

# General Terms of Sale and Delivery

## 1. General

- 1.1. The Buyer acknowledges that these General Terms of Sale and Delivery form part of all present and future contracts with MetSuisse Distribution Ltd., Zug, Switzerland (Seller).
- 1.2. Additional or deviating terms proposed by Buyer, in particular Buyer's Terms and Conditions of Purchase, are not applicable and hereby expressly rejected, even if (1) the Buyer expressly refers to other terms and conditions in the course of the business relationship with the Seller or (2) they are not rejected explicitly by the Seller in an Order Confirmation or (3) the Seller delivers the Goods and accepts payment by the Buyer.

## 2. Formation of Contract, Scope of Supply

- 2.1. The Seller shall be bound only by offers specifying a period for acceptance.
- 2.2. The scope and execution of the contract shall exclusively be governed by Seller's Order Confirmation or any other written agreement between the Parties.
- 2.3. Data, such as technical specifications, processability or fitness of the Goods for a particular purpose published on Seller's website or otherwise serve as general information only and are binding only if explicitly confirmed in the Order Confirmation.
- 2.4. Discrepancies in dimensions or quality within the tolerance of applicable standards, discrepancies in weight customary in the trade as well as discrepancies of up to 10 % of the total quantity ordered are permitted. Seller shall be entitled to invoice the quantity actually delivered.
- 2.5. The coming into force of the contract shall be contingent on the granting of all required government approvals, in particular any export- or import license, if so required. If the granting of such license is de-

layed by more than 3 months, the other Party may withdraw from the contract.

## 3. Prices and Terms of Payment

- 3.1. Unless otherwise agreed, the Prices are understood FCA Seller's place of business (Incoterms latest edition)
- 3.2. For supplies to be delivered later than 4 months after conclusion of the contract Seller reserves the right to increase the Price of the Goods appropriately, if its respective supplier has increased the price by more than 5 %.
- 3.3. Buyer may only withhold or set-off payments against counter claims which are either expressly acknowledged by Seller or awarded to Buyer by final judicial judgment.
- 3.4. If Buyer is in arrears in effecting payment of an instalment or in providing an agreed security by more than 14 calendar days, the balance of the total Price shall become due and payable. In this case the Seller –in addition to its right to claim interest on arrears of 6 % p.a. - shall be entitled to withdraw from the contract and claim damages of at least 10 % of the Contract Price.

## 4. Retention of Title

- 4.1. Until the Goods are fully paid they shall remain Seller's property. Seller shall be entitled to register and do all things necessary to preserve its property rights. Prior to the transfer of title, Buyer shall not be entitled to pledge or grant security interests in the Goods.
- 4.2. In the event of withdrawal from the contract, Seller may enter Buyer's premises to retake possession of the Goods which have not been paid in full.

## 5. Delivery

- 5.1. Part shipments shall be permitted and Seller may invoice each part shipment,

provided the respective Goods can be used by Buyer for the agreed purpose.

5.2. The term of delivery shall commence as soon as the contract has been concluded, all regulatory approvals, such as export- and payment permits have been obtained, any advance- or prepayments or the notification of the issue of or the confirmation of a letter of credit have been received by Seller, all payments due for Goods supplied under prior contracts have been made and as soon as all technical documents agreed between the Parties have been supplied or approved by Buyer.

5.3. Delivery is subject to the following conditions, i.e. the term of delivery shall be reasonably extended:

a) if Seller or Seller's suppliers are prevented from performing the contract by Force Majeure. Force Majeure shall be deemed to be any unforeseeable event beyond the affected party's control which renders said party's performance commercially impractical, unduly burdensome or impossible, such as delayed or defective supplies from sub-contractors or sub-vendors, labor disputes, governmental orders or regulations, shortage in materials or energy, serious disruptions in the affected party'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 and the ensuing reasonable start-up period exceed a total of two (2) months, either Party may terminate the contract forthwith. In such case Buyer may not claim damages.

b) if Buyer 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 an agreed security.

5.4. If for reasons attributable to Seller the agreed term of delivery or a reasonable extension of not less than one month to be granted by Buyer is exceeded, Buyer may exert its rights at law. However, Seller's liability hereunder shall be limited to maxi-

mum 10% of the Price of the Goods in delay.

5.5. If Buyer fails to take delivery of the Goods notified as ready for dispatch or if he cancels a Purchase Order without cause and if he fails to remedy such breach within latest seven days from Seller's notice, Seller shall be entitled to withdraw from the contract and claim damages pursuant to Clause 3.4.

5.6. In addition, Buyer shall bear the costs of storage of the Goods. In case the Goods are stored in Seller's premises, the weekly storage charge shall amount to 0.25% of the Price of the Goods stored.

5.7. Seller shall inform Buyer as soon as practical of any circumstances occurred or likely to occur, which may impair the agreed delivery date, as well as of the estimated period of delay. The Seller shall exert its best efforts to minimize the delay or to procure replacements from third parties.

## **6. Packing Material**

Buyer agrees to dispose of the packing material at its own expense. Unless required by applicable law, Seller does not take back packing and transport material.

## **7. Inspection, Notification of Defects**

7.1. Buyer shall note any transport damages, missing or wrong items on the receipt handed out to Seller's carrier, document the damages by photo records and inform Seller forthwith.

7.2. The Buyer shall further examine the Goods received with regard to identity and or defects in quality or functionality as soon as feasible in the ordinary course of business, at the latest however before processing. Defects or other discrepancies must be notified in traceable form and accompanied by supporting evidence latest within eight days following receipt of the Goods – in the case of hidden defects, immediately after their discovery, at the latest however within the agreed warranty period.

7.3. After notification of the defects, Seller shall be entitled to examine the Goods himself

and to this effect, Buyer shall store the Goods properly and grant Seller access thereto.

## **8. Warranty**

- 8.1. Seller represents and warrants that the Goods: (i) conform to the agreed specifications, (ii) are free from defects (iii) are not infringing third party industrial property rights and (iv) are of good and merchantable quality.
- 8.2. Erroneous deliveries of a different type of Goods are deemed to be deliveries of a defective Good.
- 8.3. Seller, at its election, undertakes to repair or replace all defective Goods free of charge without undue delay after having received Buyer's notice thereof..
- 8.4. Buyer may withdraw from the contract or to demand a reduction of the Purchase Price,
  - a. if the repair or replacement of the defective Good is impossible; or
  - b. if Seller refuses the repair or replacement or if, for reasons attributable to Seller, the repair or replacement is unduly delayed.
- 8.5. The warranty period is 24 months and begins, unless otherwise agreed by the Parties, upon receipt of the Goods by Buyer.
- 8.6. The warranty period for repairs or replacements shall be 12 months from the date of replacement or successful repair, provided, however, that it shall not expire prior to the warranty period for the original delivery of the respective Goods.
- 8.7. The warranty given hereunder shall not apply to defects or damages resulting from normal wear and tear, improper storage, failure to observe any processing instructions, overstressing, improper repairs by Buyer or third parties, defects resulting from other reasons beyond Seller's control. If it turns out that the Seller is not responsible for the defect the Buyer shall reimburse all assessment, travel and related costs

## **9. Limitation of Liability**

- 9.1. Seller shall not be liable for damages resulting from loss of production, loss of use, loss of orders, loss of profit, loss of anticipated savings, costs for dismantling or re-installation of the Goods or handling costs for claims management, as well as for claims of third parties for such damages or costs.
- 9.2. The limitation does not apply to the extent Seller's liability is mandatory, in particular in case of unlawful intent or gross negligence on the part of Seller and its employees or third parties engaged in in the performance of the contract, in case of fraudulent concealment of a defect, for direct claims arising from personal injury or death or under Seller's mandatory liability under applicable Product Liability Acts.

## **10. Confidentiality**

- 10.1. The Parties shall not disclose to third parties and shall use solely for the execution of an order all confidential information of which they have gained knowledge in the course of their dealing with the other Party, in particular technical information, business secrets and details of the order, such as quantities, technical specifications, commercial terms of an order, etc. as well as any knowledge derived from said information.
- 10.2. The Seller 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
- 10.3. Without Seller's prior consent, Buyer shall not publish the fact that he has contracted with Seller to use his business relationship with Seller for publicity purposes.
- 10.4. In the event of breach or threatened breach, the disclosing party is entitled to seek injunctive relief from a court of competent jurisdiction in addition to any other remedy at law or in equity.

## **11. Import Licenses, etc.**

The Buyer shall be responsible for obtaining all required import licenses, in particular for dual use goods, at its own expense and shall bear the risk of any change in applicable government regulations becoming effective after conclusion of the contract. If applicable, the Buyer shall timely provide the required End-user Statement.

## **12. Final Provisions**

- 12.1. No delay or omission of Seller to exercise any right or remedy granted under the contract and these terms and conditions shall operate as a waiver of such rights, and every right and remedy of Seller provided herein shall be cumulative, concurrent and in addition to any other further rights and remedies available at law or in equity.
- 12.2. Any communication transmitted via facsimile or electronically (e.g., via the Internet, including but not limited to EDI or E-mail) shall also be considered to have been made "in writing."

## **13. Applicable Law and Place of Jurisdiction**

- 13.1. The contract between the Parties is subject to Swiss law, the UN-Convention on Contracts for the International Sale of Goods (CISG) expressly being excluded.
- 13.2. Exclusive place of jurisdiction for all actions arising out of or in connection with a Purchase Order or another agreement between the Parties shall be Zug, Switzerland, the Seller additionally being entitled to bring action also before any other court having jurisdiction over the subject-matter in dispute. In such case the respective court shall apply the substantive law in force at the place of venue, the UN-Convention on Contracts for the international Sale of Goods remaining excluded."

Valid as of December 1, 2022.