



**1. Scope**

- 1.1 These General Terms of Delivery apply to all deliveries and services of Metallwerk Elisenhütte GmbH ("**MEN**") to customers and supplement the provisions of any framework delivery agreement ("**framework delivery agreement**"). Customers are the natural person, the company and the legal person under public law to whom MEN delivers or intends to deliver the products.
- 1.2 The applicability of general conditions of purchase or other conditions of the customer is excluded, even if MEN has not expressly objected to such other conditions or if MEN accepts or carries out the service unconditionally being aware of such conditions. Deviations from these General Terms of Delivery are only valid if MEN has expressly agreed to them in writing; this also applies to a deviation from this written form requirement.

**2. Offer and conclusion of the contract, sales documentation**

- 2.1 MEN's offers are non-binding, unless MEN expressly declares otherwise in writing. Binding offers may be changed by MEN, until MEN receives the customer's written order.
- 2.2 A delivery agreement ("**delivery agreement**") is only concluded if MEN has accepted the customer's order either by written order confirmation or by execution of the order. MEN's acceptance of the order and the delivery agreement between the parties are subject to these terms of delivery. Verbal agreements or commitments must be confirmed by MEN in writing, so that they are binding upon MEN.
- 2.3 All illustrations, drawings, designs, specifications, product descriptions, product data sheets, plans and weight, size and measurement specifications or comparable materials provided by MEN or contained in MEN's technical or commercial documentation ("**sales documentation**") are only provisional and non-binding, unless MEN expressly declares otherwise in writing. All sales documentation presented by the customer remains the sole property of MEN and may be used by the customer only for the preparation or the performance of the contract.

**3. Terms of delivery, default of acceptance**

- 3.1 Unless otherwise stated in the order confirmation issued by MEN, the delivery "FCA Nassau" (Incoterms®) is made to the designated place of destination.
- 3.2 MEN reserves the right to perform the delivery in one or more partial deliveries with corresponding partial invoices, provided that partial deliveries are reasonable for the customer. For payment purposes, each partial delivery shall be treated as a separate contract.
- 3.3 Unless otherwise stated in MEN's order confirmation, a delivery date or a delivery period indicated by MEN merely constitute a non-binding best estimate. MEN is not liable to the customer for non-delivery on a non-binding delivery date or within a non-binding delivery period.
- 3.4 An agreed delivery period starts with MEN sending the order confirmation. MEN's adherence to a delivery date or a delivery period is subject to the timely fulfilment of the customer's obligations being the prerequisite for the delivery, such as the submission of documents required for delivery or the effecting of any agreed advance payments. If this is not the case, MEN is not responsible for the respective delay.
- 3.5 The customer is in default of acceptance if he/she does not accept the products either at the end of the binding delivery period or on a binding delivery date. In the case of non-binding delivery periods or delivery dates, MEN may inform the customer that the products are ready for dispatch; if the customer does not accept the products within two (2) weeks of receipt of the notification of readiness for shipment, he/she will be in default of acceptance.
- 3.6 In case of default of acceptance or any other delay in delivery caused by the customer, MEN may claim damages, among other things, for storage costs. The buyer pays a lump-sum damage compensation for the storage costs in the amount of 0.1% of the purchase price for the stored products per calendar day of storage, but not more than 1% per calendar month; MEN reserves the right to demand further damage compensation. After an appropriate grace period has expired, MEN may otherwise dispose of the products and, within a reasonable period, instead supply a similar product under the terms of the delivery agreement or withdraw from it as well as demand additional compensation.

**4. Passing of risk, shipment and insurance**

- 4.1 The products are deemed to have been delivered according to the applicable Incoterms® and the associated risks pass to the customer according to the applicable Incoterms®. Should the delivery be delayed for reasons for which the customer is to blame, the risk passes to the customer on the date of the notification of readiness for shipment of the products or on the date on which the customer defaults acceptance in another way.
- 4.2 If MEN, upon request of the customer, carries out certain tasks for which the customer is otherwise responsible according to the applicable Incoterms® (particularly the payment of the insurance against transit, breakage, fire and accident damage), these tasks are deemed to have been performed by order and on account of the buyer and this does not affect any of the distribution of the risks and the responsibilities according to the applicable Incoterms®. All costs arising from the foregoing will be exclusively borne by the customer, who will reimburse these costs to MEN upon receipt of the relevant invoice.
- 4.3 The products are packed in line with customary commercial practice or as indicated in MEN's order confirmation.
- 4.4 Reusable European pallets are owned by MEN and, unless the contracting parties have agreed otherwise, must be returned to MEN by the customer free of any carriage charges. Unless otherwise agreed in writing, these items must be returned within twelve (12) weeks from delivery; if this return period is not observed, MEN may charge the full replacement cost of these items to the customer.
- 4.5 MEN is not obliged to deliver the products to third parties at the customer's request, unless this has been agreed in writing by the contracting parties.

**5. Limited warranty, disclaimer of warranty, remedies of MEN**

- 5.1 MEN guarantees that the products will (i) be free from defects in materials and workmanship and (ii) comply with the agreed performance specifications at the time of the passing of risk. MEN only warrants the suitability for a particular purpose if this has been expressly guaranteed.
- 5.2 If products are defective at the time of the passing of risk, MEN may, at its own discretion and free of charge for the customer, either remedy the defect (repair) or supply a defect-free replacement (together "**supplementary performance**"). The supplementary performance takes place without recognition of any legal obligation. If MEN is unwilling and unable or refuses to provide supplementary performance or if supplementary performance is delayed beyond a reasonable period for reasons for which MEN is to blame or if supplementary

performance fails for other reasons, the customer may, subject to the applicable legal provisions, withdraw from the delivery agreement or reduce the purchase price and/or demand compensation according to section 6. Further warranty claims of any kind are excluded.

- 5.3 The place of performance for the supplementary performance on the part of MEN is the registered office of MEN. Claims by the customer for compensation of the costs necessarily incurring for the subsequent performance, particularly the transportation, travel, labour and material costs, are excluded, insofar as the costs increase as a result of the fact that the products are brought to a destination other than the agreed place of delivery. Excluded are also costs for the removal and installation of defective products. MEN may charge these increased costs to the customer. The customer may claim compensation for such costs only according to section 6.
- 5.4 If the customer is entitled to return the products, he/she is solely allowed to do so after consulting MEN and following MEN's instructions.
- 5.5 MEN is not liable for defects caused by normal wear and tear, by an accident or a damage after the passing of risk or misuse, change, modification, incorrect handling, inadequate verification and, in general, non-compliance with MEN's instructions.
- 5.6 The limitation period for warranty claims on the part of the customer is one (1) year from delivery. This limitation does not apply if a defect was fraudulently concealed or a guarantee in respect of the quality of the product was given. In the case of damage compensation claims, this statute of limitations does not apply either in cases of intent, of gross negligence on the part of a senior executive or a managing director of MEN and injury to life, limb or health. Deviating agreements are only valid if MEN has agreed to them in writing.
- 5.7 In the event of supplementary performance by remedy of defects, the remainder of the original period of limitation of one (1) year starts to run from the day of the return of the defect-free product. The same applies to the subsequent fulfilment by replacement.
- 5.8 Under no circumstances shall MEN assume any liability for the customer's warranty programmes. The customer is solely responsible for a warranty which he grants to his/her own customers.
- 5.9 As a prerequisite for the customer's claims for defects, the customer examines the products according to the practices used in the ordinary course of business. Any identifiable defects must be reported immediately, but no later than within two (2) weeks after delivery. Any hidden defects must be reported immediately, but no later than two (2) weeks following the discovery of the defects. The notification of defects must specifically indicate the defect; notifications of defect must be in writing. The customer informs MEN immediately in writing about complaints of alleged defects of the products which he/she receives from his own customers.

## **6. Limitation of liability and product liability**

- 6.1 MEN's prices for the products reflect the subsequent distribution of risks and limitations of liability.
- 6.2 MEN is liable for damages caused by slight negligence only if they arise as a result of a breach of an essential contractual obligation in a manner which jeopardises the purpose of the contract. In this case, liability is limited to damages being foreseeable and typical for this type of contract. The latter also applies to damage caused by gross negligence on the part of an executive body, a senior executive, an employee or a representative of MEN.
- 6.3 In the cases mentioned in section 6.2, liability per damaging event is limited to the amount of the individual order value.
- 6.4 In the cases referred to in section 6.2, liability for indirect damages, incidental damages, special or consequential damages, lost profits or turnover, goodwill loss, downtime, business interruption and loss of production is excluded.
- 6.5 The limitation period for damage compensation claims is two years from the date on which the claims arises and the buyer obtains knowledge thereof. Regardless of the buyer's knowledge, the limitation period is three years from the date of the damaging event. The limitation period of section 5.6 applies to claims for defects.
- 6.6 The above limitations of liability apply to all damage compensation claims, regardless of their legal basis, except in the case of (i) mandatory liability according to applicable product liability laws, (ii) defects for which a guarantee concerning the quality of the product was provided, (iii) injury to life, body or health, (iv) intent and (v) gross negligence on the part of an executive body or a senior executive of MEN.
- 6.7 If the customer resells the products, the customer indemnifies MEN against any product liability claims of third parties and the customer holds MEN harmless with respect to any product liability claims of third parties if and to the extent that the customer is responsible for the defect triggering the liability.

## **7. Prices and payment**

- 7.1 Unless expressly stated otherwise, the prices indicated in the offer or order confirmation by MEN are net prices applying to the products delivered from Nassau "FCA" (Incoterms®) to the designated place of destination, but excluding the cost of packaging which will be added to the price.
- 7.2 Invoices are payable within thirty (30) days from the date of shipment without any deductions, unless otherwise agreed in writing. Decisive for the timely payment is the receipt of the payment on MEN's account. Payment by bill of exchange is only permitted after prior written consent. Bills of exchange and cheques are accepted by MEN only on account of performance and are only deemed as payment upon their complete encashment. All bank charges and costs incurred for the payment or the collection of bills of exchange and cheques are to be borne by the buyer. MEN assumes no liability for timely and proper submissions, lodging of protests and notifications.
- 7.3 MEN may adjust the agreed prices if and to the extent that (i) the costs of materials and raw materials required for the manufacture of the products has increased or decreased, (ii) the labour costs (salaries) have increased or decreased or (iii) the import duties and levies have increased or decreased. The extent of the adjustment depends on the actual change in cost. MEN informs the customers about the price adjustment in the event of a price increase at least two (2) months before the new prices take effect. In the event of a price increase, the customer may terminate the framework delivery agreement by written notice within two (2) weeks after receipt of the notification of the price increase.
- 7.4 MEN may set off the customer's payments against previous debts of the customer in the following order: (i) costs incurred, (ii) interest, (iii) principal debt.
- 7.5 If the customer fails to pay within the designated period (i) MEN may suspend the delivery of open order items until all outstanding payments have been settled, (ii) all other outstanding invoices are due immediately, (iii) MEN may charge interest on overdue receivables upon commencement of the default in the amount of eight (8) percentage points above the key rate of the European Central Bank, and (iv) MEN reserves the right to claim additional damages.
- 7.6 If, after the conclusion of the contract with the customer, it becomes clear that the fulfilment of the contractual obligations of the customer is due to the financial situation of the customer (in particular in the event of cessation of payment, application for the initiation of insolvency proceedings, seizure or enforcement measures, lodging of bill of exchange or cheque protests and refusal of encashment of direct debits, also in relation to third parties) jeopardised, MEN may, at its own option, withhold delivery until the entire purchase price for the respective products has been paid in full in advance or until adequate security (such as a third-party guarantee) has been provided. The same applies if any reasonable doubts arise concerning the solvency or creditworthiness of the customer arise as a result of the customer's delay in payment.
- 7.7 In the cases referred to in section 7.6, MEN may also withhold deliveries until all outstanding payments have been settled or adequate security has been provided. However, for claims which are not yet due for payment, including claims for which MEN is required to pay in advance according to previously concluded contracts, this only applies if MEN has a legitimate interest in it. If, in the cases referred to in section 7.6, any or all claims of MEN are included in a current account, MEN may withhold deliveries until all payments due under the recorded account balance are fully settled.
- 7.8 If, in the cases specified in section 7.6 the customer fails to pay in advance or provide security within two (2) weeks after being requested by MEN, MEN may withdraw from the delivery agreement.
- 7.9 The buyer may only exercise a right of retention or a set-off right if his/her counterclaim is undisputed or legally established. MEN will not be charged any interest.

## **8. Reservation of title**

- 8.1 The products delivered to the client remain the property of MEN until all claims on the part of MEN towards the customer following from the business relationship have been fulfilled. If individual or all receivables have been included in a current account, the reservation of title exists accordingly until all recognized balance claims relating to the current account are completely fulfilled.
- 8.2 The customer may only sell, pledge or transfer the delivered products as security if he/she has previously fully complied with all claims on the part of MEN towards the customer based on the business relationship.
- 8.3 The customer must handle all delivered products with care and adequately insure them against damages caused by fire, water and theft at their own expense and in the form of a reinstatement value insurance against damages caused by fire, water or theft. If the products are confiscated or the rights of MEN are jeopardised in any other way, the customer has to inform third parties of MEN's property rights and to notify MEN immediately. Upon agreement with MEN, the customer has to take all necessary measures to avert the danger. Upon MEN's, the customer has to transfer rights to MEN if this is considered reasonable for the protection of the reserved goods.
- 8.4 In the event of a breach of an essential contractual obligation on the part of the customer, such as the omitted payment to MEN, MEN may take back the reserved goods and, after termination of the contract, use it otherwise to settle the outstanding claims against the customer, notwithstanding any other rights MEN may assert. In this case, the client has to immediately allow MEN or its representatives access to the reserved goods and demand their surrender. The demand for surrender on the part of MEN does not constitute a termination of the contract.
- 8.5 In the event of deliveries to other jurisdictions where the above provisions concerning the reservation of title do not have the same effect of securing the goods as in Germany, but where MEN enjoys other, similar security rights, MEN will assert these security rights. The customer will take all the steps and will participate in all measures, such as the registration and publication, necessary and useful for the effectiveness and enforceability of such security rights.

## **9. Intellectual property rights**

- 9.1 Provided there is no contrary written approval on the part of MEN in place, the contract does not confer any rights, entitlements to or participation in names, trademarks, patents, pending patents, know-how, copyrights or other intellectual or industrial property rights, which MEN holds in relation to the products and related documents.
- 9.2 The customer may only use MEN brand names or trademarks in its promotional activities (i) with the prior written consent of MEN, (ii) in accordance with MEN's guidelines, and (iii) using their original layout and only for original products without any modifications. MEN reserves the right to revoke an issued permit at any time.
- 9.3 MEN must indemnify the customer for and hold him/her harmless against any allegations that the actual use of the products, as supplied by MEN, directly infringes any third party intellectual property rights in the country where the customer is located, provided that (i) MEN was promptly notified in writing of any legal action and a claim preceding the legal action, (ii) MEN has the sole authority to defend or settle the claim or the respective proceedings, (iii) the customer provides appropriate information and assistance if requested by MEN in connection with a claim or a legal action, and (iv) the customer has used the products strictly according to their normal practice.
- 9.4 This exemption is expressly limited to damages granted by a court to third parties in a final judgement or expressly approved by MEN in the context of a settlement or a compromise.
- 9.5 If, following an action, the use of the products is prohibited by a judicial decision, MEN may at its own option either (i) replace the infringing products by non-infringing and functionally comparable products, (ii) obtain and provide the customer with a licence to use the product on reasonable terms, or (iii) refund to the customer the purchase price of the product, less a reasonable amount for use, damage or obsolescence.
- 9.6 In addition, MEN is not liable for the infringement of intellectual property rights of third parties caused by its products.
- 9.7 MEN is not obliged to review any special specifications determined by the buyer with respect to the infringement of rights of third parties. If the breach of third-party rights results from the compliance with such specifications, the customer has to indemnify MEN for and hold it harmless against any claims asserted or related to it as a result of the infringement.
- 9.8 MEN may destroy certain templates (particularly drafts and layouts of labels), designed for the customer, after one year from the date of the last delivery, without having to notify the customer.

## **10. Confidentiality**

- 10.1 All information, particularly with respect to terms of agreement, conditions regarding orders or order confirmations, including pricing, must be treated confidentially by the contracting parties. Without the prior written consent of the respective contracting party, no information must be provided on the business relationship between MEN and the customer or on a product delivery (except in cases of disclosure to professional consultants of the contracting parties in case of justified need for information). The obligations of the parties according to this section 10 apply for a period of three years from the date of disclosure of an information. The restrictions and obligations of this section 10 do not apply with respect to information which (i) is already publicly known at the time of disclosure, (ii) becomes publicly known after disclosure without any fault on the part of the other contracting party, (iii) has already been in proper possession of this contracting party prior to disclosure, as the written documentation of the concerned contracting party shows, or (iv) which the other contracting party has autonomously identified, without the use of the information provider's information or its reference.
- 10.2 After expiry or termination of the contract, the customer must, upon MEN's request, immediately return to MEN all documents and other information storage media, including related copies, regardless of the format, if these contain or refer to any confidential or proprietary information of MEN.

## **11. Termination**

- 11.1 MEN reserves the right to withdraw from the delivery agreement in the event of contract violation by the customer if the customer does not remedy the violation within a reasonable period set by MEN. In the case of a serious or repeated contract violation, MEN reserves the right to also terminate the framework delivery agreement.
- 11.2 MEN may terminate an ongoing supply relationship in writing at any time subject to a notice period of three (3) months. MEN's right to terminate for good cause under applicable law remain unaffected. Orders in progress at the time of the termination will, in the event of termination, still be executed.

## **12. Force majeure**

- 12.1 Due to events of force majeure, such as war, natural disasters, earthquakes, labour disputes, shortage of raw materials, fire, delivery bottlenecks, which prevent MEN from fulfilling the contract, or other unforeseen and unavoidable events occurring outside the sphere of influence of MEN and for which MEN is not responsible, MEN is, for the duration of their effects, released from the obligation of timely product delivery. Agreed delivery periods are extended by the duration of the respective event and its effects. The customer must be properly informed about such an event and its effects. If the end of the event and of its effects is not foreseeable or if they continue for more than six (6) months, MEN may terminate the delivery agreement in writing in whole or in part. This section 12.1 also applies if subcontractors or subcontracted suppliers of MEN are affected by these events.
- 12.2 If, in the event of force majeure, the amount of products available to MEN for satisfying customer demands, is insufficient, MEN may, at its own discretion, allocate the available products to its customers.

## **13. Export restrictions - Re-export**

(Re-)export of products by the customer lie within the sole responsibility of the customer. He/she must comply with all applicable national and international export control provisions. The customer must obtain the necessary export licence or other documents prior to the scheduled re-export of the products and to hold MEN harmless with respect to liabilities, damages, costs, penalties and fines, as well as generally reimburse MEN the amount of money (including lawyer's fees) which MEN would have to pay as a result of the customer's non-compliance with applicable export control provisions.

**14. Assignment and pledging**

- 14.1 The customer may transfer or assign the contractual relationship or rights and obligations thereof only with MEN's prior written consent.
- 14.2 The claims incurring to the customer from the contractual relationship, with the exception of pecuniary claims, must neither be assigned nor pledged without MEN's prior written consent.

**15. Governing language**

The original version of these General Terms of Delivery is written in German. If the terms of delivery are translated into another language, the German version takes precedence in the event of discrepancy between the German and the translated version.

**16. Applicable law and jurisdiction**

- 16.1 All contracts between MEN and the customer are subject to the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.2 The place of performance, as well as the exclusive place of jurisdiction for all disputes arising from or in connection with this contract, is the registered office of MEN. MEN may also file an action against the customer at the customer's general place of jurisdiction.

**17. Modification of the General Terms of Delivery**

- 17.1 MEN reserves the right to modify these General Terms of Delivery with effect for the future.
- 17.2 The customer must be notified of reasonable modifications to non-essential parts of these General Terms of Delivery in writing or in text form. The modifications are deemed to have been approved if the customer does not object to them in writing or in text form. MEN will make specific reference to this consequence in the letter of notification. The objection must be received within six weeks of receipt of the notification. If the customer objects to a modification, MEN may refrain from continuing the contract.

**18. Final provisions**

If any competent court declares a provision, an article or a regulation contained in these terms of delivery to be invalid, the validity of the other provisions, articles or regulations of these terms of delivery are not affected by this finding of the court. The invalid provision, the article or the regulation is to be replaced by one which, in terms of its commercial outcome, equals the will of the parties in the commercial sense.