

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY  
of MEGGLE Japan Co. Ltd.  
As of July 01, 2023**



**1. Scope of Application, Deviating Terms and Conditions, Future Business, Prevailing Agreements, Written Form for Legally Relevant Declarations**

- 1.1 These General Terms and Conditions of Sale and Delivery shall apply to any offers or declarations of acceptance issued by MEGGLE Japan Co. Ltd. (hereinafter referred to as "**MEGGLE**"), as well as to any deliveries and other services provided by MEGGLE (including cost estimates, additional services, consultations and information), and to all contracts that MEGGLE concludes as a seller, supplier and contractor with the buyer or client (hereinafter referred to as the "**Customer**").
- 1.2 These General Terms and Conditions of Sale and Delivery shall apply exclusively. Any conflicting, deviating or supplementary conditions of the Customer shall only apply if MEGGLE explicitly consents to their validity in writing in each case. These General Terms and Conditions of Sale and Delivery shall only apply to dealings with the Customer which is a corporation using the deliveries and services provided by MEGGLE as a business or for business purposes.
- 1.3 These General Terms and Conditions of Sale and Delivery shall even apply if MEGGLE unconditionally delivers a product or service to the Customer in the knowledge of the latter's conflicting or deviating conditions.
- 1.4 The latest version of these General Terms and Conditions of Sale and Delivery shall also apply exclusively to any future business concluded with the Customer within the scope of the parties' current business relations, even if the application of this document is not explicitly agreed again.
- 1.5 Any individual agreements concluded with the Customer (including side agreements, additions and amendments) and any deviating information contained in offers / declarations of acceptance shall take precedence over these General Terms and Conditions of Sale and Delivery.
- 1.6 Any legally relevant declarations and notifications to be submitted by the Customer to MEGGLE after the contract has been concluded (e.g. set deadlines, complaints for defects, declaration of withdrawal from the contract or price reductions) must be made in writing to be effective.

**2. Contractual Declarations (Written Form), Documents**

- 2.1 Any offers, declarations of acceptance/order confirmations, amendments and other (side) agreements before or upon conclusion of the contract must be made in writing to be legally effective (e.g. letter, fax, signed document sent via email; hereinafter referred to collectively as "**in writing**").
- 2.2 Any offers made by MEGGLE (particularly regarding prices, quantities and delivery dates) shall be non-binding and only regarded as an invitation for the Customer to make a request for a contract (hereinafter referred to as an "**order**"), unless stated otherwise in a specific offer submitted by MEGGLE. The Customer shall be bound to its order for two weeks. A contract shall only become legally effective when MEGGLE issues a written order confirmation, but at the latest – by derogation from Section 2.1 – when the Customer accepts the delivery.
- 2.3 MEGGLE shall retain ownership of any technical illustrations, product descriptions or other documents issued to the Customer over the course of the contractual negotiations. They may only be passed on to third parties with MEGGLE's express prior written consent.

2.4 MEGGLE shall be entitled to ask the Customer to prove it is authorised to purchase the ordered products if the applicable laws stipulate a special form of registration and/or authorisation for the purchase of the type of products concerned. MEGGLE shall only be obliged to deliver the products when the Customer has provided the appropriate evidence.

3. **Assignments, inclusion of Third Parties, Pricing, Terms of Payment, Late Payment, Electronic Invoicing, Offsetting / Withholding Payments, SEPA Direct Debit Mandate, Financial Deterioration**

3.1 MEGGLE may assign claims arising from or in connection with the contract to affiliated companies or to other third parties. MEGGLE shall further be entitled to commission third parties for performance of contractual obligations for which it is responsible.

3.2 Unless otherwise stated in an order confirmation, all prices shall include "Free Carrier" shipment from MEGGLE's headquarters (FCA, Incoterms 2020) and the usual packaging. Unless otherwise agreed, all prices shall be indicated as net prices; statutory value added tax shall be charged additionally ; the value added tax shall be indicated separately.

MEGGLE shall adjust the prices to be paid at its reasonable discretion to the development of energy costs that are relevant for the calculation of prices. A price increase shall be possible and a price reduction shall be made if there is an increase or decrease in the cost of procuring energy. Increases in cost of purchasing energy, may only be used to increase prices if they cannot be compensated otherwise. In the case of energy cost reductions, MEGGLE shall reduce prices to the extent that such cost reductions are not fully or partially offset by any increases in other areas.

Within the context of a continuing obligation or a framework agreement, MEGGLE shall, when exercising its reasonable discretion, select the respective points in time of a price change in such a way that cost reductions are not taken into account in accordance with criteria that are less favourable for the Customer than cost increases; this means that cost reductions shall have an effect on the price at least to the same extent as cost increases. Within the context of an individual purchase contract, MEGGLE shall make a price change if there are more than three months between the conclusion of the contract and the agreed delivery date.

3.3 Unless otherwise stated in the order confirmation, all invoices issued by MEGGLE shall be due for payment within 10 days of the invoice date. Deductions for early payment shall only be granted by express written agreement.

3.4 A payment shall only be considered made when the full invoice amount is at MEGGLE's disposal. MEGGLE shall not be obliged to accept cheques or bills of exchange; they shall only be accepted as full payment following a successful bank clearance process.

3.5 In the event of late payment, MEGGLE shall be entitled to charge interest at 9 percentage points above the respective base rate. MEGGLE explicitly reserves the right to assert a greater claim for damages as a result of late payment.

3.6 Any complaints about invoices must be made by the Customer immediately (i.e. without culpable delay) in writing.

3.7 The Customer may only offset claims against counterclaims that are acknowledged by MEGGLE, undisputed, legally established or ready for judgement. The Customer shall only be authorised to withhold a payment if its counterclaim is based on the same contractual relationship and is acknowledged by MEGGLE, undisputed, legally established or ready for judgement.

3.8 If it becomes apparent that MEGGLE's claim to consideration is jeopardised by the Customer's solvency after the contract has been concluded, MEGGLE may refuse to provide

its services until the Customer renders the consideration or provides a security. After a period set for this purpose, MEGGLE shall be entitled to withdraw from the contract and/or demand compensation for damages or the reimbursement of expenses if the legal requirements are met.

4. **Delivery, Partial Deliveries, Force Majeure, Deliveries from Suppliers, Delivery Delays, Liability for Late Deliveries**

4.1 Unless otherwise indicated or agreed by MEGGLE, all delivery dates and deadlines shall be non-binding. A delivery period shall only begin when all necessary documents, permits, clearances or other cooperative actions have been provided by the Customer or an agreed down payment has been made. Even after a delivery period has begun, MEGGLE shall not be obliged to deliver if the Customer fails to properly perform its own obligations on time, particularly if it falls in arrears. MEGGLE reserves the defence of unperformed contract.

4.2 Unless otherwise agreed, all deliveries shall be made as “Free Carrier” shipments from MEGGLE’s headquarters in Tokio, Japan(FCA, Incoterms 2020).

4.3 MEGGLE shall be entitled to deliver the goods in partial quantities to a reasonable extent.

4.4 If the delivery of the goods is hindered by force majeure or other unforeseeable events occurring at MEGGLE or one of its suppliers/subcontractors that prevent MEGGLE temporarily from delivering the goods on the agreed date or by the agreed deadline through no direct or indirect fault of its own, the delivery date and deadline shall be extended by the amount of time for which the performance of the contract is disrupted by such circumstances plus a reasonable recovery time. If delivery becomes completely or partly impossible or cannot be reasonably expected due to the above circumstances, MEGGLE shall insofar be released of its duty to deliver and/or entitled it withdraw from the contract. If such a disruption leads to a postponement of over 8 weeks, both contracting parties shall be entitled to withdraw from the contract; however, the Customer shall only be entitled to withdraw from the contract after setting a reasonable grace period for the delivery. Other statutory rights of withdrawal are not affected by the before mentioned provision.

Such events particularly include breakdowns caused by war, sabotage, fire, explosion, water or natural disaster or extreme natural events such as severe weather, as well as legitimate labour disputes and strikes, pandemics, epidemics or plagues, official orders, interruption or suspension of energy supply, failures or restrictions of electronic data exchange caused by a third party as well as attacks on IT systems of MEGGLE or one of its suppliers/subcontractors by third parties.

4.5 Section 4.4 shall also apply in the case of a long-term supply relationship; MEGGLE shall even be entitled to terminate the entire contract if only partial deliveries are affected but MEGGLE cannot be reasonably expected to fulfil the terms of the entire contract due to force majeure.

4.6 If MEGGLE does not receive deliveries on time or at all from its suppliers – this also includes the supply from MEGGLE’S suppliers of raw materials as well as energy such as gas –, it shall not be deemed in default of its obligations to the Customer, unless MEGGLE is responsible for the late supply or lack of supplies. MEGGLE shall be entitled to withdraw from the contract if becomes clear that its suppliers will not be able to supply the ordered goods, raw materials or the quantities of energy ordered through no fault of its own despite making parallel covering arrangements.

4.7 In the event of late delivery, MEGGLE shall be liable for damages in accordance with Section 7 of these General Terms and Conditions of Sale and Delivery. In the event of slight negligence, however, MEGGLE’s liability for damages caused by delay shall be limited to 0.5% of the value of the delayed (partial) delivery for every full week of delay, up to a maximum of 5% of the value of the delayed (partial) delivery.

## **5. Default on Acceptance, Storage Costs, Flat-Rate Compensation**

- 5.1 If the Customer defaults on the acceptance of the goods or culpably violates any other of its obligations to cooperate, MEGGLE shall be entitled, without prejudice to its other rights, to appropriately consign or store the goods at the risk and expense of the Customer. MEGGLE may commission a forwarding agent or warehouse keeper for such purposes. If MEGGLE stores the goods on its own premises, it shall be entitled to a storage fee amounting to 0.25% of the net purchase price of the stored goods per full week of storage. Higher or lower storage costs may be proven and charged accordingly. MEGGLE reserves the right to assert further claims.
- 5.2 The risk of the accidental loss or deterioration of the goods shall be transferred to the Customer at the point in time at which it defaults on acceptance.
- 5.3 If the Customer refuses to accept the contractually agreed goods, or if a reasonable grace period for acceptance expires without the desired result, MEGGLE shall be entitled to withdraw from the contract and/or demand compensation for damages instead of providing the service. In such cases, MEGGLE shall be entitled to demand 20% of the agreed net purchase price from the Customer as compensation. The Customer shall be free to present evidence that MEGGLE has not incurred any damage or less damage than the flat-rate compensation. MEGGLE reserves further rights, particularly the right to prove it has incurred a greater degree of damage.

## **6. Complaints for Defects, Warranty**

- 6.1 The Customer may only assert claims for defects if it inspects the goods immediately after delivery, and in any case before processing the goods. Apparent defects must be immediately reported to MEGGLE in writing (within one week of delivery at the latest). If a hidden defect subsequently becomes apparent, a written complaint must similarly be made immediately (within one week of its discovery at the latest). If the Customer fails to report a defect, the delivery shall be considered faultless and approved. Any rejected goods must be properly stored by the Customer at its own expense. The timeliness of a complaint shall depend on the time at which it is received by MEGGLE.
- 6.2 The expected quality of a product shall be determined by the product specifications and the information contained in the offer.
- 6.3 If the Customer reports a defect on time in accordance with Section 6.1, MEGGLE shall be entitled, at its own discretion, to resolve the issue by either remedying the defect or delivering another flawless item. If MEGGLE decides to remedy the defect, it shall bear all the necessary expenses, unless the rectification measure is made more expensive by the fact that the goods have been moved to a different location since delivery.
- 6.4 The Customer shall not be entitled to assert claims for defects if there is only a minor deviation from the expected quality of a product or a minor impairment of its usability.
- 6.5 The Customer may only assert claims against MEGGLE for the breach of third-party industrial property rights or copyrights if it immediately informs MEGGLE in writing about any such claims asserted by third parties, it does not acknowledge a breach and allows MEGGLE to take care of all protective measures and settlement agreements. Furthermore, the Customer may not assert claims if the breach of third-party industrial property rights or copyrights is caused by special requirements of the Customer, by an application of the goods that could not be foreseen by MEGGLE, or by the fact that the delivery is changed by the Customer or used alongside products that are not supplied by MEGGLE.
- 6.6 With the exception of claims for damages warranty claims shall become time-barred one year after the products have been delivered.

6.7 The Customer may only assert claims for damages caused by defects if MEGGLE's liability is not excluded or limited in accordance with Section 7 of these General Terms and Conditions of Sale and Delivery. The Customer may not assert any claims for defects beyond those stipulated in Section 6 of these General Terms and Conditions of Sale and Delivery.

6.8 The limitation of Section 6 shall not apply if MEGGLE has fraudulently concealed a defect or to the extent MEGGLE issued a guarantee.

## 7. **Liability**

7.1 MEGGLE shall be fully liable for damages in the event of intent and gross negligence. In the event that the damages are caused by the MEGGLE's negligence other than gross negligence, MEGGLE's liability shall be limited to ordinary damages which are caused actually and directly by such negligence (excluding special damages, lost profit, indirect damages and attorneys' fees) or two times the order value, whichever is lower.

7.2 The above exclusions and limitations shall not apply if defects are fraudulently concealed or if a guarantee is undertaken for product qualities, nor shall they apply to MEGGLE's liability for claims asserted by the Customer in accordance with the Japanese Product Liability Act (Act No. 85 of July 1, 1994) or for damage to the Customer's life, limb or health. This shall not reverse the burden of proof to the detriment of the Customer.

7.3 If MEGGLE's liability is excluded or limited, this shall also apply to the personal liability of MEGGLE's legal representatives, employees, workers and vicarious agents.

7.4 With the exception of claims resulting from prohibited acts, any claims for damages asserted by the Customer, where MEGGLE's liability is limited in accordance with Section 7 of these General Terms and Conditions of Sale and Delivery, shall expire one year from the start of the statutory limitation period.

## 8. **Reservation of Proprietary Rights**

8.1 MEGGLE shall retain ownership of the delivered goods (hereinafter referred to as "**goods subject to the reservation of proprietary rights**") until the settlement of all claims held against the Customer within the scope of the supply contract and any other claims that MEGGLE acquires against the Customer in direct connection with the delivered goods, regardless of the legal grounds. Furthermore, MEGGLE shall retain ownership of goods subject to the reservation of proprietary rights until the settlement of any other claims that MEGGLE acquires against the Customer – now or in the future – regardless of the legal grounds (including any outstanding claims to the balance on a current account). In the case of a current account, the goods subject to the reservation of proprietary rights shall act as a security for the outstanding balance claims held by MEGGLE.

8.2 If goods subject to the reservation of proprietary rights are delivered to countries where the validity of the reservation of such proprietary rights is subject to specific requirements or formalities, the Customer shall do everything at its own expense and without undue delay to grant MEGGLE the appropriate security rights. The Customer shall cooperate in all measures that are necessary and beneficial for the effectiveness and enforceability of such security rights (e.g. registration, publication).

8.3 The Customer shall be entitled to process and resell goods subject to the reservation of proprietary rights within its ordinary course of business. However, the Customer shall not be entitled to process and resell goods subject to the reservation of proprietary rights if it is in arrears or has suspended its payments for more than a temporary period. If MEGGLE is the owner of goods subject to the reservation of proprietary rights, it may revoke the Customer's authorisation to process and resell such goods for objectively justifiable reasons. The Customer hereby assigns to MEGGLE all claims resulting from the processing and

resale of goods subject to the reservation of proprietary rights, including any ancillary rights; MEGGLE hereby accepts the assignment.

- 8.4 The Customer shall remain entitled (until revocation) to collect the assigned claims. MEGGLE may revoke the authorisation to collect the claim for objectively justifiable reasons. MEGGLE reserves the right to collect the assigned claims itself. If the Customer fulfils its payment obligations, does not fall in arrears and, in particular, no application has been made to open insolvency proceedings and payments have not been suspended, MEGGLE agrees to refrain from collecting the assigned claims itself. If the Customer fails to fulfil its payment obligations and MEGGLE is therefore authorised to collect the claims itself, the Customer must, upon request, provide MEGGLE with a list of all goods subject to the reservation of proprietary rights, as well as a list of the assigned claims and the names and addresses of the debtors with the amount of the respective claims. The Customer shall be obliged to notify the debtors of the assignment of claims upon request, and MEGGLE shall be entitled to do the same.
- 8.5 If the Customer processes or transforms goods subject to the reservation of proprietary rights in any way within its ordinary course of business, it shall do this on behalf of MEGGLE in such a way that MEGGLE shall be regarded as the manufacturer, without obliging MEGGLE to accept its assignment as the manufacturer. Any processed goods shall be considered goods subject to the reservation of proprietary rights, as described in Section 8 of these General Terms and Conditions of Sale and Delivery. If the Customer processes, combines or mixes goods subject to the reservation of proprietary rights with other goods that are not owned by MEGGLE, the latter shall acquire co-ownership of the new item in the ratio of the final invoice amount of the goods delivered under the reservation of proprietary rights (hereinafter referred to as the **“value of the goods subject to the reservation of proprietary rights”**) to the value of the other processed, combined or mixed goods at the time of the processing, combination or mixing. If the Customer acquires sole ownership of the new item, the parties hereby agree that the Customer shall transfer MEGGLE proportionate ownership of the new item in the ratio of the value of the goods subject to the reservation of proprietary rights to the value of the new item, and the Customer shall store the new item for MEGGLE free of charge. The new item resulting from the processing, combination or mixing shall otherwise be subject to the same terms and conditions as the goods subject to the reservation of proprietary rights.
- 8.6 The Customer must adequately insure goods subject to the reservation of proprietary rights against theft, burglary, water and fire damage, and it must maintain such insurance coverage. The Customer hereby assigns to MEGGLE any insurance claims held against its insurance company in the event of damage, provided MEGGLE is the owner or co-owner of the damaged items; MEGGLE hereby accepts the assignment.
- 8.7 As long as goods are subject to the reservation of proprietary rights, MEGGLE must give its prior written consent for the goods to be pledged, transferred by way of security or otherwise transferred or changed in any way that affects MEGGLE's security. In the event of any third-party intervention (e.g. enforcement measures), the Customer must immediately notify MEGGLE, provide all information and documents required for MEGGLE to safeguard its rights and inform the third party of the reservation of MEGGLE's proprietary rights.
- 8.8 If the Customer breaches the contract, particularly by falling in arrears, MEGGLE shall be entitled to recover the delivered goods at the end of a reasonable grace period. However, MEGGLE shall not be obliged to set a grace period in the event of imminent danger. The recovery of the goods shall also constitute a withdrawal from the contract. MEGGLE shall be entitled to exploit any recovered items; the proceeds from any such exploitation shall be deducted from the Customer's liabilities (minus any reasonable exploitation costs).
- 8.9 At the request of the Customer, MEGGLE shall be obliged to waive the reservation of its proprietary rights or release its securities insofar as the realisable value of all securities granted to MEGGLE from the reservation of proprietary rights, transfer by way of security

and assignment in advance exceeds the total amount of the secured claims against the Customer by over 10%; MEGGLE shall select the securities to be released.

9. **Place of Jurisdiction, Place of Performance, Foreign Trade Regulations, Applicable Law**

9.1 The place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship shall either be the Tokyo District Court or Tokyo Summary Court, as determined by the value of the dispute. The same shall apply if the Customer does not have a general place of jurisdiction in Japan. However, MEGGLE shall be entitled to sue the Customer at another legal venue. The above provisions shall have no bearing on the regulations governing the exclusive jurisdiction of certain institutions.

9.2 Unless otherwise indicated in the order confirmation, the place of performance shall be MEGGLE's place of business. The Customer must transfer money to MEGGLE's place of business at its own risk and expense.

9.3 The performance of the contract shall be subject to the proviso that no obstacles are posed by German, US or other mandatory national, EU or other international foreign trade regulations, embargoes or other sanctions.

9.4 The contract shall be subject to the laws of Japan under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).