

General Terms of Sale and Payment of Metrax GmbH

(Version: February 2020)

1. Scope of Applicability, General

- 1.1 These General Terms of Sale and Payment ("GTS") apply to all contracts regarding the sale and/or delivery of products by Metrax GmbH with seat in Rottweil, Germany ("We", "Us", "Our") to its customers ("Customer"). They also apply to future contracts without a renewed reference thereto by Us in each individual case.
- 1.2 Terms and conditions of the Customer which conflict with or supplement these GTS are not recognized by Us unless We expressly agree to their applicability in writing. This consent requirement and these GTS also apply if We unconditionally execute the delivery in awareness of terms and conditions of the Customer which conflict with or deviate from these GTS.
- 1.3 Individual agreements with the Customer take precedence over these GTS. All agreements made between Us and the Supplier regarding the execution of a transaction require written form. This also applies to legally relevant declarations and notifications (e.g. setting of grace periods, declarations of rescission, termination notices, notifications of defects) which are made by the Customer after formation of the contract.
- 1.4 These GTS only apply if the Customer is a businessperson (Section 14 of the German Civil Code - "BGB"), a legal person under public law or a special fund under public law.

2. Formation of Contract

- 2.1 Our offers are subject to change and non-binding unless they are expressly marked as binding or contain a defined acceptance period. This also applies if We have provided catalogues, technical documentation, other product descriptions or documents (including in electronic format) to the Customer; We reserve the ownership rights and copyrights in such materials.
- 2.2 The order of products by the Customer is deemed as binding offer. A purchase contract is formed only if We send the ordered goods to the Customer or if We confirm acceptance of the order in writing within a reasonable period (order confirmation).

3. Delivery, Scope of Supply

- 3.1 Our information about products (e.g. weights, measurements and technical data) and Our presentations thereof (e.g. illustrations) are only approximate unless the usability for the contractually intended purpose requires an exact match. They are not guaranteed features but descriptions or characterizations of the products. Customary variations are permissible to the extent they do not impair the usability for the contractually intended purpose. We reserve the right to make technical, constructive or design modifications, in particular improvements (including after the order confirmation), to the extent this is reasonable for the Customer.
- 3.2 Performance descriptions, illustrations, references to DIN/ISO standards do not constitute the assumption of a guarantee. Quality or durability guarantees require an express written declaration from Us. The functions of offered software programs and modules are limited to the description in the manual/operating instructions.
- 3.3 Partial deliveries are permitted in reasonable scope. If the partial deliveries can be used separately, they are deemed as separate delivery for purposes of determining the due date of payment.
- 3.4 Unless otherwise agreed, Our deliveries are EXW (Incoterms 2020) our plant/premises.

4. Delivery Period, Delivery Default and Default of Delivery Acceptance

- 4.1 Delivery periods are only binding if they are expressly confirmed as binding by Us. Otherwise, they are approximate.
- 4.2 If binding delivery periods cannot be met for reasons not attributable to Us (unavailability of the goods/services), We will inform the Customer hereof immediately and at the same time provide the estimated new delivery period. If the goods/services are not available during the new delivery period, we may wholly or partly rescind the contract and will refund any payment made by the Customer for such goods/services immediately. In particular, the following cases are deemed as cases of unavailability of the goods/services: (i) failure of Our suppliers to deliver to Us if We have entered into a congruent purchase agreement, provided that neither We nor the suppliers are at fault; or (ii) if We are not under a procurement obligation in the individual case.
- 4.3 Apart from that, the occurrence of a delivery default is determined by the provisions of statutory law. A reminder of the Customer is, however, required in each case (excluding transactions where time is of the essence).
- 4.4 If the Customer is in default of delivery acceptance, fails to fulfil cooperation duties or if Our delivery is delayed for other reasons attributable to the Customer, we may demand compensation of the resulting damages, including additional expenses. We charge liquidated damages in the amount of 0.25% of the invoice amount of the respective delivery per full calendar week, up to a maximum of 5% of the invoice amount. Proof of higher damages and Our statutory rights remain unaffected; the liquidated damages shall, however, be credited against further claims.

5. Prices and Payment Modalities

- 5.1 Unless agreed otherwise, our list prices - current at the time the contract is formed - shall apply. The prices are stated ex works/warehouse including packaging, but excluding shipping, statutory VAT, in case of export deliveries customs and fees and other public charges. Payment by cheque or bill of exchange is only accepted as conditional payment. Any related fees are borne by the Customer.
- 5.2 Invoice amounts are principally due for payment within 14 days after invoicing and delivery or acceptance of the goods, without any deduction, unless otherwise agreed in writing. Receipt by Us is relevant for the payment date. The Customer is in default upon expiration of the aforesaid payment period.
- 5.3 However, We may choose to make a delivery wholly or partly conditional on pre-payment at any time, including within the scope of an ongoing business relationship, and We may declare such a condition until confirmation of the order at the latest. If it becomes clear after formation of the contract (e.g. by application to open insolvency proceedings), that Our claim to the purchase price is endangered because of insufficient financial capability of the Customer, We may refuse performance in accordance with statutory law and rescind the contract (after setting of a grace period, where appropriate) (Section 321 of the German Civil Code - BGB).
- 5.4 The Customer may only set off against or exercise retention rights because of undisputed or finally judicially determined claims. In case the products are defective, the Customer's counter-claims remain unaffected.

6. Dispatch, Transfer of Risk, Acceptance

- 6.1 The goods will be sent to another destination if requested by the Customer. Unless otherwise agreed, we may determine the type of dispatch (in particular, transport company, transport route, packaging).
- 6.2 The risk of accidental demise or accidental impairment of the goods is transferred to the Customer at the latest upon hand-over of the goods to the forwarding agent/carrier or other third party designated to carry out the transport (provided that the beginning of the loading process is relevant). This also applies in case of partial deliveries.
- 6.3 To the extent acceptance is agreed, acceptance is relevant for the transfer of risk. Apart from that, the statutory provisions regarding works agreements also apply to an agreed acceptance (subject to section 6.4 of these GTS). If the dispatch or hand-over are delayed because of a circumstance caused by the Customer, the risk shall be transferred to the Customer on the day on which we are ready to ship and we have informed the Customer accordingly.

- 6.4 To the extent acceptance is required, the goods are deemed as accepted if (a) delivery has been carried out, (b) We have informed the Customer accordingly, pointing out deemed acceptance hereunder, and requested the Customer to accept the goods, (c) more than 14 days have passed since delivery, and (d) the Customer failed to declare acceptance within this period for a reason other than a defect notified to Us which makes use of the goods impossible or materially impairs such use.

7. Liability for Defects

- 7.1 The rights of the Customer in case of material or title defects are subject to the statutory laws unless otherwise set forth below. The special provisions regarding end deliveries of the goods to consumers (Sections 478, 479 BGB) remain unaffected.
- 7.2 Claims for defects of the Customer require that it has met its statutory duties of inspection and rejection (Sections 377, 381 of the German Commercial Code - "HGB"). Rejections due to incomplete, incorrect or defective delivery must be notified to Us in writing immediately after delivery; hidden defects immediately after their discovery. The notification is deemed immediate if it is made within 14 days after delivery or discovery of the defect, provided that the timely dispatch of the notification is sufficient to meet the deadline.
- 7.3 Claims for defects become time-barred within two years after the transfer of risk.
- 7.4 In case of defects of the delivered goods, we are firstly obligated and authorized, at Our option, to repair or re-deliver the goods. Supplementary performance includes neither the removal of the defective item nor its re-fitting, unless We were originally obligated to fit the goods. In case of failure, i.e. impossibility, unacceptability, refusal or unreasonable delay of the repair or re-delivery, the Customer may rescind the contract or reasonably reduce the purchase price. This also applies in case a reasonable grace period to be set by the Customer expires unsuccessfully or is not required pursuant to statutory law. In case of defects of software We may provide a new software version.
- 7.5 If a defect is based on Our culpability, the Customer may demand damage compensation under the prerequisites set forth in section 9.
- 7.6 The Customer shall comply with its contractual duties, in particular also the agreed payment terms; We may make supplementary performance owed by Us conditional on payment of the due purchase price by the Customer. However, the Customer may withhold part of the purchase price reasonable in relation to the defect.
- 7.7 Liability for defects does not relate to natural wear and tear. Further, it does not apply to such damages which arise after transfer of the risk as a consequence of improper or negligent treatment, improper maintenance, incorrect storage, incorrect assembly or operation, excessive use, inappropriate equipment, and such chemical, electrochemical, electric influences which are not pre-supposed under this contract and which are not attributable to Us. Nor is a material defect constituted by non-reproducible software errors and defects which do not occur in the latest software version provided to the Customer by Us if use of the latest software version is reasonable for the Customer.
- 7.8 There is no liability for defects if the Customer modifies the delivered goods without Our consent, or engages a third party to do so, and if the removal of the defects becomes impossible or unreasonably more difficult as a result. In any case, the Customer shall bear the additional rectification expenses resulting from such modification.

8. Industrial Property Rights

- 8.1 We warrant pursuant to this section 8 that Our products are not subject to industrial property rights or copyrights of third parties. The Customer shall inform Us (or We will inform the Customer) in writing immediately, respectively, if claims are asserted against the Customer because of the infringement of such rights.
- 8.2 In case a product delivered by Us were to infringe an industrial property right or copyright of a third party, We shall at Our option modify or replace the product at Our expense in such a way that third party rights are no longer infringed, but the product still fulfills the contractually agreed functions, or procure the right of use for the Customer by entering into a license agreement. If We are unable to do so within a reasonable period, the Customer may rescind the contract or reasonably reduce the purchase price. Damage compensation claims of the Customer, if any, are subject to the limitations of section 9.
- 8.3 In case of infringements by products of other manufacturers which We supply We shall at Our option assert the claims against the manufacturers and upstream suppliers for account of the Customer or assign the claims to the Customer. In these cases, the Customer only has claims against Us pursuant to this section 8 if the judicial enforcement of the aforesaid claims against the manufacturers and upstream suppliers was unsuccessful or if it is futile, e.g. because of a bankruptcy.

9. Liability

- 9.1 Unless these GTS, in particular the following provisions, provide otherwise, we are liable in accordance with statutory law in case of breach of contractual or extra-contractual duties.
- 9.2 We are liable for damage compensation for any legal reason whatsoever within the scope of fault-based liability in case of willful intent and gross negligence. In case of simple negligence We are only liable for (a) damages from injury to life, body or health and (b) damages from the not immaterial breach of a material contractual duty (i.e. a duty which is essential to the proper performance of the contract and on the fulfillment of which the other party generally relies and may generally rely); in this case, however, Our liability is limited to the compensation of the foreseeable, typically occurring damages.
- 9.3 The aforesaid limitations of liability also apply in case of breaches by or for the benefit of persons whose faults are attributable to Us pursuant to statutory law. They do not apply (i) if We have fraudulently concealed a defect; (ii) if We assumed a guarantee for the quality of the goods; and (iii) in case of claims pursuant to the German Product Liability Act.
- 9.4 The Customer may only rescind or terminate the contract because of a breach of duty other than a defect if the breach of duty is attributable to Us. A free termination right of the Customer (in particular pursuant to Sections 651, 649 BGB) is excluded. Apart from that, the statutory prerequisites and legal consequences apply.
- 9.5 The Customer shall take all necessary and reasonable measures in order to prevent or mitigate damages; in particular, the Customer shall ensure the regular back-up of programs and data. We are therefore only liable for the recovery of data under the aforesaid prerequisites if the Customer has made proper back-up copies of data. Further, the Customer is obligated to defend against malware in accordance with the current state of the art technology, respectively.

10. Software

- 10.1 To the extent the delivered product is or contains software, we grant the Customer a non-exclusive, non-transferrable right to use the software for the contractually intended purpose; section 10.5 remains unaffected. The right of use is restricted to the use for own operational purposes of the Customer. The Customer is not authorized to sublicense, temporarily provide to third parties, rent out or lend the software or make it available as "software as a service".
- 10.2 If the software is supplied as part of a device or if the software is intended for use with a device, the Customer may only use the software with the designated or associated hardware unless there is an express agreement providing otherwise. Liability for defects is excluded if the software is used with a device which We did not approve for use with the respective software.
- 10.3 Unless there is an express agreement providing otherwise the Customer receives a single software license, i.e. the software may only be used at one workplace or one device at the same time.
- 10.4 The Customer may not remove, cover or render illegible copyright notices and other markings contained in the software or on the data carriers containing the software. They must be transferred onto each back-up copy made within the scope permitted by law.

- 10.5 If the Customer acquired the software as part of a device the software may only be sold to a third party in conjunction with the device. If the Customer acquired the software independently from a device, the Customer may only resell the software (i) if it gives up all possession of the software and the back-up copy and (ii) subject to the condition precedent that the buyer accepts these GTS. Multi-user licenses may only be resold together. In case of a resale, the Customer is responsible for compliance with all applicable export regulations and shall indemnify Us from any and all claims and liabilities upon first demand.
- 10.6 We are not obligated to provide the source code. Software maintenance and support are not covered by scope of the contract; the liability for defects in accordance with these GTS remains unaffected.

11. Retention of Title

- 11.1 The delivered goods (reserved goods) remain Our property until all claims under the respective purchase contract are paid.
- 11.2 The goods which are subject to retention of title may not be pledged to third parties or transferred as security prior to complete payment of the secured claims. The Customer shall inform Us in writing immediately if an application for the opening of insolvency proceedings is filed or in case third parties are attempting to seize goods which are Our property.
- 11.3 If the Customer breaches the contract, in particular fails to pay the due purchase price, We may rescind the contract in accordance with statutory law and/or request surrender of the goods on the basis of the retention of title. The request to surrender the goods does not simultaneously include the declaration of rescission. Rather, We may only request surrender of the goods and reserve the right to rescind the contract. If the Customer fails to pay the due purchase price, We may only assert these rights if We have previously unsuccessfully set a reasonable grace period for payment for the Customer, or if a grace period is not required pursuant to statutory law.
- 11.4 Until revocation (cf. section 11.7 below), the Customer may resell and/or process the reserved goods in the ordinary course of business. In this case, the following terms apply supplementarily.
- 11.5 The retention of title covers products arising through the processing, mixing or combination of Our goods, in their full value, and We are deemed manufacturer. If title of third parties survives in case their goods are processed, mixed or combined, We acquire joint ownership prorated to the invoice amounts of the processed, mixed or combined goods. Apart from that, the arising product is subject to the same terms as the reserved goods.
- 11.6 The claims against third parties arising from the re-sale of the goods or the arising product are hereby assigned to Us as security by the Customer in total or in proportion to Our ownership share pursuant to the preceding paragraph, where appropriate. We accept the assignment. The duties of the Customer set forth in Section 11.2 also apply with respect to the assigned claims.
- 11.7 The Customer remains authorized to collect the claim in addition to Us. We undertake not to collect the claim as long as the Customer meets its payment obligations vis-à-vis Us, its financial capability is not impaired and We do not assert the retention of title by exercising a right pursuant to section 11.3. However, if this is the case, We may ask that the Customer informs Us about the assigned claims and their debtors, provides all data necessary for collection and the associated documentation and informs its debtors about the assignment. Moreover, in this case, We may revoke the right of the Customer to resell and process the reserved goods.
- 11.8 If the realizable value of the security exceeds Our claims by more than 15%, We will release securities at Our choice upon request of the Customer.

12. Data Protection

The provided Customer data will be stored and processed by Us in accordance with statutory law for purposes of performing this contract, i.e. to the extent necessary to establish and execute the underlying contractual relationship and/or additional arrangements between Us and the Customer.

13. Safety Regulations and Provisions of Medical Device Law

- 13.1 The Customer is (i) responsible for compliance with national laws, regulations and health and safety legislation, in particular with respect to approval, installation, operation, maintenance and repair of the delivery items; and (ii) obligated to comply therewith. It shall indemnify Us from and against all claims arising from the failure of the Customer to comply with such laws.
- 13.2 Within its sphere of control the Customer will ensure that the requirements of the German Medical Device Act (MPG) are met. In particular, it shall ensure that products are handled exclusively by individuals who have the relevant professional qualifications. It will ensure that Our medical devices are not combined with products of other manufacturers unless such a combination is expressly approved by Us. Apart from that, any delivered medical devices and medical devices or non-medical devices from the Customer's stock are combined only on behalf of and upon instructions of the Customer. We do not place the combination on the market within the meaning of Section 10 MPG. To the extent the Customer resells medical devices within the scope of its business operations it shall insofar also ensure an appropriate induction of the buyers. It will also ensure that only individuals qualified pursuant to Section 31 MPG undertake such measures. The Customer shall cooperate within the scope of the medical devices vigilance system provided in Section 29 MPG and comply with the reporting obligations set forth therein. In case of occurrences which led to a death or a material deterioration of the health of a patient, user or other person, and in case of occurrences which could have led to one of the aforesaid events without corresponding remedy, it shall provide all information relevant in this context. This includes in particular the type of product; the catalogue number; series or batch numbers, where applicable; information about the devices and/or accessories connected to the product; details of the occurrence including date and consequences for the patient and the user.

14. Applicable Law/Venue

- 14.1 These GTS and all legal relationships between the Customer and Us are solely subject to German law excluding its conflict of laws regulations. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Law, CISG) does not apply.
- 14.2 The venue for all disputes arising under the contractual relationship is our corporate seat. Alternatively, We may file suit at the place of general jurisdiction of the Customer.