Terms and Conditions of Sale and Delivery – Metallux AG

1. Validity

1.1. These terms and conditions of sale and delivery apply only to business people exercising their commercial and independent professional activities and to juridical persons under public law. They shall apply to all business transactions between Metallux AG (referred to hereafter as 'Metallux') and the Buyer, even if they are not mentioned in subsequent agreements. They also apply to works and services. Whereas products delivered are accepted, work performed shall be approved and services shall be received.

1.2. Any conflicting, additional or deviating terms and conditions put forward by the Buyer shall not be included in the agreement unless Metallux has agreed to them. These terms and conditions of sale and delivery shall even apply if Metallux delivers to the Buyer unconditionally, despite knowing about the Buyer's conflicting, additional or deviating terms and conditions.

1.3. This does not affect any rights which Metallux has under statutory provisions or other agreements over and above these terms and conditions of sale and delivery.

2. Conclusion of agreement

2.1. Metallux's offers are always subject to change and non-binding, unless we state otherwise.

2.2. Metallux has not accepted an offer until it confirms it. Metallux shall not be bound by an order confirmation containing obvious errors, spelling/grammatical mistakes or miscalculations. If the Buyer receives a delivery note or an invoice, or if the delivery or service is executed, this too shall be deemed confirmation.

2.3. The specifications and dimensions of products in Metallux's quotations and documents reflect product characteristics determined by Metallux under test conditions. The products may behave differently under the Buyer's environmental and operating conditions. The Buyer must therefore check the suitability of the products for their intended use, unless agreed otherwise.

2.4. Metallux does not check specifications provided by the Buyer to ascertain whether they contain errors or are suitable, etc. If Metallux prepares approval documents or other documents on the basis of specifications provided by the Buyer, the Buyer shall themselves be responsible for checking that these documents are complete and correct.

2.5. Metallux reserves the right to make changes to the design and shape of the products, provided these changes are customary in the industry or within the DIN tolerances, or provided the changes are minor and of a kind the Buyer can reasonably be expected to tolerate.

2.6. Metallux reserves full rights of ownership, copyrights and other intellectual property rights regarding all of the documents. They may not be made accessible to third parties. The Buyer shall immediately surrender all of the offer documents to Metallux upon the latter's request, if they are no longer required in the ordinary course of business. The same shall apply to any other documents, drafts, samples, patterns and models.

2.7. If Metallux does not respond to offers, orders, requests or other declarations by the Buyer, this shall only be deemed consent if agreed in advance.

2.8. If a reasonable application for the opening of insolvency or similar proceedings against the assets of the Buyer is turned down due to lack of assets, Metallux shall be entitled to withdraw from the agreement, either wholly or partially. This does not affect Section 4.4 of these terms and conditions of sale and delivery.

3. Prices

3.1. Unless otherwise agreed, prices are based on the list price valid on the day the agreement was concluded, plus value added tax, and are ex works, excluding packaging, transport, installation, assembly and other additional expenses, and excluding insurance, customs duties and other charges. Any costs of this kind incurred, in particular additional expenses, shall be charged in addition to the price, upon proof. Statutory value added tax shall also be itemised separately in the invoice at the rate applicable on the invoice date.

4. Payment, right of retention

4.1. The delivery price is payable net within 14 days from receipt of invoice, or as otherwise agreed. The day of payment shall be deemed to be the day on which Metallux can dispose of the delivery price. In the event of arrears, the Buyer shall pay interest on the arrears of 9% p.a. above the base interest rate at the time. This shall not affect further claims by Metallux.

4.2. In the case of foreign sales, payment shall be made prior to delivery, notwithstanding Section 4.1. of these terms and conditions of sale and payment, unless agreed otherwise beforehand.

4.3. There is no obligation to accept bills of exchange or cheques, and they shall only be accepted for processing. Fulfilment is only deemed to happen once the respective amount has been irrevocably credited to Metallux. The Buyer shall carry any costs incurred as a result of paying by bill of exchange or cheque, in particular bill of exchange and cheque fees.

4.4. Metallux is entitled to refuse to deliver as originally obliged, if it becomes apparent after the agreement is concluded that Metallux's dues are jeopardised by the Buyer's inability to pay. Metallux is then entitled to set a reasonable deadline by which the Buyer shall, at its discretion, either make payment or provide security as and when delivery takes place. If the Buyer does not make payment by the deadline and does not provide any security, Metallux is entitled to withdraw from the agreement in accordance with the law. This does not affect either Metallux's other rights, or Section 2.8 of these terms and conditions of sale and delivery.

4.5. The Buyer is only entitled to exercise the right of retention insofar as its counterclaim is based on the same contractual relationship.

5. Delivery, delivery times

5.1. Our deliveries are Ex Works (EXW) Incoterms 2020.

5.2. In the absence of written instructions from the Buyer, the method and route of shipping, and the type of packaging shall be chosen by Metallux as it reasonably sees fit. Metallux shall only take out transport insurance at the written request of the Buyer, who shall pay for it.

5.3. Delivery can be in parts, unless partial delivery is unreasonable for the Buyer, while taking into account Metallux's interests.

5.4. Delivery periods shall commence upon conclusion of the agreement, but not before all of the technical and financial questions have been resolved, and not before the documents to be obtained by the Buyer have been furnished, including any necessary official certificates and approvals, and not before receipt of any agreed deposit or, in the case of a foreign transactions, receipt of full payment. If there is a delivery date, it shall be postponed to a reasonable degree if some of the technical and financial questions have not been resolved in time, or if the Buyer does not timeously furnish the documents they need to obtain, including the necessary official certificates and approvals, or if the agreed deposit or, in the case of a foreign transactions, full payment is not received by Metallux. Our obligation to deliver or provide service shall be suspended for as long as the Buyer remains in significant arrears in any of its obligations.

5.5. Delivery shall be deemed to be punctual if the products leave the Metallux factory by the deadline, or Metallux notifies the Buyer that the products are ready for collection or dispatch. Metallux is only bound to delivery deadlines if it itself is supplied properly – especially punctually – unless Metallux is itself responsible for lack of supplies, in particular because it has not entered into congruent hedging transactions. Metallux is entitled to withdraw from the agreement if it itself is not supplied properly. Metallux shall inform the Buyer without delay if it intends to exercise its right to withdraw from the agreement and shall refund any deposits paid by the Buyer.

5.6. The Buyer must notify the person responsible for transport without delay of any recognisable transport damage by making a note on the consignment papers, forwarding order or delivery note and having it signed. Alternatively, the Buyer should prepare a damage report.
This does not affect Section 5.1. and Section 6 of these terms and conditions of sale and delivery.

6. Transfer of risk

6.1. The risk of accidental loss and accidental deterioration shall pass to the Buyer as soon as the products are handed over to the person responsible for transport or leave Metallux's warehouse for the purpose of shipment. If they are collected by the Buyer, the risk shall pass to them upon notification of readiness for collection. Sentence 1 and 2 still apply if delivery is in parts or Metallux is providing other services, such as covering transport costs or assembling the products at the Buyer's premises.

6.2. If dispatch is delayed due to circumstances for which the Buyer is responsible, the risk shall pass to the Buyer upon notification of readiness for dispatch. In this case, we are entitled, should we see fit, to store the goods at the Buyer's expense and risk and to demand payment of the agreed price. This shall not affect further claims.

6.3. The Buyer must receive the products even if they exhibit insignificant defects, but without prejudice to their claims for defects.

7. Retention of ownership, security interests

7.1. Metallux shall retain ownership of the delivered products until full payment of the delivery price and any other receivables due to Metallux from the Buyer in connection with the business relationship.

7.2. Any processing or transformation of products subject to retention of ownership done by the Buyer shall be performed on Metallux's behalf. The Buyer's expectant right to products subject to retention of ownership shall continue to apply once they are processed or transformed. If products are processed or transformed in conjunction with other items not belonging to Metallux, Metallux shall become co-owners of the new item, pro rata, as per the ratio between the value of the delivered products and that of the other processed or transformed items at the time of processing or transformation. The same applies if the products are combined or mixed with other items not belonging to Metallux in such a way that Metallux loses full ownership. The Buyer must keep the new items safely on behalf of Metallux. In all other respects, the same applies to items created by processing, transforming, combining or mixing as applies to products subject to retention of ownership.

7.3. The Buyer is entitled to sell products subject to retention of ownership in the normal course of business. Other than that, the Buyer may not pledge products subject to retention of ownership, assign them by way of security or dispose of them in any other way that could endanger Metallux's ownership. The Buyer must notify us immediately if third parties gain access to products subject to our retention of ownership, in particular by attachment. Furthermore, the Buyer shall provide Metallux with any information it needs, inform the third party about Metallux's ownership rights, and cooperate in whatever Metallux does to protect the products subject to retention of ownership. If the third party is not able to reimburse Metallux for court and out-of-court costs incurred by asserting its ownership rights, then the Buyer must compensate Metallux for the resulting loss, unless the Buyer is not responsible for the breach of duty.

7.4. The Buyer hereby assigns to Metallux any rights arising from the sale, including any ancillary rights, regardless of whether the products subject to retention of ownership are sold on with or without processing. Metallux hereby accepts this assignment. If assignment is not allowable, the Buyer hereby instructs the third-party debtor to make any payments to Metallux only. The Buyer is authorised (although this may be revoked) to collect receivables assigned to Metallux on behalf of Metallux, in its own name and in a fiduciary capacity. Any amounts collected must be paid to Metallux without delay. Metallux may, given good cause, revoke the Buyer's entitlement to collect and the Buyer's entitlement to resell, especially if the Buyer does not properly fulfil its payment obligations towards Metallux, falls in arrears, ceases payments, or if the Buyer files for insolvency or similar debt settlement proceedings against its own assets, or if a third party files a reasonable application for the opening of insolvency proceedings or similar debt settlement proceedings against the Buyer's assets, but this is turned down due to lack of assets. If the Buyer is subject to a blanket assignment, the rights assigned to Metallux shall be expressly excluded.

7.5. On Metallux's request, the Buyer must immediately inform any third-party debtor of the assignment and provide Metallux with the information and documents it needs for collection.

7.6. In the event of a breach of the agreement, especially a default in payment by the Buyer, Metallux shall be entitled, without prejudice to its other rights, to set a reasonable grace period, after which it may withdraw from the agreement. The Buyer shall immediately grant Metallux or its agents access to the products subject to retention of ownership, and surrender them. After giving due notice, Metallux may find other uses for the products subject to retention of ownership in order to recoup what it is due from the Buyer.

7.7. Metallux shall be obliged to release the securities to which it is entitled to the extent that their realisable value, taking into account the usual bank valuation adjustments, exceeds Metallux's receivables from the business relationship with the Buyer by more than 10%. Valuation shall be based on the invoice value of products subject to retention of ownership, and on the nominal value in the case of receivables. Metallux shall choose which items are to be released in each instance.

7.8. In the case of deliveries to other legal jurisdictions in which this reservation of title clause does not have the same protective effect as it does in the Federal Republic of Germany, the Buyer hereby grants Metallux the equivalent protective rights. If this requires further steps to be taken, the Buyer shall do everything it can to grant Metallux these protective rights without delay. The Buyer shall cooperate in anything required for and conducive to the effectiveness and enforceability of such protective rights.

8. Rights in the event of defects

8.1. The Buyer's rights in relation to a defect in the products are conditional on the Buyer inspecting the products upon delivery, where reasonable through trial processing or trial use, and notifying Metallux in writing of any obvious defects without delay, and at the latest within one week of delivery of the products. Hidden defects must be reported to Metallux in writing immediately after their discovery. The Buyer must describe the defects in writing when notifying Metallux.
Furthermore, when planning, constructing, assembling, connecting, installing, commissioning, operating and servicing the products, the Buyer must comply with any specifications, notes, guidelines and conditions in the technical, assembly, operating and operating instructions and other documents relating to the products; in particular the Buyer must properly service the products and provide evidence thereof, and use recommended components. Claims cannot be made for defects resulting from a breach of this obligation.

8.2. The Buyer must give us the opportunity to investigate notifications of defects. If a notification of defects turns out to be unfounded, the Buyer shall be obliged to reimburse us for the costs incurred in inspection, unless they are not responsible for the unfounded notification of defects. This shall not affect further claims by Metallux.

8.3. If there is a defect in a product, Metallux may choose to either rectify it or supply a new product (supplementary performance). In the case of supplementary performance, Metallux is obliged to cover every expense it incurs, in particular transport, travel, labour and material costs. Personnel and material costs claimed by the Buyer in this context shall be charged at cost price. Replaced parts shall become the property of Metallux and must be returned to Metallux.

8.4. If rectification fails or is unreasonable, or if Metallux refuses supplementary performance, the Buyer may choose either to reduce the price or withdraw from the agreement in accordance with the law, without prejudice to any claims for damages or reimbursement of expenses. The same shall apply if supplementary performance is unreasonably delayed for reasons for which Metallux is responsible.

8.5. Claims may not be made for defects caused by natural wear and tear, especially in the case of wearing parts, improper handling, assembly, use or storage, or improper modifications or repairs on the products by the Buyer or third parties. The same applies to defects attributable to the Buyer or with a technical cause other than the original defect.

8.6. Metallux shall not provide any guarantees, in particular with regard to quality or durability, unless otherwise agreed in individual cases.

8.7. The period of limitation for the Buyer's claims for defects is one year, unless consumer goods are purchased at the end of the supply chain (end customer is a consumer). If defective products have been used in their customary way for a building and have caused it to be defective, or if the defect is a defect in a building, the period of limitation shall be five years.
The one year period of limitation shall also apply to claims in tort based on a defect in the products. The period of limitation begins when the products are delivered. The one year period of limitation does not apply to Metallux's unlimited liability for damages in relation to breaches of warranty or injury to life, limb or health, for intent and gross negligence, and for product defects, or if Metallux has assumed a procurement risk. A statement by Metallux regarding a claim for defects asserted by the Buyer may not be regarded as the first step in negotiations over the claim or the circumstances that have given rise to it, if the claim for defects is rejected in its entirety by Metallux.

8.8. The statutory period of limitation for the Buyer's rights of recourse against Metallux on account of a defect in a resold product (supplier recourse, Section 445b German Civil Code (BGB)) remains unaffected. The period of limitation for these rights of recourse shall commence no earlier than two months after the point at which the Buyer satisfies the claims of its customer.

9. Metallux's liability

9.1. Metallux shall be liable without limitation for damages arising from breaches of warranty or from injury to life, limb or health. The same applies to intent and gross negligence, or if Metallux has assumed a procurement risk. Metallux shall only be liable for minor negligence if essential obligations are breached which are inherent in the agreement and which are of particular importance in achieving the purpose of the agreement. In the event of a breach of such obligations, or delay or impossibility, Metallux's liability shall be limited to such damages as may typically be expected to occur within the scope of the agreement. This does not affect mandatory statutory liability for product defects.

9.2. In the instances where Metallux's liability is excluded or limited, the same shall apply to the personal liability of its employees, workers, representatives and agents.

10. Product liability

10.1. The Buyer shall not modify the products, and in particular not modify or remove warnings about dangers in the event of their improper use. If this duty is breached, the Buyer shall indemnify Metallux in their internal relationship against third party product liability claims, unless the Buyer is not responsible for altering the products.

10.2. If Metallux has to issue a product recall or warning on account of a product defect, the Buyer shall cooperate to the best of its ability in any measures that Metallux deems necessary and expedient and shall support Metallux in this respect, in particular in determining any customer details it needs. The Buyer must cover the cost of the product recall or warning, unless they are not responsible for the product defect under the principles of product liability law. This shall not affect further claims by Metallux.

10.3. The Buyer shall inform Metallux in writing as soon as it becomes aware of any risks which using the products entails and of potential product defects.

11. Third party intellectual property rights

Metallux guarantees the delivery free of copyrights and other intellectual property rights (hereafter ‘intellectual property rights’). The Buyer’s claims shall be excluded if a breach of intellectual property rights is caused by the Buyer’s special instructions, by a mode of use not foreseeable by Metallux, or by the fact that the products have been modified by the Buyer or used together with products not supplied by Metallux.

12. Force majeure

12.1. If Metallux is prevented by force majeure from fulfilling its contractual obligations, in particular from delivering the products, then it shall be released from its obligation to perform for the duration of the impediment plus a reasonable restart period, without being obliged to compensate the Buyer for damages. The same applies if the performance of Metallux’s obligations is made unreasonably difficult or temporarily impossible due to unforeseeable circumstances for which it is not responsible, in particular industrial action, pandemic, official measures, energy shortage, prevention of delivery from a supplier, or major operational disruptions. The same applies if such circumstances occur at subcontractor. If Metallux is released from the obligation to deliver, it shall return any advance payments made by the Buyer.

12.2. Metallux shall be entitled to withdraw from the agreement after a reasonable period, if such an impediment goes on for more than four months and Metallux no longer wishes to continue with the agreement as a result. At the Buyer’s request, Metallux shall state, once the deadline has passed, whether it intends to exercise its right of withdrawal or deliver the products within a reasonable period.

13. Special Provisions on Foreign Trade Law and Export Controls

13.1 Due to the restrictive measures of the European Union (EU) against Russia, Belarus and the Russian occupied territories in Ukraine (together the "**Sanctioned Territories**"), it is prohibited to directly or indirectly sell, supply, transfer or export certain goods and technology ("**Sanctioned Goods**") to the Sanctioned Territories or for use in the Sanctioned Territories ("**Export Ban**"). The Sanctioned Territories, Sanctioned Goods and the applicable Export Ban are set out in the legal provisions of the EU regarding the restrictive measures against Russia, Belarus and the territories occupied by Russia.

13.2 The Buyer is prohibited from directly or indirectly selling, supplying, transferring or exporting the Sanctioned Goods to third parties in the Sanctioned Territories or for use in the Sanctioned Territories *(export ban)*.

13.3 The prohibitions and bids within the meaning of Section 13.2 of these Terms and Conditions of Sale and Delivery also apply accordingly to the direct and indirect provision of technical assistance in connection with the Sanctioned Goods as well as to the direct and indirect provision of intermediary services in connection with the Sanctioned Goods *(provision ban)*.

13.4 In the event of a breach by the Buyer of the prohibitions and obligations contained in this undertaking declaration: In the event of a breach by the Buyer of the prohibitions and obligations contained in this Section 13 of these Terms and Conditions of Sale and Delivery:

13.4.1 Metallux shall be entitled to terminate the contractual relationship with the Buyer without notice for good cause (in the case of contracts for recurring services) or to withdraw from the contract (in the case of contracts for one-off services) *(right of termination and withdrawal)*;

13.4.2 the Buyer shall be obliged to compensate Metallux for all damages incurred as a result *(obligation to pay damages)*;

13.4.3 the Buyer undertakes to pay Metallux an appropriate sum of money to be determined by Metallux at its reasonable discretion as a contractual penalty for each breach of the obligations set out in this Section 13 of these Terms and Conditions of Sale and Delivery, the amount of which may be reviewed by the competent court in the event of a dispute *(contractual penalty)*.

Further claims of Metallux shall remain unaffected, whereby any contractual penalties paid shall be offset against claims for damages.

13.5 The obligation to pay damages and the obligation to pay a contractual penalty shall not apply if the Buyer is not responsible for the breach.

14. Secrecy

14.1. The parties must keep confidential, for a period of five years from delivery, any of each other's business secrets that they come to know about; they must protect them by taking appropriate precautions and, unless required for the business relationship, neither record them nor pass them on to third parties, use them or exploit them. In particular, the parties shall ensure that each other's business secrets are only made accessible to those employees and other staff needed for the business relationship, and only to the extent it requires. This duty of confidentiality also applies to objects that embody business secrets. In particular, a party receiving a product or item is not allowed to reverse engineer it to obtain the business secrets it embodies. Business secrets are any information designated as confidential or secret, or which is recognisable as a business secret in other ways – in particular technical information (such as drawings, product and development descriptions, methods, processes, formulas, technologies and inventions) and commercial information (such as prices and financial data and sources of supply).

14.2. This duty to maintain confidentiality shall not apply if it can be proven that the business secrets were already known or generally accessible to the receiving party prior to the commencement of the contractual relationship, or if they become generally known or accessible through no fault of the receiving party. The burden of proof shall be on the receiving party.

14.3. The parties shall ensure, by means of appropriate contractual agreements with those employees, other staff and third parties who work for them and to whom the business secrets of the other party become accessible as described in Paragraph 1 above, that these people are also obliged to maintain secrecy for a period of five years from delivery.

15. Data protection

15.1. The parties are obliged, in performing the agreement, to adhere to the statutory provisions on data protection, in particular the EU General Data Protection Regulation (GDPR), and to ensure that their employees comply with these provisions.

15.2. The parties shall process any personal data received (names and contact details of people with whom they are in correspondence) exclusively for the performance of the agreement and shall protect it by taking security precautions (Art. 32 GDPR) in line with the state of the art. The parties are obliged to delete personal data as soon as its processing is no longer necessary. This does not affect any statutory retention obligations.

15.3. Should either party process personal data on behalf of the other while performing the agreement, the parties shall conclude an agreement on processing in accordance with Art. 28 GDPR.

16. Final provisions

16.1. The place of performance shall be the registered office of Metallux.

16.2. The legal relationship between the Buyer and Metallux shall be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

16.3. If the Buyer is a merchant within the meaning of the German Commercial Code (HGB), a juridical person under public law or a special fund under public law, the exclusive place of jurisdiction for any disputes arising from the business relationship between Metallux and the Buyer shall be the registered office of Metallux. Metallux is also entitled to file lawsuits at the registered office of the Buyer or at any other permissible place of jurisdiction. There are no arbitration clauses.

16.4. The place of performance for any services performed by the Buyer and Metallux shall be the registered office of Metallux, unless agreed otherwise.

16.5. The contractual language is German.

Metallux AG, 71397 Leutenbach
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