

## GENERAL CONDITIONS OF SALE

These general terms and conditions of sale aim to establish the rights and obligations governing the sale of goods by the company-seller to a professional client. These provisions only bind the parties to the sale and will only be opposable to the client provided that he could effectively take note thereof at the conclusion of the sale and accepted these (either expressly or implicitly).

## GENERAL CONDITIONS OF SALE

### **1. Introduction**

These general conditions shall apply, barring any changes expressly agreed in writing by both parties.

### **2. Conclusion of an agreement**

**2.1.** Agreement shall be deemed to have been reached when, after receiving an order, the seller receives written confirmation that the order is to be processed, within the buyer's stipulated deadline if applicable.

**2.2.** If when submitting an offer the seller imposes a deadline for the acceptance thereof, agreement shall be deemed to have been reached when the buyer has confirmed the acceptance of the offer in writing prior to the expiry of that deadline, it being understood that no agreement shall be deemed to have been concluded if such confirmation has not been received within a week after the expiry of said deadline.

**2.3.** Alterations made to the seller's offer shall only be valid if confirmed in writing. All orders processed via an intermediary must be confirmed directly by the seller to the buyer.

### **3. Drawings and descriptions**

**3.1.** Weights, dimensions, capacities and other details included in catalogues, prospectuses, circulars, advertisements, images and price lists shall be deemed to have the status of further details. These data shall only be binding insofar as the agreement specifically refers thereto.

**3.2.** Any drawings and technical descriptions provided to the buyer either before or after agreement has been reached and on the basis whereof whole or partial manufacture is rendered possible, shall remain the exclusive property of the seller. The buyer may not use, copy or reproduce such drawings or technical descriptions, nor pass them on to third parties or acquaint third parties with them without the permission of the seller. However, they are the property of the buyer if:

a) this has been expressly agreed, or

b) they relate to a distinct development agreement preceding the implementing agreement in which the seller did not reserve the associated property rights.

**3.3.** Any drawings and technical descriptions provided by the buyer to the seller either before or after agreement has been reached and on the basis whereof whole or partial manufacture is rendered possible, shall remain the exclusive property of the buyer. The seller may not use, copy or reproduce these drawings or technical descriptions, pass them on to third parties or acquaint third parties with them without the permission of the buyer.

**4. Packaging**

Unless otherwise agreed, prices shall be understood to correspond to unpackaged goods. Packaging is invoiced separately.

**5. Monitoring**

Both during the manufacturing process and following the completion of the work, the buyer shall be entitled to ask its relevant authorised representatives to monitor and verify the quality of both the equipment and the components used. Such monitoring and verification shall be performed during normal working hours at the place of work once a date and time has been agreed in advance with the seller. Any costs arising from the investigation or from the intervention by a monitoring or inspection body are to be borne by the buyer.

**6. Transfer of risk**

**6.1.** The goods are sold and definitively delivered FOB (Incoterms 2020), even if they have to be shipped franco.

**6.2.** The seller must inform the buyer in writing of the date on which the buyer is to take delivery of the goods. The buyer must be informed in sufficient time to be able to take the appropriate measures.

**6.3.** If the seller has acted to provide the buyer with wagons or some other means of transport or to simplify customs formalities, he cannot be held liable in this connection, and any costs arising shall be charged at cost price.

**6.4.** The goods shall be shipped at the buyer's own risk.

**6.5.** Unless otherwise agreed, partial shipments are allowed.

**7. Reservation of title**

**7.1.** Notwithstanding the provisions of Article 6, the goods shall remain the property of the seller until payment has been received in full.

**7.2.** The buyer undertakes not to sell the goods or transfer them to a third party whilst they are still the property of the seller.

Failure to comply with this clause will result in the buyer being liable to pay fixed damages amounting to [50 %<sup>1</sup>] of the retail price (as a supplement to the retail price and as compensation for any delays).

## **8. Delivery periods**

- 8.1.** Unless otherwise agreed, the delivery time shall commence on whichever of the following dates is the later:
- a) the day on which the agreement is reached (see Article 2);
  - b) the day on which the seller receives an instalment of the payment due, in the event that it was stipulated in the agreement that an instalment would be paid prior to the start of production.
- 8.2.** Unless otherwise agreed, the delivery times laid down in the agreement shall be estimates only. Delays shall not entitle the buyer to terminate the contract or claim any compensation.
- 8.3.** Even if the buyer does not take delivery of the goods when they are made available to him by the seller, he may nonetheless not postpone the date normally set for the payment associated with the delivery.

The seller shall store the goods at the expense and risk of the buyer. Should the buyer so request, the seller shall organise arrange to have the goods insured on behalf of the buyer.

## **9. Payment**

- 9.1.** All payments shall be made in euro or in the currency stipulated in the agreement. All payments shall be calculated net and excluding discounts.
- 9.2.** Prices shall be calculated on the basis of the current market value of raw materials, wages and social charges. Unless stated otherwise, the prices shall be revised using the price-revision formula annexed to these general conditions of sale.
- 9.3.** Unless otherwise agreed, invoices must be settled within 30 days, starting from the day following that:
- 1° on which the buyer receives the invoice or similar request for payment; or

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<sup>1</sup> The amount of such compensation should be reasonably proportionate to the possible foreseeable damage in case of non-compliance. Otherwise such clause is presumed to be abusive and therefore null (grey list, art.VI 95/1, 8° Code Economic Law).

- 2° on which the goods or services are received, if the date on which the invoice or similar request for payment is received has not been specified or if the buyer receives the invoice or similar request for payment before receiving the goods or services; or
- 3° on which the approval or inspection of the goods or services takes place with a view to verifying whether they comply with what has been agreed, if the law or agreement in question makes provision for such an approval or inspection procedure and if the buyer receives the invoice or similar request for payment on or prior to the date on which the goods or services are approved or inspected.

Should the buyer fail to pay within the agreed payment period or, in the absence of an agreed such period, within the legally stipulated deadline, on the day after the expiry of said period the seller shall be legally entitled to demand the payment of interest at the reference rate plus eight percentage points rounded up to the nearest half percent. The seller shall be entitled to do this without sending a letter of formal notice to the buyer.

The reference rate shall be the interest rate applied by the European Central Bank for its most recent main refinancing operation, as defined by the law of 2 August 2002.

Should the buyer fail to pay within the agreed payment deadline or, in the absence of an agreed period, within the legally stipulated time limit, the seller, notwithstanding his right to compensation of the legal costs in accordance with the conditions set out in the Civil Code, shall be entitled to reasonable compensation from the buyer for all relevant recovery costs arising from late payment.

The fact that interest is charged does not mean that payments cannot be demanded on the due date.

- 9.4.** All current and future taxes, additional levies and costs, regardless of their nature, related to the sale, are at the expense of the buyer.

## **10. Financial guarantees**

Should it transpire after agreement has been reached but before payment has been settled in full that the buyer is experiencing credit difficulties or should the buyer's creditworthiness diminish, especially in the following cases: requests for payment deadlines, protests, seizure of all or part of the buyer's goods at the request of a creditor, delay in social security payments and so forth, the seller reserves the right to demand the guarantee he deems necessary to ensure proper fulfilment of the relevant obligations, even after delivery of the goods. No formal notice of default is required for this purpose.

## **11. Termination clause**

Should an invoice not be settled within the due date set in a first reminder, or should Article 10 have to be applied, the agreement shall be legally dissolved by the seller declaring his intention to do so in a registered letter without requiring any prior formal notice of default.

In this case, the seller shall be entitled to retake possession of the delivered goods without the need for intervention by the courts. In addition, the buyer shall be liable for compensation totalling [10%<sup>2</sup>] of the price, with a minimum of € 150.

## **12. Guarantee**

**12.1.** The seller undertakes to remedy any undeniable hidden faults (with the goods themselves) that have not been caused by force majeure or faulty handling or other by either the buyer or a third party, by replacing or repairing the goods in question.

This obligation shall only apply to faults that become apparent within one year after the goods have been brought into circulation. This will be assumed to have happened by 30 days after the goods have been made available in the factories if the delivery was made in Belgium and 45 days if the delivery was made abroad.

The replaced components shall be the property of the seller. These items shall be returned at the cost of the buyer.

**12.2.** The seller shall not be obliged to provide any guarantee or compensation other than that which is stipulated in Article 12.1. In particular, the seller shall not be obliged to provide any kind of compensation for potential damage to commercially used goods or for loss related to the professional activity of the buyer or the people for which the buyer is responsible under article 1384 of the Civil Code.

**12.3.** At the same time, the seller shall not be obliged to provide compensation for this damage, based on reasons not included in the contract.

With respect to bodily harm and damage caused to private property, the seller shall not be obliged to provide compensation if:

- there is no proof that the faults were present at the time when the goods were brought into circulation;
- given the state of scientific and technological knowledge it was not possible for the seller to know about the presence of the faults;
- the faults in question are attributable to the design of the item in which the goods are incorporated or result from instructions issued by the buyer;

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<sup>2</sup> The amount of such compensation should be reasonably proportionate to the possible foreseeable damage in case of non-compliance. Otherwise such clause is presumed to be abusive and therefore null (grey list, art.VI 95/1, 8° Code Economic Law).

- the damage is the fault of the buyer, the injured person or somebody under the charge of the injured person (e.g. incorrect manoeuvres, faulty operation, modifications made by the buyer or third parties, and so forth);
- the faults result from the conformity of the goods with binding regulations issued by public authorities;
- the damage is caused by a lack of maintenance or maintenance carried out at odds with the maintenance manual or maintenance instructions drawn up by the manufacturer;
- the damage results from action taken by a third party not approved by the manufacturer.

**12.4.** The buyer shall protect the seller against any claims or demands that third parties could make against the seller on the basis of damage as defined in Article 12.3.

Should the product have been manufactured in accordance with a design provided by the buyer, in all cases, the guarantee shall be limited to a strict execution of the item in accordance with the specifications of that design.

### **13. Assembly**

**13.1.** Assembly is not included in the agreement under any circumstances. However, the seller may, under specific conditions, agree to provide these services at the buyer's request and expenses.

**13.2.** The buyer must provide all assistance, equipment and materials required for assembly at his own expense.

### **14. Mitigating circumstances**

**14.1.** Mitigating circumstances arising after the conclusion of the agreement, occurring beyond the control of the parties, and preventing the implementation thereof shall be deemed to include, without limitation: industrial disputes and any other circumstances such as fire, mobilisation, seizure, embargo, the prohibition of currency transfers, rebellion, a shortage of transport, a general shortage of raw materials, restrictions imposed on energy consumption, pandemics, (cyber)terrorism.

**14.2.** The party citing the occurrence of such aforementioned circumstances must immediately inform the other party in writing of their onset and termination.

**14.3.** Should one of the aforementioned set of circumstances arise, the buyer and seller shall both be free of any liability.

### **15. Applicable law**

The agreement is governed by Belgian law unless the parties expressly decided otherwise in writing.

**16. Competent court**

In the event of a dispute, the courts of the registered office of the seller shall have exclusive jurisdiction.

**Alternative 16 - Arbitration**

*Any dispute concerning the validity, interpretation or implementation of the present conditions will be definitively resolved, in accordance with the CEPANI Mediation and Arbitration Regulations, by one or more arbitrators appointed in accordance with these Regulations<sup>3</sup>.*

**17. Separability**

Should any provision of these general conditions or the contract to which they apply be declared illegal, void or unenforceable in whole or in part under the applicable law, this will not affect the legality, validity and enforceability of the remaining provisions of these general conditions or contract. The parties will undertake to replace by mutual agreement such invalid provision by a valid one pursuing the same or largely the same economic purpose.

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<sup>3</sup> CEPANI: Belgian Centre for the study and practice of national and international arbitration.



**ANNEX**  
**PRICE REVISION FORMULA**

For companies with work and supplies to be carried out in-factory:

$$P = P_o \left( a \frac{M}{M_o} + b \frac{S}{S_o} + c \right)$$

in which:

*P* = Invoice price

*P<sub>o</sub>* = Initial price at date of order confirmation

*M<sub>o</sub>* = Value of CORROSIVE STEEL AISI 304, Cold-rolled sheets 1 to -1.2 mm on date of order confirmation taken from Market prices of materials: summary tables ([www.agoria.be](http://www.agoria.be))

*M* = Value of same material on invoice date

*S<sub>o</sub>* = The reference hourly wage plus social security contributions in the metalworking industry (Limburg average), recognized by the Federal Public Service Economy, SMEs, Self-employed and Energy and published by Agoria on the order confirmation date (month).

*S* = Same wage on invoice date

*a – b – c* = Are replaced by the coefficient values