

## General Terms and Conditions of Sale and Service of IST METZ GmbH & Co. KG

(11/2023)

### I. Validity

(1) Our deliveries and services are subject exclusively to these General Terms and Conditions of Sale and Service (GTS). We do not recognize any terms and conditions of the purchaser that are contrary to or deviate from the GTS; their validity is hereby expressly rejected. Our GTS shall also apply if we carry out the delivery or service without reservation in the knowledge that the purchaser's terms and conditions are contrary to or deviate from our terms and conditions.

(2) The GTS shall only apply to entrepreneurs within the meaning of § 14 of the German Civil Code (BGB) as well as to legal entities under public law or special funds under public law.

(3) Unless otherwise expressly stipulated, the agreed written form shall also be complied with by text form.

### II. Conclusion of contract, written form, deviating agreements, guarantees

(1) The written declarations of both parties shall be decisive for the content of the contracts concluded with us. If a contract has been concluded without such mutual written declarations, only our written order confirmation shall be decisive.

(2) Deviating agreements and side respectively additional agreements shall only be binding with our express confirmation in the individual case. With the exception of managing directors or authorized signatories ("*Prokuristen*"), our employees are not authorized to make oral collateral agreements or oral promises that deviate from or go beyond these terms and conditions or our order confirmation.

(3) The assumption of a guarantee by us requires an express and written declaration to this effect with the designation "*Garantie*". Our product descriptions do not constitute a guarantee in the sense of § 443 of the German Civil Code (BGB).

(4) The conclusion of the contract is subject to self-delivery. This shall not apply if we are responsible for the non-delivery or incorrect delivery, in particular if we have not concluded a congruent purchase transaction. We shall inform the purchaser without delay of the non-availability of the delivery item.

### III. Offer documents and trade secrets, costs

(1) The documents belonging to the offer, such as illustrations, drawings, weights and dimensions specifications, are only approximate unless they are expressly designated as binding.

(2) We reserve unrestricted property rights and copyrights to cost estimates, drawings and other documents in accordance with Section XI; they may only be made accessible to third parties with our prior consent. We are obliged to make plans designated as confidential by the purchaser accessible to third parties only with the purchaser's consent. The purchaser is not permitted to obtain a trade secret by observing, examining, dismantling or testing products or objects provided by us.

(3) We will not invoice for drafts of plants and products, drawings, for samples and models or cost estimates if the order in question is placed with us; otherwise we shall be entitled, at our discretion, to reclaim the drafts supplied by us and to invoice the costs incurred, in accordance with the fee rates of the Association of German Engineers. We shall also charge for travel at the request of the purchaser. In principle, construction drawings will not be supplied.

### IV. Scope of delivery and services to be rendered

(1) In the absence of a special written agreement, our written order confirmation shall be exclusively decisive for the scope of the delivery and the other services to be provided by us. Parts, that are precautionary delivered in excess and remaining parts remain our property.

(2) In the event of subsequent changes to the order, the additional services shall be invoiced.

(3) Protective devices will only be supplied insofar as this has been agreed.

(4) In any case, even if we have taken over the assembly for a lump sum, earthwork, masonry and carpentry work, lifting gear, scaffolding, auxiliary crews, roof mounting, fastening and support of pipelines, racks for dust collectors, steam and condensation water pipes, valves, steam trap, transmission gears, drive belts as well as the supply of the delivery item with electricity, water and compressed air including supply lines do not belong to our delivery. The transport of the delivery parts from the unloading point to the place of installation is also not part of our delivery.

(5) If such services are nevertheless provided by us, they shall always be invoiced additionally and shall be paid for by the purchaser in addition.

(6) Our delivery items meet the safety requirements of the relevant European standards (EN). In addition, the applicable international standards (ISO/IEC) shall be taken into account as the state of the art.

(7) The purchaser shall dispose of the gas discharge lamps supplied for exclusive use in the commercial sector at its own expense at the end of their use in compliance with the WEEE Directive 2002/96/EC and shall indemnify us against the obligation to take them back and other claims of third parties. In case of passing on to third parties, the purchaser has to oblige the third party itself to disposal in a proper manner.

(8) If our scope of delivery includes software, the purchaser shall only receive a simple, worldwide, non-sublicensable right to use it - unless expressly agreed otherwise - insofar as this is necessary for the contractual use of our delivery. We shall only be obliged to update or otherwise maintain the software and to provide the source code if this has been agreed in writing.

(9) The purchaser shall be obliged to provide all information and documents required by it for the export, transfer or import of the delivery item. Purchasers in other EU countries are obligated to send us, upon request, a confirmation of receipt in accordance with legal requirements and a form provided by us, if applicable, as proof of tax exemption. We will accept the purchaser's own text if this text complies with all legal requirements. If the purchaser does not provide the confirmation of receipt despite a deadline being set, it shall be liable for all disadvantages incurred by us as a result.

(10) The purchaser acknowledges that all goods, software, and technology obtained from us might be subject to export control, economic sanctions or other laws on foreign trade. As far as necessary to ensure compliance with laws on foreign trade, to apply for a potentially required export control license and to enable the competent authorities to conduct export control checks, the purchaser shall provide us with all necessary information and documents. If necessary, this shall include, but not be limited to information on the end-user and the issuance and provision of an end-use certificate. The goods delivered to the purchaser are principally intended to remain with the purchaser. In the event that the delivered goods are resold or otherwise made available to third parties by the purchaser, the purchaser must ensure on its own responsibility that all applicable national or international laws on foreign trade are complied with.

(11) If the purchaser intends to install or attach the delivery item, it shall already upon receipt inspect the properties relevant for the installation or attachment and the subsequent intended use and notify us in writing of any defects without undue delay, insofar as such inspection is reasonable in view of the type and condition of the delivery item. If the purchaser fails to carry out such an inspection, the purchase is acting in gross negligence.

(12) We provide certain service and troubleshooting services by using third-party software, the updates, version changes, updates or other changes of which we cannot influence. Extensive adaptations of hardware and, in particular, of the system or other software may also be the result of changes to the third-party software on the part of the customer. Unless otherwise agreed, we shall only bear the costs for such adaptations within 24 months after commissioning of a system; thereafter, the customer must commission us with such adaptations at our usual conditions.

## **V. Prices and payments, set-off and right of retention**

(1) Prices shall be ex works in accordance with FCA at our works in Nürtingen/Germany, Incoterms, latest version, excluding assembly, excluding packaging and insurance and excluding value added tax, which shall always be payable in the amount prescribed by law on the day of invoicing in addition to our prices.

(2) A price charged including assembly and commissioning is only valid in case of uninterrupted work; in case of interruption through no fault of ours, the additional costs (travel, wages, etc.) shall be borne by the purchaser.

(3) Payments shall be made to us on the due date without any deductions, such as bank charges etc., in accordance with the terms of payment agreed in writing.

(4) The purchaser shall only be entitled to rights of set-off or retention insofar as its counterclaim is undisputed or has been legally established.

(5) When accepting orders we assume solvency of the purchaser. If it turns out that this precondition was not met at the time the contract was concluded or is no longer met at a later date, we shall be entitled to revoke payment terms granted, to demand advance payment or securities for further deliveries or to withdraw from the contract. A lack of solvency on the part of the purchaser can also be assumed, among other things, if the purchaser is in arrears with the payment of earlier invoices or if a substantial deterioration in its financial circumstances becomes known.

(6) Insofar as the prices are based on our list prices, we shall be entitled to increase the price if delivery is not to take place until more than four months after conclusion of the contract or if delivery cannot take place for reasons for which the purchaser is responsible. We shall also be entitled to increase the price if, after the conclusion of the contract, our cost prices, in particular material prices, collectively agreed wages, statutory and collectively agreed social benefits and freight costs increase and the delivery is to be made more than one month after the conclusion of the contract or can be made for reasons for which the purchaser is responsible.

(7) We are entitled to send an electronic invoice by e-mail.

## **VI. Delivery time**

(1) Delivery periods stated by the purchaser shall only be binding if they are expressly confirmed by us in writing. Our compliance with delivery periods shall be subject to the timely receipt of all documents to be provided by the purchaser, such as required official approvals and releases, in particular of plans, as well as compliance with the agreed terms of payment and other obligations, including any obligations to cooperate, by the purchaser. If these prerequisites are not fulfilled in time, the delivery period shall be extended accordingly. This shall not apply if we are responsible for the delay.

## **VII. Transfer of risk, partial performance**

(1) Unless otherwise agreed in writing, a sale by delivery to a place other than the place of performance ("*Versendungskauf*") shall be concluded between us and the purchaser. The risk shall pass to the purchaser upon dispatch of the delivery item from our respective location, even if partial deliveries are made or if we have assumed other services, e.g. the shipping costs, delivery or installation. At the request and expense of the purchaser, we shall insure the consignment against the usual transport risks. The purchaser shall inspect the delivery item for transport damage upon receipt. The purchaser shall inform the transport person without delay of any transport damage and have the damage note on the consignment note, forwarding order or delivery bill signed. The purchaser will also inform us without delay about the transport damage.

(2) If shipment is delayed due to circumstances for which the purchaser is responsible, the risk shall pass to the purchaser on the day of our notification of readiness for shipment. We undertake to take out the insurances requested by the purchaser at the latter's request and expense.

(3) Partial deliveries shall be permissible insofar as they are reasonable for the purchaser, in particular insofar as the partial delivery is usable for the purchaser within the scope of the contractual purpose, the delivery of the remaining delivery items is ensured and the purchaser does not incur any significant additional expenses (unless we agree to bear these expenses).

## **VIII. Assembly**

(1) The provision of our fitters for the installation of machines, apparatus, units, etc. shall be subject to our installation terms and conditions in addition to any special agreements.

(2) The purchaser shall be obliged to provide at its own expense the necessary personnel requested by the fitter commissioned by us. If the purchaser does not comply with this obligation and we therefore bring in our own people to assist the fitters, their costs will be additionally invoiced by us.

## **IX. Acceptance**

(1) The acceptance of a delivery item shall take place without delay after its completion in the presence of our fitter and shall be certified on our form. If a delivery item cannot be accepted immediately after completion through no fault of our own, the purchaser shall bear the costs and risks arising from the delayed acceptance.

(2) The purchaser may not refuse acceptance in the event of only minor defects.

(3) Our services shall be deemed to have been accepted if the purchaser has not notified us in writing of a material defect within two weeks of handover of the delivery item or notification of completion or has taken the delivery item into productive operation.

## **X. Retention of title**

(1) All items delivered by us shall remain our property until payment of all our claims arising from the business relationship with the purchaser.

(2) Until the transfer of ownership, the purchaser is obliged to treat the delivery item with care; in particular, it is obliged to insure it adequately at its own expense against fire, water and theft damage at replacement value. If maintenance and inspection work is required, the purchaser must carry this out in good time at its own expense. We or the companies authorised by us will offer maintenance and inspection work at the usual market price.

(3) In the event of default of payment by the purchaser, we are entitled to demand the return of the delivery item delivered under reservation of title after the unsuccessful expiry of a reasonable deadline set for the purchaser to perform; the applicable statutory provisions on the dispensability of setting a deadline remain unaffected. The taking back of the delivery item or the assertion of the reservation of title due to default in payment shall constitute a withdrawal from the contract, unless we expressly stipulate otherwise. In the same way, we can demand the return of the delivery item if the purchaser handles our property improperly or otherwise acts contrary to the contract. In this case, our demand for return shall not constitute a withdrawal from the contract.

(4) In the event of repossession of the delivery item in accordance with Section 3 above, any repayments of payments already made by the purchaser in respect of the delivery item shall only be made to the amount of the current market value, less our

damage, the reduction in value, compensation for use for the period of use of the delivery item by the purchaser, the costs of repossession, e.g. transport costs, and our loss of profit.

(5) The purchaser shall be entitled to resell the delivery item in the ordinary course of business, taking into account all safety precautions and accident prevention regulations to be observed in the specific case. However, the purchaser already now assigns to us all claims in the amount of the final factura amount (including VAT) of our claim, which accrue to the purchaser from the resale against its purchasers or third parties, irrespective of whether the delivery item has been resold without or after processing. The purchaser shall remain authorized to collect this claim even after the assignment. Our authority to collect the claim ourselves shall remain unaffected. However, we shall not collect the claim as long as the purchaser meets its payment obligations, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or payments have not been suspended. If this is the case, however, we may demand that the purchaser inform us of the assigned claims and their debtors, provide all information necessary for collection, hand over to us the relevant documents and inform the debtors of the assignment.

(6) Treatment and processing of the reserved goods shall be carried out for us, within the meaning of § 950 of the German Civil Code (BGB), without obligating us. The processed goods shall be deemed to be goods subject to retention of title within the meaning of these terms and conditions. If the reserved goods are processed or inseparably mixed with other goods not belonging to us, we shall acquire co-ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used at the time of processing or mixing. The co-ownership rights thus created shall be deemed to be reserved goods within the meaning of these terms and conditions. If delivery items are combined or inseparably mixed with other movable items to form a single item and if the other item is to be regarded as the main item, it shall be deemed to have been agreed that the purchaser shall transfer co-ownership to us on a pro rata basis insofar as the main item belongs to it. In all other respects, the same shall apply to the object created by the processing and the combination and mixing as to the goods subject to retention of title. 7.

(7) We undertake to release the securities to which we are entitled at the request of the purchaser insofar as the realizable value of our securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released shall be incumbent upon us.

#### **XI. Industrial property rights**

(1) If we have to deliver according to drawings, models, samples or using parts provided by the purchaser, the purchaser shall be responsible for ensuring that industrial property rights of third parties in the country of destination of the delivery item are not infringed thereby. We shall inform the purchaser of any rights known to us. The purchaser shall indemnify us against claims of third parties and pay compensation for any damage incurred. If the production or delivery is prohibited by a third party with reference to an industrial property right belonging to it, we shall be entitled - without examining the legal position - to stop the work until the legal position has been clarified by the purchaser and the third party. Should the continuation of the order no longer be reasonable for us due to the delay, we shall be entitled to withdraw from the contract.

(2) Drawings and samples provided to us which have not led to an order shall be returned on request; otherwise we shall be entitled to destroy them three months after submission of the offer. This obligation applies accordingly to the purchaser. The party entitled to destroy the samples shall inform the other party in good time of its intention to destroy them.

(3) We shall be entitled to the copyrights and, if applicable, other proprietary and industrial property rights, in particular all rights of use and exploitation, to the models, molds and devices, drafts and drawings designed by us or by third parties on our behalf.

(4) Section III remains unaffected.

#### **XII. Claims in the event of defects**

(1) In the case of a commercial purchase, the purchaser must comply with its statutory obligations to examine the goods and give notice of defects (§§ 377, 381 para. 2 as well as §438 of the German Commercial Code (HGB)).

(2) Complaints due to incomplete or defective delivery, including transport damages, must be notified to us in writing without delay, at the latest within 7 (seven) days after receipt of the delivery item, in the case of hidden defects without delay after their discovery. In particular, the purchaser shall be obliged to inspect without delay any protective devices supplied for compliance with official requirements (e.g. Trade Inspectorate, *Gewerbeaufsichtsamt*) and the applicable statutory requirements, in particular accident prevention regulations.

(3) The purchaser shall give us the opportunity to examine notices of defects - also by third parties. If the notice of defect is unfounded and the purchaser was able to recognize this, we may charge for the inspection.

(4) In the event of defects, we shall, at our discretion, remedy the defect or make a new delivery (subsequent performance). In the event of failure, unreasonableness or refusal of subsequent performance, the purchaser may reduce the price or - in the case of defects that are not merely insignificant - withdraw from the contract and/or claim damages within the limits of Section XIV.

(5) Claims of the purchaser for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, shall be excluded insofar as the expenses increase due to the fact that the delivery item was taken to a place other than the contractually agreed place of delivery.

(6) We shall not be liable in the event of natural wear and tear of the delivery item, unsuitable or improper use of the delivery item, faulty assembly or commissioning by the purchaser or by third parties, insofar as we are not responsible for this, faulty or negligent handling of the delivery item as well as in the event of thermal, chemical, electrochemical, electrical or other special external influences after the transfer of risk which are not assumed under the contract.

(7) No claims for defects shall exist if modifications or repairs have been made to the delivery item by the purchaser or third parties without our written consent and, which is assumed, the modifications or repairs have led to the defect or if the delivery item is operated with unsuitable accessories by third parties.

### **XIII. Force majeure**

In cases of force majeure which make performance substantially more difficult or temporarily impossible for us, we may reasonably postpone performance without being in default. A case of force majeure may exist, for example, in the event of natural disasters, war, strike, lockout, official measures, a pandemic (e.g. at the headquarters of us, our sub-suppliers or the purchaser) or a comparable event by which we are directly or indirectly affected. Disruptions to performance that occur as a result of a pandemic shall also be deemed to be force majeure, even if the pandemic is already known. In the event of a delay in performance of more than three months, the parties will negotiate an appropriate adjustment or termination of the contract.

### **XIV. Liability**

(1) Our liability for damages and reimbursement of expenses for slight negligence, in particular due to the breach of duties arising from the contractual obligation and from tort, is excluded, unless we have breached an essential contractual obligation, i.e. an obligation the fulfilment of which is a prerequisite for the proper performance of the contract or on the fulfilment of which the purchaser may regularly rely. In this case, our liability shall be limited to the damage typical for the contract, the occurrence of which we had to expect at the time of conclusion of the contract on the basis of the circumstances known to us.

(2) The purchaser is obliged to draw our attention expressly and in writing to the risk of unusually high damage with each order; otherwise we shall not be liable for such damage. An unusually high damage shall be deemed to exist, in particular, if the purchaser has committed itself vis-à-vis its purchasers or other third parties to a contractual penalty, liquidated damages or other payment in the event of a defect or delay, which is related to our performance for the purchaser.

(3) However, our liability for damages resulting from injury to body, life or health, for intent and gross negligence, for the absence of a guaranteed quality and under the Product Liability Act shall be unlimited.

(4) The above liability provisions shall apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents.

### **XIV. Limitation of claims for defects and compensation**

The limitation period for claims of the purchaser due to a defect is reduced to one year. The limitation period shall also be one year for claims of the purchaser for damages and reimbursement of expenses which are not based on a defect. Liability for intentional or grossly negligent breaches of duty as well as liability for damages resulting from injury to life, body or health as well as liability under the Product Liability Act shall remain unaffected.

### **XV. Place of performance, place of jurisdiction**

(1) If the purchaser is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, our respective location shall be the place of performance for all obligations arising from the contractual relationship with us.

(2) If the purchaser is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the courts having jurisdiction for our principal place of business shall be agreed as the place of jurisdiction for disputes arising from or in connection with our deliveries and services or with the utilization of any bank guarantees. Notwithstanding the foregoing, we shall also be entitled to bring an action at the purchaser's principal place of business.

**XVI. Applicable law**

The contractual relationship shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

**XVII. Partial invalidity**

If any provision of this contract proves to be invalid, this shall not affect the validity of the remaining provisions of the contract.