

GENERAL TERMS AND CONDITIONS OF SALE, MANUFACTURE AND DELIVERY OF GOODS AND PROVISION OF SERVICES BY METALDLEW S.A. (effective as of 1st Jan. 2019)

GENERAL PROVISIONS

1. The following terms and conditions of delivery shall apply to contracts of sale, manufacture and delivery of goods and provision of services by MetalDleW Spółka Akcyjna with a registered office in Kraków, 31-752 Kraków, Poland, ul. Ujastek 1, entered in the Register of Entrepreneurs maintained by the District Court for Kraków-Śródmieście in Kraków, 11th Commercial Division of the National Court Register (KRS), under the KRS number: 000071401, NIP (Taxpayer's Identification No.): 678003573, REGON (Business Statistical No.): 350649005, having a share capital of PLN 829,340.00, paid up in full, hereinafter referred to as "MetalDleW SA".
 2. A counterparty of MetalDleW SA shall be hereinafter referred to as the "Customer" and the subject of the contract as the goods or service, depending on the context.
 3. These Terms and Conditions of Sale, Manufacture and Delivery of Goods and Provision of Services (hereinafter referred to in an abbreviated form as "GTC") shall constitute an integral part of any contracts of sale, manufacture or delivery of goods and provision of services by MetalDleW SA, unless the Parties have agreed otherwise in writing, otherwise any such agreements being null and void. Any matters not specifically provided for in such a contract shall be governed by the relevant provisions of these GTC.
 4. These GTC have been published and are freely available at www.metaldlew.pl. Any amendments to GTC shall become effective as of the date of publication thereof on the website specified above where the current version of GTC is also available. In addition, GTC are also available at MetalDleW SA's registered office.
 5. The Customer shall be obliged to acquaint itself with the provisions of these GTC prior to any final acceptance of all material aspects of the contract and not later than before the contract is signed or order placed. By placing an order with MetalDleW SA, the Customer represents that it is aware of and accepts GTC.
 6. In the event of any separate written contract is executed and the provisions thereof are at variance with these general terms and conditions, the provisions of the contract shall prevail.
 7. If the Customer has and applies its own general terms and conditions, it is agreed that the general terms and conditions of MetalDleW SA shall prevail, unless MetalDleW SA explicitly accepts in writing the Customer's general terms and conditions. Any exclusion of applicability of these GTC, stipulated in the content of any general terms and conditions applied by the Customer, shall be to no effect.
- SUBJECT AND EXECUTION OF THE CONTRACT
8. MetalDleW SA represents that it is an enterprise professionally involved in a sale, manufacture and delivery of the following goods and provision of the following services:
 - a) Steel castings, cast iron castings, non-ferrous metal castings,
 - b) Casting patterns,
 - c) Heat treatment,
 - d) Machining,
 - e) Technical and technological support,
 - f) Welding, and
 - g) Quality acceptance testing in accordance with applicable standards.
 9. Any contract of sale, manufacture or delivery of goods, as well as any contract of provision of services by MetalDleW SA shall be deemed executed whereby the Customer places an order or a copy of an electronic form and MetalDleW SA expressly accepts and confirms the same. A basis for placement of an order shall be a preliminary "offer" made by MetalDleW SA (which, however, does not constitute an offer within the meaning of Article 66 §1 of the Polish Civil Code and shall be made solely for information purposes) and a request for quotation submitted by the Customer. Any electronic correspondence exchanged between the Parties which specifies the subject of the contract, accept the price, date and method of delivery, payment terms and any other material elements of the type of contract relevant to the subject of the contract concerned, shall be deemed part of the contract.
 10. Where MetalDleW SA has no production capabilities at a given moment to perform a contract, it shall notify the Customer of that fact within 10 days of receipt of the order. In such an event MetalDleW SA shall notify the Customer of the estimated possible performance date or, where performance of the subject of the contract is not possible, of its incapability of performing the same.
 11. Where MetalDleW SA and the Customer maintain on-going business relationships, no reply from MetalDleW SA within 14 days of the date of receipt of an order falling within the scope of the activities listed in Section 8 above, shall be deemed failure to provide immediate response and, in consequence, acceptance of the order.
 12. MetalDleW SA reserves the right to the order contingent on a submission by the Customer of the relevant documents evidencing the Customer's entry in the relevant register or record and the powers of the persons placing the order to represent the Customer.
 13. The Parties agree that the contract shall be deemed executed upon the moment MetalDleW SA confirms acceptance of the order.
 14. Technical drawings along with any descriptions and any other requirements, as well as generally available technical standards shall form an integral part of the order.
 15. By placing an order along with a full technical documentation the Customer warrants that the technical documentation furnished by it is not encumbered with any third-party rights and that the Customer has an unrestricted right to use the same for commercial purposes, including for the purposes of ordering manufacture of goods and provision of services from MetalDleW SA based thereon. Should any third party lodge any claim in respect of MetalDleW SA, information that the effect shall be immediately provided to the Customer and MetalDleW SA shall specify the Customer as the party to any possible dispute. In such a situation the Customer undertakes to take any such legal steps as are necessary to indemnify MetalDleW SA against the consequences of third-party claims, including securing the relevant amounts for any possible legal proceedings. In any case, the Customer undertakes to cover any and all costs MetalDleW SA might be obliged to incur in connection therewith.
 16. In order to ensure proper performance of an order or uninterrupted production processes, MetalDleW SA reserves itself the right to adapt a pattern set at the Customer's cost subject to prior notification of such a need to the Customer. Failure by the Customer to provide an immediate response to the notification of the need to make such an adaptation shall be deemed acceptance thereof.
 17. The Customer may be obliged to pay a storage fee to MetalDleW SA for the storage of a pattern set which is not used for the manufacture of castings for a period of the subsequent 12 months due to no orders being placed by the Customer, provided that a prior request has been submitted, to no effect, by MetalDleW SA to the Customer to collect the said pattern set. The storage fee shall be PLN 5,000.00 net for a full 12-month period of storage.
 18. Upon the lapse of the 12-month storage period and ineffectual submission of the request referred to in the preceding item, the Customer shall be obliged to pay to MetalDleW SA a fee of PLN 500.00 net per each commenced month of storage of the pattern set.
 19. The Parties agree that in respect of the patterns provided to MetalDleW SA, the latter shall be entitled to keep the same until the Customer pays the amounts due to MetalDleW SA.
 20. MetalDleW SA undertakes to keep confidential any and all information, designs and data (including those that constitute a trade secret) provided to it by the Customer for the purposes of manufacturing of the goods or provision of services for a period of 3 years following performance of the order the confidential information pertains to. Upon the lapse of that period, the Customer should collect from MetalDleW SA any and all documentation or carriers containing information relating to performance of the contract, failing which MetalDleW SA shall bear no liability for the security of any such data. At the same time, MetalDleW SA shall be entitled to keep or copy any such information as is required to demonstrate that the contract has been duly performed should any dispute arise between the Parties.
 21. The terms and conditions of performance of this contract and of the individual orders shall constitute a business secret, hence providing any information on the content thereof to any third parties shall be prohibited. Such a prohibition shall not apply to a situation where such information is required from a party to the contract by any authority entitled thereto under applicable law or a requirement to keep any prices confidential shall remain in effect also following performance of the order.
 22. Subject to the obligation, referred to above, to keep confidential any information constituting a business secret, MetalDleW SA shall have the right to refer in its marketing activities to the fact that it performed an order to the Customer.
 23. Any amendment to the technical documentation of the goods or services ordered shall be deemed an amendment to the material terms and conditions of the contract and as such it shall require reconsideration of the ability to perform the subject of the contract, revaluation thereof and establishment of a new performance deadline. Where no such new arrangements are made, the order shall be deemed not amended and

- performance thereof on the original terms and conditions shall not be deemed undue performance of the contract.
24. The contractual obligation of MetalDleW SA shall be solely the manufacturing, sale or delivery of goods and services that have been explicitly specified in the order. Any additional elements not covered by the contract shall be treated as goods and services ordered and paid for on a separate basis. Acceptance of such a separate order as well as detailed rules governing performance and settlement thereof shall be agreed by the Parties on a case by case basis.
 25. In the event that the Customer requires carrying out of any quality testing of the goods that has not been agreed in the order confirmation or whose frequency exceeds the agreed number of tests, MetalDleW SA may refuse to carry out such testing.
- PRICE AND PAYMENTS
26. Given the individual nature of the goods sold, manufactured or delivered and of the services provided, the price for the performance thereof shall be agreed on a case by case basis in accordance with an offer presented by MetalDleW SA :
 - a) For any new goods: according to the actual weight at the net price expressed in Polish zlotys per kilogram as agreed by the Parties in the order confirmation;
 - b) For any reproducible goods: at the net price expressed in Polish zlotys per piece as agreed by the Parties in the order confirmation.
 27. Any increase in the prices of materials and energy shall entitle MetalDleW SA to request the Customer to renegotiate the prices quoted in the order confirmation and the Customer shall be obliged to enter into such renegotiations.
 28. The Customer undertakes to pay for the goods and services based on the invoices issued by MetalDleW SA by the date and with the method specified in the order confirmation.
 29. MetalDleW SA represents that it is a payer of the tax on goods and services (VAT) and that it has been assigned the following Tax Identification Number (NIP): PL6780035737.
 30. The Customer authorises MetalDleW SA to issue invoices without the recipient's signature and to send the same in electronic form.
 31. Payment for delivery of goods or provision of services shall be made within 30 days of the issue of the relevant invoice, unless the Parties have agreed otherwise.
 32. MetalDleW SA may render acceptance of an order contingent on the Customer making an advance payment to be subsequently set off against the final amount due.
 33. In the event of a sale with deferred payment, the Customer shall confirm receipt of the goods and approve the amount due.
 34. MetalDleW SA may render performance of a contract contingent on a provision of any appropriate security for payment as MetalDleW SA may think fit.
 35. Payments shall be made to the bank account of MetalDleW SA as specified in the invoice.
 36. The Customer may not set off any amounts due to MetalDleW SA against any amounts it owes from MetalDleW SA, unless it has obtained a prior consent thereto from MetalDleW SA made in writing under pain of nullity.
 37. The Customer may not transfer any rights or obligations under any contract entered into based on these GTC to any third parties, unless it has obtained a prior consent thereto from MetalDleW SA made in writing under pain of nullity.
 38. As regards any amounts due to the Customer under any contract entered into based on these GTC, MetalDleW SA shall have the right to transfer the same to any third party without the Customer's consent.
 39. When in doubt, it is agreed that the prices of the goods and services of MetalDleW SA are net prices to be increased by the relevant amount of VAT according to the laws currently in force in Poland.
 40. In the event of any default in payment, MetalDleW SA shall be entitled to claim statutory interest.
 41. MetalDleW SA shall have the right to withhold delivery of goods and provision of services if payment for any prior deliveries is delayed, and also if it has reasonable doubts as to the Customer's financial condition. Such a withholding shall not be deemed delay or default in performance of the order.
 42. MetalDleW SA reserves itself the right to credit each payment received from the Customer in such an order as the payments fall due irrespective of any indications by the Customer stating otherwise.
- COLLECTION OF ORDERS
43. An order may be collected by the Customer at the registered office of MetalDleW SA or at such other place as MetalDleW SA may specify. The risk of a loss of or damage to the goods shall pass on to the Customer upon the moment MetalDleW SA makes the goods available for collection by the Customer, also in the event that the Customer uses any third-party transport services.
 44. Failure by the Customer to collect the goods when scheduled may result in MetalDleW SA charging a fee for the storage of the goods in the amount of 2% of the value thereof + VAT per each commenced month of delay in collection.
 45. The date of performance or release of the goods must be each time specified in the order and confirmed by MetalDleW SA. If in the course of performance of the order it turns out that the deadline originally planned cannot be met, MetalDleW SA shall immediately notify the Customer of the anticipated date of collection of the goods. The Customer may not raise any claims towards MetalDleW SA, including any claims for damages, related to the setting of a new delivery date.
 46. The Customer should examine the goods received immediately after receipt of the delivery. Collection of the goods or services by the Customer shall mean acceptance by the Customer of the quantity and quality thereof and confirmation that the same have been delivered in accordance with the order. Following receipt and acceptance, the Customer may not claim any quantitative shortages or defects that were visible and accepted by the Customer or that should have been identified by the Customer on receipt of the goods.
- FORCE MAJEURE
47. MetalDleW SA shall not be liable for any delay in delivery of goods or provision of services, if the delay has been caused by any force majeure event. A force majeure shall be deemed to mean occurrence of any events that are independent of the Parties' will, that the Parties could not foresee or prevent and that objectively render performance of contractual obligations impossible or substantially hindered. Should performance of a contract of sale become impossible due to a force majeure event, each Party may withdraw therefrom.
- WARRANTY AND LIABILITY
48. MetalDleW SA shall warrant the quality of the goods and services for a term of 12 months of the date of manufacturing or provision thereof.
 49. Failure to pay by the contractual deadline shall result in a loss of warranty rights with regard to the goods and services not paid for.
 50. A warranty claim should be made immediately but no later than within 3 days of occurrence of a defect or fault. Failure to meet that deadline shall result in a loss of warranty rights.
 51. In a notice of a warranty claim the Customer should describe in detail at least the goods, scope of defects identified and the circumstances and date of occurrence thereof, as well as attach documents, if any, and photographs evidencing the irregularity.
 52. Until examination thereof, any claims lodged by the Customer shall not affect determination of the total value of the order or the payment dates specified in the order confirmation.
 53. Until final examination of the claim, the Customer shall be obliged to store the goods the claim refers to in a proper manner, in particular so as to prevent any damage thereto and allow inspection thereof by the representatives of MetalDleW SA, otherwise the warranty rights shall be lost.
 54. The warranty shall cover the following defects: hidden defects identified in the course of machining, i.e. inherent defects such as: porosity, discontinuities, shrink holes, cracks and any other defects that are more serious than those specified in the terms and conditions of acceptance and testing. This applies only to defects that occurred for reasons inherent in the item sold. If the goods are manufactured in accordance with the technology and documentation provided by the Customer, MetalDleW SA shall not be liable for any defects resulting from such technology.
 55. Any inherent defects identified in the course of machining should be immediately reported to MetalDleW SA. If the defective goods have any machining allowance allowing repair of the defect, no further machining that could render such repair impossible should be permitted.
 56. The warranty shall not cover any damage to the goods or equipment the goods have been installed in, caused by any failures to comply with the instructions for further treatment and operation, attempts to make any repair on one's own, mechanical damage, or use of supplies other than recommended by the manufacturer. The warranty shall not cover any loss of functionality of the goods resulting from normal wear and tear. The Customer may not lodge any warranty claims if the goods manufactured and services provided are compliant with the technical documentation supplied and the Customer lodges claims arising from any amendment to the documentation or if errors result from any misstatements in the technical documentation.

57. The Customer shall lose warranty rights if MetalDleW SA identifies any attempted repairs of the goods concerned by the Customer.
 58. In the event that any irregular functioning or non-functioning of the goods has been caused by further machining or start-up, or by installation of such goods by the Customer in a manner incompatible with the instructions for further treatment and operation, any costs of repair, established according to an individual valuation made by MetalDleW SA shall be charged to the Customer.
 59. Should it be found that a repair is not covered by the warranty, MetalDleW SA shall notify the Customer of that fact and, at the same time, present it with an offer of repair specifying valuation of such repair. MetalDleW SA shall commence any repair once the costs of such repair are accepted by the Customer.
 60. The costs of any possible disassembly of the goods and delivery of defective goods to MetalDleW SA under the warranty shall be borne by the Customer.
 61. Any warranty repairs shall be carried out by MetalDleW SA or ordered to third parties and should be performed within 14 days of the date of delivery of a given item to MetalDleW SA. However, if a particular warranty repair requires procurement of any raw materials or other materials of limited availability or if the repair process needs more time for justified reasons, MetalDleW SA shall notify the Customer of that fact and the Parties shall jointly estimate the time needed to complete the warranty repair. The Customer may not lodge any claims as to the duration of the repair or delivery of new goods under the warranty, or any claims as to the very fact of occurrence of the fault and the resulting temporary exclusion of the equipment from operation.
 62. In any event, MetalDleW SA may, at its own discretion, either repair or replace defective goods, or terminate the contract of sale and reimburse the Customer for the amounts already paid.
 63. MetalDleW SA shall not be obliged to deliver any substitute goods for the period of repair or replacement, or liable for any compensation for damages resulting from the fact that throughout the repair period the Customer cannot use the equipment the goods repaired are a component of.
 64. In the event that the goods are replaced with new ones under the warranty, the goods shall be covered by additional warranty for a period of 12 months as of the date of completion of the warranty replacement.
 65. The Customer shall be notified of the completion of the warranty repair and the goods shall be made available for collection. The Customer may, at its own discretion, either collect the goods from MetalDleW SA or from a place specified by MetalDleW SA.
 66. MetalDleW SA shall not be liable for any damage or accelerated wear and tear of the goods, resulting from improper use, storage or transport thereof. The Customer agrees that the proper manner of use shall be one that is in compliance with the instructions for further treatment and operation.
 67. MetalDleW SA shall not be liable for any qualitative or quantitative deviations provided that they do not exceed the tolerances agreed in the order or permitted in the applicable standards or generally accepted industry practice. This shall also apply to minor repairs of the goods, e.g. through welding.
 68. Any statutory liability of MetalDleW SA for physical or legal defects of the subject of the contract is hereby excluded and the Customer, by placing its orders based on these GTC, consents thereto.
 69. Given the fact that MetalDleW SA manufactures products that are intended to be further machined or otherwise treated and installed into other final equipment, it shall not be liable for any damage caused by the product, except where a defect that could have triggered the damage had been identified in the item sold from the beginning.
 70. Any liability of MetalDleW SA for damages resulting from defective operation of the products sold, both as regards direct loss and profits lost, shall be excluded.
 71. The costs of the warranty claims may not exceed the value of the order.
 72. Subject to the other provisions of these general terms and conditions, any liability of MetalDleW SA for the performance of the contract or towards third parties (e.g. in the event of any recourse by the Customer) may not exceed the value of the goods or services such claims pertain to. This limitation of liability shall not apply to a liability for any intentional damage caused to the Customer.
 73. Any foregoing limitations of liability shall apply both to MetalDleW SA and to any third parties MetalDleW SA is liable for pursuant to the applicable laws.
- RETENTION OF TITLE
74. MetalDleW SA reserves itself the right to retain the ownership title to the goods collected by the Customer until the amount due for them is paid in full including any default interest.
 75. In the event that no payment has been made for delivery of the subject of the contract, MetalDleW SA shall have the right to demand immediate return of the entire delivery, irrespective of whether the goods are in possession of the Customer or of any third parties. The Customer undertakes to notify its clients of this provision and to incorporate an analogous provision in its agreements with such clients.
 76. If the goods are not returned when requested by MetalDleW SA, MetalDleW SA shall, in addition, have the right to claim a contractual penalty of 20% of the net price + VAT of the lot of goods requested to be returned.
 77. Should the goods returned be worn out or damaged, resulting in the value thereof being lower than the value of the goods released to the Customer, MetalDleW SA shall also have the right to claim supplementary damages.
- FINAL PROVISIONS
78. Any correspondence shall be delivered to the address specified by the Customer in its order, unless it has specified in writing any other address for correspondence. Should any doubts arise as to the right address for correspondence, any correspondence shall be sent to the address specified in the excerpt from the relevant court register or register of entrepreneurs. If any letter has not been successfully served, the Parties shall deem it duly delivered as at the date of return of the same by post due to it not having been collected by the specified deadline. The Parties may exchange electronic correspondence to the email addresses specified in the order and confirmation of order. Any information sent from addresses other than the ones specified in the order and confirmation of order, by persons not authorised to represent a given Party, shall not be deemed binding correspondence.
 79. Payment of any contractual penalty provided for in these general terms shall not preclude seeking damages by MetalDleW SA in excess of the amount of such penalties under general principles of the civil law.
 80. The place of performance of the orders these GTC apply to shall be Kraków, Poland. As a consequence, the country the orders relate to most closely shall be Poland.
 81. Any possible disputes arising out of performance of the contract shall be resolved by Polish courts having jurisdiction over the registered office of MetalDleW SA.
 82. Any matters not provided for in these general terms and conditions shall be governed by the relevant provisions of the Polish law, in particular of the Civil Code.
 83. Any goods manufactured and services provided under these GTC shall be governed by the industry rules and standards applicable on the territory of the Republic of Poland.
 84. These GTC exclude application of the provisions of the Vienna Convention of 11 April 1980 on international sale of goods.
 85. Any amendments to these Terms and Conditions or the terms and conditions set forth in the order confirmation as well as any additional stipulations regarding the contract shall be in writing, otherwise being null and void.
 86. Should any provision of these GTC be found invalid or ineffective in whole or in part, it shall not affect the validity of the other provisions of the GTC.