

# General Contractual and Payment Conditions of pohltec metalfoam GmbH

## 1. Order confirmation and order obligation

- 1.1 These Terms and Conditions apply to all current and future business relationships of pohltec metalfoam GmbH (hereinafter referred to in brief as "metalfoam"). Customers in the sense of these Terms and Conditions are both consumers and entrepreneurs. Consumers in this sense are natural persons with whom a business relationship is established and who are not thereby performing commercial or independent professional duties. Entrepreneurs in the sense of the Terms and Conditions are natural or legal entities or legally authorized private companies with whom a business relationship is established and who are performing commercial or independent professional duties.
- 1.2 For all orders given to metalfoam, only the written order confirmation issued by metalfoam, in conjunction with the General Contractual and Payment Conditions, shall be definitive.
- 1.3 Any alternate, contradictory or supplementary Terms and Conditions, even if these are known, shall not be a component of the contract unless their validity is expressly agreed to. The acceptance of payment or the fulfillment of the order shall not constitute agreement.
- 1.4 Until their confirmation in writing, all offers by metalfoam remain non-binding. Verbal agreements and promises by our representatives and traveling salespeople require written confirmation by metalfoam.
- 1.5 All agreements made between metalfoam and the customer, including, for instance, side agreements, promises and retroactive changes to the contract, shall only take effect upon being confirmed in writing. No agreements have been made beyond those agreed to in writing by metalfoam and the customer, nor have any verbal promises been made.

## 2. Delivery deadlines

- 2.1 Delivery deadlines are agreed to only as estimates, and only if these have been confirmed in writing by metalfoam.
- 2.2 Compliance with the delivery deadline assumes that the customer has taken all necessary cooperation measures in a timely manner and clarified technical details; if the customer does not do so, a new delivery deadline must be agreed to.
- 2.3 The delivery deadline is considered to have been met if, by this date, the delivery item has been sent or if the customer has been notified of its readiness to ship.
- 2.4 If metalfoam does not meet an agreed-upon delivery deadline due to reasons for which it is responsible, the customer shall set an appropriate deadline for the performance in writing. After the grace period has elapsed without results, the customer shall be entitled to withdraw from the contract. The customer's right to request damage compensation in the event of an unproductive grace period is not excluded by such withdrawal.
- 2.5 If the goods are not available within the agreed-upon delivery period due to reasons for which metalfoam is not responsible – e.g. in cases of force majeure, strike, lockout, power-supply difficulties, operational disruptions or other unforeseeable, unusual and non-culpable circumstances, metalfoam shall be entitled to withdraw from the contract. The same applies if suppliers fail to make correct and timely deliveries due to reasons for which metalfoam is not responsible. The customer shall be informed immediately if the performance cannot be provided. The compensation shall be refunded immediately.
- 2.6 If shipment of the goods ordered by the purchaser is delayed by more than 2 weeks at the purchaser's request, metalfoam shall be entitled to invoice the resulting storage costs, at a minimum of 2% of the invoice amount per month.

## 3. Transfer of risk, partial delivery

- 3.1 If the purchaser is an entrepreneur, the risk of accidental damage or deterioration of the goods shall be transferred to the purchaser upon delivery; in the event of delivery by shipment, it shall be transferred upon handover of the goods to the shipper, the freight forwarder or other persons or institutions charged with carrying out delivery, even if the goods are loaded into proprietary transport vehicles.
- 3.2 If the purchaser is a consumer, the risk of accidental damage or deterioration of the sold item shall not be transferred until the item is handed over to the purchaser, even in the event of delivery by shipment.
- 3.3 The abovementioned transfers of risk shall also apply in the event of free shipping.
- 3.4 If the purchaser is in default of acceptance, this shall constitute a transfer.
- 3.5 Insurance for transport damages shall only be arranged at the customer's express written request and at the customer's expense.
- 3.6 metalfoam is entitled, but not obligated, to insure deliveries on behalf and at the expense of the customer.
- 3.7 The signatory acknowledged receipt of goods on behalf of the buyer / recipient, that the shipper or carrier shall be deemed free of responsibility to defects and therefore all items described in this document are approved.
- 3.8 Packaging frames shall be invoiced separately in addition to the offer prices and paid upon their return.
- 3.9 metalfoam is entitled to make reasonable partial deliveries and can invoice these upon delivery.

## 4. Retention of title

- 4.1 In contracts with consumers, metalfoam shall retain ownership of the goods until the purchase price has been paid in full. For contracts with entrepreneurs, metalfoam shall retain ownership of the goods until all claims from the ongoing business relationship have been paid in full.

- 4.2 The entrepreneur is entitled to sell the goods to a third party in the normal course of business.

The entrepreneur hereby assigns to metalfoam in advance all claims equal to the invoiced amount that it is owed as a result of selling the goods to a purchaser, in cases where the entrepreneur is authorized to collect the claims by acknowledging the assignment of claims to metalfoam. metalfoam reserves the right to inform the third-party purchaser of the assignment and to collect the claims itself as soon as the entrepreneur fails to properly comply with payment obligations and enters into payment default; in the event of a significant deterioration of the entrepreneur's assets; and in the event that insolvency proceedings are pending and/or initiated with regard to the entrepreneur's assets.

In the event of a stopped payment, an application for insolvency proceedings, a disputed check or bank note or seizure, the right to further sell or process the goods and to collect receivables shall be rendered null and void. Any assigned receivables obtained after this time shall be held separately by the entrepreneur on the behalf of metalfoam, apart from its own assets.

The handling and processing of goods by the entrepreneur shall always take place on behalf and on the account of metalfoam, free of charge and without obligation for the latter, in the sense that metalfoam is considered a manufacturer as per § 950 BGB and thus retains ownership of the products at all times and stages of processing. If the products are processed together with other objects not belonging to metalfoam, the company shall be granted co-ownership of the new item corresponding to the value of the delivered goods in relation to the other processed objects. The same applies if the goods are mixed with other objects not belonging to metalfoam.

- 4.3 If metalfoam coats materials in-house, it shall gain ownership of the delivered materials in the process of coating them.

- 4.4 For all claims due to metalfoam from the ongoing business relationship with the entrepreneur, the retained ownership simultaneously acts as insurance for the balance claim of metalfoam. If the value of the securities for metalfoam exceeds their claim by a total of more than 20%, metalfoam must release its choice of securities at the request of the entrepreneur or a third party disadvantaged by the overcollateralization of metalfoam. In determining the value of the securities, their realizable value (security value) shall be definitive.

- 4.5 The customer must immediately inform metalfoam of any third-party access to the goods, for instance in the event of seizure, as well as any damage to or destruction of the goods. The customer must immediately inform metalfoam of a change of ownership of the goods, a change of residence or change of business address.

- 4.6 metalfoam is entitled to withdraw from the contract in the event that the customer violates the terms of the contract, and to request the return of the goods. Such withdrawal shall not affect the possibility of asserting damage claims against the customer.

It is not necessary to withdraw from the contract in order to claim the right to retention of ownership unless the purchaser is a consumer.

- 4.7 Any return of goods shall only take place as a precaution; this shall not be considered a withdrawal from the contract, even if partial payments are made retroactively.

## 5. Guarantee

- 5.1 If the purchaser is an entrepreneur, metalfoam shall first provide its choice of rectification or replacement delivery by way of guarantee for defective goods in the sense of § 434 BGB.

- 5.2 If the purchaser is a consumer, he or she can first choose whether the subsequent performance will take place by way of rectification or replacement delivery. However, metalfoam is entitled to refuse the type of subsequent performance chosen if this is only possible at an unreasonable cost and if the other type of subsequent performance does not cause a significant disadvantage to the consumer.

- 5.3 If the type of subsequent performance chosen by the customer is unsuccessful, i.e. if the defect is not rectified or if a fault-free item is not delivered, the customer can fundamentally choose to either lower the compensation (reduction) or have the contract nullified (withdrawal). However, in the event of an insignificant contractual violation, particularly for insignificant defects, where the subsequent performance chosen by the customer is only possible at an unreasonable cost, the customer shall not be entitled to a withdrawal.

- 5.4 Entrepreneurs must report obvious defects in writing immediately, but no later than 7 days after receipt of the goods (including receipt by third parties at the customer's instructions); otherwise the right to assert guarantee claims shall be excluded. If the notification of defect is sent in a timely manner, the deadline is considered to have been met. The burden of proof falls entirely to the entrepreneur for all claim requirements, particularly for the defect itself, for the date when the defect was discovered and for the timeliness of the defect complaint.

- 5.5 Consumers must inform metalfoam in writing of any obvious defects, within 2 months of the date when the goods were discovered to be in violation of contractual standards. Compliance with this deadline is based on receipt of the notification by metalfoam. If the consumer fails to provide such notification, the guarantee rights shall lapse 2 months after the defect is discovered. This does not apply in the event of malice on the part of the seller. The consumer shall bear the burden of proof for the date the defect was discovered. If the consumer was persuaded to purchase the item through inaccurate claims by the manufacturer, the consumer shall bear the burden of proof for its purchasing decision. For used goods, the consumer shall bear the burden of proof for the item's defectiveness.

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- 5.6 If, due to a legal or material defect, the customer chooses to withdraw from the contract, the customer shall not be entitled to any additional damage claims due to the defect.  
If the customer chooses to claim damages after an unsuccessful subsequent performance, the goods shall remain with the customer if this is reasonable. The damage compensation shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply if metalfoam maliciously committed the contractual violation.
- 5.7 Before rectification work is performed, the customer must provide metalfoam with the goods to be rectified, free of transport charges, at the location where the goods were manufactured by metalfoam (headquarters or branch).
- 5.8 For entrepreneurs, the guarantee period is 1 year as of the delivery or transfer of the goods. For consumers, the grace period shall be 2 years as of the delivery of the goods. However, this shall not apply if the customer does not notify metalfoam of the defect in a timely manner corresponding to the notification period given in Points 5.4 and 5.5.
- 5.9 If the purchaser is an entrepreneur, only the manufacturer's product description shall determine the agreed characteristics. Public statements, claims or advertisements by the manufacturer do not constitute contractually guaranteed characteristics of the goods.
- 5.10 In carrying out contract work, metalfoam shall not be responsible for any defects that are caused by a characteristic of the material.
- 5.11 To the extent that services or partial services were provided for metalfoam by subcontractors and these services were declared defective by the customer, metalfoam can fulfill its guarantee by assigning the guarantee claims against the subcontractor to the customer. If the customer's legal claim against the subcontractor for justified guarantee claims is unsuccessful, the customer can assert claims against metalfoam within the scope of the guarantee provided by these conditions. The guarantee period shall not be affected hereby.
- 5.12 If the customer receives faulty assembly instructions, OHNE shall only be obligated to deliver fault-free assembly instructions, and only if the defect in the assembly instructions prevents proper assembly.
- 5.13 metalfoam does not provide the customer with warranties in the legal sense. Manufacturer's warranties shall not be affected hereby.
- 6. Coating by metalfoam:**  
The delivered materials shall be coated according to the processing and testing guidelines of the Quality Association for the single-unit coating of building components. The customer can request a copy of these guidelines from metalfoam or from the Quality Association.  
If the coating is defective and the purchaser is an entrepreneur, or if defects appear within the guarantee period, metalfoam must fulfill the guarantee by providing its choice of either rectification or replacement delivery. If the purchaser is a consumer, the consumer can choose whether the subsequent performance shall take place by way of rectification or replacement delivery. However, metalfoam is entitled to refuse the type of subsequent performance chosen if this is only possible at an unreasonable cost or if the defect is insignificant, e.g. if it only involves color variations within the permitted tolerances.  
If a defect is caused by the material provided by the customer, all guarantees shall be rendered null and void. If a defect in the coating is due to a demonstrable failure by the customer or its purchaser to comply with its obligations to clean the coated material as per Point 7 below, the guarantee for this defect shall be rendered null and void.  
The guarantee period shall be 5 years from the customer's acceptance of the coated materials or from a third party's acceptance of the materials at the customer's instructions.
- 7. Cleaning obligation**  
The customer must care for and clean the coated material according to the guidelines of the Gütegemeinschaft für die Reinigung von Metallfassaden e.V., Nuremberg [Quality Association for the cleaning of metal façades]. If the customer sells the coated material to a third party, the customer must ensure that the purchaser also promises to comply with this cleaning obligation and, in the event that the cleaning obligation is not fulfilled, to agree with the customer that any guarantee for defects caused by the failure to provide proper cleaning shall be rendered null and void.
- 8. Liability limitations**
- 8.1 In the event of slightly negligent violations of obligation, the liability of metalfoam shall be limited to the average direct damages that are foreseeable and typical in contracts for this type of goods. This also applies to slightly negligent violations of obligation by legal representatives, managing employees and other agents.  
In the event of a slightly negligent violation of insignificant contractual obligations, metalfoam shall not be liable to entrepreneurs.
- 8.2 The present liability limitations do not apply to the customer's claims arising from product liability. Furthermore, the liability limitations do not apply to attributable damages to body or health, or in the event of the customer's loss of life.
- 8.3 The customer's damage claims due to a defect shall lapse one year after the delivery or transfer of the goods. This shall not apply if metalfoam can be accused of malice, or in the event of attributable damages to body or health, or in the event of the customer's loss of life.
- 9. Prices, payments, packaging costs**
- 9.1 The offer and contract prices are ex works and are considered binding. The gross purchase price includes the applicable value-added tax in each case, to the extent that the value-added tax law for the respective region requires this tax to be calculated.  
Delivery/shipping costs are not included in the purchase price. metalfoam shall assess a flat shipping rate for each delivery/shipment.
- 9.2 If a significant change occurs in wages or material costs after the conclusion of the contract, the price must be adjusted according to these factors.
- 9.3 As long as no other agreements have been made, the customer must provide payment within 14 days of the invoice date at the latest.  
The date the credit is received in the account of metalfoam shall be considered the payment date.  
The customer shall be in default of payment at the latest 14 days after invoicing; in this case, metalfoam can request payment of all outstanding invoices.  
For partial-payment transactions, a delayed installment can render the entire invoiced amount due.
- 9.4 During the delay, the consumer must provide interest on the amount owed at a rate of 5% over the base rate.  
Unless a higher interest rate has been contractually agreed, the entrepreneur must provide interest on the amount owed at a rate of 8% over the base rate.  
The right to prove and claim higher damages due to default remains reserved.
- 9.5 The purchaser is only entitled to offset payments if its counterclaims are legally established, undisputed or acknowledged; furthermore, the purchaser is only entitled to exercise a right of retention to the extent that its counterclaim is based on the same legal relationship. The same applies in the event of a deterioration of the seller's assets.
- 9.6 It is hereby noted that representatives and traveling salespeople employed by metalfoam are not authorized to collect claims.
- 9.7 metalfoam shall take back transport packaging in the sense of the Packaging Act, assuming that the customer returns the packaging to metalfoam at its own expense and sorts it according to the type of material.  
The packaging cannot be sent back with the shipper working for metalfoam.
- 9.8 The purchaser shall not obtain any rights to the tools used in custom-made products by participating in the costs of these tools. After two years from the last delivery, metalfoam shall be entitled to scrap these tools.
- 9.9 If costs are increased between the order date and the date of delivery that increase the production cost by 3%, metalfoam shall be entitled to request a correspondingly higher price.
- 9.10 metalfoam is entitled to assign its claims against the customer to third parties.
- 10. Damage compensation due to a violation of obligations / plea of uncertainty**
- 10.1 In the event that the customer violates an obligation in the contract, particularly by withdrawing from the concluded contract, or indicates its unwillingness to fulfill the contract, or fails to fulfill its acceptance obligation, metalfoam shall be entitled to request compensation for the resulting damages; this shall not obligate metalfoam to fulfill its part of the contract.  
In such cases, metalfoam is entitled to request a flat-rate compensation equal to 25% of the net value of the goods, regardless of its entitlement to prove and claim higher damages, and regardless of the customer's right to prove that the damage is lower.
- 10.2 If, after conclusion of the contract, it becomes apparent that metalfoam's claim for payment is threatened by the customer's inability to provide performance, metalfoam shall be entitled to refuse the service it is to perform until the customer provides payment or a corresponding security.  
If, after an appropriate grace period established in writing, the customer fails to provide metalfoam's choice of either payment or appropriate security, metalfoam shall be entitled to withdraw from the contract in the event that it is obligated to provide performance in advance.
- 10.3 The seller is entitled to collect, store, process and use information and data regarding the purchaser and to share such information with third parties to be stored, processed and used, particularly for the purpose of collecting receivables and for outsourced debtor management.
- 11. Offsetting within the Pohl Group**
- 11.1 The customer hereby agrees that metalfoam is entitled to:  
a) use claims from companies within the Pohl Group against the customer to offset the customer's claims against metalfoam;  
b) settle metalfoam's claims against the ordering party by offsetting them with the customer's claims against companies in the Pohl Group.  
This applies even if cash payments have been agreed on one side and payment by bill of exchange or other services have been agreed on the other side on account of performance. This agreement may apply only to the account balance. The customer also agrees that securities given to metalfoam or another company in the Pohl Group shall be liable for the claims by all companies within the Pohl Group.
- 11.2 The companies in the Pohl Group have authorized metalfoam to offset against their outstanding claims and to use their liabilities to settle metalfoam's claims.

### **12. Place of fulfillment, place of jurisdiction, dispute resolution proceedings**

- 12.1 The place of fulfillment for all obligations arising from this contractual relationship shall be Cologne.
- 12.2 metalfoam is neither willing nor obliged to participate in dispute resolution proceedings before a consumer arbitration board.
- 12.3 If the customer is an entrepreneur, a legal public entity or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from this contract shall be the headquarters of metalfoam in Cologne. The same applies if the customer does not have a general place of jurisdiction in Germany, or if the customer's domicile or habitual place of residence is not known at the time the complaint is filed.

### **13. Final provisions**

- 13.1 If individual provisions of the contract with the customer, including these Terms and Conditions, should be or become invalid in full or in part, this shall not affect the validity of the remaining provisions. The fully or partially invalid provision shall be replaced by a provision whose economic effect as closely as possible approximates that of the invalid provision.
- 13.2 German law applies to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The regulations of the UN Convention on the Assignment of Receivables in International Trade are hereby agreed to in advance subject to the condition precedent from the moment at which they take effect.

**2021\_07 pohltec metalfoam GmbH**