

# General Commercial Terms and Conditions

## § 1 General Terminology

- 1.1 MEA Verzinkungs GmbH, [ ], is known in the following General Commercial Terms and Conditions by the term "User". The contractual partner of the User is the "Customer", the contract to be drawn up is the "Contract".
- 1.2 The subject of the contractual obligations of the User, in so far as these are directed at the sale and supply of items, is the "Supply". In each case "Services" relates to the services to the Customer named in the Contract or in the order confirmation of the User, irrespective of whether they are performed in connection with the supply of products or unrelated to them.

## § 2 Validity of the Conditions

- 2.1 The Supplies/Services and offers of the User are exclusively delivered based on these General Commercial Terms and Conditions. These thus also apply to all future business relationships, even if these are not expressly renegotiated. These conditions are deemed to be accepted, at the latest, upon receipt of the Supply/Service. They herewith override any counter-confirmations on the part of the Customer with reference to his business and/or purchase conditions.
- 2.2 All agreements made between the User and the Customer for the execution of the contract must be submitted in writing. Amendments and additions to the contract and/or its appendices as well as dispensing with the requirement for the written form must be submitted in writing. There will be no verbal agreements.

## § 3 Orders and Acceptance of Orders

- 3.1 Offers of the User are without commitment and non-binding. The documents, information and descriptions of services belonging to the offer are approximate values normal for this branch of industry. The User has the right to sell the Supply on to a third party between the offer and acceptance. Orders of the Customer are only binding for the User if they were expressly confirmed in writing by the User or if the User has provided the Supply/Service. A confirmed order may only be amended by the Customer with approval in writing and taking into consideration the conditions imposed by the User. This also applies to the modification of these General Commercial Terms and Conditions.
- 3.2 The Supply and/or Service – if the Service is aimed at achieving a specific economic success or at the construction of factories – must only have the characteristics mentioned in writing in the Contract. These characteristics form the definitive description of the Supply/Service. The User has the right to change the characteristic unilaterally, if this is done due to legal requirements or if it represents a technical improvement and its use assumed under the Contract is not affected by this.
- 3.3 Should the User make a sample or a specimen available to the Customer prior to or after the signing of the Contract, these do not have to have the properties as per the Contract. Sentence 1 applies accordingly to drawings, pictures, dimensions, weights and other data which the User makes available to the Customer prior to or after the signing of the Contract.
- 3.4 The conformity of material and semi-finished products ordered by the Customer to contractual specifications or to drawings and samples submitted will only be checked by the User after written agreement with the Customer. The Customer is himself responsible for the correctness and completeness of the documents and of information to be made available to the User.
- 3.5 The User reserves all rights without limitation, on all cost estimates, drawings, samples, specimens, diagrams or other documents ("Documents") which he may make available to the Customer. Without prior written agreement of the User, the Customer has the right to make available to third parties

neither the Documents themselves nor their contents. At the demand of the User the Customer is obliged to issue all Documents immediately and in their entirety to the User if in the normal course of business they are no longer required by the Customer or, if in the end, no order is placed by the Customer.

#### **§ 4 Advertising, Marking**

In the case of public comments by the manufacturer, the User, an employee or other agent on the characteristics of the Service or Supply (e.g. weight, dimensions, utility values, capacity, tolerances and technical data) in particular in advertising or when marketing, it is assumed that these comments were not causal in the signing of the Contract by the Customer.

#### **§ 5 Pricing**

- 5.1 The User's prices are net prices – ex works weighed galvanised. Freight costs, value added tax and other costs associated with the execution of the Contract ("Additional Costs") are not included. If and in so far as not otherwise regulated for in the Contract, all of the User's price information is in Euros. The basis for the price calculation in the case of hot galvanising is the Customer's weight card. The prices are made up of the basic price and metal supplement.
- 5.2 If the User has borne Additional Costs, he may demand reimbursement from the Customer. This only applies to freight costs if the User is obliged to pay the transport, contrary to para. 5.1.
- 5.3 The price is the price named by the User or if this has not been quoted individually, the price listed in the current price lists of the User at the time of the order. The User has the right, after advising the Customer in good time and prior to undertaking the Supply/Service, to increase the agreed price in such a way as is required due to the general price development outside the User's control (as in the case of fluctuations in the rate of exchange, currency regulations, changes in Customs control, increase in material or manufacturing costs) or due to a change of Supplier. Should it transpire after placing the order that additional work is required for the order to be carried out properly, such as in particular the removal of old galvanising and other deposits on the galvanised article, making openings in tube structures or the hollow body and/or repeated dipping, the User will only undertake this additional work after agreeing with the Customer on the method of execution and reimbursement of the relevant costs. If necessary, binding agreed Supply and Service dates will be extended accordingly in this case.
- 5.4 If the User, without recognising any legal obligation, takes back a Supply out of goodwill, the User may claim an expense allowance of 10% of the invoice value for the relevant Supply. The amount must be reduced if the Customer can prove that the actual costs to be charged are lower than the lump sum amount according to sentence 1.

#### **§ 6 Supply/Service and Delay in Supply/Service**

- 6.1 Supply/Service dates or deadlines may be agreed as either binding or non-binding.
- 6.2 An agreement on Supply and Service times is only binding if the User has declared specifically and in writing that he wishes to be liable for exceeding the agreed date/deadline.
- 6.3 Delays in Supply and Services due to force majeure or due to events which make the Supply/Service not just temporarily considerably difficult or impossible for the User – this includes in particular strike, lock-out and government regulations even if they occur with the User's suppliers or their sub-suppliers – are not the responsibility of the User even in the case of bindingly agreed dates and deadlines. They give the User the right to postpone the Supply/Service for the period of the disruption plus a reasonable initial period, or due to the not yet fulfilled part, to withdraw either entirely or partially from the Contract. Sentences 1 and 2 apply accordingly in the case of delays in Supply or Services due to documents and information, which were necessary in the opinion of the

User for the Supply/Service, not being given in good time to the User by the Customer prior to the Supply/Service.

- 6.4 If the delay in Supply/Service lasts for longer than one month, the Customer has the right, after a reasonable time limit, to withdraw from the Contract, with regard to the not-yet-fulfilled part.
- 6.5 In so far as the User is responsible for the non-adherence to bindingly agreed deadlines and dates and is in default, the Customer may claim default compensation amounting to 0.5% of the invoice value of the Supply/Service for every full week of the delay, however up to a maximum of 5% of the invoice value of the Supply/Service. The amount must be reduced if the User proves that the actual damages must be assessed lower than the lump sum according to sentence 1. Any claims over and above this are excluded, unless the delay is deliberate or due to gross negligence on the part of the User.
- 6.6 The User has the right at any time to partial Supplies or Services, unless the Customer is not interested in partial Supply or Service. The User has the right to transfer the rights and obligations from the Contract to a third party, including the provision of the Supply/Service.
- 6.7 If a Supply/Service is provided after call-off by the Customer, the Customer is obliged to announce the call-off in writing to the User with a firm description of the Supply/Service and stating the Supply/Service date, at least four weeks prior to provision of the Supply/Service.
- 6.8 In principle the place of Supply/Service is the factory and/or the despatch warehouse of the User ("ex works"). If the goods are delivered ex works, the risk of loss is transferred to the Customer at the point in time at which the User advises the Customer that the goods are ready for collection.
- 6.9 If the goods are supplied free carrier (FCA), the point of hand-over is the location of the User.
- 6.10 If the User despatches the goods at the request of the Customer, the transport risks are at the expense of the Customer, irrespective of who is paying the freight costs. This applies in particular to the despatch or transport by the User, without a delivery liability being deemed as agreed with the Customer. Should despatch be delayed as a result of circumstances for which the Customer is not responsible, the loss risk is transferred to the Customer from the day the goods are ready for despatch. Should the Customer default on acceptance, the loss risk is transferred to the Customer at the time at which the User offers hand-over.
- 6.11 If the User bears the freight costs either in full or in part, the User retains the right to specify both the method of despatch and the type of despatch. If the Customer requests a different method and/or type of despatch and if the User conforms to this request, the Customer will bear the difference in the costs between the type and/or method of despatch requested by him and the type and/or method of despatch specified by the User. Otherwise para. 6.10 applies accordingly.
- 6.12 In the cases of para. 6.10, the User will undertake storage at the Customer's risk and expense.
- 6.13 If Supplies/Services take place free delivered building site, the Customer must ensure usable access roads, i.e. roads which can be used by a loaded heavy tractor-trailer unit. Any possible delays, costs, damage and off-loading times of over one hour per tractor-trailer unit are for the Customer's account.

## **§ 7 Right of Lien and Retention of Title**

- 7.1 The Customer will grant the User right of lien to the items given to the User for galvanising. The right of lien may also be asserted due to claims from work carried out previously and other services of the User, as long as they are in connection with the item submitted. The right of lien only applies to other claims resulting from the business relationship with the Customer as long as these are undisputed or have been legally established. P. 1 – P. 3 apply accordingly with regard to the

contingent right of ownership of the Customer to the items submitted to the User, which were supplied to the Customer with retention of title. The User has the right to acquire ownership through conditional waiver of payment.

- 7.2 The securities listed in the following paragraphs will be granted to the User until all claims are fulfilled (including all balance payments from the running account), to which the User is entitled now or in the future, for any legal reason, from the Customer. The User will release these securities upon request at his discretion, as long as their value effectively exceeds the total and the value of all claims by over 20%.
- 7.3 The User will remain the owner of goods supplied. Any treatment or re-designing will always take place for the User as manufacturer, however without any obligation for him. Should the User's ownership cease through amalgamation of the goods, it will then be agreed that the Customer's ownership of the unit will be transferred pro rata according to the value (invoice value) to the User. The Customer will safeguard the User's ownership without remuneration. Goods of which the User is entitled to ownership will be known hereinafter as "reserved goods".
- 7.4 The Customer has the right to process and sell the reserved goods in regular business, as long as he is not in default with the User. Pledges or transfer of ownership by way of security are not permissible. The Customer will now transfer any claims resulting from selling on or any other legal reason (insurance, illegal dealing) with regard to the reserved goods (including all balance claims from the running account) for the sake of security in their entirety. The User empowers in a revocable manner the Customer to call in any claims transferred to the User for his account in his own name. This collection authority may only be revoked if the Customer does not properly fulfil his payment obligations. At the relevant request by the User, the Customer will disclose the transfer and give him the required details and information.
- 7.5 In the case of seizure of the reserved goods by third parties, the Customer will point out the User's ownership and advise him without delay. Costs and damages will be borne by the Customer.
- 7.6 In the case of the Customer acting in contravention of his obligations – in particular payment default – the User retains the right to take back the reserved goods or if necessary to demand transfer of the Customer's claims for restitution against third parties. No withdrawal from the Contract is contained in the taking back and in the attachment of the reserved goods by the User – as long as §§ 488-507 of the Civil Code are not applicable.
- 7.7 If and as long as reserved goods are built into the premises of a third party as a constituent part by the Customer, then the Customer will already transfer the claims arising, against the third party or against whomsoever it concerns, for remuneration amounting to the value of the reserved goods with all supplementary rights including one for provision of a security mortgage over and above the rest; the User will accept the transfer. The Customer is authorised to effect the registering of a security mortgage but is obliged at the demand of the User to transfer the rights to the User (c/f §§ 1153, 1154 para. 3, 873, Civil Code). Cash payments, bank transfers or payments by cheque, which are made against remittance of a bill of exchange, drawn up by the User and accepted by the Customer, are only valid as fulfilment in accordance with sentence 1, if the bill of exchange is redeemed by the drawee and thus the User is released from the bill of exchange liability. The agreed right of ownership (irrespective of any continuing agreements) remains therefore in favour of the User until the bill of exchange is redeemed.

## **§ 8 Conditions of Payment**

- 8.1 The Customer must pay for Supplies and Services of the User after their completion within 30 days from the date of invoice. If and as long as no claims of the User against the Customer from previous Supplies/Services are still open, the User will grant the Customer 2% discount from the net value of the goods upon payment within 14 days from the invoice date. The punctuality of the payment is dependent upon the date of receipt of the money and the unconditional credit to the User's account.

- 8.2 Payment must be made by transfer to the User. The User is not obliged to accept a payment by cheque or bill of exchange; in any case the surrender of a cheque or bill of exchange is merely by way of fulfilment. Surrender does not lead to a delay of the claim. The costs associated with the redemption of a cheque or a bill of exchange are for the Customer's account. If the Customer's payments are made by payment methods which the Customer has secured by discounting an acceptance draft, then the payment claim does not expire until the bill of exchange has been redeemed by the Customer.
- 8.3 Should the Customer not fulfil his payment obligations within the period specified in para. 8.1 ("payment delay"), the User may demand due date interest amounting to 8% above the base interest rate applicable at the time and which the Federal Bank last publicised in the Federal Gazette.
- 8.4 In the case of delayed payment the User may demand a one-off payment of 5% of the invoice value as compensation for the administration costs arising. The amount must be reduced if the Customer can prove that the actual expenditure must be applied at a lower rate than the lump sum according to sentence 1.
- 8.5 Should the Customer be in default with a payment obligation or should circumstances arise through which the financial position of the Customer worsens or his credit status is affected, all other claims of the User on the Customer will become due immediately. In this case the User has the right to withdraw from the Contract and/or with prior written advice to the Customer, to withhold further Supplies/Services until full payment is made and/or there is a change in the circumstances according to sentence 1.
- 8.6 As long as there are no conflicting legal rulings, the Customer may only settle the User's claims with undisputed, legally established or decided counter-claims. The same applies to exercising the right of retention, including the rights from § 369 of the Commercial Code.
- 8.7 The User may, deviating from para. 8.1, also demand payment prior to execution of the Supply/Service. In this case paras. 8.3 and 8.4 cannot be applied.

## **§ 9 Liability for Quality Defects, Acceptance and Testing**

- 9.1 The User's liability for quality defects for Supplies – and for Services as long as the Service is aimed at achieving a specific economic success or the construction of factories – is governed by legal regulations, as long as no deviating ruling is made hereinafter.
- 9.2 The quality defect claims of the Customer lapse 12 months after Supply/Service. The period commences irrespective of whether the Customer knows of any defect in the Supply/Service, from the time of hand-over to the Customer.
- 9.3 The period for asserting quality defect claims for spare parts is limited to three months.
- 9.4 The Customer is obliged to inspect the Supply/Service directly after hand-over. The Customer must advise the User immediately in writing of any obvious defects during inspection of the Supply/Service, and any other defects immediately after their discovery, giving a description of the defect and the time of its discovery. If the Customer does not conform properly and punctually to this obligation to report, the Supply/Service is deemed to have been approved by the Customer. The Customer may only demand reparation from the User. The User may, by way of reparation, at his discretion undertake to repair the defect or supply a fault-free item. Should the reparation by the User fail, legal rulings will apply, provided that the Customer only has the right to withdraw from the Contract, if and in so far as the goods have not yet been built in as a component part of a premises. In this case the Customer is only entitled to reduce the purchase price. In the case of an insignificant fault, the right to reparation is excluded.

- 9.5 In the case of violation of a Supply/Service obligation by the User, which does not consist of a defect in the Supply/Service, the Customer is only entitled to withdraw from the Contract if the User is responsible for the violation of the Supply/Service obligation. The User is not responsible for the Supply/Service working fault-free in conjunction with other products.
- 9.6 In so far as there are no opposing legal rulings, quality defect claims by the User are excluded in the following cases:
- a) The Customer has had changes made to the Supply/Service by a third party or has processed the Supply/Service;
  - b) The Customer disregards the User's specific instructions for use in connection with the Supply/Service, in particular the enclosed or attached processing and/or assembly instructions, or he uses accessories or spares unknown to the User in connection with the User's Supplies/Services;
  - c) The Customer does not use the supply/Service for the contractually assumed purpose and/or for the normal purpose, does not assemble it perfectly or does not put the Supply/Service into operation correctly, taking into account current state of the art technology;
  - d) The Customer makes available to the User work pieces which have not been correctly hot galvanised.
- 9.7 If the Supply/Service is defective, the Customer may, provided there are no opposing legal rulings, only assert a claim for compensation for damages against the User under the following additional conditions:
- a) If and in so far as the User does not provide a Supply/Service which is due, or does not provide it as required under the Contract, the Customer must set in writing for the User a reasonable time-limit for the Supply/Service. The time-limit must include the explanation that the Customer will refuse to accept the Supply/Service after expiry of the time-limit. If the time-limit set by the Customer expires with no outcome, the claim for the Supply/Service is excluded.
  - b) Should the Customer withdraw from the Contract with the User due to a defect in the Supply/Service, the User may demand from the Customer that the latter should explain in writing to the User, within a period of 2 weeks from exercising the withdrawal, whether he is adhering to the withdrawal or whether instead he will demand compensation for damages. Should the Customer not make use of his right of choice vis-a-vis the User, the Customer's claim for compensation for damages will be excluded.
- 9.8 In so far as acceptance is agreed, the Customer is obliged to undertake this within one week after the User has advised completion. The Customer is also obliged to accept the Service if insignificant defects are to hand which do not particularly prevent usage.
- 9.9 In case the Customer, for reasons for which he is responsible, does not inspect or accepts the Service and does not complain about any significant defects within ten days after usage, the Service is considered to be accepted.
- 9.10 Should the Customer wish that the User carries out other tests for zinc coating than those scheduled in DIN 50976, No. 9, the type and extent of such tests must be agreed separately in writing between the parties. If there are no deviating written agreements, all tests will take place in the User's factory. A test in the presence of the Customer or his representative must be agreed separately in writing between the parties and must take place at the latest by the acceptance date in the User's factory.

## **§ 10 Amount of Damages**

- 10.1 Irrespective of the legal basis the User is liable for damages which can be traced back to a defect in the Supply/Service itself or to treatment or neglect, only to the extent of the damage typical under the contract and the predictable damage and only within the following limits:
- a) Unlimited in the case of intent or gross negligence by lawful representatives, an employee or other vicarious agents of the User;
  - b) limited to the invoice value of the Service in the case of culpable violation of significant contractual obligations (cardinal obligations) by the User, his lawful representative or other vicarious agents without intent or gross negligence.
- 10.2 The User is only liable for damages which can be traced back to the conduct of an employee or vicarious agent, if these persons have acted in the execution of their work. The User is also exempt from this liability if the damage is due to circumstances which, with the greatest of care he could not avoid and the consequences of which he could not avert (e.g. strike, force majeure).
- 10.3 The liability of the User is limited per incidence of damage for risks insured by the User, to the liability total of the company liability insurance taken out by the User.
- 10.4 The User is liable for the loss of data and programmes and/or their recovery, also only within the scope of 10.1 and 10.2 and also only if this loss could not have been avoided through reasonable preventative measures of the Customer, in particular the daily preparation of security copies of all data and "accuracy checks" programmes.
- 10.5 Any additional liability on the part of the User is excluded, as long as there are no conflicting legal rulings. In particular the User is not liable for violations of collateral obligations, lack of economic success, lost profits, indirect damages, consequential damages and damages from claims of third parties on the Customer.
- 10.6 The limit of liability according to paras. 10.1 to 10.5 does not apply to harm to the body, life and health.

## **§ 11 Commercial Patent Rights and Copyright**

- 11.1 If and in so far as a third party asserts justified claims against the Customer due to violation of a commercial patent right or copyright (hereinafter known as "patent rights") through a Supply/Service developed and/or provided by the User, the User is liable as follows as long as there are no opposing legal rulings:
- a) The User will at his discretion and at his expense either adduce a right of use for the developed and/or provided Supply/Service, alter the Supply/Service in such a way as to no longer be in violation of the patent right or exchange the Supply/Service if the use of the Supply/Service assumed in the Contract is not affected by this. If and in so far as the User cannot finally concede to the Customer the contractually owed right of usufruct through the measures named in sentence 1, the Customer has the right, after a reasonable time-scale, to withdraw from the Contract.
  - b) The User is only obliged to carry out the measures in a) sentence 1 if the Customer reports the claims being asserted by the third party to the User without delay in writing and with an indicative description of the violation, does not accept a violation and if the Customer unlimitedly grants to the User all decision making authorities on the legal defence and the carrying out of composition negotiations. Should the Customer cease to use the Supply/Service to reduce damage or for other significant reasons, he is obliged to point out

to the third party that no acceptance of a violation of patent rights is linked to the cessation of use.

- 11.2 The Customer's claims according to para. 11.1 are excluded if and in so far as the Customer is responsible for the patent right violation. The Customer's claims are further excluded if and in so far as the patent right violation is caused by special requirements of the Customer, by a usage which the User was unable to predict, or due to the fact that the Supply/Service was altered or was used by the Customer together with Supplies/Services not provided by the User.
- 11.3 The Customer is obliged to support the User to the best of his ability in the defence against the patent right violation.
- 11.4 Conversely, the Customer exempts the User from all claims of third parties, which the latter may make against the User due to violation of a commercial patent right or copyright, if the violation results from a specific instruction of the Customer to the User or the Customer alters the Supply/Service or integrates it into a third party's system.
- 11.5 Programmes and accompanying documentation made available by the User are only for the sole use of the Customer within the framework of a simple, non-transferable licence, and exclusively for Supplies/Services supplied by the User. The Customer may not make these programmes and this documentation accessible to third parties without the prior written agreement of the User, not even in the case of the User's hardware being sold on. Copies may only be made – without the User taking over the costs or liability – for archive purposes, as replacement or for fault-finding. Where originals carry a comment on protection of copyright, this must be included by the Customer on the copies as well.

## **§ 12 Legal Domicile, Law Applicable, Salvatory Clause**

- 12.1 The Customer may not transfer the rights and obligations from the agreement with the User to third parties without prior written agreement of the User.
- 12.2 For any disputes arising from or in connection with the Contract and the fulfilment thereof, the legal domicile is Aichach.
- 12.3 The law of the Federal Republic of Germany applies exclusively to all relationships between the Customer and the User. Application of the UN Agreement on the Purchase of Goods of 11<sup>th</sup> April, 1980 is excluded.
- 12.4 Should one of the clauses in these General Commercial Terms and Conditions be or become invalid, unworkable or incomplete, this will not affect the validity of the remaining clauses. A clause will be deemed as agreed, in place of the invalid, unworkable or missing clause, which the parties would have reasonably agreed if they had been aware of the invalidity, unworkability and the incompleteness.