

## General terms and conditions of sale and delivery

### 1. General terms and conditions

- 1.1 All deliveries by Metrotech Vertriebs GmbH ("**Vivax-Metrotech**") shall be subject exclusively to the following General Terms and Conditions of Sale and Delivery ("**General Terms and Conditions**"). Other provisions, in particular general terms and conditions of the purchaser, shall not apply, irrespective of whether they have been expressly rejected by Vivax-Metrotech or not. The General Terms and Conditions shall also apply exclusively if Vivax-Metrotech effects contractual performance without reservation in knowledge of other terms and conditions.
- 1.2 The General Terms and Conditions shall only apply to entrepreneurs within the meaning of §14 German Civil Code (BGB), legal entities under public law or special funds under public law.
- 1.3 Individual agreements concluded from case to case between Vivax-Metrotech and the purchaser shall prevail. They require written form in order to be effective, as shall any modifications of, amendments to, or cancellation of any agreements between Vivax-Metrotech and the purchaser as well as of these General Terms and Conditions. This also applies to the cancellation of this written form requirement. Means of telecommunication that do not contain at least a copy or facsimile of the signature of the issuing party, in particular simple e-mails, shall be sufficient to comply with the written form requirement.

### 2. Offers, orders

- 2.1 Offers issued by Vivax-Metrotech are non-binding. In the event that an offer issued by Vivax-Metrotech is expressly designated in writing as binding, Vivax-Metrotech shall be bound by such offer for the period of four weeks, starting from the date of the offer.
- 2.2 Orders placed by the purchaser shall only become binding for Vivax-Metrotech upon acceptance of the order by written confirmation or by dispatch of the goods and invoice. Vivax-Metrotech shall have the right to accept orders within two weeks after their receipt.
- 2.3 Vivax-Metrotech reserves the title and copyrights in respect of any offers, cost estimates, drawings and other documentation provided to purchaser in written, oral, electronic or other form ("**Documents**"). The Documents and their content may only be made available or otherwise disclosed to third parties with the prior written consent of Vivax-Metrotech and shall be returned immediately upon request of Vivax-Metrotech if the agreement between Vivax-Metrotech and the purchaser is not finalized. Any copies made shall be destroyed.

### 3. Delivery, acceptance of delivery

- 3.1 Deliveries shall be made EXW (Vivax-Metrotech's warehouse, Am Steinernen Kreuz 10a, 96110 Schesslitz, Germany) ICC Incoterms 2020. Even if in individual cases Vivax-Metrotech agrees to ship the goods, the place of performance shall be the place where Vivax-Metrotech hands over the goods to the person in charge of the transport.
- 3.2 The delivery periods or delivery dates stated in the offer are non-binding, unless it has been agreed explicitly and in writing that they are binding in the individual case. In the case of non-binding delivery periods or delivery dates, Vivax-Metrotech shall not be in delay in delivery (*Lieferverzug*) until a reasonable delivery period set in writing by the purchaser has expired to

no avail. The purchaser shall not set the expiry date of such period earlier than four weeks after expiry of the non-binding delivery period or the non-binding delivery date.

- 3.3 Vivax-Metrotech shall not be in delay in delivery if a supplier does not supply Vivax-Metrotech correctly or on time for reasons beyond the control of Vivax-Metrotech and although Vivax-Metrotech has concluded a congruent hedging transaction with the supplier.
- 3.4 Vivax-Metrotech shall also not be in delay in delivery, to the extent the purchaser has failed to present duly or on time the documentation, licenses, permits, releases or other formalities required for shipment or has failed to meet other obligations. This shall not apply if Vivax-Metrotech is responsible for the delay.
- 3.5 If Vivax-Metrotech is in default, the purchaser shall be entitled to claim liquidated damages (*pauschalierter Schadensersatz*) in the amount of 0.5% for each full week of delay, in total however no more than 5% of the net price of that portion of the shipment that could not be put to its intended use on account of the delay. Vivax-Metrotech reserves the right to prove that the purchaser has incurred only a significantly lower damage or no damage at all.
- 3.6 At the request of Vivax-Metrotech, the purchaser shall declare within a reasonable period of time whether it elects to withdraw from the agreement because of the delay in delivery or whether it insists on delivery being executed.
- 3.7 Vivax-Metrotech shall be entitled to effect partial deliveries, provided that their acceptance is not unreasonable for the purchaser, in particular if the delivery of the remaining ordered goods is ensured and the partial delivery does not constitute a significantly increased effort or considerable additional costs for the purchaser (unless Vivax-Metrotech declares itself willing to bear these costs). Each partial delivery may be invoiced separately.
- 3.8 The purchaser is in default of acceptance if it fails to collect the goods on the binding delivery date as agreed. In the case of non-binding delivery periods or delivery dates, Vivax-Metrotech shall be entitled to inform the purchaser, subject to a notice period of two weeks, that the goods are ready for collection; if the purchaser fails to collect the goods by the expiry date, it shall be in default of acceptance. The purchaser is not entitled to refuse acceptance due to minor defects.
- 3.9 If, at the request of the purchaser, delivery is delayed by more than one month after notice of readiness for dispatch, the purchaser may be charged storage fees for each additional month or part thereof in the amount of 0.5% of the net price of the objects of delivery, however no more than 5% in total. The contracting parties are at liberty to prove higher or lower storage costs.

#### **4. Prices, price adjustment**

- 4.1 Unless otherwise agreed, the current price list as valid from time to time shall apply. Prices shall be understood EXW (Vivax-Metrotech's warehouse, Am Steinernen Kreuz 10a, 96110 Schesslitz) ICC Incoterms 2020 in Euro, excluding packaging and shipping costs. Any applicable value added tax shall be calculated separately at the statutory rates as valid from time to time and shall be payable by the purchaser.
- 4.2 Vivax-Metrotech reserves the right to adjust the prices in the event of cost changes occurring after conclusion of the agreement and prior to effecting the delivery, in particular as a result of wage agreements, changes in raw material costs, other price adjustments on the part of subcontractors, or exchange rate fluctuations, that are beyond the responsibility of Vivax-

Metrotech and could not be foreseen with sufficient certainty. Upon request, Vivax-Metrotech shall substantiate the reasons for the price adjustments to the purchaser.

**5. Payment, default of payment**

- 5.1 Invoices shall be paid without deduction within 30 days of delivery and receipt of the invoice by bank transfer to an account indicated to the purchaser by Vivax-Metrotech. Unless otherwise agreed, payments shall be effected in Euro.
- 5.2 If the purchaser fails to effect payment by expiry of the due date for payment, it shall be in default without further notice. Decisive for the timeliness of the payment is the receipt of the invoiced amount in the bank account specified.
- 5.3 In case of default of payment Vivax-Metrotech shall be entitled to charge default interest at the statutory rate. The right to assert further damages is reserved.
- 5.4 If the purchaser is in default with at least two payments from the business relationship with Vivax-Metrotech, all payment obligations on the part of the purchaser arising from the business relationship with Vivax-Metrotech shall become due and payable immediately.

**6. Deterioration of financial position**

- 6.1 If, after conclusion of a contract with the purchaser, it becomes apparent that the fulfilment of the purchaser's contractual obligations is at risk due to its financial situation (in particular in the event of suspension of payments, application for the opening of insolvency proceedings, seizure or execution measures, raising of bill or cheque protests and return of direct debits, also vis-à-vis or to third parties), Vivax-Metrotech shall be entitled, at its own discretion, to withhold delivery until either advance payment of the purchase price or provision of appropriate security. This shall also apply if, as a result of the purchaser's default in payment, there are justified doubts about his solvency or creditworthiness.
- 6.2 In the cases of Section 6.1 Vivax-Metrotech shall also be entitled to withhold deliveries until receipt of all payments from outstanding claims against the purchaser or provision of appropriate security. For claims not yet due, including claims for which Vivax-Metrotech under concluded agreements has to perform in advance, and claims without internal natural or economic connection to an order this only applies if Vivax-Metrotech has a justified interest for it.
- 6.3 If a current account relationship exists within the scope of the business relationship, Vivax-Metrotech shall also be entitled in the cases of Section 6.1 to withhold deliveries until receipt of all payments from acknowledged balances or provision of an appropriate security.
- 6.4 Should the advance payment or security deposit pursuant to Section 6.1 not be provided by the purchaser within two weeks, Vivax-Metrotech shall be entitled to rescind the corresponding agreement.

**7. Retention of title**

- 7.1 Vivax-Metrotech shall retain title in the supplied goods until receipt of all payments due from the contractual relationship. In the event of a current account relationship existing within the scope of the business relationship, Vivax-Metrotech shall retain title to the supplied goods until receipt of all payments from acknowledged account balances.

- 7.2 In the event of a violation of the agreement on the part of the purchaser, in particular in the event of default of payment, Vivax-Metrotech shall be entitled to collect the goods delivered under retention of title ("**Retained Goods**"). In case of default of payment, prior indication of a notice period is not required. For the purpose of collecting the Retained Goods, Vivax-Metrotech shall be entitled to enter the business premises of the purchaser during the usual business hours. Further claims of Vivax-Metrotech shall remain unaffected.
- 7.3 After taking back the Retained Goods, Vivax-Metrotech shall be authorized, upon prior notice, to utilize the goods as appropriate; the revenues shall be set off against the purchaser's liabilities, after deduction of the appropriate utilization costs.
- 7.4 For the duration of the retention of title, the purchaser shall not be entitled to pledge the Retained Goods or use them as security. The purchaser is entitled to process and/or resell the Retained Goods in the ordinary course of business, however, it now already assigns all claims in the amount of the final invoice amount (including value added tax) that it may have as a result of the sale against its customers or third parties, irrespective of whether the Retained Goods was sold before or after processing, to Vivax-Metrotech. The purchaser shall not be entitled to pledge the assigned claims or use them as security.
- 7.5 When reselling the goods, the purchaser shall notify its customer of the assignment of the payment claims for the delivered goods. The purchaser shall not be entitled to sell the Retained Goods to customers who have excluded or restricted the assignment of payment claims against them. If the Retained Goods have been further processed with other objects that are not the property of Vivax-Metrotech, the assignment shall only be effected in proportion of the co-ownership in the processed object in accordance with Section 7.10.
- 7.6 The purchaser shall retain its right to collect the receivables even after assignment. The right of Vivax-Metrotech to collect the receivables itself shall remain unaffected. Vivax-Metrotech shall, however, not collect the receivables as long as the purchaser meets its payment obligations from the revenues acquired, does not enter into default of payment and, in particular, has not filed an application for the opening of insolvency proceedings and has not suspended its payments. In any of the aforementioned cases, Vivax-Metrotech may demand that the purchaser discloses the assigned receivables and their debtors, provides all information required for collection, hands over the relevant documents and notifies the debtors of the assignment. Upon the occurrence of any of these events, the purchaser's right to collect the receivables shall expire.
- 7.7 Insofar as a current account relationship pursuant to § 355 German Commercial Code (HGB) exists between the purchaser and its customer, the claim assigned to Vivax-Metrotech by the purchaser in advance also refers to the acknowledged account balance. In the event of the purchaser's insolvency, it shall also refer to the account surplus of the final balance existing at that point in time.
- 7.8 The purchaser is obliged to notify Vivax-Metrotech immediately in writing of any and all seizures, pledges and other attachments by third parties with regard to the Retained Goods or the assigned claims. In addition, the purchaser shall notify such third parties of the retention of title. To the extent the third party is not in a position to reimburse Vivax-Metrotech for the court and out-of-court costs of legal action pursuant to § 771 German Code of Civil Procedure (ZPO), the purchaser shall be liable for the loss incurred by Vivax-Metrotech.
- 7.9 The purchaser shall be obliged to handle the Retained Goods with due care. In particular, it shall take out adequate insurance to insure the Retained Goods at replacement value against

fire, water and theft. The purchaser shall be obliged to store the Retained Goods separately and to identify them as the property of Vivax-Metrotech, as well as to mark the assigned receivables in its accounts as being owed to Vivax-Metrotech.

- 7.10 Processing or conversion of the Retained Goods by the purchaser shall always be performed on behalf of Vivax-Metrotech. If the Retained Goods are processed or converted together with other objects not belonging to Vivax-Metrotech, Vivax-Metrotech shall acquire co-ownership of the new object in proportion of the value of the Retained Goods to the other processed or converted objects at the time of processing or conversion; apart from the aforesaid, the new object thus created shall be subject to the same provisions as those governing the product supplied under retention of title.
- 7.11 If the Retained Goods are merged or combined inseparably with other objects not belonging to Vivax-Metrotech, Vivax-Metrotech shall acquire co-ownership of the new object in proportion of the value of the Retained Goods to the other merged objects at the time of merging or combining. If the merging or combination is performed in such a manner that the purchaser's object is to be regarded as the main item, the purchaser shall transfer co-ownership proportionately. The purchaser shall hold the sole ownership or co-ownership thus created in safekeeping for Vivax-Metrotech.
- 7.12 The purchaser shall adopt appropriate measures for and provide comprehensive support to Vivax-Metrotech in safeguarding the rights of Vivax-Metrotech pursuant with this Section 7 (and, as necessary, by other means of protection) in the country in which the Retained Goods are located.

## **8. Quality of the goods, specifications and application, guarantees**

- 8.1 The quality of the goods shall be defined only by the agreed specification. It is the responsibility of the purchaser to check whether the goods are suitable for the intended purposes.
- 8.2 Information provided by Vivax-Metrotech in word, writing or any other form regarding suitability, including application, processing and other use, as well as technical consultation provided by Vivax-Metrotech is given to the best of Vivax-Metrotech's knowledge, but shall be regarded as non-binding information and shall not release the purchaser from the obligation to inspect the goods supplied by Vivax-Metrotech for their suitability for the intended purposes. Application, processing and any other use of the goods are beyond the control of Vivax-Metrotech and are therefore the sole responsibility of the purchaser.
- 8.3 Guarantees, in particular guarantees as to quality, shall only be binding for Vivax-Metrotech to the extent that they (i) are contained in an offer or an order confirmation, (ii) are expressly referred to as "guarantee" or "guarantee of quality", and (iii) expressly define the obligations resulting from such guarantee for Vivax-Metrotech.
- 8.4 If standard software or firmware is supplied with the goods, the purchaser shall have the non-exclusive right to use the software or firmware with the agreed performance features in unchanged form on the agreed equipment.

## **9. Defect rights**

- 9.1 The purchaser's claims for defects (*Mängelrechte*) are subject to the purchaser inspecting the goods upon delivery and submitting a proper notice of defects in accordance with § 377 German Commercial Code (HGB).

- 9.2 A notice of defect shall be submitted in writing and shall specifically state the respective defect. Complaints regarding incomplete delivery and other visible defects shall be brought to Vivax-Metrotech's attention in writing without undue delay and no later than one week after delivery, hidden defects without undue delay and no later than one week upon their detection. The acceptance of the goods may not be refused for defects that are not of a material nature. Claims based on defects that are notified belatedly are excluded.
- 9.3 The costs for the inspection of the goods shall be borne by the purchaser. Defective goods shall be made available to Vivax-Metrotech for inspection upon request.
- 9.4 Vivax-Metrotech will remedy defects by subsequent performance (*Nacherfüllung*), at its own discretion, either by correcting the defect (rectification) or by supplying a non-defective product (replacement). Subsequent performance shall be effected without any acknowledgment of a legal obligation. In the case of rectification, the remaining period of the original statutory period of limitations shall begin with the return of the rectified product. The same shall apply if a replacement has been delivered.
- 9.5 Purchaser's claims for expenses necessary for the purpose of subsequent performance, in particular transport, travel, labor and material costs, shall be excluded, to the extent the expenses are increased as a result of the goods being brought to a place other than the agreed place of delivery; Vivax-Metrotech shall be entitled to charge such additional costs to the purchaser.
- 9.6 If subsequent performance finally fails, the purchaser may reduce the purchase price or rescind the agreement.
- 9.7 Any other claims for defects, regardless of their nature, shall be excluded without prejudice to any claims for damages limited pursuant to Section 10.
- 9.8 The purchaser shall bear the reasonable costs of an unjustified assertion of claims for defects (e.g. if the product was not defective); the same applies if Vivax-Metrotech wrongfully grants defect rights without being obliged to do so.
- 9.9 The limitation period for claims for defects is one year as from the date of delivery. This limitation shall not apply, however, if (i) a defect was fraudulently concealed or (ii) a guarantee regarding the quality of a product was given (in this context, where applicable, the guarantee and/or limitation period laid down in the guarantee shall apply). In case of damage claims, this limitation shall further not apply in the following cases: (i) liability pursuant to the German Product Liability Act, (ii) injury to life, body or health, (iii) intent, (iv) gross negligence on the part of governing bodies or executives of Vivax-Metrotech.
- 9.10 Rights of recourse on the part of the purchaser, if the goods are sold to a consumer, remain unaffected. Such rights of recourse exist only insofar as the purchaser has not entered into agreements with its sub-purchaser that exceed the statutory claims for defects.

## **10. Liability**

- 10.1 The liability of Vivax-Metrotech for damages caused by simple negligence is limited to damages resulting from the breach of material contractual obligations, the fulfilment of which is prerequisite to the proper execution of the agreement and in the observance of which the contractual partner regularly trusts and is entitled to trust; in this case, however, liability shall be limited to the typically foreseeable damage. This limitation of liability shall equally apply

to any damage caused by gross negligence on the part of employees or agents of Vivax-Metrotech, who are not governing bodies or executives of Vivax-Metrotech.

- 10.2 In cases governed by Section 10.1 liability shall be limited to 5-fold of the purchase price of the delivery concerned.
- 10.3 In cases governed by Section 10.1 the limitation period shall be two years from the point in time in which the claim arose and the purchaser became aware of the circumstances giving rise to the claim. Irrespective of purchaser's knowledge, the claim shall become statute-barred three years after occurrence of the event giving rise to the damage. The limitation period for claims for damages due to defects shall be determined pursuant to Section 9.9.
- 10.4 The above limitations of liability shall apply to all claims for damages irrespective of their legal basis, with the exception of claims for damages by the purchaser (i) due to fraudulently concealed defects, (ii) for defects which are covered by a guarantee that was given regarding the quality of a product (in this context, where applicable, the guarantee and/or limitation period laid down in the guarantee shall apply), (iii) according to the German Product Liability Act, (iv) for death, damage to body or health, (v) for intent or (vi) for gross negligence on the part of corporate bodies or executives of Vivax-Metrotech.
- 10.5 The above limitations of liability shall also apply to claims for damages by the purchaser against Vivax-Metrotech's officers, executives, employees or agents.
- 10.6 The above limitations of claims for damages shall apply accordingly to the claim for reimbursement of futile expenses.

## **11. Force Majeure**

- 11.1 If Vivax-Metrotech is hindered in its performance of its contractual obligations due to force majeure such as mobilization, war, terrorism, riots, natural disasters, fire or other unforeseeable circumstances for which Vivax-Metrotech is not responsible, such as strikes or lawful lock-outs, operational or transport disruptions, difficulties in procuring raw materials, virus and other attacks by third parties on the IT system of Vivax-Metrotech, insofar as these occur despite the observance of the usual care taken in protective measures, as well as direct or indirect effects of epidemics or pandemics (including COVID-19), including associated official authorities, legal or other measures, the agreed delivery periods shall be extended by the duration of the hindrance plus a reasonable start-up period, but by three months at the most. Vivax-Metrotech shall not be held responsible for the aforementioned circumstances even if they occur during an already existing default. Vivax-Metrotech shall inform the purchaser of the beginning and the expected end of such circumstances as soon as possible.
- 11.2 If the hindrance lasts six weeks or longer, each party may rescind the agreement.

## **12. Compliance with regulations and export**

- 12.1 Purchaser shall comply with all applicable legal, regulatory and governmental requirements, including applicable import and export regulations and other laws of the country in which purchaser sells, otherwise places on the market or uses the goods. Purchaser shall obtain and maintain, in a timely manner, all necessary permits and licenses and any other authorizations required to use or export the goods under all such applicable laws.

12.2 Vivax-Metrotech is entitled to withhold delivery to the purchaser if the delivery to the purchaser would violate such applicable laws or if the required permits have not been procured and this is not due to the fault or responsibility of Vivax-Metrotech.

**13. Set-off and right of retention**

Set-off and the exercising of a right of retention by the purchaser for disputed counterclaims or counterclaims that are not established as final and absolute is excluded unless the counterclaims are based on the same contractual relation-ship.

**14. Assignment**

The purchaser shall not assign its rights and obligations in connection with deliveries, neither in part nor in their entirety, without the prior written consent of Vivax-Metrotech. Vivax-Metrotech is entitled to assign its rights and obligations in connection with deliveries, in particular to associated companies as defined in § 15 German Stock Companies Act (AktG).

**15. Applicable law, place of jurisdiction, miscellaneous**

15.1 All legal relations between Vivax-Metrotech and the purchaser shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

15.2 Exclusive place of jurisdiction for all disputes arising out of or in connection with a delivery shall be at the registered office of Vivax-Metrotech; Vivax-Metrotech shall, however, be entitled to file a suit against the purchaser at its registered place of business.

15.3 Should individual provisions of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions.