

METUSAN TURNING GmbH

General Terms and Conditions of Sale and Delivery (GTCSD) – Revision 05/2020

Application and conclusion of contract, specification

Unless otherwise agreed in writing, the following conditions apply, to all sales and transactions made by us.

Unless expressly agreed otherwise, all transactions are only carried out under the following conditions, which the customer acknowledges as binding for himself by placing the order. General terms and conditions of the buyer or other conditions only apply if we have expressly agreed to them in writing. These general terms and conditions also apply to future business relationships between the contractual representatives unless agreed otherwise in writing. All offers, orders and agreements made verbally or by telephone only become binding for us after our written confirmation. Delivery times will be calculated from the date of the order confirmation, unless explicitly agreed otherwise. For call-off orders, the last day of the month following the notification of readiness for dispatch shall be deemed the end date for the call-off. Specifications of a confirmed order can only be changed by the buyer with our written consent.

Property rights, drawings and samples

The buyer is liable to us for ensuring that the execution of his specifications regarding quality and other requirements or the use of drawings, matrices, samples and similar implementation specification provided to us does not infringe domestic and foreign property rights of third parties, in particular patents, trademarks and design rights. He has to hold us harmless for such claims from the execution of his order. We assume no responsibility for loss of or damage to drawings, samples and the like provided and only take out insurance for this by order of and at the expense of the customer.

Quantity deviations

In the absence of other agreements, excess or short deliveries of up to 10 percent of the ordered quantity or weight are permissible.

Prices and terms of payment

The prices and costs according to our order confirmation shall be deemed agreed between the contracting parties. All prices are net prices and, unless otherwise agreed in writing, are ex works (EXW - Incoterms 2020) and exclusive of VAT, customs, freight, postage, insurance, packaging and any other shipping costs. Unless otherwise agreed, the prices valid on the day of delivery from the respective delivery plant or warehouse without packaging apply as the basic price plus any customary or otherwise agreed surcharges. Fees and other public charges as well as postage, insurance, packaging, customs and any other shipping costs that are created, added or changed after the conclusion of the contract and that directly or indirectly affect the content of the contract are to be borne by the buyer. We are entitled to make an appropriate price increase if there are changes in raw material or supplementary material prices, wages, salaries, fees, taxes, other levies or similar price-relevant features after the offer has been submitted. If the order differs from the overall offer, we reserve the right to change the price accordingly. We are not bound to previously agreed prices and costs for follow-up orders.

Unless otherwise agreed in writing, the invoice is due 14 days after delivery or after notification of readiness for dispatch. Payment must be made to our account net, excluding set-off or retention, and free of charge. Payments shall only be deemed debt-discharging once they are received in our business account. Discount deductions are not permitted and will not be accepted. If the buyer is in arrears with his payments, we may postpone the fulfilment of our contractual obligations until the arrears have been paid. The set-off of claims of the buyer against our claims is not permitted, as far as his claims have not been recognized by us or have been determined by a court. The buyer is not entitled to withhold payments due to warranty claims or other counterclaims not recognized by us. Any respite is granted under the condition that the agreed payment deadlines are met, delayed payments will immediately cause default of payment. In the event of default, all claims are due immediately, regardless of the due dates. In the event of default in payment, the buyer shall be charged default interest at the statutory default interest rate provided for business transactions (currently Section 456 UGB) and other expenses incurred, without prejudice to the other legal consequences. Unless expressly agreed, payments by bill of exchange will not be accepted.

In the case of business transactions in a foreign currency, the conversion shall be based on the exchange rate announced by the Austrian National Bank (Oesterreichische Nationalbank) on the date of our order confirmation, whereby the buyer has to bear the exchange risk. If the agreed method of payment or the agreed route of payment cannot be adhered to, the buyer is obliged to make the payment at our discretion. The buyer agrees that invoices can also be created and transmitted electronically if they are created with a secure electronic signature. The buyer is obliged to inform us immediately in writing of any change of his address as long as the contractual legal transaction has not been completely fulfilled by both parties. If the buyer fails to do so, declarations shall also be deemed received if they are sent to the last known address.

Retention of title

The goods remain our property, regardless of country-specific deviations, until full payment has been made. The buyer has to ensure that the goods are insured at replacement value and assigns future claims for reimbursement to us by way of security. The goods subject to retention of title may under no circumstances be changed or processed before full payment has been made. Furthermore, these goods may neither be pledged to third parties nor transferred by way of security. Should a third party access the goods subject to retention of title, the buyer must notify us immediately in writing and immediately take all necessary preventive measures to defend our claims. The buyer is only entitled to resell the goods subject to retention of title under the condition that the claim from the resale is transferred to us. The buyer is entitled to collect claims from the resale until revoked by us at any time. The buyer, on the other hand, is not entitled to dispose of such claims by assignment. At our request, the buyer is obliged to notify his customer of the assignment to us. The buyer must notify us immediately of any seizure or any other claim on the goods by third parties.

Delivery

In principle, we endeavour to meet the requested delivery dates. In the absence of other agreements, our delivery times are to be understood as non-binding reference periods. They begin with the date of our order confirmation.

Unless another Incoterm clause has been agreed in individual cases, the EXW clause (Incoterms 2020) applies to all deliveries. Shipping and acceptance of goods take place at the risk of the buyer, even if carriage paid delivery has been agreed. Our delivery obligation is deemed fulfilled at the time when the goods leave our factory or warehouse. It is also deemed fulfilled if, after timely notification of readiness for dispatch, the goods cannot be dispatched on time through no fault of our own. We are not obliged to insure the delivery against any risks.

We are entitled to make partial deliveries. In the case of contracts with continuous delivery, the partial quantities must be specified when the offer is obtained. If such a determination has not been made, we are entitled to initiate and deliver the goods ourselves without setting a grace period or to withdraw from the part of the contract that has not yet been fulfilled and to demand compensation. If we are in delay with the delivery, claims for damages or other claims due to this delay are not accepted, unless we are guilty of wilful intent or severe gross negligence.

Warranty and liability

The warranty period is 6 months. For all warranty and compensation claims, the existence of the defect at the time of handover must be proved by the buyer without exception, the legal presumptions of §§ 924 and 933a ABGB are expressly waived. Any complaints must be made

in writing immediately after discovery of the defects, but no later than 3 days in the case of externally recognizable defects such as number of items, weight, surface damage, etc., and no later than 14 days after receipt of the goods in the case of internal defects, otherwise they shall be deemed as being rejected. The buyer must report hidden defects in writing immediately after they have been identified, whereby the six-month warranty period also applies to hidden defects. The examination results of our factory are decisive for the proof of the defects. The place of correction of defects is our headquarters in Wolkersdorf, Austria. In order to correct the defect, the object complained must be sent to us carriage paid. Returns of goods to us require our prior consent.

For our products, we warrant that we can, at our discretion, either repair items free of charge or take them back at the calculated price or replace them with new ones that correspond to the original order free of charge ex works against reimbursement of the defective pieces, but only when there is evidence of material or manufacturing defects that exclude the usability of the items.

Any liability for slight and gross negligence (with the exception of personal injury) is excluded. The amount of our obligation to pay compensation for each damage-causing event is limited to the respective net order amount. Further claims, such as in particular compensation for lost profit, processing costs, loss of interest as well as damage from claims by third parties etc. are excluded. Warranty and compensation claims for damage and consequential damage caused by defects resulting from production according to plans, sketches and samples provided by the buyer are also excluded; this also applies if the buyer approves proposed changes made by us. Recourse claims within the meaning of Section 12 of the Product Liability Act (Produkthaftungsgesetz) are excluded.

If a warranty case occurs in the relationship between the buyer and his customer, recourse to us in accordance with Section 933b Austrian Civil Code (ABGB) is excluded. In the case of wage work ("Verklonarbeiten"), we are liable for defects in the execution of the work we undertook and are responsible for up to the amount of the wage costs invoiced by us.

Unless a shorter statutory limitation or preclusive period applies, all claims against us must be asserted in court within six months from the time that the buyer becomes aware of the damage and the person who caused the damage or of the event otherwise giving rise to the claim. Otherwise the claim shall be forfeited, but no later than two years after the event causing the damage.

Information about processing and application possibilities of the products, technical advice and other information about suitability and use, weight, dimensions, shapes, colours, performance and appearance, even if in public statements, are non-binding unless they have been declared in writing as part of the contract.

Acceptance, dispatch and transfer of risk

In the event of default of acceptance by the buyer, we are, at our discretion, entitled to dispatch the goods without acceptance at the risk and expense of the buyer or to store them in any way we choose. At this point in time, the goods are deemed to have been delivered in accordance with the contract in every respect. The buyer is then obliged to immediately make the payments due in the event of delivery or due as a result of the delivery without delay. If, in the case of call orders, the call-off has not been made within 14 calendar days after the agreed call-off date, the goods will be dispatched or stored at our discretion at the simultaneous transfer of risk at the expense and risk of the buyer. It is deemed to have been delivered on this date. Unless special packaging has been expressly agreed, the goods shall be packed only in the customary manner.

Force majeure and other delivery conditions

Operational disruptions and supply difficulties of all kinds and events of force majeure entitle us to extend the delivery appropriately or to withdraw from the delivery obligation in whole or in part. Force majeure includes events such as strikes, lockouts, epidemic diseases and other circumstances (e.g. import and export bans imposed after the conclusion of the contract) that make delivery significantly more difficult or impossible for us, regardless of whether they occur at our premises or one of our subcontractors. We will inform the buyer immediately about the occurrence of such circumstances.

If the buyer is forced to withdraw from the contract due to force majeure or similar impediments to acceptance, the costs and expenses incurred shall be borne equally by both parties. If the buyer withdraws from the contract or parts thereof without giving reasons or for reasons for which we are not responsible, or if he prevents its execution, he is obliged to pay 80% of the net purchase contract sum plus VAT.

If the circumstances under which a contract was concluded have changed so significantly that it can be assumed with good reason that the contract would not have been concluded at all under the changed circumstances or would have been concluded under different conditions, we shall be entitled, depending on the nature of the case, to refuse the fulfilment of the contract or to demand a modification of the contractual provisions taking into account the changed circumstances, e.g. to request payment in another currency, applying a sliding clause, changing the delivery modalities, etc.

Data protection law

The buyer undertakes to treat our deliveries with strict confidentiality, to comply with the provisions of the General Data Protection Regulation (GDPR) and the Austrian Data Protection Act (Datenschutzgesetz), in particular to take appropriate technical and organizational measures regarding data security in accordance with Art 32 GDPR in order to ensure a level of protection appropriate to the risk; in the event of a breach, we are entitled to withdraw from the contract without prejudice to further claims. Information on data protection can be found in our data protection declaration available at <http://www.metusan.at>.

Information obtained within the framework of the cooperation, which constitutes trade and business secrets or know-how, may not be made accessible to third parties or used in any other form by the buyer without our express written consent.

Contestation due to error, shortening of the true value by half (laesio enormis)

A contestation of the contract by the buyer due to error or shortening of the true value by half (laesio enormis) is excluded.

Place of performance, applicable law and place of jurisdiction

The registered office of our company in Wolkersdorf, Austria is deemed to be the agreed place of performance and place of payment, even if the handover takes place at a different location as agreed. The interpretation of the provisions of these terms and conditions as well as all sales transactions made by us are subject to Austrian law with the express exclusion of the reference norms of the International Private Law Act (IPRG) and other conflict-of-law standards and the provisions of the UN Convention of April 11, 1980 on contracts for the international sale of goods (CISG). In the event of a dispute, both parties submit to the courts in Korneuburg, Austria which have jurisdiction over the subject matter of the dispute, depending on the amount in dispute.

Final provisions

Oral agreements do not exist. Changes and additions to the contract must be made in writing to be legally effective. This also applies to any dispensation from this formal requirement. Should any of these provisions become invalid, the remaining provisions shall remain unaffected. In case of contradictions between this translation of the GTCSD and the GTCSD in German language, which are available on our website www.metusan.at, the German version shall prevail.