

# General Terms and Conditions

## § 1 General provisions

1. These General Terms and Conditions shall apply to all business relations to wit business partners that are no consumers in terms of the German Civil Code.
2. These General Terms and Conditions shall govern all legal relations between MTV Metallveredlung GmbH & Co. KG (hereinafter referred to as "MTV") and the party ordering with binding effect and shall be the basis of our offers, orders, deliveries and services. They shall be agreed upon acceptance of the order by us. The party ordering shall accept these Terms and Conditions as amended as binding upon all future legal relations with MTV.
3. Deviating, conflicting or additional Terms and Conditions of the party ordering shall be inapplicable and shall be expressly refused.
4. Modifications and amendments hereto shall require the written consent by both parties to take effect. The requirement of written form may only be dispensed with in writing. Individual agreements in terms of Section 305b, German Civil Code, shall take effect informally.

## § 2 Offer, order, conclusion of contract

1. We shall not be bound by our offers. Information concerning dimensions, weights and other technical data are approximate values customary in our company and in industry. We reserve the right of modifications, e.g. as a result of technical developments. Bidding documents provided shall not have recommending character but reflect the party ordering's offer. Offers and its annexes shall not be made accessible to third parties unless we have consented thereto.
2. The party ordering shall place orders with binding effect. We are entitled to accept the contractual offer included in the order within two weeks following the receipt.
3. In case of doubt the contract has been brought about upon our acknowledgment of order or, in the absence of such acknowledgment, by execution of the work. An order, an acknowledgment of order or other statements may be in writing, in text form or by way of an electronic document. The contents of the acknowledgment of order shall be authoritative as regards the parties' rights and duties. Individual agreements shall remain unaffected.
4. A contract shall only be signed subject to correct and timely deliveries by our suppliers. This provision shall apply only in case that we are not responsible for a non-delivery. The party ordering shall be notified of the impossibility to perform a contract. The counter-performance shall be returned immediately. If we are prevented from performing a contract without any fault on our part (lack of resources, labour disputes, natural disasters, etc.) we shall be released from our duty to supply during such hindrance and the period of the effects thereof. In such case we shall be entitled to terminate a contract.

## § 3 Prices

1. Recommended prices shall become the basis of the contract only if agreed upon. Offering prices shall be binding upon us for a period of max. 4 months. In the acknowledgment of order reference can be made to our price lists.
2. If the party ordering wants an order to be executed within a short period of time both an overtime allowance and overheads involved shall be charged.
3. All prices shall be net cash (Euro) ex works without any discounts or other reductions plus the respective value-added tax at the rates provided for by law. Packaging and shipping charges shall be excluded. Prices shall apply to appropriately designed and produced items. Considerations for additional works (e.g. removal of colour, oil, fat, tar and scrap metal coatings, etc., adding openings to hollow parts, test reports and records, etc.) shall be subject to agreement. In the absence of such agreement a fair consideration pursuant to Section 315, German Civil Code, is deemed to have been agreed upon.
4. In case of a significant increase in factors (e.g. production materials, energy, operating supplies, wages and salaries) having an influence on pricing between the signing of the contract and the delivery date contractually agreed upon we shall be entitled to demand a new agreement as a compensation for an increase in costs. If there is no such agreement, we shall be entitled to terminate the contract. In case of reduced costs the party ordering shall exercise such right analogously.

5. Deviations of quantity or of any other kind regarding a delivery cannot be excluded with absolute certainty and shall, therefore, be accepted by the party ordering provided this does not affect the contractual purpose and the intended use by the party ordering, in particular. In such case we shall be entitled to adjust prices correspondingly.

## § 4 Delivery

1. Part deliveries shall be permissible, if the party ordering can reasonably be expected to accept same.
2. Deliveries shall be effected ex works excluding packaging.
3. In general, periods of delivery and dates of completion shall not be binding. They shall only be binding if confirmed by us in writing (hardcopy or e-mail).
4. In case of doubt the period of delivery shall commence upon acknowledgment of the order or when receiving all documents and materials from the party ordering including all approvals and releases needed to execute the order whichever is earlier. If such documents and materials are not received in good time the period(s) of delivery shall be adjusted correspondingly.
5. The time limit is deemed to have been complied with if a notification for readiness of dispatch has been sent. We shall not be responsible for any delays caused by shipping.
6. In case of delays in delivery or in production due to unforeseeable circumstances on our part, on the part of suppliers or subcontractors (e.g. Force Majeure, strike, shortage of materials, shutdown or power failure) the party ordering having granted a period of grace shall be entitled to terminate the contract. Section 323, par. 2, German Civil Code, shall remain unaffected. If due to such circumstances a delivery cannot be effected, we shall no longer be under an obligation to effect delivery. If due to such circumstances we can no longer be reasonably expected to effect delivery, we shall be entitled to refuse delivery. The party ordering shall only be entitled to claim damages if we are responsible for such circumstances.

## § 5 Payment

1. Unless otherwise expressly agreed payments shall be effected in cash after delivery and immediately upon receipt of the corresponding invoice. Deductions shall not be made.
2. If after conclusion of a contract there are circumstances that are likely to call into question the party ordering's creditworthiness (filing an insolvency petition, making a statutory declaration, in particular), we shall be entitled to terminate all contracts not performed so far and we shall suspend performing services until the contracting party has effected a payment in full or has provided security to the extent of the purchase price.
3. In case of part deliveries the price proportional to such part delivery shall be paid subject to the above provisions.
4. If the party ordering has defaulted payment all payments outstanding shall be due and payable notwithstanding the exercise of additional rights and without having to put the party ordering in default. This provision shall also be applicable to legal action to be taken in case of a non-payment of an invoice. Irrespective of a termination we shall also be entitled to prohibit the party ordering from reselling the subject matter of the contract. The provisions of Section 325, German Civil Code, shall be applicable, i.e. a termination shall include the right to claim damages.
5. The party ordering shall only set off undisputed or legal claims against our claims.

## § 6 Party ordering's duty to cooperate

1. The party ordering shall provide free and timely assistance in the performance of a contract by us. In particular, the party ordering shall provide all data, documents and information needed to perform a contract. This applies to any information concerning the material composition of the products to be processed.
2. We shall inspect incoming shipments the quantities of which can be counted without any problems, with such quantities significantly falling below 50. As for the rest the quantities stated by the party ordering shall be transferred to our merchandise information system. If the party ordering wants precise figures of incoming shipments an adequate consideration for extra time, separate instructions shall be given.

3. In order to maintain the high standards of our products and services and when using parts made of our products and services the party ordering shall notify us of any changes in its processes, material qualities or equipment that could have an effect on the parts to be coated by us as well as any damage or noticeable problem in connection with our products without delay.
4. When warding off claims arising in connection with product liability the party ordering shall support us in any reasonable way whatsoever. In particular, the party ordering shall provide all information needed in connection with the way of processing our products and the services as well as the portion of the materials supplied by us and the services rendered regarding the products manufactured by the party ordering.
5. Certain products and services might be subject to special import or export controls and/or restrictions. It is the responsibility of the party ordering to verify and comply with all corresponding regulations. This shall also include licenses to be granted under public law as well as all documents to be provided in connection with the import / export of certain products.
6. When placing the order the ordering party shall notify us if a certificate of origin is needed. Any additional time / expenses needed in connection with the application for and/or issuance of such certificate of origin may be charged to the party ordering as an expense allowance.
7. The party ordering acknowledges that failure to comply with all statutory regulations may result in a failure to export and/or resell any products.
8. If as a result of a dunning letter regarding its duties to cooperate the party ordering is in default, we having granted a period of grace of 14 days in writing shall be entitled to terminate the contract and demand damages in lieu of performance.

### **§ 7 Passing of the risk, shipment**

1. The risk shall pass onto the party ordering if the goods are ready for dispatch and if the party ordering was notified thereof. Delays in sending or in acceptance for reasons we are not responsible for shall not be chargeable to us.
2. If MTV fails to notify the party ordering of its readiness for shipment the risk regarding processed objects and objects to be processed shall pass onto the party ordering upon handing over the goods to the forwarder and/or carrier upon leaving our plant.
3. We shall be liable for any damage in transport of these objects only in case of intent and gross negligence. Liability for a breach of essential contractual obligations shall remain unaffected.
4. The risk of transport regarding objects to be transported shall be borne by the party ordering even if they are collected by us as requested by the party ordering. par. 3 shall apply mutatis mutandis.
5. The provisions of par. 1 - 4 shall also apply to an assurance of freight paid deliveries.
6. Goods delivered carriage paid shall be called by the party ordering without delay but within a reasonable period of time following a corresponding notification. Otherwise we shall store the goods at the risk and expense of the party ordering as we deem fit and charge them ex works.
7. If the party ordering causes a delay in delivery we may demand storage fees amounting to 1% (max. 5%) of the amount invoiced for each beginning month with such period beginning one month after notification of readiness for dispatch unless we can prove higher expenses or if the party ordering can prove lower expenses.
8. Reasonable waiting periods not exceeding one week shall not result in any liability on our part unless there are binding collection and/or delivery dates.
9. Considering the interests of the party ordering but without guaranteeing the fastest and cheapest mode of transport we shall select the type and means of transport as well as the shipping method. If we act as a forwarder, the General German Freight Forwarding Terms and Conditions shall also be applicable.
10. In case goods are returned for reasons we are not responsible for, the party ordering shall bear the risk until they are received by MTV.
11. Parts the surface of which is to be treated will be packed only to the extent they were packed when delivered to us, repackaging has been requested and the packing material can be reused. Costs of special packing requested shall be borne by the party ordering. Such packing material shall not be taken back.

12. In case of damage - even if the package is in undamaged condition - the carrier shall be notified immediately and the damage shall be assessed. The party ordering shall provide all documents needed such as transport documents (consignment note, express consignment note, postal stubs, etc.), damage assessment note, forwarder's statement, etc.

### **§ 8 Insurance**

Insurance cover for processed parts and/or parts to be processed regarding damage in transport or any other damage (fire, water, theft, in particular) shall only be provided at the request and expense of the party ordering.

### **§ 9 Claim for defects**

1. Our surface treatment of materials is based on generally accepted engineering standards and the respective DIN standards. Unavoidable deviations from the basic specimen in case of electroplating or chemical processes or different qualities of raw materials shall not constitute a defect.
2. The material to be processed must be free from any casting skin, moulding sand, scale, oil carbon, burnt-in fat, welding slag, graphite and paints. There shall be no pores, pipes, cracks, laminations, etc. Threads shall be undercut adequately. Otherwise we may refuse to process an object and/or terminate the contract. If the party ordering still insists on processing the object we shall not give any guarantee regarding special accuracy to size, adhesive strength, colour stability and corrosion-protecting properties of the layer applied insofar as defectiveness is attributable to inadequate material instead of gross negligence or intent on our part. This provision shall also apply if the material provided by the party ordering cannot be used for processing as contractually agreed upon for reasons unknown to us. Furthermore, adhesive strength shall not be guaranteed if the material has been deformed following surface treatment. This provision shall also apply, if parts electroplated for testing purposes can be deformed without the electroplated layer flaking off and if the party ordering has been informed about the risk of flaking off still wants the parts to be processed.
3. The material the surface of which is to be treated and/or a specimen of the material shall be provided for an adequate period of time (min. six weeks) for testing purposes as otherwise we cannot guarantee protection from corrosion that is not attributable to gross negligence or intent on our part. If, considering the period of delivery requested by the party ordering, no short-term test or other chemical and/or mechanical test can be conducted or if there are no test records or test certificates and if the party ordering having been informed correspondingly still insists on processing without any preceding test, we shall not be liable for any damage attributable to tests not conducted unless we can be charged with gross negligence or intent.
4. Hollow parts shall be treated on the outside only unless a hollow space treatment has been agreed upon. Immediate corrosion of untreated surfaces shall not constitute a defect. Any material the surface of which was treated shall be protected from condensed water and fretting corrosion and packed, stored and transported properly.
5. The party ordering shall specify minimum layer thicknesses at a specific measuring point. The party ordering shall take appropriate measures to avoid any chemical or mechanical damage to a surface. We shall be liable for any damage attributable to weather conditions or residues of the coating processes seeping out of other inaccessible hollow spaces or laminations only in case of intent or gross negligence. A hydrogen embrittlement shall be required only if expressly requested by the party ordering, with liability being limited to intent and gross negligence.
6. Lacking additional agreements and/or notes by the party ordering the objects to be processed shall be used under normal conditions in terms of weather and operation.
7. The party ordering shall immediately check the goods for defects and complain in writing about defects within 12 days at the latest following the receipt of the goods. In case of defects not discovered despite careful inspection the time limit shall start upon discovery. The foregoing shall also apply to outturn samples. If there is no complaint in proper form and within the time limit, the goods are deemed to have been approved by merchants in terms of the German Commercial Cod.
8. Objects given to us for the purpose of processing shall include a delivery note and/or the exact quantity and total weight. Gross weight figures shall not be binding upon us even if they are of importance to the party ordering. Missing parts shall only be replaced if the delivery thereof is evidenced by a deliv

ery note countersigned by us, with such note proving the quantity check and if the risk regarding missing parts has passed onto us. In case of small parts or bulk goods a rate of defectives and shortages of up to 3% of the total quantity delivery shall not constitute a defect.

9. A defect within a part delivery shall not entitle the party ordering to terminate the contract unless the extent of such defect causes the party ordering to abstain from further part deliveries.
10. As part of our liability for defects we shall only be liable for intent and gross negligence. Limitations of liability shall not apply to any damage resulting from an injury to life, the body and health or a breach of essential contractual obligations. In case of a breach of essential contractual obligations we shall be liable for the foreseeable damage typical for the contract. Contractual penalties shall not be accepted by us. Any liability under the Product Liability Act shall remain unaffected.
11. Claims for defects asserted by the party ordering shall become statute-barred after one year following the delivery of the object and the factory acceptance test. This provision shall not apply to claims for damages regarding an injury to life, the body or health.

## § 10 Limitation of liability

In addition to contractual guarantees we shall only be liable for intent and gross negligence. This limitation of liability shall not apply to any damage resulting from an injury to life, the body or health or in case of a breach of essential contractual obligations. In case of a breach of essential contractual obligations we shall be liable for foreseeable damage typical for the contract. Any liability under the Product Liability Act shall remain unaffected.

## § 11 Security interest

1. We are entitled to a statutory entrepreneur's right of lien to the objects processed by us. Irrespective of that the party ordering shall create a contractual right of lien for us regarding the objects given to us for the purpose of surface treatment, with such right of lien securing our claims arising from the order. The contractual right of lien shall also include claims arising from previous orders and performances as long as the objects within the contract are inwardly contiguous, uniformly and vitally related. If surface-treated parts are delivered to the party ordering prior to a payment in full it is hereby agreed with the party ordering that ownership in these objects equalling the value of our claims shall be vested in us for the purpose of securing our claims. A transfer of title shall be replaced by the fact that the party ordering will keep the objects on behalf of us.

If the party ordering gives us objects for the purpose of surface treatment which have been delivered by a third party subject to reservation of title, the party ordering shall assign the inchoate title to the ownership in these objects to us, with such right equalling the value of our claims. Such assignment is accepted herewith. We shall provide those services to such third party in a way getting the party ordering full ownership. In such case we shall be entitled to a corresponding compensation regarding the party ordering.

If the party ordering gives us objects for the purpose of surface treatment that were preventively assigned to a third party, the party ordering shall assign the claims for retransfer to us for the purpose of securing our claims for compensation for work equalling the value of our claims. Such assignment is accepted herewith.

2. Objects to which we have a lien or which are owned by us by way of security shall neither be pledged nor assigned by the party ordering. The party ordering may resell or process them in the ordinary course of business unless the party ordering effectively assigned the claim against a contracting party to a third party in advance. Objects assigned to us as security shall be converted into a movable object by the party ordering on behalf of us without any liabilities arising there from. The party ordering shall be granted co-ownership in the new object in proportion of the value of the new object less the value of our performance to the value of the new object. The party ordering shall keep the new object free of charge, exercising the due diligence of a prudent businessman.
3. In case the party ordering acquires sole ownership or co-ownership in a new object created by combining or mixing our property serving as security with other movable objects, the party ordering shall assign such ownership to us, with such ownership being in proportion of the value of our security to the value of the other object, and the party ordering shall promise to keep the new objects free of charge in behalf of us.

4. In case objects processed by us or transferred to us as a security or new objects made on the basis thereof are resold, the party ordering shall notify its customers of our collateral ownership therein
5. In order to secure a satisfaction of our claims the party ordering shall assign all future claims arising from the resale or processing of the objects assigned to us including all ancillary rights to the extent of the value of the goods to us. Such assignment is accepted herewith.
6. The party ordering shall be authorized to collect any claims arising from a resale or processing on behalf of us. If requested, the party ordering shall produce evidence of each claim and disclose the assignment to third-party purchasers, calling upon them to make payments to us until our claims are satisfied. We shall be entitled to notify third-party purchasers of such assignment and collect the claim ourselves. We shall not call upon the party ordering to collect claims or disclose an assignment, and we shall not collect a claim ourselves or disclose an assignment as long as the party ordering duly effects payment.
7. The party ordering shall be under an obligation to notify us of an execution by third parties regarding our security.
8. The party ordering shall be under an obligation to provide adequate coverage of our security (fire and loss, in particular) and, if requested, assign claims asserted against an insurance company and a damaging party to us.
9. At the request of the party ordering the security due to us subject to the foregoing provisions shall be released if the value thereof exceeds the claims to be secured by more than 20 %.
10. In case third parties exercise rights to the security the party ordering undertakes to send us all documents needed and compensate us for all intervention costs incurred provided that such intervention is successful and if an execution levied upon the assets of a third party as party liable for costs has been in vain.
11. In case of deferral all our claims including those arising from other contracts shall be due and payable as soon as the party ordering I) is culpably behind schedule regarding MTV, II) stops payments, III) is insolvent, and IV) if its assets have been subjected to insolvency proceedings or if such proceedings are terminated for lack of assets. In such case we shall be entitled to refuse outstanding deliveries and services and grant the party ordering a reasonable period of time during which the party ordering shall concurrently effect payment of our services and deliveries or provide security. After expiration of this time limit we shall be entitled to terminate the contract.

## § 12 Venue, applicable law

1. Venue for all claims and lawsuits arising from the contractual relationship shall be our headquarters unless warranty claims or claims in connection with an unravelling of the contract are concerned.
2. Legal relations between the parties shall be subject to German law. Foreign law and the UN Sales Convention shall be inapplicable.

## § 13 Escape clause

If a provision of these Terms and Conditions becomes invalid, then this shall in no way affect the validity of the remaining provisions.

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