

Terms and Conditions from MetPro Verpackungs-Service GmbH

1. Area of application

MetPro Verpackungs-Service GmbH, referred to below as MetPro, is a contract service provider in the area of environmentally friendly packaging for industrial packaging and mechanical packaging systems. The terms and conditions below apply to all contracts entered into between MetPro and the Buyer for the delivery of goods, manufacturing of works and rendering of services. They apply to the entire duration of the business relationship, even if they are not explicitly agreed on once more. The conditions are considered accepted at the latest by receiving the service or goods. Deviating conditions of the ordering parts, which MetPro does not acknowledge in writing, are not binding for MetPro, even if not explicitly contradicted.

2. Offer and contract conclusion

- 2.1 The offers from MetPro are subject to change and non-binding, unless MetPro has designated them in writing as binding.
- 2.2 Acceptance statements and all orders require a written order confirmation from MetPro to become legally effective. The contract only becomes valid with the written order confirmation from MetPro and in accordance with its content or through delivery or service. MetPro is entitled to involve third parties to meet the contract obligations. Deviating from the above, when ordering commercially available goods, order acceptance is granted by call-offs and invoice payment.
- 2.3 All agreements made between MetPro and the Buyer in the context of purchase, work or service contracts are established in writing in the purchase, work or service contract, these conditions and the order confirmation of the Seller.
- 2.4 In as far as MetPro employees are not granted respective authority of representation by act of law they are not authorized to enter into verbal incidental agreements or to provide verbal assurances. Such agreements require written confirmation to be effective.
- 2.5 a) With regard to deviations in size or weight, if no specific tolerances are agreed in the individual case the respective valid version of the "Conditions of the GKV Test and Assessment Clauses for Polyethylene Films and Their Products" from the Fachverband Verpackung und Verpackungsfolien in GKV, stored with the Bundesanstalt für Materialprüfung in Berlin, shall apply. b) Samples provided by us are deemed to be examples for the quality, material and properties of a product. Our end products may deviate insignificantly from these. Details provided by us regarding sizes, properties and intended use of the products are non-binding, insofar as they are not written parts of the contract, and do not establish guaranteed properties. c) Subject to separate instructions from the client, performance shall be with standard materials and in accordance with the usual and known manufacturing processes. With regard to all plastic products, we reserve the usual quality fluctuations corresponding to the state of technology. d) The client must expressly refer to the use of packaging for foodstuffs. If this is omitted, the client cannot assert any claims due to defects. e) Recycled materials or biodegradable films may have slight deviations in terms of quality, colour, purity, odour and physical properties from batch to batch. These deviations shall not entitle the client to assert claims due to defects. f) We reserve the right to make over or under deliveries to an extent of 10 % and 15% for non-standard materials. The client shall be billed for the quantity delivered. Subsequent delivery of the quantity difference in the event of under deliveries cannot be demanded; nor can a return of the quantity difference in the event of over deliveries.

3. Copyright, right of modification

- 3.1 Specifications, weights, figures, drawings, samples, models, data as well as other documents that are part of the non-binding offers of MetPro remain the property of MetPro and are only approximate and do not represent assured properties unless they have been explicitly designated as binding. MetPro reserves the right to make engineering and format changes to the contract object during the delivery period if the contract object and its appearance do constitute an unreasonable change for the Customer. All specifications of quantity, dimensions, color and weight are understood to be within customary tolerances.
- 3.2 MetPro reserves the right of ownership and copyrights to figures, drawings, calculations, samples, models, data and other documents. They may neither be duplicated nor disclosed to third parties without written agreement.
- 3.3 MetPro is entitled to make changes and improvements to products and services; however, no obligation to make such changes is hereby substantiated.

4. Terms of payment

- 4.1 MetPro charges the prices agreed on at contract conclusion, based on the cost factors applicable at the time. If these cost factors (especially material, wages, energy, freight, duties, etc.) change between contract conclusion and the agreed time of delivery MetPro is entitled to making respective price changes. If the Buyer is not the commercial purchaser or if the contract does not belong to the operation of his trade, this applies only if more than 4 months lie between contract conclusion and agreed upon delivery time.
- 4.2 If the agreed upon delivery or manufacturing time exceeds the period of four months from contract conclusion or if delivery or manufacturing is delayed for more than four months from contract conclusion for reasons solely due to the Buyer or fully part of his area of risk, MetPro is entitled to charge the price valid on the day of delivery or manufacturing. If the price increase is greater than 5% of the estimated purchase price or wage, the Buyer is entitled to withdraw from the contract. The right of withdrawal becomes void if the Buyer does not exercise it within a period of two weeks, beginning with the date of the new price notification.
- 4.3 Orders for which fixed prices have not been explicitly agreed on are charged at the list prices valid on the date of delivery (daily price), plus packaging and shipping costs, especially transport insurance, customs fees as well as value-added tax at the respective legal rate.
- 4.4 Unless otherwise agreed on with the Buyer in writing, payment of the purchase price or wage (without subtraction) is due immediately upon receipt of the invoice by the Buyer.
- 4.5 The Buyer will go into default, without notice from MetPro, if the purchase price is not paid within 30 days after the due date and receipt of the invoice or equivalent payment schedule. If the Buyer is in default on a payment, MetPro is entitled to charge interest in the amount of 5 percent above the base interest rate from the respective time if the Buyer is a natural person entering into a legal business transaction for a purpose that can neither be attributed to his commercial nor independent professional job activity (consumer), otherwise it is 8 percent above the base interest rate. MetPro reserves the right to proof higher damages.
- 4.6 The Buyer is only entitled to offset, even if notices of defects or counterclaims are claimed, if the counterclaims have been deemed to be legally binding, accepted by MetPro or are undisputed. The Buyer is only entitled to exercise a right of retention if his counterclaim is based on the same purchase, work or service contract.

5. Payment default, deterioration of assets, deferral

- 5.1 If the Customer goes into default on a payment or if MetPro receives an unsatisfactory answer regarding his ability to pay or financial situation, MetPro may suspend work on orders in progress until full prepayment has been made or security services have been rendered. If this prepayment or security service has not been rendered within an appropriate time, MetPro is entitled to cancel the contract and to charge the Customer for the costs incurred so far, including any lost profit.
- 5.2 If partial payments have been agreed on, the full remaining amount is due for immediate payment as soon as the Customer is fully or partially in default on 2 payments.

6. Delivery and performance time

- 6.1 Delivery dates, production dates or periods that have not been expressly agreed on as binding constitute solely non-binding information. Subsequent requests for change or supplements by the Customer extend the delivery time appropriately.
- 6.2 If MetPro is at fault of not being able to keep an agreed upon deadline or is in default for other reasons, the Buyer shall give a reasonable extension time, starting from the date MetPro receives the default statement or, in case of a deadline determined by the calendar, from this deadline. After this extension time has elapsed without results, the Buyer is entitled to withdraw from the contract.
- 6.3 MetPro is liable according to the legal regulations subject to the following limitations if the contract is a fixed business transaction or the Buyer, as a result of the delay of delivery for which MetPro is responsible, is entitled to invoke the discontinuance of his interest in the fulfillment of the contract.
- 6.4 MetPro is liable to the Buyer in case of delay of delivery according to the legal regulations if the delay of delivery is based on a deliberate or grossly negligent violation of duty for which MetPro is responsible. MetPro shall be assigned responsibility if its representatives or fulfillment assistants are at fault. If the delay of delivery is not based on a deliberate or grossly negligent breach of contract for which MetPro is responsible, MetPro's liability is limited to the predictable, typically occurring damage.

- 6.5 If the delay of delivery or production delay for which MetPro is responsible is based on the culpable violation of an essential contract duty, MetPro is liable according to the legal regulations whereby its liability is limited to the predictable, typically occurring damage.
- 6.6 The other legal claims and rights of the Buyer due to a delay of delivery or production delay by MetPro remain unaffected.
- 6.7 MetPro is entitled to make partial deliveries or render partial services as far as this is reasonable for the Buyer.
- 6.8 The other legal claims and rights of the Buyer due to a delay of delivery or production delay by MetPro remain unaffected.
- 6.9 MetPro is entitled to make partial deliveries or render partial services as far as this is reasonable for the Buyer.
- 6.10 Transfer of risk - Shipping/Packaging
 - 7.1 Goods are loaded and shipped without insurance at the risk of the Buyer. With regard to the type and route of shipping, MetPro will strive to take the Buyer's preferences and interests into account; resulting additional costs, also for prepaid freight deliveries, shall be charged to the Buyer.
 - 7.2 If shipping or production is delayed upon request or on account of the Buyer, MetPro will store the goods at the expense and risk of the Buyer. In this case the notification of readiness for shipping is equivalent to shipping.

8. Warranty claims

For property and legal deficiencies of the shipment MetPro grants a warranty, excluding additional claims based on the regulations in section 9 of these conditions, as follows:

- Material defects:
- 8.1 All parts determined to be deficient because of circumstances preceding the transfer of risk shall be repaired or replaced at the discretion of MetPro without charge. The detection of such deficiencies shall be reported to MetPro in writing without delay. Replaced parts become the property of MetPro.
 - 8.2 To conduct all repairs/rework deemed necessary by MetPro and for replacement shipments the Customer, upon agreement with MetPro, shall give MetPro the time and opportunity necessary; otherwise, MetPro is absolved from the liability for the resulting consequences. Only in urgent cases where operational safety is at risk or to prevent unreasonably high damages, where in these cases MetPro is to be informed immediately, does the Customer have the right to have the deficiency corrected himself or by third parties or to request reimbursement of the necessary expenditures from MetPro.
 - 8.3 Of the cost resulting from reworking or substitution delivery, MetPro, insofar as the objection proves to be justified, shall bear the costs of the spare part including shipping. Moreover, MetPro shall bear the costs of the removal and installation of the spare part as well as the possibly necessary validity of the necessary assemblers and assistants including travel expenses, as far as this does not present a disproportionate burden for MetPro.
 - 8.4 The Customer has the right to withdraw from the contract within the scope of the legal regulations if MetPro, taking into account the legal special cases, has allowed the adequate time limit set by the Customer for rework or substitute delivery because of a material defect, to lapse without results. In case of only a minor defect, the Customer is only entitled to have the contract price reduced. The right to reduce the contract price remains excluded in all other cases. Further claims are determined according to section 9 of these Conditions.
 - 8.5 Any warranty, whatsoever, is excluded by MetPro for the following cases: for damage to the delivery object due to unsuitable or improper use; faulty assembly or commissioning by the Customer and third parties; natural wear; faulty or negligent treatment by the Customer; improper maintenance; use of unsuitable operating equipment or equipment not communicated by the Customer to MetPro before delivery.
 - 8.6 If the Customer or a third party commissioned by the Customer, performs improper repair work, MetPro is not liable for the resulting consequences. The same applies to such changes of the delivery object which the Customer would have made to the delivery object without prior written consent by MetPro. Defects of title:
 - 8.7 If the use of the object of delivery leads to the violation of domestic commercial property rights or copyrights, MetPro shall principally obtain the right to the further use by the Customer at its own cost or modify the object of delivery in a manner reasonable for the Customer so that that the property right violation no longer exist. If this is not possible at economically reasonable conditions or in a reasonable period, the Customer is entitled to withdraw from the contract. MetPro also has the right to withdraw from the contract under the conditions named. Beyond this, MetPro will indemnify the Customer from uncontested or legally determined claims of the respective owners of the property rights.
 - 8.8 The conditions mentioned in section 9 of these conditions are final, subject to the regulations in section 9.2, for the case of property rights violations and copyright infringement.

The obligations mentioned in section 8.7 only exist if

- the Customer has informed MetPro without delay of the asserted violation of property rights or copyright infringement; and
- the Customer supports MetPro to a reasonable extent with defending against the asserted claims or the execution of the modification measures; and
- MetPro has all defense measures, including amicable regulations, at its disposal; and
- the defect of title is not based on an instruction by the Customer; and
- the legal violation is not the result of the Customer having modified the delivery object without authorization or used it in a manner contrary to the contract.

9. Liability

- 9.1 If the object of delivery cannot be used due to a fault on MetPro's part as a result of omitted or faulty execution of recommendations and consultations provided prior to or after the conclusion of the contract or due to the violation of other ancillary contractual duties, in particular instructions for operating and servicing the object, by the Customer according to the contract, the provisions in section 8 and 9.2 of these conditions apply accordingly with the exclusion of additional claims by the Customer.
- 9.2 For damages that have not occurred to the delivery object itself, MetPro is only liable, regardless of the legal grounds, in the event of
 - a) deliberate acts
 - b) gross negligence of the owner/organs or managerial employee
 - c) being at fault for injury to life, body and health
 - d) deficiencies MetPro has maliciously hidden or the absence of which was supposed to have been guaranteed,
 - e) deficiencies of the delivery object, as far as liability on privately used objects applies according to the product liability act for persons or property damages.In case of culpable violation of essential contract obligations, MetPro is also liable in case of gross negligence of persons other than managerial employees and in case of minor negligence; in the latter case, limited to the damages typical for the contract and reasonable predictable. All other claims are excluded.

10. Statutory limitation

All claims by the Customer against MetPro, regardless of the legal grounds, expire in 12 months. This statutory limitation period begins upon the transfer of risk according to Sections 6 and 7 of these Conditions. This period of statutory limitation of 1 year does not apply in the following cases:

- a) if the Buyer is a natural person entering into a legal business transaction for a purpose that can neither be attributed to his commercial nor independent professional job activity (consumer), the statutory limitation, for new movable assets or the delivery of a newly to produce or generate movable asset, is two years; for used assets one year.
- b) if the deficiency exists in a building, an asset which has been used according to its usual use for a building and whose deficiency has caused or in a work whose success exists in the performance of planning or supervision achievements for this, then the legal statutory limitations apply. This statutory limitation period begins upon the transfer of risk according to Sections 6 and 7 of these Conditions.

11. Retention of title

- 11.1 The delivered product remains property of MetPro up to the full payment of all demands from the business relationship, in particular, also up to the redemption of all drafts submitted for payment. This also applies to the processing of goods, which is always the case for MetPro as a manufacturer (§ 950 BGB). When processing, combining and mixing with other goods MetPro is entitled to joint ownership at the ratio of the invoice value of the MetPro's goods to these other goods at the time of processing, combination or mixture.
- 11.2 The Buyer shall undertake to sell the goods subject to the reservation of title only in the usual course of business as long as he is not in default of payment. He is not entitled to otherwise dispose of the goods subject to the reservation of title (e.g. giving as security, pledging as collateral). Purchase price or wage demands of the Buyer from the further sale of the goods subject to the reservation of title, are herewith assigned to MetPro in the amount of the invoice value until all demands for payment from, including bills of exchange, have been satisfied. The Buyer has the revocable right to collect these demands for payment.

- 11.3 In case of default, pending payment stop, in the case of unsatisfactory information about the solvency or financial situation of the Buyer, or if forced execution or bill protests against him arise, MetPro is authorized to take the subject to the reservation of title and sell it. The Buyer is obligated to release the product. The Buyer is responsible for all costs of return and use of the product.
- 11.4 The Buyer shall inform MetPro of all accesses of third parties, in particular of compulsory enforcement measures as well as other restrictions of his property immediately in writing. The Buyer shall reimburse MetPro for all damages and costs which originate from a violation against this obligation and necessary intervention measures against accesses of third parties.

12. Data protection

- 12.1 MetPro complies with the legal regulations on data protection. The Buyer agrees to the information from the contract being stored, processed and transmitted within the company, if this is necessary for the execution of the contract and for operational and statistical evaluations.
- 12.2 The Buyer agrees to MetPro obtaining a credit report from respective economic credit inquiry agencies and transmitting this data for non-contractual processing. Concerns of the Buyer requiring protection will not be affected or violated by this. Further information on the principles of data processing can be found under the following link: <https://www.metpro.de/en/privacy>
13. Place of execution, jurisdiction
 - 13.1 The place of execution for all payments of the Customer as well as all deliveries and services by MetPro is the main business location of MetPro, currently 71701 Schwieberdingen.
 - 13.2 If the Buyer is a business person, legal entity of the public right or public special property, or has no general jurisdiction domestically, jurisdiction is at the place of the main business of MetPro, currently Schwieberdingen. The right to file claim against the Buyer at the location of his general jurisdiction remains unaffected.

14. Final provisions, applicable law

- 14.1 The relationships between the contract parties are solely governed by the applicable law of the Federal Republic of Germany. The application of the uniform law on the international purchase of movable assets as well as the law on the conclusion of international sales contracts for movable assets is excluded.
- 14.2 The Buyer is not entitled to assign claims from the purchase or contract for work without approval of MetPro.
- 14.3 Should provisions in these general conditions be or become ineffective or impracticable, this does not affect the effectiveness of the remainder of the General Terms and Conditions.

Date : 12. Juli 2019