

Terms of Delivery and Payment of Company Metalltechnik Arnberg GmbH & Co. KG (short "MTA") for business within Germany

I. General

1. Diverging and / or supplementary conditions of the customer not expressly acknowledged by us in writing are not binding upon us, even if they are not expressly opposed by us.
2. Orders shall not be deemed as accepted but upon confirmation by us or delivery having been made.

II. Delivery

1. We aim high at complying as punctual as possible with the delivery dates confirmed by us. Should such compliance with the delivery time be impossible due to circumstances beyond our control, such as natural disasters, war or measures of industrial action with us or our subcontractors, a reasonable extension of the delivery time sets in. Should such impediments continue to exist for more than 2 months, each contracting party is entitled to withdrawal.
2. Partial delivery is possible. With manufacture to customer's specifications, delivery deviations of 10 % more / less are permissible. MTA reserves the right of modifications, especially of the given values, measures and weights, as well as of constructional modifications. Drawings are not binding.
3. In case of delay in delivery on our side and an additional period of time of reasonable length having been granted to us by the customer, and with such period having been elapsed, the customer may either withdraw from the Contract or in as much as he shows satisfactorily that he has suffered a loss by this - demand for each terminated week of such delay a compensation of 0,5% but all in all not more than 5% of the purchase price of such delayed delivery. Any further claims of the Customer in all cases of delayed delivery are excluded, even in case of expiration of an additional period of time that may have been granted to us. To claims for compensation, apply also par. IX. 1, 2 and 3 as well as IX. 4.
4. Returns accepted by our firm upon prior agreement confirmed in writing are reimbursed with 90% of the invoice value. Returns are not possible but within the first 14 days following delivery and in closed original packing. With returns, packing is not reimbursed. With returns of a total value of less than 250.- Euros a handling fee of 25.- Euros net is charged.

III. Prices, Dispatch, Liability for Damage to Goods in Transit

1. Accounting is done at the list prices, allowances and terms valid on the day of delivery. Precious metal surcharges are charged separately according to the quotation of the day before the day the order is received. Our prices are based on a price of 200.-€ per 100 kg of copper, 185.-€ per 100 kg of brass and 180.-€ per kg of silver.
2. All list and offer prices are net, without the statutory VAT, without packing and ex works. Special wishes of the Customer (e.g. delivery under an address other than that of the customer, express delivery, special packing, commissioning of a particular for warder) are taken into account as far as possible. The additional costs resulting therefrom are borne by the customer.
3. Tool costs paid pro rata by the Customer create no entitlement to the tools, unless otherwise agreed by the parties. They remain the property of the firm of MTA. This applies also to the rights in exclusive developments.
4. With dispatch ex works and also in case of partial delivery, risk passes in any event to the customer, even when in individual cases freight paid delivery was agreed. With the product being ready for dispatch and its dispatch or taking delivery of being delayed for reasons beyond our control, risk passes to the Customer at the moment of receipt of the advice of readiness for dispatch.

IV. Payments

1. Our invoices, subject to deviating individual agreements, are payable without deduction 30 days after the invoice date.
2. According to the statutory regulations, the customer is in default especially 30 days upon payment being due and receipt of an invoice or an equivalent list of accounts receivable. Payments shall be considered as being made on the day the amount is at our disposal. From the due date on, statutory default interest of 8 % above the basic interest rate is charged.
3. Dishonoured cheques or bills of exchange, suspension of payments, and petition in insolvency proceedings against the assets of the customer make all our claims- also in case of respite - immediately become due.
4. The customer may only set off such claims that are established uncontested or have become final and absolute.

V. Reservation of Title

1. We reserve full title in the products until payment in full of all accounts receivable under a current business relation.
2. The customer is obliged to the careful handling of the products. The customer is obliged to inform us immediately of any attachment of the products by third parties. e.g. in case of seizure, as well as of possible damages to or the destruction of the products. Any change in the possession of the products and the change of his own residence must immediately be communicated to us by the customer.
3. With the customer being in breach of contract, especially in case of delay in payment, we are entitled to withdraw from the Contract and to demand the return of the products.
4. The customer is entitled to resell the products in the ordinary course of business. He already now assigns to us all claims to the size of our invoice amount that accrue to him against a third party through such reselling. We accept this assignment. Upon assignment the customer is entitled to collect the sum due. We reserve the right to collect the sum due ourselves the moment the customer does not properly comply with his financial obligations and is in default.
5. The processing and working up of the products by the Customer are always done in our name and on our behalf. Where the products are being worked up with objects not in our possession, we acquire co-ownership in the new article at the ratio of the value of the products delivered by us to the other worked up objects. The same applies when the products are mixed with other objects not in our possession.

VI. Duty to Examine and Notice of Defect

Has the customer failed to give notice of defect according to § 377 sub-par. 1 HGB / German Commercial Code, which has to be sent in writing to our firm within 10 days upon receipt of the products, any recourse of the customer is excluded, unless such defect is of a kind not recognizable at the time of the examination.

VII. Warranty

1. We warrant the faultlessness corresponding to the respective state of the art. Modifications in construction or design that do not impair neither the functionality nor the value of the product do not represent an imperfection.
2. For the condition of the product only the product description shall basically pass for being agreed on.
3. With the product being defective, of which notification in writing has to be made immediately by the customer, we shall within a reasonable period of time remove such defect at no cost by our after-sales service or deliver a faultless article (= subsequent performance). We choose in each case under the aspect of reasonableness the adequate kind of subsequent performance. Should subsequent improvement or substitute delivery very fail, the customer may withdraw from the Contract or reduce the purchase price. In case of a substitute delivery or withdrawal we reserve ourselves the assertion of an adequate allowance for use. To claims for damages applies par. IX, any further claims of the customer are excluded. If improper changes, additions/removals or repair work is done by the customer or third parties, then there are no claims for defects for this and resulting consequences.
4. All statutory and contractual claims of the customer based on a defective product become statute-barred for new products after two years upon handing over. Removal of defects or new delivery is no new beginning of the limitation period. This does not apply insofar as the law prescribes periods longer than two years, especially in the event of intent, malicious concealment of the defect as well as in the event of non-compliance with a guarantee of quality. The customer's claim to reimbursement of expenses pursuant to § 445 a BGB (German Civil Code) (recourse of the seller) also expires after two years from the legal start of the limitation period, provided that the last contract in the supply chain is not a sale of consumer goods.
5. Claims for recourse by the customer against the supplier pursuant to § 445a BGB (recourse of the seller) only exist to the extent that the purchaser has not made any agreements with its purchase beyond the statutory claim for defects.

VIII. Industrial Property Rights / Copyrights

Orders according to drawings, drafts or other indications given to us are executed at customer's risk regarding patent, industrial design and trademark rights. Should the execution of such orders interfere with any third party's industrial property rights, the customer accepts responsibility for any damage incurred to us by such interference.

IX. Other Liabilities

1. Any claims for damages by the customer for whatsoever cause in law are excluded. This does not apply where obligatory liability is given, e.g. under the German product liability law, or in cases of intent, gross negligence, for personal injury or the breach of essential contractual obligations. Yet, indemnity for breach of essential contractual obligations is limited to a foreseeable contractually inherent damage, as far as it is not a case of intent or gross negligence or liability for personal injury is given.
2. Any other claims against us do not exist, especially no claims for damages and no rights of recourse for noncompliance with the instructions for use or the mounting instructions, or for misuse of the products. Claims for damages and rights of recourse do also not exist for damages arising out of in-expert installation, mounting or repair of our products, or for damages arising during transport after the passing of risk to the customer. Any intruding action on the product, especially the changing of parts and / or modification of the original MTA product excludes liability. 3. Claims for damages for defects become statute-barred one year upon handing over of the product, except for the reproach of gross fault or fraudulent intent, or in case of injuries to health.
4. A reversal of the burden of proof to the prejudice of the customer is not incidental to the above terms.

X. Place of Performance and Venue

1. Place of performance for all obligations under this contractual relationship is the registered office of MTA.
2. Place of venue is - with the customer being merchant entered in the commercial register- at our choice Chemnitz.
3. For these contractual relations the German Law is applicable to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).