



Mitglied des
IFBS
Industrieverband
für Bausysteme
im Metallleichtbau

Metecno Bausysteme GmbH - General Conditions of Sales and Delivery

1. General provisions

- a. The General Terms and Conditions below (hereinafter referred to as "T&Cs") shall be solely applicable to all contracts concluded between Metecno Bausysteme GmbH (hereinafter referred to as "Metecno") and business entities pursuant to article 14 BGB (German Civil Code) as customers (hereinafter referred to as "customers") as well as to future contracts for the manufacture and delivery of composite elements, noise protection systems and accessories (hereinafter referred to as "products"). They shall not apply to contracts concluded between Metecno and consumers.
- b. The General Terms and Conditions of the customer shall not be applicable to such contracts even if Metecno carried out deliveries to the customer without any reservation whilst it was aware of such T&Cs.
- c. Metecno's employees shall not be entitled to make separate agreements with the customer which conflict with the present T&Cs unless they have been authorized in writing by the Board of Managers to do so. Such separate agreements also need to be made in writing.

2. Conclusion of contract

- a. At a customer's request, Metecno will provide information about prices and potential dates for delivery without submitting an offer according to article § 145 BGB [Bürgerliches Gesetzbuch = German Civil Code]. Instead, the customer will be deemed to be requested to submit himself an offer for a contract to be concluded. Only an order of the customer is to be considered a binding offer for contract conclusion, Metecno reserving the right to accept it. A contract will be concluded by Metecno's acceptance in the form, and with the contents, of a confirmation of order.
- b. The customer undertakes to review Metecno's confirmation of order without delay and, if he agrees, to confirm its correctness within three working days by signing it and returning a signed copy to Metecno. If the customer is of the opinion that the confirmation of order is not correct and reflects the contents of the contract incompletely, he has also to inform Metecno by written notice within three working days; otherwise, the contract shall be deemed to have been concluded as per the contents of the confirmation of order.
- c. Should the customer wish for modifications, Metecno will reserve the right to accept these or - if the confirmation of order is a correct declaration of acceptance - to insist that the contract be concluded according to the confirmation of order, or to withdraw from the contract. Such modifications shall become part of the contract only if they are accepted by Metecno by a new confirmation of order modified accordingly. Para. 2 then shall apply accordingly.
- d. The manufacture of the products will be based on the parts list described by the confirmation of order and based on the data provided by the customer. The customer shall have no right to the delivery of an installation drawing unless this has been agreed explicitly and against payment.

3. Times of delivery

- a. The periods of delivery given in the confirmation of order shall not be binding unless a binding date of delivery has been explicitly agreed. Other than that, the individual dates of delivery shall be agreed after manufacture. If a binding date of delivery has been agreed between Metecno and the customer, Metecno shall be in default if it does not comply with this date for reasons that are attributable to it.
- b. The customer has to provide Metecno without delay with any information and documents necessary for manufacture. Agreements as to the date of delivery shall be binding for Metecno only if this information or documents are available at the agreed date prior to manufacture. Unless a deviating date has been agreed for the provision of such information or documents, the customer has to transmit them to Metecno at least five working days after receiving the confirmation of order.
- c. If the delivery to the site is specified with exact dates and times, a waiting period of two hours shall be accepted as agreed.
- d. If the contract provides successive delivery of the products in several part shipments over a specified period, the composition of the individual partial deliveries shall be binding only if this has been agreed in writing. Subsequent instructions by the customer shall not constitute a contractual obligation for Metecno.
- e. Metecno shall be entitled to effect partial deliveries and can itself fix their scheduling unless agreed otherwise.
- f. If the manufacture of the products is impeded by industrial action such as, for example, strikes, the delivery dates agreed will be postponed by the period the production is delayed due to said industrial action. The same shall apply if the production is impeded by an unforeseeable event that cannot be controlled by Metecno such as natural disasters, power failures, the failure of machinery necessary for production or other technical breakdowns.
- g. No culpable delay in the delivery can be construed if it has been caused by events that are beyond Metecno's control. Such reasons are, in particular, unforeseeable hold-ups such as accidents or traffic congestions, breakdowns of the truck, and other force majeure events.

4. Delivery, unloading, collection

- a. Unless agreed otherwise, Metecno shall deliver the products at the agreed time to the location agreed.
- b. Unloading of the products shall be the customer's responsibility. The customer has to ensure that the unloading point is readily accessible for a 40 tons articulated truck and that there is sufficient space to unload the products.
- c. The customer has to unload the truck in a timely manner. He has to ensure that at the date agreed, sufficient staff and appropriate lifting devices are available at the unloading point.
- d. The customer shall declare that he is in possession of the lifting devices necessary to unload the trucks unless he has explicitly requested instructions, support or lifting devices from Metecno when the contract was concluded. Metecno shall owe these services only if they have been expressly agreed.
- e. Metecno shall not be liable for damage that is caused when the products are unloaded and is due to insufficient technical means and personnel or lack of expertise on the customer's part.

- f. If unloading of the products is delayed by more than one hour because insufficient provisions were made by the customer, the latter has to pay Metecno appropriate demurrage charges and shall be liable for any further damage caused to Metecno due to said delay.
- g. If the delivery fails due to circumstances the customer is answerable for, the customer has to bear the expenses of any renewed delivery and any other costs incurred by Metecno due to said failure.
- h. If the parties have agreed that the products shall be collected from Metecno's premises, Metecno shall inform the customer in writing when the elements are ready for collection from its premises. The customer then has to inform Metecno within one week from receipt of such information about the date scheduled for collection and do everything necessary to ensure prompt collection. This shall also imply payment of the relevant invoices if payment in advance has been agreed. The collection has to take place three weeks after the relevant information at the latest. If the customer fails to collect the products within said three-weeks' period, he will get in default of acceptance. Such default of acceptance shall not be barred by Metecno's assertion of a right to retain the products because the customer has not paid the invoice or has paid it only in part. If the collection of the elements is not effected within one month from the date the customer has been informed of the completion and readiness for collection, the customer has to pay warehouse charges of 2 % of the net value of the products per month.
- i. If the collection of the elements has not taken place within one month from the completion and availability notice, or if the agreed delivery by Metecno is not possible within one month after the agreed date of delivery due to a fact Metecno is not responsible for so that the elements need to be stored by Metecno, the customer has to pay a monthly charge of 2% of the net value of the goods for the storage of the elements.

5. Duty of inspection and notification

The duties of inspection and notification pursuant to article 377 HGB [Handelsgesetzbuch - German Commercial Code] are to be construed to mean that the customer is obliged to inspect the products immediately upon delivery or collection (in the following referred to as "handing-over"). The customer has to verify whether the products handed over are those provided in the contract, whether the stipulated quantity has been supplied, whether the products supplied comply with the dimensional requirements specified in the contract, and whether the products exhibit externally visible signs of damage. In all other respects, article 377 para. 1 to 5 HGB shall apply.

6. Declaration of skills and expertise and compliance with regulations

- a. The customer shall assure Metecno that he runs a specialist company which is familiar with the laying of sandwich elements and that he has obtained the required technical authorizations. He shall assure that the elements will be laid only by skilled specialist staff which has appropriate experience with the sandwich elements acquired and has been informed about the regulations governing proper and professional execution, that the mounting will be carried out according to the provisions of the general approval by the construction control agency, and that the specifications drawn from the structural analysis are complied with. The notification is to be proved upon request.
- b. The customer undertakes to observe the directive issued by IFBS (International Association for Lightweight Metal Construction) for the planning and execution of roof, wall and deck constructions made from metal sections, profiled steel panels and sandwich elements. He shall declare that these provisions are known to him and shall take note that said directive can be obtained via the association's website www.ifbs.de.

7. Payments

- a. Any amounts agreed in the confirmation of order are to be understood not to include the statutory value-added tax (at present 19 %) unless they are stated expressly as gross amounts.
- b. Unless agreed otherwise, Metecno's invoices shall be due immediately and are to be paid before expiration of the period allowed for payment as shown in the invoice. Irrespective of whether a reminder has been sent, the customer shall be in default if he does not pay the invoice within 30 days from receipt. The parties to the contract shall agree that the invoice has been received by the customer on the fourth working day after the date of the invoice unless the customer proves to have received it on a later date.
- c. Withholding of discounts shall be permitted only if granted by Metecno subject to compliance with specified payment terms, if such term is observed and if the full amount of the invoice is paid. Withholding of discounts on instalment payments shall not be permitted.
- d. The customer may only offset his claims against claims of Metecno in respect of supplied products, or claim a right to retention on account of such claims, if these are undisputed and have been recognized by Metecno in written form or if their validity has been legally established by a court decision.
- e. If the parties have agreed advance payment, Metecno shall advise the customer of the amount to be paid prior to delivery by sending him a proforma invoice. The customer has to pay such proforma invoice within ten working days unless a deviating term of payment was agreed. Until receipt of the full payment, Metecno shall be entitled to retain the products. In the event of advance payment prior to the production start being agreed, Metecno may postpone the manufacture of the products until receipt of the full invoice amount.

- f. Metecno shall also be entitled to retain the products if the customer is in default of payment in respect of other contracts.

- g. Even after conclusion of the contract, if facts come to Metecno's knowledge suggesting that the payment of the resulting claims might be compromised, Metecno may make it a condition of the delivery of the products to the customer that a particular amount be paid in advance or that a security be provided.

Such facts may be in particular:

- The customer is in default of payment in respect of previous contracts;
- Execution is levied on the customer's assets;
- An application for opening insolvency proceedings in respect of the customer's assets has been filed;
- A recognized business information provider (e. g., Creditreform, Bürgel) communicates information suggesting that the financial position of the customer has deteriorated to such an extent that Metecno's claim is compromised;
- The insurance cover for deliveries to the customer is cancelled or restricted.

8. Warranty

- a. Metecno shall warrant that the products have the characteristics specified in the contract and are in conformity with the legal regulations and the legal planning control requirements. The products to be supplied shall be of fair average quality. Tolerances within the limits defined in the relevant standards are to be accepted.





- b. Colour shade deviations shall not be considered to be defects if they affect the overall optical impression of the building to be constructed only to an insignificant extent.
- c. The customer shall take note of the fact that colour differences can never be totally excluded if several orders for a construction project are placed on different dates. These colour differences shall not constitute defects.
- d. A defect in the contractual performance on the part of Metecno cannot be claimed if the elements get damaged because
 - unloading or mounting is carried out by staff which, contrary to the customer's declaration according to No. 6.a., do not have the required technical qualifications;
 - inappropriate lifting devices or other tools have been used for unloading and mounting;
 - mounting is not carried out according to the specifications of the IFBS directive.
- e. In case of a defect, the customer has to immediately inform Metecno in writing and refrain from using the products concerned as far as these have not yet been mounted. Metecno may remedy such defect at its discretion either by repairing it or by replacing the products in question.
- f. The customer may reduce the purchase price or rescind the contract only if Metecno has not started to remedy the defect on time though it was granted an appropriate period of time to do so, or if remedying the defect as per para. 2 has failed twice.
- g. In the case of just optical defects, withdrawal from the contract shall be excluded unless such defects are so serious that the builder cannot be expected to adhere to the contract. In such case, the customer shall be entitled to an appropriate reduction in the purchase price to be calculated by the Aurnhammer method.
- h. Warranty claims shall be subject to a limitation period of two years from the date of handing-over unless provided otherwise by legal regulations which cannot be modified by general business conditions.

- c. In case of dispute arising from the contractual relationship and if the buyer is a businessman, a legal entity under public law or a special fund under public law, Metecno's registered seat shall be the place of jurisdiction. Either party shall, however, be entitled to file suit at the registered seat of the other party. This shall also be valid for businessmen and legal entities under public law having their registered seat abroad.
- d. Only German law shall apply to the exclusion of any law on the international purchase of goods even if the purchaser has his registered seat abroad.
- e. Unless provided otherwise in the confirmation of order, the registered seat of Metecno shall also be the place of fulfilment.

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9. Retention of title

- a. The delivered products shall remain the property of Metecno Bausysteme GmbH until complete payment of all claims Metecno may have against the customer for any legal reasons whatsoever. In case of breach of contract by the customer, and particularly in case of default of payment, Metecno shall be entitled to reclaim the products, the buyer being obliged to surrender them.
- b. Taking-back of the products shall not imply withdrawal from the contract by Metecno unless explicitly stated otherwise in written form. After having taken back the products, Metecno shall be entitled to sell them to somebody else whilst offsetting the proceeds of the sales against the outstanding payments.
- c. The customer shall be obliged to immediately inform Metecno if the products supplied subject to retention of title are attached by a third party and to provide Metecno with any information necessary to start a third-party action against execution.
- d. The customer shall be entitled to resell the products in the ordinary course of business; even at this stage, he shall, however, assign to Metecno any claims he will have against his clients or third parties from such resale up to the final invoice amount (including value-added tax) due to us.
- e. The customer shall be entitled to use the products to render contractual services and to connect these with immovable property. If, on account of such connection of the products with immovable property of the customer's client, Metecno loses ownership of the products supplied subject to retention of title, the customer shall assign to Metecno any claim he has against his client in respect of the performance of the contractual services, up to the amount of the payments then outstanding.
- f. In cases 9. d. and 9.e., Metecno shall accept the assignment. Should the customer be in default of payment, Metecno may revoke any entitlements pursuant to point 9.d. and 9.e. In such case, the customer undertakes, upon request, to give Metecno the names and addresses of his clients, to inform Metecno of the amount of the payments under these contracts that are still outstanding, and to submit the documents necessary to enforce the claim.
- g. Metecno undertakes to release, upon request of the customer, part of the goods supplied under reservation of title or the assigned claim (security interests) in favour of the customer if the value of the goods supplied under reservation of title exceeds 120 % of the secured claim including value-added tax. Metecno shall have the choice as to which part of the security interests is to be released. The released portion must be such that the value of Metecno's remaining security interests does not exceed 120 % of the secured claim.

10. Liability

- a. Metecno shall be liable for any violation of the obligation to exercise diligence committed by its bodies and employees by gross negligence or intent, and shall also accept liability for intentional or negligent injury to body and health as stipulated by legal regulations.
- b. In all other respects, Metecno shall not be held liable for ordinary negligence unless violation of a main contractual obligation is concerned. In such case, the liability shall be limited to damage that could have been foreseen due to such negligence.
- c. Liability under the Product Liability Act shall not be affected by the clauses above.

11. Data protection

Metecno shall advise the customer that personal data of the customer himself and, if necessary, also of his employees will be stored and used exclusively for the purpose of contract performance. The customer shall declare his agreement with such use of his data.

12. Final provisions

- a. If drawings, photos or other documents are made available to the customer which have no connection with the products to be supplied, any rights and the ownership of, and the copyrights in, such items in particular remain with Metecno.
- b. In case the products are inspected by a state-approved testing institute, the customer shall agree to provide such institute, upon request and against reimbursement of costs by Metecno, with a specimen. The customer undertakes to ensure that his client assumes such obligation as well.

