

## **General Terms and Conditions of Delivery and Payment of Metecno Bausysteme GmbH**

### **1. General provisions**

- a. The following General Terms and Conditions (hereinafter referred to as the GTC) apply exclusively to all existing and future contracts concluded between Metecno Bausysteme GmbH (hereinafter referred to as Metecno) and businesses within the meaning of § 14 of the German Civil Code [BGB], acting as customers (hereinafter referred to as Customers), concerning the manufacture and supply of composite elements, noise protection systems and accessories (hereinafter referred to as Products).
- b. They do not apply to contractual relationships between Metecno and consumers within the meaning of § 13 of the German Civil Code [BGB].
- c. Any general terms and conditions of the customer that conflict with or deviate from these General Terms and Conditions shall not form part of the contract, unless Metecno has expressly agreed to their validity in writing or in electronic form in accordance with § 126a of the German Civil Code [BGB]. They shall also not apply if Metecno has carried out the delivery to the customer without reservation whilst being aware of these General Terms and Conditions.
- d. Metecno's employees are not authorised to enter into individual agreements with the customer that contradict these General Terms and Conditions, unless they have been duly authorised in writing by the management to do so. Such individual agreements shall also be in writing or in electronic form in accordance with § 126a of the German Civil Code [BGB].

### **2. Conclusion of contract**

- a. Upon request, Metecno shall provide a customer with prices and possible delivery dates, without thereby making an offer within the meaning of § 145 of the German Civil Code [BGB]. Price quotations are to be understood merely as an invitation to the customer to make an offer to conclude a contract. Only an order placed by the customer is to be regarded as a binding offer to conclude a contract, which Metecno reserves the right to accept. A contract is concluded upon acceptance by Metecno in the form and with the content of an order confirmation (hereinafter referred to as the 'OC').
- b. The customer is obliged to check Metecno's OC immediately and, if the customer agrees with its content, to confirm its accuracy by signing it within five working days and to return a signed copy to Metecno. If, in the customer's opinion, the OC inaccurately or incompletely reflects the content of the contract, they shall also notify Metecno of this in writing within five working days; otherwise, the contract shall be deemed to have been concluded with the content of the OC, unless the customer can prove that they were prevented from responding in time through no fault of their own.
- c. In the event of changes made by the customer, Metecno reserves the right to accept such changes, provided that the OC constituted a valid declaration of acceptance, to insist on the conclusion of the contract in accordance with the OC, or to withdraw from the contract. Such changes shall only form part of the contract if they are accepted by Metecno in a revised version of the OC. Clause 2 shall then apply mutatis mutandis.



- d. The products shall be manufactured in accordance with the bill of materials described in the OC, which is based on the information provided by the customer. The customer shall have no entitlement to the provision of an installation drawing unless such provision has been explicitly agreed and is subject to a charge.

### 3. Delivery and delivery times

- a. Unless collection has been agreed, Metecno shall deliver the products to the agreed location on the agreed dates.
- b. In this case, Metecno shall specify in the OC the calendar week in which delivery may take place. This schedule is non-binding unless a binding delivery date or delivery period has been expressly agreed.
- c. The customer shall provide Metecno with the information and documents necessary for production without delay. Agreed delivery dates are only binding on Metecno if this information or these documents are available at the agreed time prior to production. Unless another timeframe for provision has been agreed, the customer shall send this information or these documents to Metecno no later than five working days after receipt of the OC.
- d. Once production is complete, Metecno shall notify the customer of the calendar week from which delivery of the products to the construction site can take place. The customer shall then, without delay and no later than three working days after receiving this notification, provide Metecno with a specific date on which delivery can take place.
- e. If the customer fails to provide Metecno with a possible delivery date within the specified calendar week within this period, they shall be in default of acceptance.
- f. If the customer fails to specify a delivery date either within the period specified in clause 3.d. or in the following calendar week, Metecno shall be entitled to charge the customer a storage fee of 2 % of the net value of the goods per month from the end of the offered delivery week until the actual delivery. The customer is entitled to provide evidence of lower storage costs. Metecno reserves the right to claim further damages and to provide evidence of higher storage costs.
- g. Where a specific time for delivery to the construction site has been agreed, a grace period of 2 hours shall be deemed to have been agreed.
- h. If, under the terms of the contract, the products are to be delivered in partial deliveries over a specified period, the composition of the individual deliveries and delivery dates shall only be binding if agreed in writing. Subsequent instructions from the customer shall not give rise to any contractual obligations on the part of Metecno.
- i. Metecno is entitled to make partial deliveries and may determine the schedule itself, provided that nothing else has been agreed, this is reasonable for the customer, and it does not cause disproportionate additional costs or disruptions to the construction process.



- j. If the manufacture of the products is hindered by industrial action such as strikes, the agreed delivery dates shall be postponed for as long as production is delayed due to the industrial action. The same applies if production is hindered by an unforeseeable event beyond Metecno's control, such as natural disasters, power cuts, the unforeseeable breakdown of a machine necessary for production, or any other technical malfunction for which Metecno is not responsible.
- k. A delay in delivery shall not be deemed to be attributable to Metecno if it was caused by events beyond Metecno's control which Metecno was unable to avert despite exercising the due care required in the course of business. Such reasons include, in particular, exceptional traffic disruptions such as serious accidents, natural disasters, road closures ordered by the authorities and other cases of force majeure.

#### 4. Collection

- a. If the parties have agreed that the products are to be collected from Metecno, Metecno shall notify the customer that the products are ready and available for collection at its premises and shall offer a specific time slot for collection.
- b. The customer shall then inform Metecno of the planned collection date within three working days of receiving this notification and take all necessary steps to ensure immediate collection. This includes payment of any invoices due at the time of the agreed collection, in particular any agreed advance payment for the goods to be collected. The customer shall carry out the collection no later than three weeks after this notification.
- c. The customer shall be in default of acceptance if they fail to collect the goods within this period.
- d. Default of acceptance shall not be precluded by Metecno asserting a right of retention over the goods on account of unpaid or partially paid invoices.
- e. If the products are not collected within three weeks of the notification of readiness, Metecno shall be entitled to charge the customer a storage fee of 2% of the net value of the goods per month for the period from that date until the actual collection. The customer is entitled to prove that storage costs are lower. Metecno reserves the right to claim further damages and to prove that storage costs are higher.

#### 5. Unloading

- a. The unloading of the products is the responsibility of the customer. The customer shall ensure that the unloading point is easily accessible for a 40-tonne articulated lorry and that there is sufficient space to unload the products.
- b. The customer shall unload the lorries promptly. They shall ensure that sufficient personnel and suitable lifting equipment are available at the unloading point on the agreed delivery date.
- c. The customer declares that they possess the expertise required for unloading the lorries and the necessary lifting equipment, unless they expressly requested instruction, assistance or the provision of lifting equipment from Metecno at the time of concluding the contract. Metecno is only obliged to provide these services if they have been expressly agreed.



- d. Metecno shall not be liable for any damage caused during the unloading of the products due to inadequate technical or personnel arrangements or a lack of expertise on the part of the customer, unless Metecno has failed in its duty to provide information regarding the necessary precautions or has identified the lack of such precautions and failed to draw attention to the associated risks.
- e. If the unloading of the products is delayed by more than one hour due to the customer's inadequate arrangements, the customer shall pay Metecno reasonable demurrage charges and shall be liable for any further damage incurred by Metecno as a result of this delay.
- f. If delivery fails due to circumstances for which the customer is responsible, the customer shall bear the costs of any redelivery and all other costs incurred by Metecno as a result of the failure.

## 6. Inspection and reporting obligation

The inspection and reporting obligations according to § 377 section 1 of the German Commercial Code [HGB] are specified as follows: the customer is obliged to inspect the products immediately upon delivery or collection (hereinafter referred to as 'handover'). In doing so, the customer shall check whether the products handed over are those contractually owed, whether the contractually agreed quantity has been delivered, whether the products handed over comply with the contractually agreed dimensions, and whether the products show any externally visible damage. Otherwise, §§ 377 sections 1 to 5 of the German Commercial Code [HGB] shall apply.

## 7. Declaration of Competence and Compliance with Guidelines

- a. The customer declares to Metecno that they operate a specialist company experienced in the installation of sandwich panels, or have commissioned such a company for the installation, which holds the necessary trade licences. They warrant that the elements will be installed only by trained specialist personnel with appropriate experience in working with the purchased sandwich panels, and that such personnel have been instructed in the provisions governing proper installation, and that the installation will be carried out in accordance with the requirements of the general building approval or the administrative regulations applicable in the relevant country and the structural calculations. Proof of such instruction shall be provided upon request.
- b. The customer undertakes to Metecno to comply with the guidelines for the design and construction of roof, wall and ceiling structures made of metal profiles, steel profile panels and sandwich elements issued by the International Federation for Light Metal Construction (IFBS Installation Guidelines). The customer declares that they are aware of these guidelines and notes, for precautionary purposes, that they can be obtained via the association's website (currently <https://ifbs.eu/>).

## 8. Payments

- a. All amounts agreed in the OC are exclusive of statutory VAT, unless they are expressly stated as gross amounts.



- b. Unless otherwise agreed, Metecno's invoices are due immediately and shall be paid by the payment deadlines stated on the invoices. The customer shall be in default of payment, irrespective of any reminder, if they fail to pay the invoices within 30 days of receipt. The contracting parties agree that the invoices shall be deemed to have been received by the customer no later than 4 working days after the invoice date, unless the customer can prove a later date of receipt. If it has been agreed that invoices are to be sent electronically, e.g. by e-mail, they shall be deemed to have been received on the date the email was sent.
- c. The deduction of discounts is only permitted if these are granted by Metecno subject to compliance with specific payment deadlines, if this deadline is met, and if the invoice amount is otherwise paid in full. The deduction of discounts on partial payments is not permitted.
- d. The customer may only set off their own claims against Metecno's claims arising from the delivery of the products, or assert a right of retention on the basis of such claims, if their claims are undisputed, have been acknowledged in writing by Metecno, or if their existence has been established by a final and binding court ruling.
- e. If advance payment has been agreed between the parties, Metecno shall notify the customer of the amount payable prior to delivery by sending a pro forma invoice. The customer shall pay this pro forma invoice within a period of 10 working days, unless another deadline has been agreed. Metecno retains a right of retention over the products until payment has been received in full. If payment in advance prior to production has been agreed, Metecno may withhold the manufacture of the products until payment has been received in full.
- f. Metecno also retains a right of retention over the products if the customer is in default of payments under other contracts.
- g. Even after the contract has been concluded, Metecno may make the handover of the products to the customer conditional upon advance payment of a specific amount or the provision of security if Metecno becomes aware of facts that suggest the payment of the resulting claims is at risk.

Such circumstances apply in particular where

- the customer defaults on payments under previous contracts,
- enforcement proceedings are initiated against the customer's assets,
- an application is made to open insolvency proceedings against the customer's assets,
- Metecno receives information from a recognised credit reference agency (e.g. Creditreform, Bürgel) indicating that the customer's financial situation has deteriorated to such an extent that Metecno's claim appears to be at risk,
- credit insurance cover for deliveries to the customer is withdrawn or restricted.



## 9. Warranty

- a. Metecno warrants that the products comply with the characteristics specified in the contract, statutory requirements and building regulations. Products of standard type and quality are supplied. Tolerances within the limits of the relevant standards must be accepted.
- b. Differences in colour shade do not constitute defects if they only insignificantly affect the overall visual impression of the building to be constructed.
- c. The customer acknowledges that colour differences can never be entirely ruled out if several orders are placed at different times for a single construction project. These colour differences do not constitute defects.
- d. It shall not constitute a defect in the service contractually owed by Metecno if the products are damaged because
  - the unloading or installation is carried out by personnel who, contrary to the customer's declaration under clauses 5c and 7a, do not possess the necessary technical competence,
  - unsuitable lifting equipment or other tools were used during unloading or installation,
  - installation was carried out contrary to the specifications of the IFBS installation guidelines in accordance with clause 7b.
- e. In the event of a defect, the customer shall inform Metecno immediately in writing and shall not process the affected products further, insofar as they have not yet been processed. Metecno may, at its discretion, remedy the defect either by repairing the affected products or by supplying new ones.
- f. The customer may only reduce the purchase price or withdraw from the contract if Metecno has not commenced rectification of the defect within the specified period despite a reasonable deadline having been set, or if rectification of the defect in accordance with clause 2 has failed twice.
- g. In the case of purely cosmetic defects, withdrawal from the contract is excluded, unless the cosmetic defects are so serious that it would be unreasonable for the client to continue with the contract. In this case, the customer is entitled to a reasonable reduction in the purchase price, calculated in accordance with the Aurnhammer method.

## 10. Retention of title

- a. The products supplied remain the property of Metecno until all claims to which Metecno is entitled against the customer, regardless of the legal basis, have been paid in full.
- b. In the event of late payment by the customer or any other material deterioration in the customer's financial position, Metecno shall be entitled to prohibit the further processing of the products with immediate effect and to demand their return. The customer shall be obliged to surrender them.



- c. The demand for the return and repossession of the products shall not constitute a withdrawal from the contract by Metecno, unless such withdrawal is expressly declared in writing. Following the repossession of the products, Metecno shall be entitled to realise them by selling them to a third party, with the proceeds being set off against the claims.
- d. The customer is obliged to inform Metecno immediately if the products delivered under retention of title are seized by a third party and to provide Metecno with all information necessary to bring an action to set aside the third-party attachment.
- e. The customer is entitled to resell the products in the ordinary course of business; however, the customer hereby assigns to Metecno all claims in the amount of the final invoice amount (including VAT) arising from such resale against its customers or third parties, irrespective of whether the goods subject to retention of title were resold with or without processing.
- f. The customer is entitled to use the products to perform services under a building contract and to permanently attach them to a plot of land. If Metecno loses ownership of the products delivered under retention of title as a result of such attachment of the products to a plot of land belonging to the customer's client, the customer shall assign to Metecno its claim against its client arising from the performance of the works contract, plus VAT, up to the amount of the outstanding claim at that time, plus VAT.
- g. Metecno accepts the assignment in the cases described in clauses 10.e and 10.f. In the event of the customer's default in payment, Metecno may revoke the rights granted under clauses 10.e and 10.f. In such a case, the customer is obligated, upon request, to provide Metecno with the names and addresses of its customers and the amount of the outstanding claim arising from these contracts, as well as to hand over to Metecno the documents necessary for enforcing the claim.
- h. Metecno is obligated, upon the customer's request, to release a portion of the goods subject to retention of title or the assigned claim (security interests) in favour of the customer if the value of the security interests exceeds 120% of the secured claim (including VAT). Metecno may select the portion of the security interests to be released. The portion to be released shall be such that the value of Metecno's remaining security interests does not exceed 120% of the secured claim.

## 11. Liability

- a. Metecno shall be liable without limitation for grossly negligent or intentional breaches of duty of care by Metecno, its representatives, and vicarious agents, as well as for intentional or negligent injuries to life, limb, or health within the scope of statutory provisions.
- b. Metecno shall not otherwise be liable for simple negligence, unless such negligence constitutes a breach of material contractual obligations. In such cases, liability is limited to foreseeable damages typical for this type of contract.
- c. Liability under the Product Liability Act remains unaffected by the foregoing provisions.



## 12. Data protection

- a. Metecno hereby informs the customer that, for the purpose of contract fulfilment, personal data pertaining to the customer and, where applicable, the customer's employees will be stored and used electronically in accordance with Article 6 section 1(b) of the GDPR, exclusively for the purpose of contract fulfilment.
- b. Data processing is carried out in compliance with the provisions of the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG). The customer is informed of their rights under Articles 15–22 of the GDPR (right of access, rectification, erasure, restriction, data portability, and objection) as well as their right to lodge a complaint with a data protection supervisory authority. Further information on data processing is available in Metecno's Privacy Policy at [www.metecno.de](http://www.metecno.de).

## 13. Final provisions

- a. Where drawings, photographs or other documents are provided to the customer, all rights, in particular ownership and copyright, in such documents shall remain with Metecno.
- b. The customer agrees that, in the event of the products being tested by a state-recognised testing institute, they shall provide a sample to the institute upon request and against reimbursement of costs by Metecno. The customer also undertakes to impose a corresponding obligation on their own customers.
- c. For all disputes arising from the contractual relationship, if the customer is a trader, a legal entity under public law or a special fund under public law, the place of jurisdiction shall be Metecno's registered office in D-99444 Blankenhain. Each party is entitled to bring an action at the registered office of the other party. This also applies to merchants and legal entities having their registered office abroad.
- d. German law shall exclusively apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG – United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980), even if the customer has its registered office abroad.
- e. Unless otherwise stated in the order confirmation, Metecno's registered office at D-99444 Blankenhain shall be the place of performance for all obligations arising from the contractual relationship.

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