

GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY  
of

**Metallwaren Beteiligungsgesellschaft mbH**

**Definitions**

For the purposes of this General Terms and Conditions of Sales and Delivery (in the following GTSD) the term MWB identifies Metallwaren Beteiligungsgesellschaft mbH and the term „CUSTOMER“ the natural or legal entity, with whom MWB enters into contractual relationship.

**General**

This GTSD shall be applicable for all contracts concluded between MWB and CUSTOMER and for any consequent orders in case of a long term business relationship regarding delivery of MWB products, with the exclusion of any General Terms of the CUSTOMER. Any amendments or variations of this GTSD shall be valid only with express written consent of MWB.

General Terms of which kind ever, especially purchase terms of the CUSTOMER, which are in contradiction to this GTSD shall be in total ineffective. Confirmations in reply, which are in contradiction to an order confirmation of MWB shall be ineffective.

INCOTERMS as updated and registered by the ICC (International Chamber of Commerce) (currently: INCOTERMS 2000) shall apply only in accordance with an express written agreement.

**Contract Conclusion and Prices**

Offers of MWB are without obligation and subject to confirmation. Lists of prices delivered by MWB only provide a base for information and do not have the status of a sales offer. The prices as delivered by MWB are net prices and shall be understood within Austria up to an order value of EUR 150 ex works and beyond an order value of EUR 150 “carriage paid to named destination”; for export deliveries free Austrian border. For other price arrangements INCOTERMS as agreed shall apply. All prices are based on current costs and exchange rates. Should this factors experience a significant variation upwards, MWB reserves the right to correct the prices accordingly. The CUSTOMER is always charged the prices as applicable on the day of delivery plus respective VAT.

An order of the CUSTOMER shall be deemed as accepted only, if confirmed by MWB in writing or confirmed by prompt delivery and rendering of the invoice. Silence of MWB shall not be deemed as consent. If the order confirmation of MWB does contain variations compared to the order, this variations are deemed as accepted if CUSTOMER does not contradict against them without delay.

Any granted sales return and allowances shall be inapplicable if an application for opening of an insolvency proceeding is being filed or if such an application is being rejected for lack of assets, or if an application for a settlement proceeding inside or outside court is being filed or if CUSTOMER stops its payment obligations.

**Payment**

If not agreed otherwise in writing, invoices of MWB shall be paid promptly after receipt under exclusion of any right to withdraw or to set off with counterclaims. Deduction of cash discount from the invoiced amount is not permitted for as long as prior invoices are due for payment and not totally settled. Payments will be credited always against the oldest claim.

Bills of exchange and cheques will be accepted as payment only in accordance with a separate written agreement and subject to receipt of the respective value and coverage of any interest, expenses and costs by the CUSTOMER. Any bank charges, especially discount interest, collection charges, bill of exchange and cheque fees (as well as charges) shall be beard by CUSTOMER. No warranty for on time and proper presentation, protest and collection of bill of exchange or cheques is being granted.

In case of any doubt an agreed payment period starts with the date of the invoice. In case of exceedance of a the date of payment default interest in accordance with MWB credit costs, but not lower than 8% beyond the basis interest rate of the European Central Bank is charged, even if the delay in payment occurred without default. Place of fulfilment of payment is Klagenfurt.

The CUSTOMER is in case of delayed payment obliged to reimburse to MWB any necessary reminder and collection fees, and especially the fee of an instructed collection institute in accordance with the “Regulation regarding maximum rates of Collection Institutes” as published in the Austrian Federal

Law Gazette No 141/96 as amended. If MWB decides to arrange the dunning process by itself, CUSTOMER is obliged to pay per reminder an amount of EUR 15. In addition any further damage, especially the damage which occurs because MWB has to pay higher interest rate on its credit accounts because of the payment delay, has to be compensated.

### **Delivery**

Any delivery periods mentioned in price lists, order confirmations or otherwise shall be without commitment, unless agreed expressly otherwise in writing.

The delivery period starts at the earliest with mailing of the order confirmation by MWB, but not earlier than the day when complete conformity regarding the content and scope of the order is being reached. The order confirmation is essential for the delivery conditions and the delivery scope. Unless agreed otherwise in writing, MWB is entitled to perform delivery in one or more portions as well as to deliver also prior to an agreed delivery date. Irrespective of the other clauses in this GTSD each delivery shall be deemed as separate contract. Any default regarding one or more deliveries shall not effect the remaining contract.

Unless agreed otherwise in writing, any delivery takes place without warranty according to the discretion of MWB, shipments travelling uninsured and on cost and risk of CUSTOMER.

Acts of God or other unpredictable incidents, which prevent an on time delivery, entitle MWB under exclusion of whatever claim of the CUSTOMER (especially compensation claims), to extent the delivery period or to cancel the contract in total or in part.

In case of non-compliance with a delivery date by MWB the CUSTOMER must grant reasonable respite of a minimum of 4 (four) weeks. In case that respite elapses unused or if MWB declares inability to deliver, the CUSTOMER is entitled to cancel the contract with regard to the defaulted delivery volume. The cancellation has to be declared in writing within 1 (one) week after expiration of respite or after delivery of a respective declaration of MWB.

Authorisations beyond the right of cancellation, especially compensation claims are granted to the CUSTOMER only if the delivery default is caused by intention or by gross negligence. Preliminary suppliers, which are used by MWB to perform its contractual obligations, shall not be deemed as servants in the sense of Art 1313a Austrian Civil Rights Code.

In case that CUSTOMER refuses acceptance of the goods, it has irrespective of its obligations for payment to bear all costs of transport and warehousing. In case of a delay with acceptance the purchase price is due for payment immediately. Irrespective of his right to provide a notification of defect, defects do not entitle CUSTOMER to refuse acceptance.

Delivery obligations and delivery periods are at rest for as long as CUSTOMER is delayed with fulfilment of one of his own obligations.

### **Package**

The necessary package is not separately charged. Any deduction of the package by CUSTOMER is prohibited unless agreed otherwise in writing.

### **Shipment and Bearing of Risk**

Unless agreed otherwise in writing (especially in form of INCOTERMS) or unless accepted by MWB in the order confirmation, risk and coincidence devolve to CUSTOMER with performance of MWB at the place of fulfilment. In case of freight free deliveries and in case of delivery free Austrian border, risk and coincidence devolve to CUSTOMER as soon as MWB hands over the goods at the place of fulfilment to the freight forwarder, the freight carrier or any other person or entity dedicated to performance of the shipment regardless of who bears the costs of the transport and who actually performs the transport.

Transport insurance is concluded only upon express request and at expense of CUSTOMER. Inland extra freight charges for express good will be borne by CUSTOMER. In case of a lack of adequate reference shipment will take place against payment in advance or per cash on delivery only.

If transport or delivery is delayed upon request of CUSTOMER or due to other reasons under control of CUSTOMER, risk and coincidence devolves to CUSTOMER with delivery preparedness. The same

applies, irrespective of the regulation above, in case of acceptance delay or refusal by CUSTOMER, whereas in this case the day of delay respectively of refusal shall be the relevant date.

In case that CUSTOMER is delayed with acceptance, MWB is entitled to either warehouse the goods by itself and charge a warehousing fee of € 4/m<sup>3</sup> per commenced calendar day and simultaneously insist on fulfilment of the contract, or after having granted an adequate respite cancel the contract and commercialise the goods otherwise. In this case in addition a contract penalty of 30% of the invoiced amount is deemed as agreed, irrespective of the right of MWB to also claim compensation for additional damages.

### **Warranty, Compensation**

MWB warrants on the day of transfer of risk for expressly promised attributes of the contractual goods to the extent of the following provision for a period of 12 (twelve) months. Any warranty for a particular fitness, a particular purpose or a particular appliance of the goods is expressly excluded, unless agreed otherwise in writing. MWB expressly does not grant any warranty for defects, occurred because of inappropriate treatment, common abrasion, warehousing or other activities and omissions of CUSTOMER and third parties. Warranty is also excluded if the goods are not used in accordance with the instructions provided by MWB. Verbal information regarding attributes of MWB goods, technical advice and other statements regarding fitness and usage, weight, format, performance and appearance of MWB goods are unbinding and are provided under exclusion of any liability. This is binding for MWB only if expressly stated and promised so in the order confirmation.

CUSTOMER is obliged to inspect the goods immediately after receipt with respect to completeness and freedom of defects. Variations from quality, colour, form or equipment are not deemed as defect if such variations are customary in trade, insignificant or technically unavoidable. This does also apply in case of a delivery according to sample or pattern.

Notifications of defects and incompleteness have to take place in writing within 1 (one) week after receipt of the goods subject to exact description of the circumstances, the order and deliver date as well as the delivery note number. CUSTOMER has to supply to MWB simultaneously with the defect notification all documents useful for evidence purposes. If defect notification does not take place as described above, any and all warranty, compensation and other claims of CUSTOMER are barred.

Processing of or any alteration of the delivered goods are deemed as acceptance of duly deliverance. Before usage of a good a detailed inspection of an expert is required as to whether the good is fit for the intended utilization. Notifications of the CUSTOMER are in any case delayed, if it is impossible to inspect the good in question.

In case of verifiable defects of the material or workmanship, warranty obligations of MWB are at MWB option reduced to replacement of goods of same kind and quantity or to improvement. Additional claims, especially rights to conversion, compensation or execution by substitution are expressly excluded. Any liability of MWB for consequential harm caused by defect is excluded. Any recourse of CUSTOMER against MWB in accordance to Art 933b Austrian Civil Rights Code is excluded, unless in case of intentional or gross negligence behaviour. Redemption of used goods does not take place. Existence of a defect does not entitle CUSTOMER to repair the good by itself or by third party, prior to having granted to MWB the chance for curing of the defect.

CUSTOMER is obliged to consider security and operating guidelines in any case of MWB product presentation - especially during sales negotiations, technical advice, advertisement and so on and to devolve any warning notices therein to a respective Buyer.

Precondition for fulfilment of any warranty obligations of MWB is fulfilment of all CUSTOMER's contractual obligations, especially the agreed payment.

Compensation claims of CUSTOMER exist only in case of gross negligence. CUSTOMER bears the burden of proof for existence of gross negligence. CUSTOMER has to reduce MWB liability in contracts with its clients accordingly. If CUSTOMER does not comply with this obligation, CUSTOMER is obliged to reimburse all costs and expenses, including court and counsel fees, occurred on side of MWB because of this non-compliance.

Any existing compensation claim based on provisions of mandatory law or on this GTSD shall in terms of its extent be restricted with the purchase price of the relevant delivery.

This clause shall not in any way effect claims of consumers under the Consumer Act and other provisions of mandatory law.

### **Product Liability**

CUSTOMER is obliged to make use of the goods only in accordance with instruction and user manual, for that, to make intentional use of the goods and to secure that the goods are only handed over for intentional use to, respectively that the goods are put into circulation only by person familiar with the product risk. If any uncertainty as to the permitted use of the good exists, CUSTOMER is obliged to do respective written enquiries with MWB. CUSTOMER bears the burden of proof that such enquiry took place.

In case of product liability damages of the CUSTOMER's client, CUSTOMER is obliged to immediately provide to MWB a written documentation as to the circumstances and claims. Otherwise the right for regress shall be excluded. In case of product liability damages CUSTOMER shall bear a regress liability of MWB, if CUSTOMER did not adequately inform his clients as to the specifics of the goods, or if he did not hand over the user and instruction manual or otherwise presented to his client the product safety in another way as required in consideration of the particular circumstances.

Special attributes of the goods are deemed as being agreed only if this is promised expressly and in writing.

If the good as delivered by MWB is used as a part or as a basis material of own products, CUSTOMER is in addition obliged to comply along with its own product liability obligation and with MWB product liability obligation, when putting such products into circulation.

CUSTOMER shall observe goods after having put them into circulation with respect to negative attributes and dangerous consequences of usage and shall follow the development of science and technique with respect to such goods and shall inform buyers of MWB products immediately of any defects detected.

As far as a contract is not concluded with a consumer under the Consumer Act, the following shall apply: The liability of MWB is excluded for property damages of CUSTOMER and his clients. The limitation period for claims in accordance with Art 13 Austrian Product Liability Act as well as regress claims is reduced to three years. Regress claims of the client of CUSTOMER opposite MWB are excluded as far as legally permitted and restricted to the insurance coverage of MWB.

If CUSTOMER is informed by MWB or by manufacturer about a possible defect of a good and if CUSTOMER is requested to arrange for the correction of the good, CUSTOMER is obliged to immediately deliver this good upon discretion of MWB either at the place where MWB has its registered seat, a branch or to the seat of a MWB distribution or other partner. CUSTOMER is obliged with respect to the good to accept improvement attempts, exchange of the good against a good of equal kind or reversed transaction without the right to claim for compensation. If CUSTOMER does not comply with his obligation to return the good, CUSTOMER takes over full liability opposite MWB and third parties for any and all damages occurred by the good.

CUSTOMER is obliged to compensate MWB for all debts, losses, damages, costs and warranties, occurred to MWB because of non-compliance with the obligations described above.

### **Retention of Title**

Delivered goods remain the sole property of MWB for as long as the purchase price and any default interest, reminder and collection as well as other costs are not totally paid. In case of running account retention of title is deemed as security for the MWB balance claim. If the good is processed, co-ownership shall arise in proportion of the value of the work to the value of the good.

CUSTOMER is under the following conditions entitled to sell the good to third parties:

Irrespective of the status in which the good is being resold by CUSTOMER, CUSTOMER assigns already with acceptance of the good all claims which will arise from resale to his clients and all side claims in this context to MWB. This assignment shall be notified by CUSTOMER to his client simultaneously with resale of the good and shall also be noted in the business books. Upon demand of MWB CUSTOMER shall further immediately inform MWB as to whom such goods has been resold respectively which claims arose from such resale and shall hand over to MWB any and all documents necessary to assert the claim.

MWB is entitled to inform CUSTOMER'S clients of the assignment. CUSTOMER shall indemnify MWB for any and all damages occurred because of non-compliance with this obligation. MWB expressly declares acceptance of this assignment. CUSTOMER is nevertheless entitled to collect the claims for MWB on trust. In case of payment delay of CUSTOMER, CUSTOMER is obliged to hand over any and all documents which are necessary to collect the claims, in which case the trustee relationship is deemed as revoked.

CUSTOMER shall immediately notify MWB in writing of any execution activities into the good under retention of title or into assigned claims along with transfer of all documents required for opposition.

In case of payment discontinuation, filing or opening of a bankruptcy or of an inside or outside court settlement proceeding, CUSTOMER is obliged to return all goods under retention of title to MWB at his own expense.

In case of delayed payment MWB is entitled, to dispossess from the custody of CUSTOMER all goods under retention of title. CUSTOMER will in this case not claim protection of possession and gives already consent to the removal of the goods.

### **Acts of God**

All circumstances beyond the will of the parties are deemed as Acts of God in the sense of this GTSD, especially but not limited to delayed delivery from preliminary suppliers, cases of Acts of God in the tight sense of the word (e.g. war, fire, flood, earthquake), unpredictable disturbances of production, lack of energy, raw materials, intervention of authorities, transport and customer delays and work conflicts.

### **Miscellaneous**

If single clauses of this GTSD are ineffective because of regulations under mandatory law, the commitment of the other provisions and of the contracts concluded based on this GTSD shall not be effected. The ineffective clause shall be exchanged by such an effective clause, the content of which comes as close as possible to the economical sense of the ineffective clause.

The content of all documents and information of economical, financial and technical character, which the parties of this contract provide each other according to the conditions herein respectively in context with the goods, shall irrespective of whether marked as confidential or not, deemed as confidential and handed over to a third party or copied only with consent of the other party.

Any and all agreements between MWB and CUSTOMER shall be binding only if in writing. Verbal subsidiary agreements shall be invalid. Variations and amendments of this GTSD shall be binding only if agreed in writing. The form of writing is also met through usage of facsimile.

### **Governing Law, Place of Fulfilment and Jurisdiction**

For all disputes arising from this agreement Austrian Law shall be applicable. Application of the UN Convention of the United Nations regarding Contracts of the International Sale of Goods is excluded. Contract Language is English. Place of fulfilment for both parties is Klagenfurt.

All disputes arising directly or indirectly from this agreement shall be decided by the competent court in Klagenfurt. MWB is also entitled to bring an action also before another court competent for CUSTOMER.

### **Inconsistency between the German Text and the Translation**

This GTSD are for reason of CUSTOMER comfort provided also in German and English version. However, in case of any inconsistency between the text of these terms and conditions in the German language and that in another language, the German version shall be binding.

February 2010