

GENERAL CONDITIONS OF SALE

VERSION 05-01-2023

SCOPE

1. These general conditions of sale (hereinafter referred to as "GCS") shall apply to all products, accessories or services ("Goods") that are sold by the seller ("Seller") to the customer ("Customer").
2. GCS, together with Seller's specific conditions contained in its order confirmation or contract of sale ("Order Confirmation") and only such other documents, as are specifically incorporated herein by reference, constitute the entire agreement between Customer and Seller, and supersede, in their entirety, any other conflicting terms and conditions proposed by Customer and any oral or written communications that are not expressly incorporated herein.
3. Agreements entered into between Customer, or its agents and third parties shall only become valid upon Seller's express written confirmation.
4. Any exception or modification to the GCS, which take the form of Specific Conditions and will only, be valid if made in writing, accepted and signed by the legal representatives of the parties, these prevailing on the first.
5. Will void any conditions or specifications that the Customer will enter into any kind of documentation that are conflicting with the provisions of the General or Special Conditions.
6. In the absence of a clause to the contrary, documentation, catalogues and estimates are sent for information purposes only, and Seller's offers are not binding without Order Confirmation.
7. No additions to or variations from the terms hereof, whether set forth in Customer's purchase order or in any other documents, including shipping documents, shall be binding upon Seller unless expressly agreed in writing by Seller.
8. If any of GCS or part thereof shall be determined to be void, unenforceable or illegal in whole or contained in part, such determination shall not affect the validity of the other terms and conditions herein.
9. In case of conflict between the provisions in the Order Confirmation and the wording of the present GCS the provisions in the Seller Order Confirmation shall prevail.

OFFERS

10. Preliminary offers and quotes are valid for 1 month. The Goods supplied are only the equipment precisely specified in the preliminary offer or quote. The sales agreement is not valid until the Seller has expressly accepted the purchase order.
11. If the Customer's Order or Seller's Order Confirmation is not in Euros the validity of 1 month doesn't apply.
12. The delivery time of the offer is only valid after Seller's order confirmation.
13. The Customer is solely responsible for the selection of the product under the purchase and sale as well as the use or function intended. Consequently (and in accordance with the stipulations in catalogs, price lists and / or general product information of Seller), Seller is not responsible and does not guarantee that the product is suitable for technical applications required by the Client, or to range, total or partial, of the objectives pursued by it when making your purchase.

ORDERS

14. Unless disputed by the Customer within 3 working days of the Seller's order confirmation receipt, the terms and conditions set out in the Seller's order confirmation shall be deemed as accepted.
15. Minimum invoicing is 200 €.
16. Manufacturing tolerances specified are assumed before any surface treatment; if a different understanding is desired it must be clearly indicated and specified in the customer's drawings.
17. The manufacture of metallic structures follows the dimensional tolerances of the EN1090 standard, except for the manufacture of profiles in profiling lines, which obeys the dimensional tolerances in accordance with the EN10162 standard. In the case of product-specific CE marking, the dimensional tolerances of the specific standard will be respected.
18. Inclinations of lighting column arms are assumed before any load is applied to the arm (e.g. a luminaire); thus it is up to the customer to ensure whether the inclination changes after any load applied;
19. If the order is cancelled, the Customer will be liable for the cost of the services already performed and a cancellation fee of at least 10% of the amount of the contract shall be payable and still matter to forfeiture of advance payment of the price in favor of Seller, as compensation for the non performance of the business.
20. The cancellation of the order by Seller only and only imports the return of the amounts advanced by the Customer in respect of advance payment of the price, to the exclusion of any other liabilities.
21. All requests for additional work or order modification requests must be made in writing. Any change or modification to the contract will result in a new design, a new quote being issued and an amendment to the contract duly signed by both parties. If the changes result in extra cost to the Seller the Customer will be responsible for it.
22. Under no circumstances may the terms and conditions for additional supplies be more prejudicial to those in the initial order. Any postponement of delivery requested by the Purchaser and agreed to by the Seller will imply storage charges and financial cost (as described in the payment terms) to be paid by the Customer.
23. All information and data contained in the Customer's general product documentation and price lists shall be binding only to the extent that they are by reference in writing expressly included in the Contract.
24. Documentation regarding export (example of Certificate of Origin and EUR1) need to be requested at the moment of the purchase order.

PROPERTY AND NO-DISCLOSURE

25. The Seller shall retain all industrial property rights to any of its projects, studies and documents, which may not be disclosed or exercised without its written permission. The patented and unpatented technology and know-how used in the products and services shall remain the exclusive property of the Seller, in addition to all the industrial and intellectual property rights related to the products and services. The Purchaser is merely granted a non-exclusive license to use the products.
26. The Customer shall not disclose any information, equipment, models, plans, specifications, data, technical formulas or designs that it may acquire during the term of this contract and shall regard them as strictly confidential. The scope of the Customer obligation under this clause also includes its employees. However, this clause shall not be applicable if the information disclosed is already in the public domain or if the Customer was aware of it or obtained it from third parties by legitimate means. Likewise, the Seller shall regard any information he obtains during the performance of this contract as strictly confidential and may not disclose it to third parties either during the term of this agreement or after the termination thereof.
27. The Seller shall retain ownership of the goods until the purchase price and all other amounts owed have been paid in full. The risks of loss or deterioration of the goods shall pass to the Customer at the time of delivery, along with the liability for any damages they may cause. If the Seller is regarded as a subcontractor in an agreement, the Customer shall notify this to the end-purchaser, together with the contents of this retention clause. In all cases, the Seller expressly reserves the right to require direct payment of the amounts owed.

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ACCEPTANCE TESTS

28. Acceptance or Assembly tests provided for in the Purchase Order shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. If the Purchase Order does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture.
29. The Seller shall notify the Customer in writing of the Acceptance or Assembly tests in sufficient time to permit the Purchaser to be represented at the tests. If the Customer is not represented, the test report shall be sent to the Customer and shall be accepted as accurate.
30. If the Acceptance or Assembly tests show the Product not to be in accordance with the Contract, the Seller shall without delay remedy any deficiencies in order to ensure that the Product complies with the Order. New tests shall then be carried out at the Customer's request, unless the deficiency is insignificant.
31. The Seller shall bear all costs for acceptance tests carried out at the place of manufacture. The Customer shall, however, bear all travelling and living expenses for its representatives in connection with such tests.

DELIVERY AND TRANSPORT

32. The delivery terms are calculated from the latest of the following dates: the date of acknowledgement of the Order Confirmation by the Customer, the dates on which the Seller receives the information or approval of Drawings or Product, the deposit or the supplies that the Customer has undertaken to supply.
33. All delivery dates are indicative of the week of delivery.
34. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the Contract. If no trade term has been specifically agreed, the delivery shall be Ex-Works. If, in the case of delivery Free Carrier (FCA), the Supplier, at the request of the Customer, undertakes to send the Product to its destination, the risk will pass to the customer not later than when the Product is handed over to the first carrier.
35. All delivery dates with transport under Seller's responsibility are an estimation of the date of delivery. All delivery dates regarding sea transport are an estimation given by the shipping agent and depend on the availability of container at the moment of the load. The Seller can't be responsible for late deliveries that occur after the departure from our factory.
36. Orders may not be cancelled on the grounds of late delivery unless as stated in Clause 38 and 40.
37. The Seller is automatically released from any commitment regarding the delivery date if the Customer does not abide by the payment terms of all supplied and to be supplied order or in the event of force majeure.
38. Force majeure includes any circumstances that are beyond the Seller's control and impede its normal functioning at the product manufacturing and shipping stage; In the case of events such as lock-outs, total or partial strikes preventing the smooth running of our company or that of one of our suppliers, subcontractors or carriers, interruption of transport, power supplies, raw materials or spare parts, epidemics, wars, requisitions, government acts, seizures, fires, adverse weather conditions, natural disasters, machinery breakdowns, transport delays or any other event resulting in working hours being lost; When the information to be supplied by the Purchaser does not reach us in time and in the case of modifications or new specifications.
39. If the Seller anticipates that he will not be able to deliver the Product at the time of delivery, he shall forthwith notify the Customer thereof in writing with at least 5 working days' notice, stating the reason and, if possible, the time when delivery can be expected. If the Seller fails to give such notice, the Customer may claim compensation according to Clause 37.
40. In the event of failure to meet the contractual delivery time, a 0.5% penalty may be applied for each full week of delay after the end of the second week, up to a maximum penalty of 5% of the factory or retail value of the equipment delivered late. The penalties are in the nature of assessed damages and interest and exclude any other form of indemnification. The Purchaser shall forfeit its right to liquidated damages if he has not lodged a claim in writing for such damages within 1 week after the time when delivery should have taken place.
41. If the delay in delivery is such that the Seller is entitled to maximum liquidated damages under Clause 37 and if the Product is still not delivered, the Seller may in writing demand delivery within a final reasonable period which shall not be less than one week. If the Supplier does not deliver within such final period and this is not due to any circumstances which are attributable to the Customer, then the Customer may by notice in Writing to the Seller terminate the Contract in respect of such part of the Product as it cannot in consequence of the Seller's failure to deliver be used as intended by the parties.
42. If the Customer terminates the Contract he shall be entitled to compensation for the loss he suffers as a result of the Seller's delay, including any consequential and indirect loss. The total compensation, including the liquidated damages which are payable under Clause 37, shall not exceed 15 per cent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.
43. The Purchaser shall also have the right to terminate the Contract by notice in writing to the Supplier if it is clear from the circumstances that there will be a delay in delivery which, under Clause 37, would entitle the Customer to maximum liquidated damages. In case of termination for this reason, the Customer shall be entitled to maximum liquidated damages and compensation under Clause 39.
44. If the Customer anticipates that he will be unable to accept delivery of the Product at the time for delivery, he shall forthwith notify the Seller in writing thereof, stating the reason and, if possible, the time when he will be able to accept delivery. The Seller shall arrange for storage of the Product at the risk and expense of the Customer. The Seller shall also, if the Customer so requires, insure the Product at the Customer's expense.
45. At the time of delivery the Customer must check the shipment and note in the shipping document any reservations and file any pertinent claims against the carrier and in writing inform the Seller in 2 working days. The Customer, consignee or any other representative of the Customer is responsible for unloading the goods as the driver is not allowed to do so himself, if the unload is contracted the Customer must give support to the driver. The Customer should be available to receive the material according the normal schedule of delivery, from Monday to Friday between 8:00 and 17:00 in the address provided.
46. The total time of delivery can't exceed 3 hours for a full truck order or 45 minutes for a partial shipment.
47. Waiting time in excess of 30 minutes by a driver before and after unloading will be billed to the Purchaser at a rate of 60€ per hour.
48. The Seller disclaims all liability for the delivered goods unless a representative of the Purchaser is present and makes written reservation at the time of the delivery.

CLAIMS

49. By signing the delivery note, the CUSTOMER or his representative, certifies that he has checked the delivered goods, their quantity, quality and compliance with the order.
50. Any defects or non-compliance must be reported by registered mail with acknowledgement of receipt within 5 working days as of the date of delivery. Claims made more than 5 days after the delivery date will not be accepted. Claims regarding the damage of the product during transport or missing parts will only be accepted with a reservation on the delivery at the moment of the delivery.
51. Goods may only be returned with written consent of the seller, in perfect condition and in their original packaging.
52. Unless expressly agreed otherwise by the Seller, the transport charges for the return of goods will be paid by the Customer. However, when the fault or error is not caused by the Customer, the credit note for the returned standard equipment will be 80% of the invoiced amount.
53. Returns of specifically manufactured equipment will not be accepted.
54. The Seller shall not be liable for defects arising out of materials provided or a design stipulated or specified by the Customer.

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55. The Seller shall not be liable for defects caused by circumstances, which arise after the risk has passed to the Customer, defects due to materials provided by the Customer, defects due to faulty maintenance, stock conditions, incorrect installation or faulty repair by the Customer or to alterations carried out without the Seller's consent in writing. The Customer shall neither be liable for normal wear and tear nor for deterioration.
56. The Seller's liability shall be limited to defects which appear within a period of one year from delivery.
57. When a defect in a part of the Product has been remedied, the Seller shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product. For the remaining parts of the Product the period mentioned in Clause 53 shall be extended only by a period equal to the period during which and to the extent that the Product could not be used as a result of the defect
58. The Seller shall not be liable for any loss of production, loss of profit and other indirect loss. This limitation of the Seller's liability shall not apply if he has been guilty of Gross Negligence.
59. The Seller shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Customer. Nor shall the Seller be liable for any damage to products manufactured by the Customer or to products of which the Customer's products form a part.
60. Regardless of stated in the preceding paragraphs, the Seller's liability for any defects or damage claimed by the Purchaser / Customer, sometime in, may not exceed 20% of the total order value.
61. If the Seller incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Customer shall indemnify, defend and hold the Seller harmless. If a claim for damage as described in this Clause is lodged by a third party against one of the parties, the latter party shall forthwith inform the other party thereof in writing.
62. The Seller and the Customer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product. The liability between the Supplier and the Purchaser shall however be settled in accordance with Clause 89 and 90.
63. Where the Goods are non-conforming the Seller shall at its option and sole discretion: (A) replace the goods with conforming goods without additional expenses to both parties; (B) repair the goods without additional expenses to both parties; (C) Reimburse to the Customer the price paid for the non-conforming goods and terminate the GCS as regards to those goods; (D) Reimburse the Customer the fair depreciation of the non-conforming goods determined as per the quality claim provision of the goods. Any other rights or claims that Customer may have in relation to non-conforming goods are excluded.
64. After receiving written confirmation, by email or registered letter, the Seller has to reply in: (A) 1 week if the Customer supplies all information needed to evaluate the claim; (B) 2 weeks if the Customer doesn't supply all information needed to evaluate the claim; in the case the claim is accepted the Seller has 1 week to inform the Customer which option he will use as per Clause 60.
65. Metalogalva is not liable for any color discrepancies, such as the same RAL in repeated services, supply of products by different suppliers or different types of application (powder painting, spray painting, etc), since technically the color mixture may vary according to type, configuration, resolution and calibration, such variations being accepted as tolerant in the requested service provision. In case the Customer informs Metalogalva, in writing, that ensuring the same color is an essential condition for the provision of services, he/she must present Metalogalva with a sample of the color already applied and its respective result, in order to meet the required demand. In case the Customer does not comply with this procedure, Metalogalva's responsibility regarding color differences is exonerated.

WARRANTY

66. Unless otherwise expressly stipulated by the Customer, the equipment is presumed to be used at the place of delivery, i.e. the technical features of the delivered equipment are defined according to the place of delivery.
67. The warranty is only applicable if the equipment has been installed in accordance with good practice of installation, storage, maintenance and servicing conditions have been complied with.
68. No warranty is granted for equipment that is used with other components that were not complied with.
69. In order to benefit from the warranty, the Customer must inform the Seller of the use of the equipment before the order is placed, immediately report any alleged defects in writing including as much evidence as possible and assist the Seller as much as possible to identify and remedy the defects. The Customer must not repair the equipment itself, arrange for it to be repaired by a third party, modify any item of the equipment or arrange for it to be modified by a third party, except with the Seller's express consent.
70. The Seller's liability is limited to the replacement of defective goods, to the exclusion of any other repairs and any other claims of tangible or intangible damages, whether of a direct or indirect nature.
71. The Seller shall remedy the defects at its own expense and with due care, reserving the right to modify the mechanisms of the equipment, if necessary, in fulfillment of its obligations. Work covered by the warranty will generally be carried out in the Seller's workshops once the equipment or the faulty parts have been duly returned.
72. If the material is installed with defect the Customer must assume the cost of returning the material back to the Seller's workshops with no liability to the Seller.
73. The risks covered and the commissioning, installation, operating, servicing and maintenance conditions of the equipment shall be determined by negotiation.

REPAIR WORK FOR INSTALLED PRODUCTS

74. The Customer shall without undue delay notify the Supplier in writing of any defect which appears within 5 working days after they are detected. The notice shall contain a description of the defect. If the Customer fails to notify the Seller in writing of a defect within the time limits set forth in this Clause, he shall lose its right to have the defect remedied.
75. Where the defect is such that it may cause damage, the Customer shall immediately inform the Seller in writing. The Customer shall bear the risk of damage to the Product resulting from its failure so to notify. The Customer shall take reasonable measures to minimize damage and shall in that respect comply with instructions of the Seller.
76. On receipt of the notice under Clause 70 the Seller shall at its own cost remedy the defect. The time for remedial work shall be chosen in order not to interfere unnecessarily with the Customer's activities and will be planned by the Seller and with time to get and prepare all conditions needed for the remedy.
77. Repair shall be carried out at the place where the Product is located unless the Seller deems it more appropriate that the Product is sent to him or a destination specified by him.
78. When the defect can be remedied by replacement or repair of a defective part and if dismantling and re-installation of the part do not require special knowledge, the Seller may demand that the defective part is sent to him or a destination specified by him, in such case the Seller shall have fulfilled its obligations in respect of the defect when he delivers a duly repaired part or a part in replacement to the Customer.
79. The Customer shall at its own expense provide access to the Product and arrange for any intervention in equipment other than the Product, to the extent that this is necessary to remedy the defect.
80. Unless otherwise agreed, necessary transport of the Product or parts thereof to and from the Seller in connection with the remedying of defects for which the Seller is liable shall be at the risk and expense of the Seller. The Customer shall follow the Seller's instructions regarding such transport.
81. Unless otherwise agreed, the Customer shall bear any additional costs which the Seller incurs for remedying the defect caused by the Product being located in a place other than the destination stated at the formation of the Contract for the Supplier's delivery to the Customer or - if no destination has been stated - the place of delivery.

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82. Defective parts which have been replaced shall be made available to the Seller and shall be its property.
83. The Seller can not be responsible for any cost that was not previously agreed between the Seller and the Customer.
84. If the Customer has given such notice as mentioned in Clause 70 and no defect is found for which the Seller is liable, the Seller shall be entitled to compensation for the costs he incurs as a result of the notice.
85. If the Seller does not fulfill its obligations under Clause 72, the Customer may by notice in writing fix a final reasonable period for completion of the Seller's obligations, which shall not be less than 3 weeks. If the Supplier fails to fulfill its obligations within such final period, the Purchaser may itself undertake or employ a third party to undertake necessary repair work at the risk and expense of the Supplier.
86. Where the Product has not been successfully repaired the Customer shall be entitled to a reduction of the purchase price in proportion to the reduced value of the Product, provided that under no circumstances shall such reduction exceed 15 per cent of the purchase price, or where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Product or a substantial part of it, the Customer may terminate the Contract by notice in writing to the Seller in respect of such part of the Product as cannot in consequence of the defect be used as intended by the parties. The Customer shall then be entitled to compensation for its loss, costs and damages up to a maximum of 15 per cent of that part of the Customer price which is attributable to the part of the Product in respect of which the Contract is terminated.
87. The Seller shall not be liable for defects in any part of the Product for more than one year from the end of the liability period or from the end of any other liability period agreed upon by the parties.

PAYMENT

88. Late payment shall imply a penalty of at least 1.5 times the official rate of interest, at the rate applied by the European Central Bank in its most recent refinancing operation, plus 7 percentage points, without affecting the due date of the debt. Failure in payment of any amount due and payable shall automatically result in an event of default and all the remaining amounts owed, even those due at a later date shall become immediately due and payable. If a Purchaser fails to fulfill its obligations (late payment or a check that cannot be cashed), it may be refused purchase, unless it pays cash or provides sufficient warranties. No rebates or discounts shall be granted for payments in cash or early settlement.
89. If the Customer has any amount of due payment the Customer will lose its right to claim and activate any warranty till the due amount is paid.
90. In case of late payment and in case the Customer fails to give an agreed security by the stipulated date the Seller may, after having notified the Customer in writing, suspend its performance of the Contract until he receives payment or, where appropriate, until the Customer gives the agreed security.
91. In the event of late payment of an invoice, and checking if its continuation after the questioning of the Customer for payment by the Seller, Customer shall pay to Seller, in addition to the amount relating to the principal and interest debt, an amount equal to 15% of the outstanding amount by way of penalty clause.
92. The Seller reserves the right, if the Customer for reasons that are attributed to him, missing deadlines defined in the Purchase Order to apply the penalties for storage, below, without prejudice to compensation for damage and excess the right of termination of the Purchase Order:
 - 92.1.1. If the Contractor has not completed their obligations within the prescribed time shall be subject to a penalty corresponding to 0.5% (half percent) per calendar day of delay value, calculated on the value of the position of the Purchase Order in that integrates the property or properties in default;
 - 92.1.2. If the breach in question exceeds the ten (10) calendar days, the penalty to be applied from the end of that period shall be increased to 1% (one percent), calculated on the same terms as the previous point, up to 10%.

DISPUTES AND APPLICABLE LAW

93. All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
94. The Contract shall be governed by the substantive law of the Seller's country.