

General Terms and Conditions (GTC) of MetShape GmbH

State. 06/18/2020

I General information

1. The following conditions apply to all - also future - contracts concluded by MetShape GmbH (hereinafter 'MetShape').

II Offers and conclusion of contract

1. Cost estimates and offers are made to the best of our knowledge and belief. Obvious mistakes, printing, spelling or calculation errors are not binding for MetShape and do not entitle the customer to claim damages.
2. All offers are subject to change without notice. The costs for the refunding of a cost estimate or offer, if such costs are incurred, will be charged to the client.
3. Cost estimates and offers are not binding. The written order confirmation of MetShape is the contractual basis and decisive for the scope of delivery. This also applies in case the customer's order is based on an offer by MetShape.
4. Orders placed by the customer are binding for the customer and are regarded as accepted by MetShape upon presentation of the order confirmation. MetShape reserves a period of two weeks for the order confirmation. An order must be made in writing.
5. The information about MetShape's services and products listed in catalogues, price lists, brochures, company information material, leaflets or other media are not binding, unless they are expressly declared to be part of the contract in written form.
6. Additional agreements and changes must be confirmed in writing by MetShape.
7. Technical and commercial documents created by MetShape are their intellectual property. The transfer to third parties without written consent of MetShape is not permitted.

III Delivery, delivery periods and transfer of risk

1. MetShape is free to choose the mode of dispatch / means of transport.
2. Partial deliveries are possible.
3. If the client requests a delivery date that deviates from the agreed delivery date or from the order confirmation, any resulting additional costs will be charged to the client.
4. At the request of the customer, MetShape will take out insurance for the delivery at the customer's expense against theft, breakage, transport, fire and water damage as well as against other insurable risks.
5. Complaints due to transport damages must be made by the customer immediately after receipt of the goods to the transport company and to MetShape in written form, but at the latest within 7 days after receipt of the goods. Later complaints are not accepted by MetShape.
6. Periods for delivery/performance are non-binding unless they have been expressly agreed as such in writing in the order confirmation or in the individual contract.
7. If, for whatever reason, the order is amended or supplemented after the order has been placed, the delivery/performance period will be extended by a reasonable period.
8. If MetShape is prevented from fulfilling its obligations due to the occurrence of unforeseeable circumstances or circumstances beyond MetShape's control, such as operational disruptions, sovereign measures and interventions, energy supply difficulties, failure of a supplier who is difficult to replace, strike, obstruction of traffic routes or force majeure, the delivery/performance deadline is extended in a reasonable extent. It is irrelevant whether these circumstances occur at MetShape itself or one of its suppliers or subcontractors.
9. Objectively justified minor changes to the execution of the service that are reasonable for the customer are approved in advance.

IV Prices

1. The prices stated do not include the statutory value added tax valid on the day of invoicing.
2. The prices offered and quoted by MetShape are - unless otherwise stated in the respective document or order confirmation - ex works (EXW) Pforzheim.
3. The prices are indicated in Euro (€).
4. If an order is placed without prior offer or if services are performed that were not explicitly included in the order, MetShape is entitled to charge a fee that corresponds to its price list or its usual fee for the respective service(s).
5. MetShape is entitled to charge a higher fee or price than agreed upon, if the calculation bases existing at the time of placing the order, such as raw material prices, exchange rate or personnel costs, change after conclusion of the contract.
6. The customer is responsible for the professional and environmentally sound disposal of used material.
7. Costs for travel, daily expenses and overnight stays will be charged separately. Travel times are regarded and billed as working time.

V Payment

1. Invoicing takes place immediately after performance of the service. If there is no objection within 14 days, the invoice is considered accepted. If the customer does not pay within thirty days of the due date and receipt of the invoice, he will be in default even without a reminder.
2. The entitlement to a discount deduction requires an explicit written agreement.
3. In case of orders comprising several items, MetShape is entitled to issue a (partial) invoice after delivery of each individual item or service.
4. In case of default of payment, 12 % p.a. are agreed. Appropriate and necessary costs incurred by the delay of payment, such as expenses for reminders, collection attempts, storage costs and possible judicial or extrajudicial lawyer's fees, must be refunded to MetShape.
5. If the client is in default with any payment obligation towards MetShape arising from the contractual relationship or any other payment obligation towards MetShape, MetShape is entitled, without affecting any other rights, to suspend its performance obligation until the payment is made by the client and/or to make use of a reasonable extension of the delivery time, to make all open claims from this or other legal transactions due and payable, and to collect delivered items again, if necessary, without releasing the client from its performance obligation. This shall also apply in the case of partial payments if the service is not performed in individual sections.
6. Should the financial circumstances of the client deteriorate, MetShape is entitled to demand immediate payment of the agreed remuneration or the purchase price and to execute the order only against advance payment.

VI Ownership

1. The delivered goods, machines and accessories remain the unrestricted property of MetShape until full payment (including interest and costs).
2. If the client does not properly fulfil its obligations under the contract, MetShape will be entitled at any time to retrieve its property at the expense of the client, which the client will be obliged to surrender.
3. Delivery items and related execution documents, sketches, cost estimates and other documents provided by MetShape or resulting from MetShape's contribution remain the intellectual property of MetShape.

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Their use and particularly their passing on, duplication, publication and provision, including only partial copying, as well as their imitation, processing or utilization requires the explicit consent of MetShape.

- The customer undertakes to maintain secrecy towards third parties regarding the knowledge received from the business relationship.

VII Warranty

- In accordance with the legal provisions, MetShape undertakes to provide the client with a warranty for all products sold by MetShape.
- For components produced within the scope of feasibility studies, MetShape does not guarantee that the properties expected / ordered by the customer will be fully met.
- MetShape warrants against defects that are present at the time of delivery.
- If a defect occurs in the delivered goods, the customer may initially only demand the improvement or replacement of the goods, unless the improvement or replacement is impossible or would involve a disproportionately high effort for MetShape compared to the other remedy. Whether this is the case also depends on the value of the non-defective goods, the severity of the defect and the inconvenience to the transferee associated with the other remedy. MetShape undertakes to perform the remedy or replacement within a reasonable period of time after delivery of the goods by the customer.
- If both the improvement and the replacement are impossible or involve a disproportionately high effort for MetShape, the customer will have the right to claim a price reduction or, if the defect is not minor, the right of rescission. The same applies if MetShape refuses the improvement or replacement or does not carry out the improvement or replacement within a reasonable period of time, if these remedies would cause considerable inconvenience to the client and if they are unreasonable for the client for good reasons.

VIII Liability and compensation

- MetShape is only liable for damages caused intentionally or by gross negligence. Liability for slight negligence is excluded. The client must prove the fault.
- MetShape is in no case liable for the usability of the delivered goods beyond the freedom from defects.
- MetShape's liability for indirect damages, consequential damages, loss of profit, financial losses, damages due to business interruption, as well as damages due to claims of third parties against the customer is excluded.
- Any liability of MetShape is in any case limited to the amount of the agreed remuneration or the purchase price for the respective order. The contracts assumed by MetShape are only accepted with the reservation of this limitation of liability. Any further liability of MetShape is explicitly excluded. If the total damage exceeds the maximum limit, the compensation claims of individual affected parties are reduced proportionally.
- The customer must inform MetShape immediately about discovered defects of the goods and/or the work, otherwise all claims will be lost. Claims for damages are to be asserted in court within six months, otherwise they will expire.

IX Contract withdrawal

- If a delivery/service is not possible for reasons for which the client is responsible, or if a client does not comply with a legal or contractual obligation towards MetShape, MetShape will be entitled to withdraw from the contract.
In this case, the customer must compensate MetShape for all resulting disadvantages and lost profit.
- In case of rescission, MetShape will have the choice, if the customer is at fault, to claim a compensation of 15 % of the gross invoice amount or the compensation of the actually incurred damage.

- In case of delayed payment by the client, MetShape is released from all further service and delivery obligations.
- If the client, without being entitled to do so, withdraws from the contract or requests its cancellation, MetShape will have the choice to insist on the fulfilment of the contract or to agree to the cancellation of the contract. In the latter case, the client is obliged to pay, at MetShape's option, a compensation of 15 % of the gross invoice amount or the actual damage incurred.

X Privacy policy

- The customer gives his consent that the personal data contained in offers, order confirmations and contracts can be stored and processed by MetShape with the help of automation in fulfilment of the contract.
- The client is obliged to inform MetShape about changes of his residential or business address for the time the legal transaction is not completely fulfilled by both parties. If the notification is neglected, declarations are also considered received if they are sent to the last known address.

XI Final provisions

- The client declares that he had the opportunity to take note of the contents of these General Terms and Conditions before the conclusion of the contract and that he agrees with their contents.
- Purchasing or other terms and conditions of business of the client are not valid. These are hereby explicitly contradicted. MetShape states explicitly that they only want to contract based on their GTC. If, in exceptional cases, the application of the GTCs of the customer is agreed upon in writing, their provisions will only apply as far as they do not conflict with these GTCs. Non-conflicting provisions in the GTCs remain in force alongside each other.
- Any changes and additions to these general terms and conditions must be made in writing to be legally effective. This written form requirement can also only be waived in writing. It is noted that there are no subsidiary agreements.
- Should a provision of these GTCs be or become invalid, this has no effect on the validity of the remaining provisions. In this case, invalid provisions are replaced by another, legally effective provision in accordance with their meaning.
- Exclusive place of jurisdiction for all legal disputes between MetShape and its customers is the competent court at MetShape's place of business (Pforzheim, Germany).