METLOG takes the delivered item back within the framework of the retention of title, a rescission of the contract shall only occur if this has explicitly been declared by METLOG. METLOG may satisfy itself by selling the recovered goods under title reservation in the open market.

**7.8** The Customer shall keep the goods under title reservation in custody for METLOG without charge. The Customer shall be obliged to insure them to the customary extent against the usual risks such as fire, theft and water. The Customer hereby assigns its claims for compensation it is entitled to assert against insurance companies or other parties liable for compensation due to damages of the aforementioned kind to METLOG in the amount of the invoice value of the goods. METLOG accepts this assignment.

**7.9** All claims and all rights arising from the reservation of title with respect to all specific shapes provided for in these Terms and Conditions shall continue to exist until METLOG has been released or indemnified with respect to all contingent liabilities assumed by METLOG in the interest of the Customer.

## **8. Material Defects**

**8.1** METLOG guarantees towards the Customer that the supplies and services comply with the agreements according to clause 3.1, always provided that they are used according to the contract.

**8.2** Claims for material defects shall be excluded to the extent that non-compliance with the quality contractually agreed upon is due to excessive or improper use, incorrect assembly or installation, insufficient maintenance or normal wear and tear. The same shall apply to those discrepancies occurring due to special external influences not provided for in the contract. In addition, claims in connection with the sale of second-hand goods shall be excluded.

**8.3** Furthermore METLOG excludes the warranty for the occurrence of hydrogen embrittlement in galvanized (e.g. pickling, electrolytic cleaning and metal plating for the production of metal coatings) high strength components with a tensile strength  $\geq 1000$  MPa and for spring hard parts  $\geq 300$  HV. Therefore we would like to point out that these material treatments will cause a reduction of the strength of the product. Due to that such component treatments will be done only on special customer demand and for the risk of the customer. In accordance to the current valid technical standards (see DIN EN ISO 4042, DIN EN ISO 9587, DIN EN ISO 15330, DIN EN ISO 19598) a complete elimination of the risk of hydrogen embrittlement is technically not possible. Any warranty and compensation claims against METLOG are therefore excluded. The customer exempts METLOG from any claims of third parties, in the case that incidents are caused by hydrogen embrittlement.

**8.4** Material defects, if any, shall be reported by the Customer in writing in an understandable and detailed form by indicating the information necessary for identifying and analysing the defect. If necessary, the Customer shall assist METLOG also in any other respect concerning the elimination of defects.

**8.5** If the Customer is entitled to assert claims for defects, such right shall initially be restricted to the right to subsequent performance within a reasonable period of time. Subsequent performance shall, at METLOG's option, consist of the elimination of defects or a new delivery. When making use of this option, METLOG shall take the Customer's interests into reasonable account. If a subsequent performance is carried out, the ownership in the items replaced within the framework of such subsequent performance shall be transferred to METLOG at the time of replacement.

The processing of a Customer's notice of a material defect on the part of METLOG shall only cause a suspension of the period of limitation if the statutory prerequisites have been fulfilled. A subsequent performance may only have an effect upon the period of limitation relating to the defect that forms the cause of the subsequent performance.

**8.6** In the event that subsequent performance fails to be made or cannot be carried out for any other reason, the Customer may according to statutory provisions reduce the remuneration, rescind the contract, and/or request compensation of damages and expenditures according to clauses 10.1-10.3. Rights of election the Customer is entitled to shall be exercised by the latter within a reasonable term; as a rule, this term shall amount to seven calendar days as from the date when the Customer becomes aware of this right of election.

**8.7** If the Customer opts for contract rescission METLOG shall take the goods back and reimburse the remuneration paid by the Customer after having deducted the value of the utilisation possibilities which were available to the Customer. Utilisation possibilities shall within the framework of a degressive depreciation always be calculated over a period of use of three years. The parties shall be free to provide evidence that a longer or shorter period of use must be taken as a basis.

**8.8** The limitation period for material defects shall amount to one year as from its statutory commencement. Terms provided for by law shall remain unaffected to the extent that statutory provisions mandatorily require longer terms, as it is, for instance, the case in the event of an intentional or grossly negligent breach of duty by METLOG, particularly its legal representatives or persons employed in the performance of its obligation, in the event of a fraudulent concealment of a defect and in case of injuries to life, body or health and claims based on the product liability act.

**8.9** Unless otherwise agreed upon, the Customer shall bear any additional expenses required for subsequent performance, particularly additional costs for transport, travel and labour and costs of materials, whenever the Customer has taken the goods and services concerned to another place of use than the one indicated towards METLOG upon contract conclusion. The provision according to Section 439 of the German Civil Code (*BGB*) shall remain unaffected.

**8.10** METLOG may request compensation for its efforts/expenses if  
- it becomes active in response to a notice of a defect which actually does not exist, unless the Customer was - after reasonable efforts on its part - unable to recognise that the defect did not exist or

- additional efforts/expenses become necessary due to an improper fulfilment of the Customer's duties, especially according to clause 8.3.

**8.11** The provisions concerning a recourse on the part of the Customer according to Sections 478, 479 of the German Civil Code (*BGB*) shall remain unaffected.

## 9. Defects in Title

**9.1** METLOG shall be liable towards the Customer for an infringement of rights of third parties caused by its goods and services only if they are used by the Customer in compliance with the contract, especially in the environment of use provided for in the contract. A liability for an infringement of rights of third parties shall furthermore be limited to rights of third parties held within the European Union and the European Economic Area as well as at the location of the contractual use of the goods and services. Clause 8.2 sentence 1 shall apply *mutatis mutandis*.

**9.2** If a third party asserts towards the Customer that goods and services of METLOG infringe its rights, the Customer shall be obliged to give METLOG immediate notice in this respect. METLOG shall be entitled, but not obliged - if admissible - to defend against the asserted claims at its own expense.

**9.3** If goods and services of METLOG infringe rights of third parties METLOG shall at its own option and at its own expense:

- provide the Customer with the right to use the goods and services or convert them in a way that they no longer infringe any rights; or
- take the goods and services back by reimbursing the remuneration paid by the Customer in this context (less a reasonable compensation for use according to clause 8.6 sentences 2 and 3) if METLOG is in spite of reasonable efforts not able to offer any other solution.

The Customer's interests shall be taken into reasonable account in this context.

**9.4** Claims of the Customer due to defects in title shall become statute-barred according to clause 8.8 With respect to claims for damages and claims for compensation of expenditures, clause 8.6 shall apply complementarily.

## 10. Liability

**10.1** METLOG shall always be liable to pay damages to the Customer

- for any damage caused by it, its legal representatives or persons employed in the performance of its obligation either intentionally or due to gross negligence;
- according to the product liability act, and
- in case of damage arisen from injuries to life, body or health for which METLOG, its legal representatives or persons employed in the performance of its obligations can be made liable for.

**10.2** METLOG shall be liable for slight negligence to the extent that METLOG, its legal representatives or persons employed in the performance of its obligations violated a significant contractual duty (so-called cardinal duty) the fulfilment of which is indispensable for the due performance of the contract or the infringement of which threatens the achievement of the contract purpose and the fulfilment of which (as e.g. in case of the obligation to provide faultless goods and services) may regularly be relied on by the Customer. In any other respect, a liability in case of slight negligence shall be excluded.

To the extent that METLOG assumes liability for slight negligence, the liability shall in case of material and pecuniary damage be limited to the foreseeable damage typical to the contract. A liability for any other, remote consequential damage shall be excluded. Liability for each individual damage event shall be limited to the contract value. This subsection shall not affect the liability according to clause 10.1.

**10.3** With respect to the limitation period, clause 8.7 shall apply *mutatis mutandis*.

**10.4** With respect to claims for compensation of expenditures and other liability claims of the Customer towards METLOG, clauses 10.1.-10.3 shall apply *mutatis mutandis*.

## 11. Export

**11.1** All supplies and services shall be delivered by METLOG according to the actually valid Dual-Use Regulations in the German Foreign Trade Law/Foreign Trade Regulation and the EC Dual-Use Regulations and according to the U.S. Export Regulations and shall be destined for use and stay in the country of destination agreed upon with the Customer.

**11.2** In case of border-crossing supplies and services, the Customer shall bear all customs duties, fees and other charges, unless otherwise provided for in individual contracts.

**11.3** If the Customer intends to (re-)export goods, it shall be obliged to obtain the permits required for this purpose, particularly from the foreign trade authority before exporting the products. The Customer shall obtain its own information on the provisions and regulations valid at the time being and carry out the (re-)export on its own responsibility. To this extent, METLOG shall not have any obligation to inform, to render advice or to cooperate.

**11.4** In the event that, in case of an export or import to another country contrary to the contract, the Customer fails to comply with a statutory regulation applicable thereto and METLOG is for this reason made liable by the exporting or importing country, a transit country or a third country on the basis

of the statutory regulations in force in such country, the Customer undertakes to indemnify METLOG with respect to any and all financial obligations arising in this context and shall furthermore be obliged to compensate METLOG for any damage resulting from the non-conforming export or import.

## 12. Miscellaneous

**12.1** Changes and amendments to any contract and supplementary agreement, if any, concluded between the parties shall be subject to writing. For complying with this requirement, the text form (Section 126b of the German Civil Code (*BGB*)) shall be sufficient. In the event that written form has explicitly been provided for in a contract (e.g. for changes or amendments, a statement of misgivings, a rescission or cancellation), the text form shall not be sufficient. Oral agreements shall only be valid if confirmed by METLOG in text form within seven calendar days.

**12.2** METLOG and the Customer shall be obliged to maintain secrecy with respect to all business and trade secrets and any other information described as confidential which become known to them in connection with their contractual relation or the contractual relationship resulting therefrom. A disclosure of such information to persons not involved in the conclusion, implementation or handling of the contractual relationship shall be subject to the explicit written consent of the contract party, unless a statutory regulation exists or the information is disclosed to members of the legal and/or tax consulting professions and the disclosure takes place in connection with the legal or tax-related cooperation and its consequences. Unless otherwise agreed upon, this obligation shall cease to exist after expiry of five years after the respective information has become known, but in no case prior to the termination of the contractual relationship between METLOG and the Customer.

The contract parties shall impose these obligations also upon their employees and third parties, if any, deployed by them.

**12.3** METLOG and the Customer are aware that electronic and unencrypted communication (e.g. by e-mail) is exposed to safety risks. For this reason, METLOG and the Customer shall not assert any claims towards each other in connection with this kind of communication if such claims are based upon the absence of encryption, unless they have concluded a prior written agreement on the use of encryption.

**12.4** The exclusively applicable law for this and all other contractual relationships between the parties based on this contract shall be the law of the Federal Republic of Germany. The applicability of the UN Vienna Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

## 13. Place of Performance and Place of Jurisdiction

**13.1** Place of performance for all obligations arising from the contractual relationships of the parties shall be Lippstadt.

**13.2** Place of jurisdiction for all legal disputes arising from or in connection with the contractual relationships between the parties and for all disputes concerning the establishment and effectiveness of such contractual relationships shall *vis-a-vis* merchants, legal persons under public law or special funds under public law will be the for Lippstadt responsible factually and locally court. METLOG shall, however, be entitled to sue the Customer at the place of the latter's registered office.