



## General Terms and Conditions of Sale (Date: 05/2010)

### 1. Application, diverging terms and conditions of purchase

The present General Terms and Conditions of Sale shall apply exclusively to the legal relations between the purchaser and METAIO GmbH (hereinafter "METAIO"). Any general terms and conditions of the purchaser conflicting with or diverging from these Terms and Conditions of Sale shall not be accepted unless METAIO has agreed thereto in writing in an individual case. The Terms and Conditions of Sale shall also apply to all subsequent contractual relations between the purchaser and METAIO in case of regular or continuous business relations. These Terms and Conditions of Sale shall apply only to relations with merchants, legal persons under public law and public law funds within the meaning of sec. 310 BGB [German Civil Code].

### 2. Written form, offers, acceptance period, documents pertaining to an offer

- 2.1 Orders, declarations of acceptance, amendments and any other agreements concluded before or at the time of the conclusion of a contract require written form to become legally effective. The same applies to warranties as to the quality of products. Any amendments of a contract shall also be set forth in writing.
- 2.2 Offers made by METAIO shall remain subject to change unless expressly and in writing defined or agreed to as binding. The purchaser is bound by its offer for a period of 14 days. A contract becomes effective only with the written confirmation of an order received by METAIO, or an invoice, at the latest, however, upon the purchaser's acceptance of the delivery. The details of the performance owed by METAIO are set out in the order confirmation of METAIO.
- 2.3 The documents pertaining to an offer by METAIO, such as illustrations, drawings, information on performances, weights, measures are detailed as precisely as possible but are merely approximate values unless expressly referred to as binding.

### 3. Prices, price increase, payment, default, retention, offsetting

- 3.1 Unless otherwise agreed, the price agreed upon by the contracting parties is understood to be a net price. VAT, if applicable, shall be added in accordance with the VAT rate valid at the time of invoicing. Unless agreed otherwise in a separate contract, the prices are understood plus transporting/dispatch costs, packaging costs, insurance, taxes, customs duties etc. (EX WORKS).
- 3.2 Unless otherwise agreed the prices are fixed in accordance with the order confirmation of METAIO, or otherwise according to the METAIO price list applicable at the time of conclusion of the contract. Provided no fixed price has been stipulated METAIO reserves itself the right, in case of a change in costs after conclusion of the contract, to reasonably adjust the prices in accordance with the change in wages, salaries, material and production costs and exchange rate fluctuations that have meanwhile occurred. In the case of imported goods the EURO or USD prices specified in the order confirmation are determined by the exchange rate of the foreign currency applicable at the time the order confirmation was issued.
- 3.3 Unless otherwise agreed in the particular case invoices from METAIO are due for payment upon delivery of the goods and shall be payable without deduction within 30 days of delivery of the goods and the date of the invoice by remittance to the account indicated by METAIO.
- 3.4 In case of default in payment METAIO shall have the right to charge default interest at a rate of 12 % p.a. unless it proves that the loss incurred was higher; the purchaser can prove that METAIO has incurred a smaller loss. In any event interest shall be charged on the unsettled claim at a rate of 8% above the current basic interest rate. The right to assert a higher loss due to default shall be reserved.
- 3.5 If METAIO accepts cheques and bills of exchange this is deemed to be on account of performance only. Any bill of

exchange taxes shall be borne by the purchaser. Irrespective of the purchaser's conditions METAIO can at its discretion credit payments against earlier debts, costs, interest and newly accrued debts of the purchaser.

- 3.6 If it becomes apparent after conclusion of the contract that the claim of METAIO for counter-performance is jeopardized due to lack in performance of the purchaser, METAIO can refuse performance until the purchaser has made counter-performance or provided security for it. METAIO is entitled to set a reasonable period within which the purchaser, at its choice, has to concurrently counter-perform or provide security against the performance. Upon expiration of the period, METAIO is entitled to withdraw from the contract and / or claim damages and reimbursement of expenses if the statutory requirements are given.
  - 3.7 The purchaser can assert a right of retention with respect to claims made by METAIO only as far it is based on claims from the same contractual relationship, which are uncontested, ready for decision or defined by enforceable final judgment. Offsetting by the purchaser is excluded as far as the counterclaim has not been defined by enforceable final judgment, is not ready for decision or not uncontested.
- ### 4. Partial delivery, delivery period, force majeure, self-supplies, delay in delivery
- 4.1 METAIO is entitled to make partial deliveries where the purchaser can be reasonably expected to accept them.
  - 4.2 The delivery deadlines and delivery periods indicated by METAIO are without any commitment unless expressly and in writing agreed otherwise. If it has been agreed that the purchaser must provide security or an advance payment, an agreed delivery period shall start at the earliest upon receipt of the security or advance payment, as the case may be.
  - 4.3 Compliance with its delivery and performance obligation by METAIO requires timely and due fulfilment of all contractual obligations of the purchaser. Delivery periods are deemed complied with if the contractual goods have left the works or storage, or if it has been signalled that the goods are ready for dispatch, by the time of expiry of the delivery period.
  - 4.4 In cases of force majeure or other unforeseeable circumstances such as, for instance, operational breakdowns, lawful strikes or lock-outs, war, import and export bans, shortage in energy or resources, official orders, which temporarily hinder METAIO without any fault on its part or imputable to it from delivering the goods by the deadline or within the period agreed upon with or without commitment, this deadline/period shall be extended – also during the time of the delay - in accordance with the duration of the hindrance caused by these circumstances. If such hindrance prevents performance for more than four months, both parties can withdraw from the contract. If delivery becomes completely or partly impossible or cannot be reasonably expected due to the above circumstances, METAIO shall insofar be released of its duty to deliver and/or entitled to withdraw from the contract. This shall not affect any statutory rights of withdrawal.
  - 4.5 In the event that METAIO has not received at all or in due time supply of any goods ordered, METAIO shall not be in default with the delivery in relation to the purchaser unless METAIO is responsible for having received such supply with delay or not at all. METAIO is entitled to withdraw from the contract if it is established that METAIO is not responsible for not having received supply of the goods ordered.
  - 4.6 The purchaser can claim, apart from delivery, compensation for the damage caused by a delay in delivery only if there is intent or negligence on the part of METAIO. In case of slight negligence the liability of METAIO shall be limited to foreseeable damage typical for the contract, however, to a maximum of 5% of the agreed purchase price of that part of the delivery METAIO is in delay with.

## 5. Dispatch, passing of risk

Unless otherwise agreed deliveries shall be effected for the account and at the risk of the purchaser. Unless otherwise agreed, the risk shall pass to the purchaser as soon as METAIO has handed over the goods to the forwarding agent, carrier or other person designated to effect the dispatch. The mode of dispatch and dispatch channel will be chosen at the discretion of METAIO. If dispatch is delayed for reasons not within the responsibility of METAIO or if the purchaser fails to accept the goods in due time even though they were offered to it, the risk shall pass to the purchaser upon receipt of the notification that the goods are ready for dispatch. If the goods are shipped METAIO shall at the purchaser's request and expense effect a transport insurance. Any damage to goods in transit shall be notified to METAIO and the delivering forwarding agent in writing without delay, however, no later than within 5 days. The purchaser shall inspect the delivery immediately upon receipt for its completeness and conformity with the delivery documents and, if necessary, immediately notify any inconsistencies; otherwise the delivery shall be deemed approved.

## 6. Notice of defects, warranty

If the cause of the defect was given already at the time of the passing of risk in accordance with para. 5., METAIO shall be liable for defects according to the following provisions only:

- 6.1 The purchaser has to meet its duties of inspection and notification of defects pursuant to Sec. 377 HGB [German Commercial Code]; the inspection must precede processing of the goods, otherwise warranty is excluded.
- 6.2 METAIO shall be notified in writing and without delay of any obvious defects, at the latest, however, within 7 days of receipt of the goods. METAIO shall be notified in writing of any hidden defects also without delay, at the latest, however, within 7 days upon discovery of the defect. If the purchaser fails to make such notification, the delivery shall be deemed free from defect and approved.
- 6.3 If the purchaser notifies a defect in due time it is entitled to, at the option of METAIO, free-of-charge rectification of the defect or delivery of a product free from defects (subsequent performance). METAIO can refuse certain types of subsequent performance or subsequent performance as a whole if it would incur unreasonable expenses.
- 6.4 If subsequent performance according to para. 6.3. fails the purchaser can, at its choice, withdraw from the contract or reduce the remuneration. In the event a purchaser chooses to withdraw from the contract due to a defect, it is not entitled to additionally claim damages due to the defect. Subsequent performance shall be deemed failed at the earliest after three unsuccessful attempts.
- 6.5 Returns of defective goods to METAIO for the purpose of subsequent performance require the written consent of METAIO. The risk of accidental loss and accidental deterioration of the returned goods shall pass to METAIO only upon delivery of the goods to the domicile of METAIO. If METAIO delivers replacement as a subsequent performance the purchaser shall immediately return the originally delivered product. Any replaced parts shall become the property of METAIO.
- 6.6 The purchaser cannot assert any claims based on the expenditure incurred by the subsequent performance (e.g. transport costs, road expenses and tolls, costs for working and material) if the expenditure has increased because the purchased goods were after delivery shipped to another place than the domicile or place of business of the purchaser, unless such shipping is in accordance with the designated use of the goods. Any costs incurred by the purchaser due to retrieval, dismantling, retrofitting or other processing of the goods required because of the goods' defectiveness do not have to be borne by METAIO, in particular not if the purchaser takes such cost-incurring measures without first obtaining the consent of METAIO.
- 6.7 Warranty is excluded if and as far as defects are caused by inexpert modifications or maintenance work to the delivered goods carried out by the purchaser or by a third party upon the purchaser's request. METAIO shall not assume liability in the case that the purchaser does not follow the instructions for use

and maintenance of METAIO or uses the goods for other purposes than those intended by the contract.

- 6.8 Warranty shall be excluded in the case of merely insignificant divergence of the quality of the delivered goods from the agreed quality, of only irrelevant impairment of the usability, of natural wear and tear, and of defects that occurred after the passing of risk due to improper or careless handling (e.g. unsuitable or inappropriate storage and use, incorrect installation and/or putting into service by the purchaser or a third party, improper or careless handling, excessive use, unsuitable means of operation, defective construction work and special external influences that are not preconditions in accordance with the contract). Advertising statements or other public statements and declarations of third parties shall not constitute a material defect; to that extent the warranty of METAIO shall be excluded.
- 6.9 Warranty claims become statute-barred within 12 months upon delivery of the goods unless the defect was maliciously concealed or is covered by a warranty as to the quality of the goods.
- 6.10 The purchaser is entitled to claim damages based on defects only insofar as the liability of METAIO is not excluded or limited in accordance with para. 7. of the present Terms and Conditions of Sale. Further claims or different claims than those stipulated by this para. 6. based on a material defect are excluded.

## 7. Overall liability

- 7.1 METAIO shall be liable for intent and gross negligence as well as in the case of a breach of an essential contractual obligation (major obligation). In the event of a slightly negligent infringement of a major obligation the liability of METAIO shall be limited to damage foreseeable at the time of conclusion of the contract and typical for the contract, however, to a maximum of EUR 2 million for personal damage, of EUR 1 million for material damage, and EUR 500,000 for pecuniary losses.
- 7.2 METAIO shall not be liable in the case of slightly negligent breach of accessory obligations that are not major obligations.
- 7.3 METAIO shall be liable for cases of initial impossibility of performance only if it had knowledge of the impediment to performance or if its lack of knowledge is due to gross negligence.
- 7.4 The above exclusions of liability do not apply in the event of fraudulent concealment of defects or a warranty as to quality, to the liability for claims under the Product Liability Act and to claims based on personal injuries. This shall not entail a change of the burden of proof to the purchaser's disadvantage.
- 7.5 Where the liability of METAIO is excluded or limited, this also applies to the personal liability of its staff, employees, representatives and vicarious agents.
- 7.6 With the exception of claims based on tortious acts, the purchaser's claims for damages, for which liability is limited under this paragraph, become statute-barred within one year as of the start of the statutory limitation period.

## 8. Reservation of title

- 8.1 All goods delivered by METAIO shall remain the property as reserved goods of METAIO until full settlement of all claims of METAIO under the contractual relationship and other claims of METAIO against the purchaser, no matter for which legal reason now or in the future (including all unsettled balances from current account). The same applies where the payments were effected on specially designated claims. In case of continuous account, the reserved goods are considered to be security for the unsettled balances of METAIO.
- 8.2 The purchaser is entitled to resell the reserved goods in the regular course of business. To secure all claims of METAIO arising from the business relation, the purchaser shall assign to METAIO by now all claims arising for it from the resale of the reserved goods; METAIO hereby accepts the assignment of future claims. As long as METAIO is owner of the reserved goods, METAIO is entitled to retract the authorization to resell if there is a justified objective reason.
- 8.3 The purchaser is revocably authorized to collect the assigned claim. This shall not affect the right of METAIO to collect the claims, however, METAIO shall undertake not to collect the

- claims as long as the purchaser meets its financial obligations properly.
- 8.4 If the purchaser fails to properly meet its financial obligations with the consequence that METAIO is entitled to collect the claims, the purchaser is obliged to, upon request of METAIO, inform its customers of the assignment and to provide METAIO with the information on the assigned claims and their debtors required to assert the rights of METAIO, and to submit the pertinent documents.
- 8.5 The purchaser is obliged to handle the reserved goods with care. As long as the reservation of title is valid, the pledging, assignment by way of security, lease or other assignment or change of the reserved goods impairing the security of METAIO require the prior written consent of METAIO. This shall not affect the purchaser's right to resell the goods in the regular course of business at the aforementioned conditions. The purchaser has to immediately notify METAIO in writing of any attachments of third parties, e.g. execution measures, and to inform the third party of the reservation of title of METAIO.
- 8.6 The purchaser is obliged to insure the reserved goods at replacement value on its own account against fire and other material damage and against theft and to maintain the insurance coverage. The purchaser shall assign to METAIO by now the claims it is entitled to assert against the insurance company in the case of a damage as far as they refer to goods owned or co-owned by METAIO; METAIO hereby accepts this assignment.
- 8.7 If the purchaser has suspended payments not only temporarily, if it files a motion for insolvency against its assets or if insolvency proceedings are opened against its assets, the purchaser is obliged to return the reserved goods still owned by METAIO to METAIO upon its request. Furthermore, in the event of the purchaser acting in breach of the contract, in particular in the event of default in payment, METAIO is entitled to demand the purchaser to return the reserved goods. The taking back of the reserved goods is considered as a withdrawal from the contract only if expressly declared so by METAIO.
- 8.8 The processing or transformation of the reserved goods, if any, shall be done on behalf of METAIO and in such a way that METAIO is considered as the manufacturer in accordance with Sec. 950 BGB (German Civil Code). In the event of the reserved goods being processed, combined or mixed by the purchaser with other goods not owned by METAIO, METAIO is entitled to co-ownership of the new product in the relation of the invoice value of the reserved goods to the invoice value of the other product at the time of the processing, combining or mixing. METAIO offers by now to grant the purchaser a contingent right to the joint ownership share that is created. The purchaser shall accept this offer. If the reserved goods are sold together with other goods after processing, combining or mixing, the assignment of the claim from the resale shall apply only up to the amount of the invoice value of the goods delivered by METAIO.
- 8.9 On demand of the purchaser, METAIO shall be obliged to, at its option, either waive the reservation of title and/or release securities from assignments by way of security and assignments of future claims if the purchaser has fulfilled all claims relating to the object of purchase or if the realizable value of all securities granted by METAIO due to reservation of title, assignment by way of security and assignment of future claims exceeds the total amount of claims against the purchaser by more than 10%.
- 9. Confidentiality**
- 9.1 The contracting parties undertake to treat all non-obvious business-related and technical details, which become known to them due to the business relation, as business secrets.
- 9.2 Any specifications, drawings, designs, technical data, samples and other objects or information the purchaser receives from METAIO are to be treated strictly confidential and may be used only to fulfil the contract. They must not be handed over or otherwise made available to third parties without permission and must be returned to METAIO after performance of the contract or earlier upon demand of METAIO. The reproduction of such objects or information is permissible only as far as required for the operation and within the provisions provided by copyright law.
- 9.3 This obligation of confidentiality shall continue to apply after the contract has been performed and shall remain valid as long as the relevant know-how and other confidential information is not publicly known and the pertinent patents and other industrial property rights are valid.
- 10. Applicable law, place of performance, place of jurisdiction, partial invalidity**
- 10.1 This Agreement shall be governed exclusively by the laws of the Federal Republic of Germany. The provisions of the UN Sales Convention shall not apply.
- 10.2 Exclusive place of performance of all delivery and payment obligations from the contracts concluded by METAIO shall be Munich.
- 10.3 Munich (LG München I) shall be the place of jurisdiction – also for claims based on bills of exchange and cheques - provided that the purchaser is a merchant or a legal person under public law. However, METAIO is entitled to sue the purchaser at any other legal place of jurisdiction.
- 10.4 If one or several provisions of these Terms and Conditions of Sale shall be held or become completely or partially invalid, nothing in this shall prejudice the validity of the other provisions. The invalid provision shall be replaced by a legally valid provision which comes as close as possible to the recognizably targeted economic objective pursued by the invalid provisions. The same shall apply in the event of a loophole in this Terms and Conditions.