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## **General Terms and Conditions of Sale and Delivery Metoxit AG**

These General Terms and Conditions of Sale and Delivery (these “Terms”) are applicable to non-US customers (the “Customers” and each, individually, a “Customer”) of Metoxit AG, a Swiss corporation (the “Company”) in situations where a resale or delivery to the US is **not** permitted.

### **1. Terms and Conditions of Sale**

- 1.1. Company shall sell and deliver to Customer and Customer shall purchase and accept from Company the products (herein, the “Products”) described on or in any confirmed order, agreement or quotation, or any combination thereof (the “Order”), pursuant to the terms and conditions of the Order and those specified below, which taken together shall constitute the entire agreement between Company and Customer regarding the Products (herein, this “Agreement”).
- 1.2. No other terms or conditions shall be of any effect unless otherwise specifically agreed upon by Company and Customer in a separate written agreement duly signed by Customer and an officer of Company. Customer will be deemed to have assented to all Terms if any part of the Products is accepted by Customer. If Customer finds any Term not acceptable, Customer must so notify Company at once and must reject the Products delivered under this Agreement. Any additional or different terms or conditions contained in Customer's order or response hereto shall be deemed objected to by Company and shall be of no effect. No general terms and conditions of a Customer shall at any time form a part of the content of any contract or agreement between the Customer and the Company, even if they are not further expressly rejected by the Company.
- 1.3. Unless otherwise agreed in writing, all quotations for Products are valid for a period of three (3) months from the date of issue. Subsequent modifications in quantity or quality, if such are requested by Customer, generally will cause a modification of the quoted price. Drawings and samples enclosed with any quotation remain the property of Company. All drawings and samples shall be treated confidentially by Customer and must be returned to Company after usage.
- 1.4. No Order is binding upon the Company until the earlier of acceptance of the Order in writing or the delivery of the Products to the Customer. Notwithstanding any prior acceptance of an Order by Company, Company shall have no obligation if the Customer is in breach of any of its obligations hereunder, or any other agreement between the Customer and Company, at the time Company's performance was due.
- 1.5. All verbal agreements concerning the terms of any Order, including agreements made by telephone, shall have no force and effect unless and until acknowledged by the Company in writing.
- 1.6. Customer shall bear all costs associated with the cancellation or modification of the Order.

- 1.7. Customer represents and warrants that without express prior written approval by the Company none of the Products purchased hereunder shall be incorporated into products which are meant for sale or use in the United States of America or any of its territories or possessions ("US"), in the Commonwealth of Australia, in Canada, or in Japan or which Customer knows or has reason to believe shall be resold to or used in the US, in Australia, in Canada, or in Japan. Moreover, Customer represents and warrants that without express prior written approval by the Company none of the Products purchased hereunder will be resold or delivered to (a) any customer of Customer or any other person or entity located in the US, in Australia, Canada, or Japan or to (b) any person or entity which is not strictly prohibited from resale or delivery into the US, into Australia, Canada, or into Japan and/or from incorporating the Products into products which are meant for sale or use in the US, in Australia, Canada, or in Japan or which Customer knows or has reason to believe shall be resold to or used in the US, in Australia, Canada, or in Japan. In case Customer breaches these representations and warranties, Customer shall hold harmless and indemnify Company and its directors, officers, employees, shareholders, affiliates, agents and representatives from and against any and all liability, claims, lawsuits, losses, demands, damages including without limitation punitive damages, costs and expenses, including, without limitation, attorney's fees and costs, expert's fees and costs, and court costs, and in each case as such costs are incurred, arising directly or indirectly out of any sale or use of the Products in the US, in Australia, Canada or Japan, whether authorized or unauthorized, and irrespective of whether a sale, delivery, or use of the Products in the US, in Australia, Canada, or Japan was later approved and whether such claim alleges personal injury, product liability, strict or absolute liability, breach of contract or implied contract or warranty, or any other claim of any nature on any theory of recovery.

## **2. Prices**

- 2.1. All price quotations are EX WORKS (per Incoterms 2000) and do not include costs for packaging, postage or other freight charges, insurance or taxes, if any.
- 2.2. Products prices will be governed by the Company's current prices in effect from time. A price list is available on request.
- 2.3. Prices quoted in a currency other than Swiss Francs are based on the official exchange rate on the date of the quote. Prices will be invoiced on the basis of the currency exchange rate in effect in Zurich on the date of confirmation of any Order.
- 2.4. Company may without notice to Customer increase the price of the Products by the amount of any new or increased tax or duty (excluding franchise, net income and excess profits taxes) which Company may be required to pay on the manufacture, sale, transportation, delivery, export, import or use of the Products or the materials required for their manufacture or which affects the cost of such materials.

## **3. Terms of Payment**

- 3.1. Unless otherwise agreed to in writing by the Company, invoices issued by the Company are due and payable by Customer within ten (10) days from the invoice date. Customer shall make payments by check or wire transfer to the account indicated on the invoice without a cash discount or offset and the Company shall not be required to incur any expense to receive timely payment in full as required by this Agreement. Payments shall be by check

shall be subject to collection and shall be received by Company within said ten (10) day period.

- 3.2. Company may without notice change or withdraw extensions of credit at any time. If Company ceases to extend credit terms before shipment, Customer's sole remedy shall be cancellation of its order. If Customer does not receive notice before shipment, its sole remedy shall be rejection of the Products immediately upon delivery.
- 3.3. If the Customer fails to make payment on or before the date required, Customer shall pay interest to the Company at the rate six (6%) percent per annum or such lesser amount permitted by law. The specification or charging of interest shall not be deemed an agreement to extend credit.
- 3.4. If Customer fails to observe these Terms or the terms of any other agreements between Company and Customer, or if Customer becomes insolvent, all balances then due and owing to the Company shall become due immediately, notwithstanding any agreed upon payment periods. Any Orders that have been confirmed by the Company but not yet filled shall in such cases become cancellable at the sole discretion of Company.
- 3.5. Customer does not enjoy a right of set-off under any circumstances.

#### **4. Delivery Terms**

- 4.1. Except as otherwise specified in this Agreement, the Products shall be sold and delivered EX WORKS (per Incoterms 2000) Company's facility in Thayngen/SH, Switzerland. Title to and risk of loss for the Products shall pass to Customer upon delivery thereof to any common carrier at such facility.
- 4.2. Any agreed delivery period commences on the day on which any Order and accompanying documents, such as drawings, have been clarified by the Company, but in any event no earlier than the written acceptance of any Order by the Company. Sales which extend over a period of time and where quantities have not been fixed in advance shall be subject to separate agreements concerning the quantity and delivery period regarding each separate sales transaction and/or request for delivery made by a Customer. Delivery periods determine the date of dispatch ex works. All delivery dates are approximate.
- 4.3. Customer will be billed for and shall pay all freight, transportation, shipping, insurance and handling charges, duties, and taxes, including any applicable VAT, sales, personal property, *ad valorem*, and other taxes, duties, levies or charges imposed by any governmental authority, irrespective of whether applicable law makes such items the responsibility of the buyer or seller, but excluding any taxes payable by Company with respect to its net income.
- 4.4. Customer, shall, subject to Company's available facilities at the shipping point, determine the type of transportation and shall notify Company thereof at the time Customer places each Order. If Customer shall fail to so notify Company, Company or its agent may select any commercial air, ship, motor or rail carrier or any combination thereof for the transportation of the Products. Company will make deliveries of the Products in the quantities ordered as near as reasonably possible to Customer's requested delivery dates.
- 4.5. Company shall use its reasonable efforts to deliver the Products to Customer by the agreed upon date. However, except in cases of Company's willful misconduct or gross negligence, Company shall not be liable to Customer for delays in delivery or damage to Products while

in transit, irrespective of whether Company or Customer determined the mode of transportation.

- 4.6. In cases of deliveries of Products manufactured to Customer's specification ("Special Orders"), Company reserves the right to deliver 10% more or less of the quantity ordered.
- 4.7. Unless otherwise agreed to in writing, all tools, models, plans, blueprints or other devices and/or documents used and/or developed by Company (the "Tools") in order to fulfil any Order or Special Order are the property of the Company, even if the cost of development and/or manufacturing of such tools, models, plans, blueprints or other devices and/or documents was wholly or partially borne by the Customer.

## **5. Reservation of Title**

The Company shall remain the owner of the Products until the Company shall have received full payment for the purchase price - in case of checks until cashed - and the Company may repossess the Products without notice or demand in the event of a payment default by the Customer. The Company shall be entitled to register the reservation of title in the reservation of title register without any further action by the Customer.

## **6. Warranty and Limitations**

- 6.1. All Products manufactured or supplied shall be of the quality, material, and workmanship defined in Company's published specifications of the Products and shall accord in all respects with the specifications and drawings and the patterns or samples (if any) supplied by the Customer and acknowledged in writing by Company; provided, however, that the Customer acknowledges that deviations of form and dimension are unavoidable for ceramic products. Therefore, to the extent that deviations are within the standard tolerance values, the Products shall be deemed conforming to the requirements set forth in this provision.
- 6.2. The foregoing warranty is subject to the proper storage, transportation and use of the Products. All warranty claims must be made by Customer to Company in writing within 7 days of the manifestation of a problem and prior to the end of the Warranty Period. Company's sole obligation under the foregoing warranty is, at Company's option, to repair, replace or correct any such covered defect or non-conformity. Upon repair or replacement of the defective or non-conforming Products, Company shall have no further obligation to Customer with respect to such defect or non-conformity. Unless expressly warranted in the Company's order confirmation, the Company makes no warranty that the Products comply with applicable law, regulations or specifications in any jurisdiction in which the Products may be sold or marketed in any jurisdiction. Any governmental or other approvals necessary in connection with the resale, marketing, distribution or use of the Products shall be the sole responsibility of the Customer.
- 6.3. The Company makes no warranty whatsoever with respect to any designs or specifications supplied by or on behalf of Customer. With respect to Special Orders, Company makes no warranty that the Products manufactured under a Special Order do not infringe the intellectual property or other proprietary rights of any third party and Customer is solely responsible for assuring that Special Order Products do not so infringe.
- 6.4. The warranty period begins on the date the Products are delivered as provided for in Section 4 and continues for 2 months. Excluded from the foregoing warranty set forth in

Section 6.1 are problems due to accidents, negligence, misuse, misapplication, storage damage or modification to the Products.

- 6.5. Company does not authorize any person or party to assume or create for it any other obligation or liability in connection with the Products except as set forth herein.
- 6.6. Except for the warranties expressly set forth in the Company's order confirmation and in these Terms, the Company makes no warranties, either express or implied, with respect to the Products. This limitation of warranty does not apply in cases of gross negligence or willful misconduct by the Company.
- 6.7. Company's liability for damages arising out of or in connection with these Terms shall in no event exceed the purchase price of the Products. It is agreed and acknowledged that the provisions of this agreement allocate the risks between the Company and the Customer and Company's pricing reflects this allocation of risk, and but for this allocation and limitation of liability, Company would not have entered into this agreement.
- 6.8. The company Metoxit does not accept any liability for claims relating to the delivered products when these are to be used in the construction of or are to be fitted in aircraft or spacecraft.
- 6.9. In jurisdictions that limit the scope of or preclude limitations or exclusions of remedies or damages or of liability such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.
- 6.10. Company shall not be required to indemnify or hold harmless the Customer from and against any costs, damages, interest or claims adjudicated by a court or arbitration tribunal located in the US or applying the laws of the US or any of its states or territories.

## **7. Indemnification by Customer**

- 7.1. Except in cases of Company's willful misconduct or gross negligence, Customer agrees to diligently defend, and to hold harmless and indemnify, Company and its directors, officers, employees, shareholders, affiliates, agents and representatives (the "Company Indemnitees") from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, attorney's fees and costs, expert's fees and costs, and court costs, and in each case as such costs are incurred (the "Losses"), (i) arising directly or indirectly out of any use of the Products, whether authorized or unauthorized, and irrespective of whether such claim alleges personal injury, product liability, strict or absolute liability, breach of contract or implied contract or warranty, or any other claim of any nature on any theory of recovery, except to the extent such Losses have been incurred as a direct result of a breach of Company's warranty or Company's gross negligence or willful misconduct, or (ii) arising out of any breach or misrepresentation of any of Customer's representations or covenants or other terms of this Agreement, or (iii) arising out of the improper use, storage, handling, transportation, modification or alteration of the Products by the Customer or any third party; or (iv) arising out of a design or specification which is provided by or on behalf of the Customer.
- 7.2. Company will promptly notify Customer of any claim, suit or proceeding that Customer may have indemnification obligations with respect to under this Section; *provided, however*, that

any failure by Company to provide prompt written notice hereunder shall excuse Customer only to the extent that Customer is prejudiced by such failure to give notice. Company shall cooperate with Customer with regard to the defense of any suit or threatened suit. Customer may assume control of the defense of any such claim, proceeding or suit and shall have the authority to settle or otherwise dispose of any such suit or threatened suit, and to appeal any adverse judgment which may be entered, *except that* Customer must obtain Company's prior written consent to any settlement unless the settlement involves solely the payment of money and all of such payment is payable by Customer, its insurers, and parties other than the Company Indemnitees.

- 7.3. Customer shall notify Company in writing within 10 days of Customer's receipt of knowledge of any accident or safety incident involving the Products which results in personal injury or damage to property, or any government or similar investigation, claim or inquiry involving the Products. Customer shall fully cooperate with Company in the investigation and determination of the cause of any such accident or incident, and shall make available to Company all statements, reports and tests made by Customer or made available to Customer by others. The furnishing of such information to Company and any investigation by Company of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by Company, nor shall it affect the indemnification obligations above.
- 7.4. Customer represents and warrants that it has in place the necessary insurance and liability waivers to cover the use and operation of the Products by Customer's personnel, customers, and third-party users. In addition, Customer represents and warrants that it maintains a policy of insurance at levels sufficient to support the indemnification obligations assumed by it in this Agreement. Customer will notify Company promptly if Customer's coverage is materially reduced or cancelled.

## **8. Force Majeure**

- 8.1. Company shall not be liable to Customer or any other person for any failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in this Agreement, acts or regulations or priorities of the federal, state or local governments.
- 8.2. Customer shall not be liable to Company or any other person for any failure or delay in the performance of any obligation under this Agreement due to events beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdown in machinery or equipment, and, except as otherwise set forth in this Agreement, acts or regulations or priorities of the federal, state or local governments.
- 8.3. When the event operating to excuse performance by either party shall cease, this Agreement shall continue in full force until all deliveries have been completed.

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## **9. Miscellaneous Terms**

- 9.1. This Agreement and all claims arising out of or related to this Agreement, including tort claims, shall be governed by and construed in accordance with the laws of Switzerland without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than Switzerland. All disputes and/or legal proceedings related to this Agreement shall be maintained in the courts located in Schaffhausen, Switzerland. In the event of any legal action, the prevailing party shall be entitled to recover from the other party all costs, expenses and reasonable attorney's fees, expert witness fees, and any other costs incurred to bring or defend such action.
- 9.2. If any provision contained in this Agreement is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Agreement, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Agreement by one party to the other, the remaining provisions of this Agreement shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.
- 9.3. In the event of a violation or threatened violation of Company's proprietary rights, Company shall have the right, in addition to such other remedies as may be available pursuant to law or this Agreement, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Company would suffer irreparable harm.
- 9.4. The parties hereto are independent contractors and nothing in these Terms will be construed as creating a joint venture, employment or agency relationship between the parties.
- 9.5. These Terms shall apply to all sales of the Products to Customer.

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