

Terms and Conditions

1. OFFER TERMS

METTOP ("Seller") hereby offers to sell and deliver its products and services to you ("Buyer") in accordance with the terms and conditions hereof. Terms and conditions of any previous offer of Buyer are hereby rejected. This offer is expressly limited to and made conditional upon the terms and conditions contained herein. Any of the Buyer's terms and conditions which are in addition to or different from those contained herein and which are not separately agreed to in writing by seller are hereby rejected and shall be of no effect. If these terms are not acceptable, Buyer must immediately notify Seller. Buyer's purchase and acceptance of products from Seller constitutes Buyer's assent to and acceptance of all terms and conditions contained herein.

2. ENTIRE AGREEMENT

This instrument, and any order acknowledgment or agreement signed by Seller into which this instrument is incorporated by reference, if any (collectively, the "Agreement"), contains the entire and only agreement between the parties relating to the subject matter hereof. Any representation, affirmation of fact, and course of prior dealings, promises or conditions in connection therewith or usage of trade not expressly incorporated in this Agreement shall not be binding on Seller. No waiver, consent, modification or change of terms herein shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. Failure of Seller to object to provisions contained in any order or other document provided by Buyer shall not be construed as a waiver of the terms and conditions of this Agreement nor an acceptance of any provisions of any such order or other document. The rights and obligations contained herein shall inure to and be binding upon the parties, their legal representatives, successors and permitted assigns.

3. WARRANTY

a. General. Seller warrants that its products and services furnished under this Agreement will, at the time of delivery, be free from defects in material and workmanship and will conform to Seller's applicable specifications or, if appropriate, to Buyer's specifications accepted in writing by Seller. Seller's obligation or liability to Buyer for products and services which do not conform to the above stated warranty shall be limited to Seller, at Seller's sole discretion, either repairing, replacing, or refunding the purchase price of the defective product(s) provided that written notice of said defect is received by Seller within the time periods set forth below:

i. for all engineering design and technical consulting , thirty (30) days from date of initial delivery;

ii. for all hardware products including complete systems, one (1) year from date of initial delivery except wear parts.

The foregoing warranties shall not apply to any products which Seller determines have, by Buyer or otherwise, been subjected to operating and/or environmental conditions in excess of the maximum value established therefore in the applicable specifications, or any products that have been the subject of mishandling, misuse, misapplication, neglect, improper testing, repair, alteration or damage.

b. Limitation. The provisions of the foregoing warranties extend to Buyer only and not to Buyer's customers or users of Buyer's products and are in lieu of any other warranty, whether express, implied or statutory, including any implied warranty, of merchantability or fitness for a particular purpose. In no event Seller shall be liable for incidental, special or consequential damages. Seller's liability arising out of the production, sale or supply of products or their use or disposition, whether based upon warranty, contract, tort or otherwise, shall not exceed the actual purchase price paid by Buyer for Seller's products. Seller's liability for any claim of any kind shall in no case exceed the obligation or liability specified in this Warranty.

c. Technical Assistance. Seller's Warranty as hereinabove set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of, Seller's rendering of technical advice, facilities or service in connection with Buyer's order of the products furnished hereunder.

d. Warranty Procedures. Buyer shall notify Seller of any products and design work which it believes to be defective or incorrect during the applicable warranty period and which is covered by the Warranty set forth above. Buyer shall not return any products for any reason without the prior authorization of Seller and issuance of a Return Material Authorization ("RMA") number. After issuance of a RMA number, such products shall be promptly returned by Buyer (and in no event later than thirty (30) days after the Warranty expiration date), transportation and insurance prepaid, to the Seller's designated facility for examination and testing. Seller shall either repair or replace any such products found to be so defective and promptly return such products to Buyer, transportation and insurance prepaid. Incorrect design work will be corrected and replaced. Should Seller's examination and testing not disclose any defect covered by the foregoing Warranty, Seller shall so advise Buyer and dispose of or return the products in accordance with Buyer's instructions and at Buyer's sole expense, and Buyer shall reimburse Seller for testing expenses incurred at Seller's then current repair rates.

e. Repair Warranty. Seller warrants its repair work and/or replacement parts for a period of ninety (90) days from receipt by Buyer of the repaired or replaced products or for the remainder off the warranty period for the initial delivery of such order as set forth in paragraph a above, whichever is greater.

f. Critical Applications. Certain applications using Seller's products may involve potential risks of death, personal injury, or severe property or environmental damage ("Critical Applications") caused by operator malfunction. Therefore Buyer operates Sellers products on his own risk and agrees to defend, indemnify and hold harmless Seller from any and all damages, claims, proceedings, suits or expense resulting from such use.

4. INDEMNITIES

a. By Seller. Except as provided below, Seller shall defend and indemnify Buyer from and against any damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising out of any claim that products purchased hereunder infringe a valid patent or copyright or infringe a trade secret of a third party, provided that (i) Buyer shall have promptly provided Seller written notice thereof and reasonable cooperation, information, and assistance in connection therewith, and (ii) Seller shall have sole control and authority with respect to the defence, settlement, or compromise thereof. Should any products delivered hereunder become or, in Seller's opinion, be likely to become the subject of such a claim, Seller may, at its option, either (x) procure for Buyer the right to continue purchasing and using such products, or (y) replace or modify such products so that they become non-infringing, or (z) request that Buyer return such products and, upon receipt, reimburse Buyer the full purchase price paid for such products as full and complete satisfaction for any claims Buyer may have against Seller arising from such infringement. In such event, Seller may withhold further shipments of infringing or potentially infringing Seller products.

Seller shall have no liability or obligation to Buyer hereunder with respect to any patent, copyright or trade secret infringement or claim thereof based upon (i) compliance with designs, plans or specifications of Buyer, (ii) use of the products by Buyer or any agents or customers of Buyer in combination with, or the incorporation or imbedding of the products into, devices or products not purchased hereunder where Seller's product alone would not be infringing, (iii) use of the products by Buyer in an application or environment for which such products were not designed or contemplated, (iv) modifications of the products by Buyer or any agents or customers of Buyer, or (v) any claims of infringement of a patent, copyright or trade secret in which Buyer or any affiliate or customer of Buyer has an interest or license. Seller's liability hereunder shall not exceed the purchase price paid by Buyer for products found to be infringing. The foregoing states the entire liability of Seller with respect to infringement of patents, copyrights and trade secrets by Seller's products or any part thereof or by their operation.

b. By Buyer. Buyer shall defend and indemnify Seller from and against any damages, liabilities, claims, proceedings, suits, costs and expenses (including reasonable attorneys' fees and court costs) incurred by Seller as a result of or arising from Buyer's activities, including, without limitation, product liability, intellectual property infringement, customer warranty and service claims, provided that (i) Seller shall have promptly provided Buyer written notice thereof and reasonable cooperation, information and assistance in connection therewith, and (ii) Buyer shall have sole control and authority with respect to the defence, settlement or compromise thereof.

5. NO LICENSE

The sale of products, or parts thereof, by Seller does not convey any license, by implication, estoppel or otherwise, to use or practice any patent claims or other intellectual property of Seller covering the products, parts or other devices or elements.

6. FORCE MAJEURE

In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any act of nature, fire, casualty, flood, war, riot, strike, lock out, failure of public utilities, injunction or any act, exercise, assertion or requirements of governmental authority, epidemic, destruction of production facilities, unavailability of materials, labour, equipment, transportation or energy sufficient to meet production and delivery needs, or any other cause beyond the reasonable control of the party invoking this provision, and if such party shall have used reasonable efforts to avoid such occurrence and minimize its duration and has given prompt written notice to the other party, then the affected party's performance shall be excused and the time for performance shall be extended for the period of delay or inability to perform due to such occurrence.

7. DELIVERY

All scheduled or quoted delivery dates agreed to by Seller are approximate and are based upon prompt receipt of all necessary information from the Buyer.

Acceptance: Buyer shall examine all products promptly upon receipt. No later than twenty (20) days after delivery, Buyer shall notify Seller of any shortage or non-conformance, and if rejection is intended, all grounds shall be specified. Failure to give Seller such timely notice shall be deemed an unqualified acceptance by Buyer of the delivered products.

8. PAYMENTS

If not otherwise agreed by Seller's offer all invoices shall be due and payable thirty (30) days from the date of invoice. Subject to applicable law, amounts past due shall accrue interest at the rate of 1% per month from the due date until paid in full. Seller reserves the right at any time to revoke any credit extended to Buyer because of Buyer's failure to pay for any products when due or, in Seller's discretion, for any other lack of financial assurance. In such event, Seller may require that all subsequent deliveries be paid for in advance or on delivery. Seller may suspend any further deliveries or discontinue any of the work to be performed by Seller until such payment has been received. Prorate payments shall become due as shipments are made. If the work to be performed hereunder is delayed at Buyer's request, payments shall be made based on the purchase price and the percentage of completion. Buyer shall be liable to Seller for damages to or loss of such product, and for the expense of holding the completed product or delaying completion of the product. Failure to furnish any such payment within ten (10) days of demand by Seller shall constitute a repudiation of this Agreement and in such event Seller shall be entitled to receive reimbursement for its cancellation charges. In the event Seller cancels Buyer's order due to non-performance of Buyer, or if Buyer fails to purchase the total quantity specified on the order, Seller shall invoice Buyer for the price in effect at the time of the last delivery applicable to the quantity actually purchased.

In the event of bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, Seller shall be entitled to cancel any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges.

9. RETENTION OF TITLE

Seller will retain title to all goods supplied by it until full payment of the amounts invoiced. This shall also apply if the purchase price has been paid for certain shipments of goods defined by the Buyer, because retention of title serves the purpose of securing the total accounts receivable by the Seller. If goods which are the property of the Seller are mixed, blended or combined with other items, the Buyer already at this point assigns his ownership rights or co-ownership rights to the new item to the Seller and shall hold the item in safe custody for the Seller with the care of a prudent businessman. The Buyer may only sell the goods which are the property of the Seller in the ordinary course of business provided that he is not in default of payment. The Buyer already at this point assigns his purchase price claims from resale vis-à-vis his customers to the Seller and shall make the note which is required for this assignment clause to become effective in his books or on his invoices. In the case of assignment the Seller shall also be entitled to notify the customers of the Buyer. The consent to resale, process or combine the goods shall automatically expire if insolvency proceedings are opened over the assets of the Buyer.

10. PURCHASE PRICE AND TAXES

Unless otherwise stated by Seller in a written acknowledgment issued to Buyer, prices, terms of payment and pricing policies, including handling charges, will be those set forth in Seller's published offer in effect on the date of delivery to domestic Buyer and in effect on the date of shipment to international Buyer. Payment of the purchase price and all other charges shall be tendered in legal currency of EURO unless otherwise agreed to in writing by Seller. The amount of any present or future sales, value added, use, excise or other tax applicable to the sale, provision or use of the products sold hereunder shall be paid by the Buyer, or in lieu thereof the Buyer shall provide Seller with a tax-exemption certificate acceptable to any applicable taxing authorities.

11. CANCELLATION


Buyer may cancel its order only upon written notice and upon payment to Seller of cancellation charges in accordance with the following schedule: a) greater than sixty (60) days prior to delivery date, 0% of the purchase price; b) between thirty (30) and sixty (60) days prior to the delivery date, 75% of the purchase price; and c) less than thirty (30) days prior to the delivery date, 100% of the purchase price. The foregoing cancellation provisions apply to non-custom products; Buyer may not cancel, delay or otherwise modify orders for custom orders without Seller's prior written consent. No cancellation by Buyer for Seller's default shall be effective unless Seller shall have failed to correct such alleged default within thirty (30) days after receipt by Seller of a written notice from Buyer specifying such default.

12. ASSIGNMENT

Any assignment of this Agreement, or of any rights or obligations hereunder by the Buyer without the prior written consent of the Seller shall be null and void.

13. APPLICABLE LAW AND VENUE, PARTIAL INVALIDITY

The construction, interpretation and performance of this Agreement and all transactions, disputes or claims hereunder or related hereto shall be governed in all respects by the laws of AUSTRIA excluding Austrian conflict of laws rules and UN-Conventions on the International Sales of goods (UN Sales law). For all disputes directly or indirectly arising from the contractual relationship the court having jurisdiction over the subject-matter and the place of the Seller's establishment shall have exclusive jurisdiction. If the Buyer's registered office is situated outside the EU, all disputes arising out of the contract or referring to violation, termination or nullity of the same shall be finally settled according to the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber (Vienna Rules) by three arbitrators appointed in accordance with the said Rules. In any event, the Seller is entitled to sue the Buyer also at the place of Buyer's establishment. If any of the provisions of these General Terms and Conditions is ineffective, a provision



shall apply which comes as close as possible to the ineffective provision. Ineffectiveness of individual provisions shall not affect the validity of the remaining provisions.

14. PROPRIETARY INFORMATION

No proprietary information disclosed by either party to the other in connection herewith shall be disclosed to any person or entity other than the recipient party's employees and contractors directly involved with the recipient party's use of such information who agree to protect the confidentiality of such information, and such information shall otherwise be protected by the recipient party from disclosure to others with the same degree of care accorded to its own proprietary information. Information will not be subject to this provision if it is or becomes a matter of public knowledge without the fault of the recipient party, if it was a matter of written record in the recipient party's files prior to disclosure to it by the other party, or if it was or is received by the recipient party from a third person under circumstances permitting its unrestricted disclosure by the recipient party. Upon termination of this Agreement, each party shall promptly deliver to the other, all proprietary information of the other party in the possession or control of such party and all copies thereof.

By accepting METTOP's products and services, Buyer agrees to be bound by METTOP's General Terms and Conditions. Buyer further agrees that said Terms and Conditions shall supersede any terms and conditions which may be printed on any purchase order form or other document submitted by Buyer to METTOP.