



## 1. Contract agreement

Offers are always without obligation. Orders are not valid before receipt of our written confirmation. Provable errors can be rectified. Purchase conditions differing from ours are regarded as refused, even if we confirm orders which expressly refer to purchase conditions or if delivery should be carried out by us on the basis of this order.

Different conditions are only binding for us if confirmed by us in writing and they are only valid for one single transaction. All personal statements, statements by phone or e-mail or statements made by a representative of ours as well as collateral agreements must be confirmed in writing by the supplier to be legally binding.

## 2. Prices

The prices are calculated in Euro or in case of special agreements in a foreign currency. The official rate of exchange registered at the day of the conclusion of contract will be taken as the minimum rate. Prices are calculated ex works, packing excluded, net cash. Packing will be charged at cost-price and not be taken back. Should there be any change in labour or material costs between date of quotation and placing of order or even after conclusion of contract, each party is allowed to request a new price by negotiation.

## 3. Delivery quantities and time

1. It is not possible to adhere exactly to the number of pieces. Deviations of about 10 % (up and down) are allowed not only with respect to the total order quantity but also with respect to partial shipments.
2. Partial deliveries are allowed.
3. All statements about times of delivery are approximate. The period of delivery begins upon receipt and clarification of all documents. It is considered to be adhered to, if shipment is effected or ready for despatch within the period of delivery quoted.
4. A reasonable prolongation of the period of delivery arises due to unforeseen or extraordinary events in our or in our suppliers' works, i.e. all causes and events including authorities' measures as well as strikes and lock-outs which disrupt the supply of basic materials, production and despatch. If the trouble lasts more than 1 month or if there are shut-downs either by us or by our suppliers and in case of war, mobilization, riot or occupation by foreign powers we are entitled to withdraw from this contract in part or in total without any indemnity for the purchaser. The latter is still obliged to accept the goods even if they are delayed due to the above mentioned reasons.
5. We reserve the right to deliver only on condition that we have enough labour, material, electricity and other forms of energy at the required time. The «Acts-of-God» Clause is valid.
6. Unless specifically agreed otherwise, we grant a period of 3 months from date of order for material call-offs. If this period is exceeded we are entitled to either charge for the goods or to cancel the order. The call-off for each partial shipment should arrive in time to ensure production within the contract period.

## 4. Transfer of risk and despatch

1. Once shipment has left our work or is ready for despatch within the agreed delivery-time or placed at the buyer's disposal the risk for goods is transferred to the buyer.
2. Despatch will be effected on sole account and at sole risk of buyer even if delivery is to be effected freight prepaid, fob or c&f. Insurance is only made out on buyer's application and account. If delivery has to be made franco town or franco domicile we reserve the right to ship balances of orders which were not ready for shipment at that time, ex works, excl. packing afterwards. Should there be no particular instruction for delivery, despatch will be made to the best of our judgement but without any obligation for us to choose the cheapest way of transport.

## 5. Industrial property rights

If production is made to buyer's specification we do not assume any liability for violation of the rights of a third party. In this case it is up to the buyer to assume the liability and legal protection toward us.

## 6. Tooling

If a special tool has to be installed for the realization of an order, the amount charged to the customer represents only a part of the full cost of tooling. By payment of this share of the tooling costs the customer does not acquire any title to this tool either in whole or in part. This tool remains the sole property of Metalluk.



## 7.a Liability for defects in the delivery of driving elements

The supplier is only to be held responsible for defects of goods which become unusable within 12 months of delivery-date in such a way that he has to repair defective parts free of charge or to deliver new parts if he judges it necessary. Claims for damages on the part of the buyer arising from positive breach of contract, negligence in contract negotiations and unauthorized actions are excluded, unless done with intent or gross negligence on our part or that of our statutory and other representative

The supplier should be informed of the defects without delay in writing and those parts concerned returned to him on request. Freight charges are for account orderer. Precondition for supplier's liability is defective construction or inferior performance; The supplier can only be held responsible for defective material insofar as he should have become aware of that defect by handling the material with expert care. Defects due to wear are not covered by supplier's liability.

The orderer must grant the supplier the time and possibility free of charge to enable him to arrange for necessary alterations or delivery of substitute parts or machines and he must supply workers at the supplier's request. The supplier is not obliged to eliminate defects as long as the buyer does not meet his obligation to pay. The supplier is furthermore not liable if repairs or replacements are impeded by the buyer's unauthorized alterations.

## 7.b Liability for defects in the delivery of electrotechnic installation material

1. Complaints about quality, quantity, etc. must be made in writing immediately on discovery irrespective of earlier legal notice but within 8 days of receipt of goods.
2. Complaints about the faultless quality of the merchandise can only be accepted if more than 3% of the delivered goods show provable defects.
3. In case of justified complaints we will repair defects free of charge if the buyer returns the goods concerned or we will compensate him by a new delivery effected ex works. Further claims such as modification or diminution, reimbursement for defects or costs incurred for processing, penalty for delay or claim for damages on grounds of consequential damage are excluded. The right to make claims expires within 12 months.
4. The supplier is not obliged to eliminate defects as long as the buyer does not meet his obligation to pay. The supplier is furthermore not liable if repairs or replacements are impeded by the buyer's unauthorized alterations.

## 8. Payment

Unless specifically agreed otherwise following conditions of payment will apply: 1/3 upon receipt of order acknowledgement, 1/3 upon despatch or receipt of despatch-note, 1/3 as payable within 30 days from date of invoice.

In case of delayed payment normal bank interest charges will be invoiced, without further notice, from maturity-date. Should commercial information turn out to be unfavourable, delivery will be effected by cash on delivery or payment in advance even if the order has already been confirmed on other conditions. Non-compliance with payment conditions will release us from effecting further deliveries. The buyer, however, is obliged to accept the goods ordered. In cases of delay in delivery or non-delivery the buyer has no right to claim for damages. Bills of exchange and bank cheques will not be regarded as paid before being cashed. We are entitled to demand financial securities or cash payment for bills of exchange even before termination of the validity period, if buyer's financial status or the drawee's status has worsened or upon receipt of disadvantageous information. Apart from this all terms of payment granted and extensions can be cancelled and the amounts due are payable without further delay, if the financial situation of the buyer worsens. Should we have to share in bankruptcy or in composition proceedings as a result of our buyer's insolvency, all discounts and allowances granted will be regarded as non-granted. Should this case arise the invoiced gross price has to be paid. The initial invoice amount, however, will in no case be exceeded. In a composition proceedings the buyer resigns in our favour the claim to Paragraph 28 of the Composition Rules about the refusal of the fulfilment of all current contracts with us. Payments made to representatives and travellers must not be accepted by us. Payments are always to be made to our address.

## 9. Retention of title

1. The title to all goods supplied is retained by the supplier until the total invoice amount has been paid and all further claims have duly been satisfied. Besides, all goods remain the property of the supplier until all claims of the supplier against the purchaser have been settled. This retention of title is also valid particularly for an existing balance to the debit of the buyer out of the current account business.



2. The processing by the buyer of the goods under proprietary rights of the supplier is always effected by order of Metalluk, but without any liability for us. The application of paragraph 950 BGB is excluded by it. Should the cases 947, 948 BGB arise the buyer resigns his title to ownership or partial ownership in our favour and becomes depository. The new goods then replace the goods under proprietary rights. Should the case arise that the transfer of property in our favour cannot be obtained, the buyer's claim from paragraph 951 are made over to Metalluk. In all cases relating to clause 2 any rights of a third party to other parts of the new goods remain unaffected.
3. The customer has only the right to sell the goods under proprietary rights within the scope of the usual business transaction and may not pawn them or convey them as a guarantee. He has to ward off as effectively as possible all impairments of our rights by a third party and has to advise us without delay.
4. The customer transfers to us as a guarantee all his claims to the resale of goods under proprietary rights - no matter in what condition - and all additional rights. Even if we do not make use of our permanent rights to claim payment at any time, the customer is entitled and obliged to do so and has to remit us the amount without delay. The customer is obliged to advise his debtor on request of the transfer of the claim, to provide all required information and to place all documents about the claim at our disposal.

## 10. Title to resignation by the supplier

Delivery is made under the precondition of the buyer's absolute credit-worthiness. If after having signed the contract, the supplier receives information, that the credit cannot be granted up to the amount of order or that there are any doubts in this respect, i.e. considerable worsening of the buyer's financial situation, suspension of payment, receivership, bankruptcy, retirement from business or transfer of business the supplier has the right to demand payment in advance or some guarantee to either withdraw from the contract, to claim for damages because of non-performance or to demand cash payment although other terms of payment had been agreed.

This also applies, if the buyer pawns his stocks, outstanding debts or goods purchased, or orders goods as a security for other creditors or if he does not meet his obligation to pay in spite of reminders. The supplier has at least the same rights towards the buyer as the creditor towards a debtor in default.

## 11. Place of jurisdiction

Exclusive place of jurisdiction for all disputes arising hereunder is Bamberg. The law court in Bamberg shall be competent for all litigations such as lawsuits concerning bills of exchange, cheques or documents, provided however that the buyer is a businessman. Nevertheless we are entitled to take legal proceedings against the buyer at his usual law court.

## 12. Applicable law

For all legal relations between the supplier and the buyer the same law is applicable as for relations between domestic parties at our seat of business.

## 13. Partial invalidity

The invalidity of one or more regulations does not influence the remaining conditions. On the contrary, what the parties would have agreed if they had known about the invalidity or voidness will be valid. As far as a regulation is invalid, the legal rulings will determine its content.

We must point out that for all possible offers and contracts only the tenor of the German text (**see herein**) is binding.

The English translation is just meant as a non-obligatory assistance for your better understanding.