

# General Terms and Conditions of 11 July 2022

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## 1. Scope of application

1.1 All deliveries of standard hardware and software (hereinafter referred to as "Deliverables") of Metrolux optische Messtechnik GmbH (hereinafter referred to as "Metrolux") include the related operating manual and installation instructions (hereinafter referred to as "Documentation") and will be made exclusively subject to the following terms and conditions and any and all general terms and conditions of the customer shall be excluded.

1.2 The scope of Metrolux' delivery obligations is exclusively defined by the written order confirmation issued by Metrolux.

1.3 Metrolux reserves the right to make modifications to the design or form based on improved technology and/or on legislative requirements during the term of delivery, provided the Deliverables are not materially modified and such modifications are reasonable for the customer.

1.4 The customer shall be solely responsible for the selection of the Deliverables that are suitable for the customer's requirements.

1.5 These General Terms and Conditions shall only apply if the customer is a merchant, body corporate under public law or special fund under public law.

## 2. Delivery, transfer of risk

2.1 Dates and/or periods of delivery shall not be binding, unless expressly confirmed as binding by Metrolux in writing.

2.2 Metrolux shall only be able to comply with such stipulated dates or periods of delivery if the customer fulfilled all their obligations, including but not limited to obtaining all necessary official certificates or permits or making a down payment.

2.3 The delivery dates/periods shall be extended in case of measures relating to labour disputes, including without limitation strikes and lockouts, as well as in case of unforeseen hindrances beyond Metrolux' control, e.g. interruptions of operations, delays in delivery of essential materials, in each case to the extent such hindrances can be proven to have a material influence on the delivery of the Deliverables. The same shall apply if sub-suppliers are subject to such circumstances. The delivery period shall be extended by a period of time corresponding to the duration of such measures or hindrances.

2.4 All deliveries are made EXW Metrolux' place of business.

2.5 The customer shall be obliged to immediately inspect the delivered Deliverables as to any transport or other external damage and to secure proof thereof. The customer must file any complaints in writing to Metrolux without delay, however, no later than within 6 days after receipt of the Deliverables.

2.6 Metrolux is entitled to make partial deliveries, provided this is not unreasonable for the customer.

2.7 The risk shall pass to the customer once the Deliverables are shipped at the latest, even in case of partial deliveries or in case Metrolux agreed to additional performance or in case of subsequent deliveries or repairs. If shipment is delayed due to circumstances not attributable to Metrolux, the risk shall be transferred to the customer at the time the Deliverables are ready for dispatch.

### 3. Prices and terms of payment

3.1 Unless otherwise agreed upon in writing, the prices for Metrolux' performance are based on Metrolux' general price list applicable at the time the order is placed. Unless otherwise agreed upon in writing, all prices are stated net, excluding packaging, shipping, freight, VAT, customs duties, etc.

3.2 Unless otherwise agreed upon, all payments shall become due upon delivery. In case the customer fails to pay, the customer shall be deemed to be in default 30 days after payment became due.

3.3 Payments by cheque or bill of exchange are not deemed to be a fulfilment of the payment obligation.

3.4 In case of delay in payment, if any, the customer shall be obliged to pay interest amounting to 10% above the base rate, however, not less than 9% p.a. Metrolux reserves the right to assert additional claims for interest and/or damage.

3.5 If the customer fails to fulfil their contractual obligations, Metrolux shall be entitled to suspend performance in whole or in part and to demand immediate payment in cash of all receivables that are due for

payment or to demand the provision of security for payment.

In case of any material deterioration of the customer's financial situation, Metrolux shall be entitled to make future performance subject to payment in advance or to the provision of securities.

3.6 The customer shall not have any right of set-off or retention, except for undisputed counterclaims or counterclaims recognised by declaratory judgement.

3.7 Price changes are inadmissible, unless the period of time between the conclusion of contract and the agreed date of delivery exceeds four months. Should wages, cost of materials or cost prices increase thereafter and until completion, Metrolux is entitled to increase the price to a reasonable extent commensurate with such cost increases. The customer shall not be entitled to rescind the contract, unless the price increase materially exceeds the increase of the general cost of living in the period between the placement of the order and the delivery thereof.

3.8 If the customer withdraws an order without justification, Metrolux shall be entitled to demand 10% of the sales price in order to cover the costs incurred for the handling costs of the order and lost profit; this shall not affect Metrolux' right to assert higher claims for damages, if the actual damage was higher. The customer shall be entitled to prove that the damage actually incurred was lower.

### 4. Retention of title

4.1 Metrolux reserves title to the delivered Deliverables (hereinafter referred to as the "Goods Subject to Retention of Title"), including related Documentation, if any, until full payment of all receivables due from the customer based on the relevant delivery contract.

4.2 Metrolux reserves all rights of use pertaining to the contractual computer programmes and other copyright-protected works until full payment of all receivables due from the customer based on the relevant delivery contract. Until full payment, Metrolux may grant a non-exclusive, non-transferable right of use for test purposes, which may be revoked at any time after the remuneration became due for payment.

4.3 In case of any violation of the contract by the customer, including without limitation delay in payment, Metrolux shall be entitled to take back the Goods Subject to Retention of Title at the customer's expense. However, if Metrolux takes back the Goods Subject to Retention of Title, this shall not be deemed to be a rescission of contract. Metrolux shall be entitled to realise the Goods Subject to Retention of Title and to allocate the proceeds to the receivables outstanding after deduction of reasonable realisation costs.

4.4 The customer shall be obliged to treat the Goods Subject to Retention of Title with the due care of a diligent businessman and to insure these goods against damage and loss.

4.5 The customer shall be entitled to resell the Goods Subject to Retention of Title in their ordinary course of business. However, effective immediately, the customer assigns to Metrolux all claims the customer has vis-à-vis their customers or third parties based on the resale, up to the amount of the purchase price (including VAT) agreed upon between Metrolux and the customer and irrespective of whether the Goods Subject to Retention of Title were resold with or without processing or compounding.

4.6 The customer shall be entitled to collect the receivables from the resale after they were assigned to Metrolux. Metrolux'

right to collect these receivables shall remain unaffected thereby.

However, for as long as the customer uses the proceeds to fulfil their payment obligations to Metrolux, is not in arrears or ceases to make payments in general, Metrolux agrees not to collect these receivables. Otherwise, Metrolux shall be entitled to demand that the customer discloses the assigned receivables and the related debtors and provides any and all information necessary for collection, the related documents and that they inform the debtors (third parties) of such assignment.

4.7 If the customer processes or remodels the Goods Subject to Retention of Title, such processing or remodelling shall be effected for the account of Metrolux. If the Goods Subject to Retention of Title are processed with other items not belonging to Metrolux, Metrolux shall acquire co-ownership to the new item at the ratio between the value of the Goods Subject to Retention of Title and the other processed items as of the time of processing.

4.8 If the Goods Subject to Retention of Title are irrevocably mixed with other items not belonging to Metrolux, Metrolux shall acquire co-ownership to the new item at the ratio between the value of the Goods Subject to Retention of Title and the other mixed items as of the time of mixing. The customer shall hold any such co-share in custody for Metrolux.

4.9 The customer must neither pledge nor transfer by way of security the Goods Subject to Retention of Title. The customer must inform Metrolux without delay if the Goods Subject to Retention of Title are attached, seized or otherwise disposed of by any third party and must provide Metrolux with any and all information and documents required for Metrolux to safeguard their rights. Third parties must be informed of Metrolux' title to the Goods Subject to Retention of Title.

4.10 Upon the customer's request, Metrolux undertakes to release collaterals to the extent the realisable value of the collaterals exceeds the receivables to be secured by more than 20%.

## 5. Right to assert claims based on defects

5.1 Available technology is unable to provide a guarantee that the Deliverables are completely free from defects. Therefore, claims based on defects are excluded to the extent defects have no or only minor effects on the use of the Deliverables in accordance with their intended purpose, or, if no intended purpose was agreed upon, on the ordinary use thereof.

5.2 The customer's claims based on defects of the Deliverables shall become statute-barred 12 months after they were delivered.

5.3 In case of any defect of a Deliverable, the customer must provide Metrolux with the opportunity for free-of-charge supplementary performance. Such supplementary performance may include, in Metrolux' sole discretion, repair of the defect, delivery of a replacement product that is free from defects or, to the extent the use of the Deliverables in accordance with the contract is not materially affected, the provision of a temporary or permanent workaround.

5.4 In case Metrolux fails to provide supplementary performance successfully after the second attempt to do so and within a reasonable period of time, the customer may set a grace period threatening to reduce the purchase price or to rescind the contract and, after lapse of such grace period, reduce the purchase price or rescind the contract.

5.5 The rights to assert claims based on defects shall cease if and to the extent the customer: uses the Deliverables in violation of the contract or changes or enhances the contractual software, unless the customer proves that such use, change or enhancement did not cause the defects the customer complained about.

5.6 The customer is obliged to cooperate in the definition of defects of the Deliverables in accordance with the Documentation delivered for such Deliverables, including without limitation by providing specified and reproducible descriptions of the defects.

5.7 The right to assert claims based on defects is subject to the condition precedent that the customer complied with their obligation to inspect and their obligation to make a complaint in case of any defect immediately upon receipt in accordance with section 377 of the German Commercial Code.

## 6. Liability/damages

6.1 In case Metrolux incurs a liability for the culpable violation of material contractual obligations, such liability shall be limited to the damage the occurrence of which was typical and reasonably foreseeable for Metrolux based on the circumstances known to Metrolux at the time the contract was concluded. The foreseeable damage will not exceed the amount of EUR 50,000.00. The same shall apply, *mutatis mutandis*, to the liability of employees and vicarious agents of Metrolux in such cases.

6.2 Metrolux' liability for other infringements of any right shall be limited to gross negligence or wilful intent, and liability (except for wilful intent) shall be limited to any damage the occurrence of which Metrolux could have typically foreseen based on the circumstances

known to Metrolux at the time the contract was concluded and not exceed the amount of EUR 500,000.00.

6.3 Metrolux shall not be liable for indirect damage, consequential damage and lost profit.

6.4 The customer shall be obliged to take reasonable precautions to prevent loss of data. Irrespective of the other provisions contained in this section 6, Metrolux' liability for loss of data shall be limited to the costs and/or expenses incurring for the restoration of the data from a regular data backup.

6.5 The liability in accordance with the Product Liability Act shall remain unaffected as well as the liability for guarantees, for fraudulent misrepresentation and for any injury to life, limb or health.

## 7. Property rights

Any and all property rights, including without limitation copyrights to the user documentation, designs, cost estimates, drawings and similar information in tangible and intangible form, including in electronic form, shall remain Metrolux' exclusive property, unless expressly otherwise stipulated in these General Terms and Conditions.

## 8. Prohibition of assignment

The customer's claims against Metrolux, including any and all claims for damages or warranty claims must not be assigned to any third party.

## 9. Third-party property rights

9.1 Metrolux will defend the customer against any and all third-party claims

arising out of any alleged violation of third-party's property rights or copyrights, provided the Deliverables were used in accordance with the contract. Metrolux will bear the costs for the legal proceedings, provided the customer informs Metrolux without delay and in writing of such alleged violation of property rights and allows Metrolux to take any and all measures, including settlement negotiations.

9.2 The customer is not entitled to assert the rights in accordance with 9.1 above, if the violation of property rights arises out of the fact that the customer changed the Deliverables or mixed them with other products.

9.3 Unless otherwise stipulated in this section, the provisions of sections 5 and 6 shall apply *mutatis mutandis*.

## 10. Confidentiality

The contractual parties mutually undertake for an unlimited period of time to treat confidentially and not to record, disclose or use (except to the extent necessary for the fulfilment of the purpose of the contract) any and all information disclosed to them in connection with this contract that was marked as confidential or that is clearly trade or business information.

## 11. Miscellaneous

11.1 Should individual provisions of these General Terms and Conditions be invalid, this shall not affect the validity of the remaining provisions thereof. An ineffective provision shall be replaced with a provision which comes as close as possible to the economic purpose of the ineffective provision.

11.2 Any changes or amendments to these General Terms and Conditions must be in writing in order to be legally valid. The requirement of written form can only be waived by a written agreement between the parties.

11.3 This agreement shall be exclusively governed by the laws of the Federal Republic of Germany.

11.4 The place of jurisdiction for any legal disputes between the parties shall be the court having jurisdiction for Metrolux' place of business and competent as regards the subject matter. Irrespective thereof, Metrolux shall be entitled to bring actions or initiate other legal proceedings at the customer's general place of jurisdiction.