

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

## **1. Validity**

(1) Offers, deliveries and performances by Metallux SA (hereinafter referred to as “Metallux”) shall be made exclusively on the basis of these General Terms and Conditions of Sale and Delivery. These Terms and Conditions shall also apply to all future business relations, even if their application is not expressly agreed upon. These conditions are deemed to be accepted at the latest upon acceptance of the delivery of goods and performances. General terms and conditions of the Buyer only apply as long as they are consistent with these General Terms and Conditions of Sale and Delivery. Deviating terms and conditions of the Buyer do not apply, even in the case where Metallux does not expressly object to these.

(2) Terms and conditions deviating from these General Terms and Conditions of Sale and Delivery will only apply if Metallux has given its written consent.

## **2. Offer and conclusion of a contract**

(1) Offers submitted by Metallux are subject to change without notice unless Metallux expressly indicates in writing that they are binding. Notices of acceptance as well as orders are not effective until confirmed by Metallux in writing. The same applies to amendments and additions to an order.

(2) Drawings, illustrations, measurements, weights and other performances are binding only if this is expressly agreed upon in writing by the parties.

## **3. Prices**

(1) Unless previously withdrawn, Metallux quotation is open for acceptance within the period stated therein or, when no period is stated, within thirty (30) days from the issue date.

(2) Prices are firm for delivery within the period stated in Metallux quotation and are exclusive of (a) Value Added Tax and (b) any similar and other taxes, duties, levies or other like charges in connection with the performance.

(3) Prices are ex works, if not agreed otherwise. Costs of delivery by a carrier appointed by Metallux, including packaging, will be paid by the Buyer. If the parties agree upon the return of the packaging, the Buyer has to return it to Metallux. Until the return, the Buyer is liable for accidental loss or deterioration of the packaging.

## **4. Passing of risk**

The risk passes to the Buyer at the latest with the delivery of the goods to the forwarding agent or any other persons carrying out transportation. The risk also passes to the Buyer if, at Buyer request, goods are stored by Metallux.

## **5. Retention of title**

(1) The goods delivered by Metallux shall remain under the ownership of Metallux until the fulfilment of all claims to which Metallux is entitled to vis-à-vis the Buyer.

(2) If Metallux ownership expires due to combination, commingling or processing, the Buyer transfers to Metallux upon signature of the respective delivery contract all claims for return against third parties as well as its rights of (co-)ownership with regard to the manufactured goods. The Buyer shall keep Metallux ownership in safe custody with professional diligence.

(3) The Buyer is not entitled to pledge goods subject to the above retention of title to a third party nor to assign them as security. The Buyer may resell goods subject to the retention of title, only in the course of its regular business, if the Buyer arranges with its customers for a reservation of title. The Buyer hereby already assigns to Metallux by way of security to the full extent all claims resulting from the resale or any other legal reason with regard to the goods subject to the retention of title. Also after the assignment, the

Buyer is, subject to revocation, entitled to collect the claim itself. Metallux will only revoke this entitlement if the Buyer does not fulfil its payment obligations.

(4) If third parties have access to the goods subject to retention of title, the Buyer will point out that these goods are in the ownership of Metallux and inform Metallux immediately. The Buyer shall pay for costs and damages incurred in connection thereof.

(5) If the Buyer acts contrary to the terms of the agreement, in particular in the event of a suspension of payment or an application for opening of insolvency proceedings, Metallux is entitled to take back the goods subject to retention of title or mark them and, for these purposes, to enter the Buyer premises.

(6) If the value of the securities exceeds Metallux claims by more than 20%, Metallux shall, upon the Buyer request, release collateral of Metallux choice.

## **6. Warranty and liability**

(1) As far as the delivery has been executed, the Buyer is obligated to inspect the delivered goods immediately upon receipt. The Buyer shall give written notice of any defects in quality and quantity not later than eight (8) days after receipt of the goods. Any defects that cannot be detected within such period, even upon careful examination, shall be reported to Metallux in writing immediately upon their discovery and, in any case, within the period of twelve (12) months after receipt of the goods.

(2) To the extent that a defect of the goods is detected, Metallux shall, at its option, be obliged and entitled to subsequent performance or substitute delivery of defective goods free of charge. The return of the defective goods has to be made carriage free. In case of any defect, Metallux has to pay the costs of the cheapest return to the Buyer. If subsequent performance or substitute delivery fails twice for reasons attributable to Metallux, the Buyer shall be able to demand termination of the contract or reduction of the purchase price subject to the requirements of the legal provisions. Subsequent performance or substitute delivery is carried out without acknowledgment of any legal obligation and does not interrupt the limitation period for claims of defects.

(3) The warranty period for claims based on defects attributable to Metallux shall be twenty-four (24) months starting from the day of manufacture of the goods.

(4) Metallux shall not be liable for any defects caused by: fair wear and tear, materials or workmanship made, furnished or specified by Buyer, non-compliance with Metallux storage, installation, operation or environmental requirements, lack of proper maintenance, any modification or repair not previously authorized by Metallux in writing. Metallux costs incurred in investigating and rectifying such defects shall be paid by Buyer upon demand. Buyer shall at all times remain solely responsible for the adequacy and accuracy of all information supplied by it.

(5) The foregoing constitutes Metallux sole warranty and Buyer exclusive remedy for breach thereof. No representations, warranties or conditions of any kind, express or implied, shall apply as to merchantability, fitness for any particular purpose or any other matter with respect to any of the goods.

## **7. Limitation of liability**

(1) Metallux is liable for the indemnification of all the damages, costs and expenses borne by the Buyer irrespective of their legal basis, if: (i) Metallux negligently or wilfully breaches an essential contractual obligation (material breach); or (ii) Metallux negligently or wilfully caused gross damages.

(2) In case of any other breach, Metallux liability is limited to the direct and documented damages, costs and expenses borne by the Buyer and the reimbursement of any collateral damages, consequential damages and loss of profit is excluded.

(3) Notwithstanding the foregoing, Metallux maximum aggregate liability for any and all losses, liabilities, expenses (including legal expenses), damages, claims or actions incurred under or in connection with a specific order, arising in or by virtue of breach of contract, tort (including wilful or negligence), misrepresentation, breach of statutory duty, strict liability, infringement of intellectual property rights or

otherwise, shall in no circumstances exceed a sum equal to the total price of the order or contract in question.

## 8. Delivery time

(1) In order to be legally binding, the agreement related to delivery dates and delivery terms must be made in writing. If the delivery is delayed due to reasons attributable to Buyer or due to any other reasons beyond Metallux control, the agreed delivery time or the agreed delivery date shall be extended accordingly.

(2) Delivery dates are considered to be observed if, prior to expiration of the delivery term, goods have left Metallux factory.

(3) In the event of default for late delivery attributable to Metallux, after the expiration of an adequate grace period agreed upon by the parties, the Buyer is entitled to demand termination of the contract or reduction of the purchase price subject to the requirements of the legal provisions.

## 9. Terms of payment

(1) Unless otherwise agreed, invoices issued by Metallux shall be paid at the latest within thirty (30) days from the issue date. In the event of default for late payment, interests will be calculated on the basis of the currently valid interest rate. In the case where Metallux accepts any cheques or bills of exchange, Metallux will only accept them on account of performance. Even if cheques and bills of exchange are accepted, Metallux reserves the right to return them and demand immediate payment or other securities in case there is a risk that they do not provide sufficient security. Discount and bill charges shall be borne by the Buyer and are immediately due.

(2) If Metallux becomes aware of circumstances which suggest that the Buyer financial situation has deteriorated considerably after conclusion of the contract, particularly if the Buyer fails to pay invoices due for payment and if, therefore, payment claims by Metallux appear to be at risk, Metallux is entitled to execute deliveries exclusively against immediate full or partial payment or against the provision of a security. In case of insolvency or the Buyer inability to pay, Metallux is entitled to terminate all contracts.

(3) The Buyer is only entitled to a set-off in cases where the Buyer claims are undisputed or legally confirmed.

## 10. Force majeure

Force Majeure of any kind, unforeseeable production, traffic or shipping disturbances, war, acts of terrorism, fire, floods, unforeseeable shortages of labor, utilities or raw materials and supplies, strikes, lockouts, acts of government, and any other hindrances beyond the control of the party obliged to perform which diminish, delay or prevent production, shipment, acceptance or use of the goods, or make it an unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent that the hindrance prevails. If, as a result of the hindrance, supply and/or acceptance is delayed by more than eight (8) weeks, either party shall have the right to cancel the contract. Should Metallux suppliers fail to supply Metallux in whole or in part, the latter shall not be under obligation to purchase from other sources. In such cases, Metallux shall have the right to distribute the available quantities among its customers taking into account its captive requirements.

## 11. Compliance with laws

Buyer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdictions in which Metallux and Buyer are established or from which items may be supplied, and the requirements of any licenses, authorizations, general licenses or license exceptions relating thereto will apply to its receipt and use of goods. In no event Buyer shall use, transfer, release, export or re-export any such goods in violation of such applicable laws, regulations,

orders or requirements or the requirements of any licenses, authorizations or license exceptions relating thereto. Buyer agrees furthermore that it shall not engage in any activity that would expose Metallux to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any customer or supplier. Buyer agrees to comply with all appropriate legal, ethical and compliance requirements.

## **12. Statutory and other regulations**

If Metallux obligations shall be increased or reduced due to amendments after the date of Metallux quotation of any law or any order, regulation or bye-law having the force of law that shall affect the performance of Metallux obligations, the price and delivery period shall be adjusted accordingly and/or performance suspended or terminated, as appropriate.

## **13. Default, insolvency and cancellation**

Metallux shall be entitled, without prejudice to any other rights it may have, to cancel the contract, wholly or partly, by notice in writing to Buyer, if (a) Buyer is in default of any of its obligations under the contract and fails, within thirty (30) days from the date of Metallux notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default is not reasonably capable of being rectified within such period, to take action to remedy the default or (b) on the occurrence of an Insolvency Event in relation to Buyer. "Insolvency Event" in relation to Buyer means any of the following: (i) a meeting of creditors of Buyer being held or an arrangement or composition with or for the benefit of its creditors being proposed by or in relation to Buyer; (ii) a chargeholder, receiver, administrative receiver or similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven (7) days) on the whole or a material part of the assets of Buyer; (iii) Buyer ceasing to carry on business or being unable to pay its debts; (iv) Buyer or its directors or the holder of a qualifying floating charge giving notice of their intention to appoint, or making an application to the court for the appointment of, an administrator; (v) a petition being presented (and not being discharged within twenty-eight (28) days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of Buyer; or (vi) the happening in relation to Buyer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets. Metallux shall be entitled to recover from Buyer or Buyer representative all costs and damages incurred by Metallux as a result of such cancellation, including a reasonable allowance for overheads and profit (including but not limited to loss of prospective profits and overheads).

## **14. Final conclusions**

- (1) If the Buyer is a corporation, limited liability company, commercial partnership or otherwise operates a commercial business, the place for fulfilment of obligations shall be the registered office of Metallux which also determines the legal venue.
- (2) These General Terms and Conditions are governed by the laws of Switzerland. The application of the UN Convention on the International Sale of Goods (CISG) shall be excluded.
- (3) In the event that a provision of these General Terms and Conditions is or becomes invalid, the remaining provisions will continue to apply in full force and effect.