

General Terms and Conditions

of METZ CONNECT GmbH | Im Tal 2 | 78176 Blumberg | Germany

Managing Director and Partner: Jochen Metz

registered at the Commercial Register of the Registry Court Freiburg im Breisgau - HRB 611606

I. Application, scope

- 1.1 The following General Terms and Conditions apply to all transactions and deliveries between us and companies (s. 14 BGB (German Civil Code)) and with juridical persons under public law and with public-law special assets.
- 1.2 We do not recognize the customer's terms and conditions unless we have expressly consented to their application. Our General Terms and Conditions shall also apply exclusively if, being aware of the customer's conditions, which are contrary to or different than our General Terms and Conditions, we deliver to the customer without referring to these General Terms and Conditions.

II. Conclusion of contract, scope of delivery

- 2.1 Our offers are always non-binding. We can accept the customer's binding order (offer as defined in s. 145 et seq. BGB) within two weeks after we received it.
- 2.2 A contract shall only be concluded with our written order confirmation or by delivery and transmission of the delivery note.
- 2.3 The customer must check all its dimensional and product requirements. We are not obligated to check the dimensions, product data and specifications prescribed by the customer. When using our products with other components (e.g. plug to our modules), it is incumbent upon the customer to check the usability of the components used by the customer for our product and the compliance with national and EU standards and directives.
- 2.4 Construction, design or form changes to the delivered objects, which are due to an improvement in the technology or the production process or which are due to legislative requirements, remain reserved during the lead time, provided they do not materially change the delivered object and the changes are reasonable for the customer. However, we are not bound to perform such changes to products already delivered.
- 2.5 We retain all property rights and copyrights to all declarations, notifications and documents, notably offers, calculations, specifications, patterns, cost estimates, drawings and similar information – whether in physical or digital form. They must not be made available to third parties. This shall also apply to written documents that are not expressly marked as “confidential”. Before disclosure to third parties, the customer requires our express written consent. We shall make information and documents, which the customer has marked as confidential, available to third parties only with the customer's consent.

III. Lead time, force majeure, transfer of risk

- 3.1 Only delivery dates and deadlines agreed in writing are binding. An agreed delivery period shall start upon receipt of the order confirmation or commercial letter of confirmation, but not before the provision of documents, approvals, releases to be provided by the customer nor before full receipt of an agreed prepayment or required advance payment. The delivery deadline is met when readiness for delivery (provided unloaded) has been achieved and the customer has been advised by email or telephone. This shall only apply for delivery FCA Blumberg, Incoterms (R) 2020.
- 3.2 In the case of force majeure, the agreed delivery periods shall be extended reasonably. If the force majeure lasts longer than six weeks, both parties reserve the right, after setting a further two-week period, to withdraw from the contract. Force majeure is an external event caused externally by elemental forces of nature or caused by actions of third parties, which is unforeseeable according to human insight and experience, which cannot be prevented or rendered harmless with economically bearable means even with the utmost care and which because of its frequency cannot be taken into account either. Force majeure includes, in particular, floods and drought, earthquake, storm, snow and ice, ash rain fall and similar, as well as fault-free or unforeseen business interruptions, fire, sabotage, hacker attacks and official or employment prohibitions and other measures according to the Infection Protection Act, for example in order to protect against a pandemic. Equally, this also includes fault-free business interruptions such as strike, lock-out and delayed deliveries, for which we are not responsible.
- 3.3 Unless agreed otherwise, deliveries are carried out from our plant in Blumberg, Germany (FCA Blumberg, Incoterms (R) 2020). If not contractually stipulated different from the FCA-Incoterms clause, the risk for the respective delivery transfers to the customer, when the supply items are provided for the customer unloaded in our plant in Blumberg and the customer has been informed of this in good time. If the final assembly to the carrier or to the customer is delayed at the customer's request or for other reasons, for which we are not responsible, or if the customer is late with acceptance, risk shall transfer to the customer upon notification of readiness for shipping or collection. From that point on, the goods are stored at the expense and risk of the customer.
- 3.4 Partial deliveries and partial performance are permitted, provided this is reasonable for the customer. They are deemed to be independent deliveries and can be billed immediately.
- 3.5 With regard to special productions, we reserve the right to make over-deliveries or under-deliveries by up to 10 % of the ordered and/or confirmed delivery quantities.

IV. Prices, payments

- 4.1 Unless agreed otherwise, our prices are valid for delivery of our plant in Blumberg and in Euro plus sales tax at the respective statutory rate.
- 4.2 If we consent to cancellations in specific cases as an indication of goodwill, we shall charge a cancellation fee of 5% of the canceled sale. The customer also shall reimburse us for costs additional incurred as a result of the cancellation. This shall apply correspondingly to the change of contracts requested by the ordering party, insofar as we agree with this for reasons of goodwill.
- 4.3 Unless agreed otherwise, payments have to be effected purely net within 30 days of the invoice date, calculated from the day following the invoice date, provided the customer has received both the goods and the invoice within 10 days. Relevant for the timeliness of the payment is the credit to one of our bank accounts.
- 4.4 If material and transport costs of the primary materials and/or delivered parts needed by us in order to manufacture the delivery objects demonstrably increase by more than 5% compared to the last price agreement, we shall adjust the delivery price corresponding to the changed situation, taking into account the justified interests of both contractual parties according to s. 315 BGB.
- 4.5 If we are not supplied correctly or punctually by our suppliers, despite having placed congruent orders promptly with reliable suppliers, we shall be released from our duty to perform and can withdraw from the respective part of the contract. We shall inform the customer without delay of the non-availability of the ordered goods and shall refund any consideration already paid by the customer promptly. In the above cases of delivery bottlenecks, for which we are not responsible, our liability for damages due to delay is excluded. The above condition shall not apply to disruptions in the supply from our suppliers if and insofar as we are responsible for this disruption.
- 4.6 The customer is not authorized to withhold payments or to compensate against counter-claims, if they do not result from the same contractual relationship or are due to shortages. The customer may not declare compensation because of asserted material defects, which are not acknowledged by us. Moreover, compensation is only permitted against legally determined, recognized or undisputed counterclaims.

V. Retention of title

- 5.1 The delivered goods remain our property until full payment of both the purchase price and all claims from the entire business relationship, regardless of which type. Ownership of the property is only transferred when all claims, including all ancillary claims, have been settled. The customer is not authorized to pledge the goods or use them as security.
- 5.2 If the customer is in default with a considerably amount of claims from the entire business relationship, we reserve the right to demand return of the conditional goods. The demand for return implies a withdrawal from the contract. In these cases it is not necessary to set a delivery deadline. The assertion of claims for compensation remains reserved, also in the event of withdrawal from the contract.
- 5.3 The customer reserves the right to resell the goods only as part of ordinary business and subject to the condition, that the customer applies the reservation that ownership shall only transfer to its purchaser when the purchaser has fulfilled all its payment obligations in respect of the conditional goods. The customer herewith assigns the claim arising from the resale of the goods to us at the amount of our invoice grand total with sales tax, and upon request has to provide us with the name and address of the assigned debtor and the amounts of his claims. The claim from the resale of our goods may not be ceded to third parties, including banks.
- 5.4 The customer is authorized to collect assigned claims. The right of confiscation shall lapse in the case of default. In these cases, we reserve the right to inform the customer's purchasers and to collect the claims ourselves. The customer has to provide all informations needed to assert the assigned claims and to permit examination of this information. In particular, upon request the customer has to provide us with a precise statement of its claims from the resale of our goods, with names and addresses of the purchasers, the amount of the individual claims, invoice dates, etc. and shall allow access to its business premises for audit.
- 5.5 If the conditional goods are combined, mixed or processed by the customer to form a new item, this is done for us without any obligation arising for us. The customer shall not acquire sole ownership of the new item according to s. 947 et seq. BGB as a result of the combining, mixing and processing. Instead, we shall acquire joint ownership of the new item in the relationship of the invoice value of our conditional goods to the total value.
- 5.6 The customer has to advise us without delay in the event of insolvency, material deterioration in its asset situation and in the case of seizures. Seizure creditors are to be identified by name and address. The customer shall bear all costs that have to be incurred in order to remove creditors' distraint on our goods and to recover the goods.
- 5.7 The customer shall insure goods, which have not yet been paid for, against damage, notably vandalism, theft, transport damage, fire, water and breakage. The customer must advise us of the respective loss insurer and herewith conditionally assigns its claim against the respective insurer for unpaid goods to us as a result of occurrence of an insurance case.

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- 5.8 The customer shall store the conditional goods for us free of charge; he is not authorized to establish a warehouse lien.
- 5.9 If, for export deliveries, the above retention of title condition is not valid according to the law of the import country or if it has to be supplemented and/or registered in order to become valid, the customer, as justified, has to conclude a security agreement according to the law of the import country, which comes as close as possible to the economic purpose of our purchase price security, and shall carry out the required registration.

VI. Duty of inspection and complaint, warranty, liability

6.1 Customer's duty of inspection, complaint and care

- 6.1.1 The customer is obligated to inspect the delivered goods without delay and report identified material defects in writing without delay, but not later than seven working days after the receiving of goods. Concealed material defects shall also be reported immediately in writing, but not later than 14 working days after discovery. The report of defects shall describe the type and manner of the respective asserted defect as concretely as possible so that it is possible for us to check and remedy the defect. The report deadlines and the required content and defect report apply in the same way to direct deliveries to third parties named by the customer; in these cases the customer shall also ensure the correct reporting.
- 6.1.2 If the customer's purchasers report defects to the customer, the customer must immediately forward these reports to us. The customer has to carry out or promise supplementary performance for its purchasers of for eligible purchasers from its supply chain only after agreeing the technical and economic measures with us.
- 6.1.3 If the customer plans to install, mount or process the goods delivered by us, he has to check their corresponding suitability, insofar as this has not been expressly assured by us, before installation, mounting or processing of the goods. If the check for suitability is omitted, contrary to duty, the customer is only entitled to claims due to material defects if the respective defect was culpably caused, culpably concealed by us or if a guarantee for the condition has been assumed.
- 6.1.4 If the customer identifies defects to the goods, he must not resale, process, install or mount them until an agreement has been reached regarding handling of the material defect or court or out-of-court preservation of evidence has been completed. The customer must provide us with the reported goods for inspection as to whether there is a material defect. Guarantee claims shall lapse if he culpably omits this.

6.2 Material defects

- 6.2.1 In the case of only slightly negligent breach of duty by us, the customer is entitled neither to compensation instead of performance nor to a right of withdrawal.
- 6.2.2 Section 445 a (2) BGB notwithstanding, if the last purchaser in the supply chain is not a consumer, the customer has to set us a reasonable period for supplemental performance if his purchaser asserts rights due to defects, before it can assert the other rights prescribed in s. 437 BGB instead of supplemental performance (right of second tender). The customer reserves the right of second offer toward his purchaser, in case this is not a consumer. In cases where we are entitled to the right of second tender, we are entitled and obliged at our discretion to repair or render delivery (supplemental performance) free of charge within a reasonable period, typically twice, in justified cases also more often because of specific technical complexity or customer-specific interface problems, for example, insofar as the defect occurs within the expiration period and is reported immediately after discovery, provided the cause of the defect existed before transfer of risk. The customer shall bear the burden of proof for this. If supplemental performance fails, the customer can withdraw from the contract or reduce the remuneration irrespective of any claims for compensation according to No. 6 of this contract.
- 6.2.3 If the customer has installed defective goods according to its type and intended use, or mounted it to another item, the following shall apply:
- a) The customer shall grant us the opportunity to remove the defective goods and to install or mount repaired or new goods. This shall not apply in cases where the customer's purchaser rejects this, which must be verified to us by the customer, or if the customer's purchaser is a consumer.
- b) Insofar as we are obliged to bear removal and installation costs according to s. 439 (3) BGB, we shall only owe costs relating to the removal and installation or mounting of corresponding goods, which are standard for and which a reasonable, economically thinking buyer should consider reasonable on the basis of expert advice for a successful remedy. The amount of the costs must be verified to us by the customer through submission of appropriate documents. The customer does not have a right to prepayment for removal and installation costs or for mounting identical goods unless its purchaser is a consumer and they are demanding a prepayment from the customer.

- 6.2.4 Rights due to defects shall expire in one year, calculated from delivery according to No. 3.3. This shall not apply if the law prescribes longer periods according to s. 438 (1) No. 2 BGB (buildings and items for buildings), s. 438 (3) BGB (malicious concealment), s. 445 b (1) BGB (right of recourse), s. 476 (2) BGB (reduced expiration period if the end purchaser is a consumer) and s. 634 a (1) No. 2 BGB (construction defects). The statutory regulations regarding expiry suspension, suspension and restart of the periods shall remain unaffected.
- 6.2.5 No. 6.3 shall apply to claims for compensation due to defects. The customer is not entitled to any claims due to defects other than those regulated in No. 6.1 in conjunction with No. 6.3.
- 6.2.6 If the customer reports a defect although a defect ultimately cannot be verified, we reserve the right to demand reimbursement of our costs from him, notably those for inspection and testing of the goods and other damages.
- 6.3 **Liability**
- 6.3.1 Irrespective of the legal grounds, damage claims by the customer, particularly due to a breach of obligations arising from the contractual relationship and from tort, are exclusively subject to the following provisions:
- 6.3.2 The liability exclusion according to No. 6.3.1 shall not apply
- to own culpable or grossly negligent breach of duty and culpable or grossly negligent breach of duty by representatives or vicarious agents,
 - to the breach of material contractual duties, whereby such contractual duties are material if their fulfillment actually facilitates the proper implementation of the contract and the customer regularly relies and can rely on their fulfillment,
 - if, in the case of a breach of other duties as defined in s. 241 (2) BGB (Duties of care), our work and services are no longer reasonable for the customer,
 - in the case of an injury to life, limb or health,
 - according to the Product Liability Act, or
 - according to any other urgent statutory liability cases.
- 6.3.3 In the case of liability due to a breach of material contractual duties, as well as initial impossibility for which we are at fault, and in the case of mandatory liability for legal defects, we are only liable for typical contractual and foreseeable damages, provided there is only slight negligence. This shall not apply in cases, in which simultaneously there is an injury to life, limb or health or in the case of product liability.
- 6.3.4 Our liability – except in cases of injury to life, limb or health, malice, gross negligence, breach of material contractual duties or product liability, along with other statutory liability provisions – is limited overall to the scope of cover of our business liability insurance, provided there is insurance cover to the usual market extent which should be reasonable and in relation to the respective liability case.
- 6.3.5 The above liability exclusion or liability restrictions shall apply to the same extent with regard to senior and non-managing employees and in the case of liability for our vicarious agents.
- 6.3.6 The customer's claims for compensation because of contractual violations can only be asserted within an exclusion period of one year from the start of the statutory expiration period. Claims for compensation due to material defects (No. 6.1) shall expire according to No. 6.2.4.
- The above exclusion period and reduced expiration period shall not apply if we are liable because of malice or gross negligence or because of injury to life, limb or health, according to the Product Liability Act or according to other statutory liability circumstances.
- 6.3.7 If our goods are exported by the customer and they are processed, used as components, installed or mounted abroad, we are not liable for the export-capability of the goods, notably not for obstacles such as export control regulations, embargoes, freedom from state approval and freedom to import into the customer's export countries. Compliance with national conditions of the respective export country is subject to examination by and responsibility of the customer.
- 6.3.8 The above liability exclusions and liability restrictions shall apply to the same extent to violations of data protection conditions, notably according to the General Data Protection Regulation (GDPR). This shall not apply in cases of a violation of the ban on processing personal data as defined in Art. 9 in the General Data Protection Regulation.
- 6.3.9 A change to the burden of proof to the disadvantage of the customer is not connected with the regulations in this No. 6.3.

VII. Assumption of guarantee

- 7.1 In principle, we do not assume quality, service life or other guarantees. In particular, quality conditions, specifications and/or product specifications do not include guarantee declarations.
- 7.2 If in single cases a guarantee should be given by us, it is only valid if it has been written. Provided is always that the customer had informed us first about the specific purpose of the use of our product. Guarantees are not assumed as a result of conclusive behavior, but rather exclusively through express declaration in the specific case and this always requires prompt disclosure of the actual intended use by the customer.

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VIII. Confidentiality, ban on reverse engineering

- 8.1 Both contractual parties are obliged to treat the information and datas, notably drawings, plans, specifications and part lists, along with customer and (sub) contractor contacts, as confidential and like business secrets, even if the requirements of the law protecting business secrets may not apply in the specific case.
- 8.2 The customer is not permitted to identify and use the know-how embodied in our products, notably their functioning and construction, by observing, examining, dismantling or testing, nor to use or to disclose same to third parties.

IX. Place of performance, place of jurisdiction, applicable law

- 9.1 Place of performance and the venue of the business relationship with our customer for delivery and payment is at the registered office of METZ CONNECT (Blumberg).
- 9.2 These General Terms and Conditions and all contractual relationships with customers regarding deliveries, work and services are subject to material German law and German procedural law with exclusion of the German law of conflicts (EGBGB). The Application of the United Nations Convention on The International Sale of Goods (CISG) is excluded, too.