

## GENERAL SALES CONDITIONS EUROMETAL SERVICE NV

These General Sales Conditions apply to all sales agreements between Eurometal Service NV (the Seller) and the Buyer. They can only be modified in writing. These Conditions are subordinated to the specific conditions mentioned in the sales confirmation. All general conditions from the Buyer or other conditions mentioned on the Buyer's documents are explicitly excluded.

These General Sales Conditions are available in different languages. In case of a conflict between the different language versions, the English text will prevail.

The validity of any agreement shall not be affected by the nullity of one or more of its terms and conditions.

### 1. Sales contracts

Offers by the Seller are not binding. Acceptance by Buyer of Seller's offer is binding upon the Buyer and will be binding upon the Seller by Seller's submission to Buyer of a written confirmation, including the confirmation of the fulfillment of the condition precedent of the supplier (i.e., e.g. mill) confirmation.

Buyer has to ascertain the availability of import licenses and/or exchange permits and the non-existence of Government restrictions, and has to complete all formalities required to import the goods prior to concluding the sales contract. Non-compliance does not entitle Buyer to cancel the sales contract without being liable to pay any and all damages incurred by the Seller.

### 2. Incoterms 2010

Unless otherwise agreed in writing in these General Conditions or in the Sales Confirmation, all sales contracts are governed by the ICC INCOTERMS 2010. Buyer accepts and acknowledges knowing the ICC INCOTERMS 2010.

### 3. Specifications

If the material is not specified at the time of concluding the sales contract, Seller is entitled to delay the supply of the material beyond the agreed delivery period or to cancel the agreement. Buyer remains responsible for all consequences and damages for the Seller resulting from such late specification.

Shipping marks, port markings, notify addresses and all other information pertaining to the manufacture, preparation and delivery of the contracted goods should all be given together with the complete material specification.

Buyer has to timely provide Seller with any specific instructions for drafting transport documentation. If the Buyer fails to issue these instructions timely, Seller will draft said documents to his best judgment. He will not be responsible for any fines, charges or levies resulting from errors or incorrect declarations or documentation.

Buyer accepts that Seller is entitled to rely on the specifications, declarations of quality and time of delivery confirmed by Seller's suppliers. Seller does not accept any liability in that respect. Unless explicitly agreed, Seller has no liability whatsoever with respect to the fitness for purpose (including end-use) of the material supplied.

### 4. Prices - Invoices

Unless indicated otherwise, all price indications are net, excluding for example taxes, levies, import and/or export duties.

Prices will not be changed, unless in circumstances, which could not be foreseen at the moment the agreement was made, and which have a material impact on the cost price, such as additional bunker charges, freight or insurance cost increases in case of political events at destination. This list is non-exhaustive.

### 5. Payment

Unless stated otherwise, all Seller's invoices are immediately payable at sight.

In case of late payment, Seller will be automatically and without prior notice of default entitled to a late payment interest based on the actual interest rate of the bank with a minimum of 13%. Seller has the right to claim a higher indemnity from Buyer for all external or additional costs and expenses reasonably incurred in the enforcement of its rights under this clause, including, but not limited to, the payment of agency and legal fees and expenses whether incurred before or after legal proceedings. Late payment interest on this indemnity will accrue, as from the date the expenditure is incurred at a rate of 13%.

In the event of late payment, non-payment, or bill of exchange protests, the entire amount of the contract will become immediately, automatically and without prior notice of default, due and payable.

All deliveries following a late payment, non-payment or draft protest will then payable by letter of credit only. All additional costs due to late payment, draft protest (whether or not due to Force Majeure) will be for the Buyers account.

If payment is agreed by Letter of Credit, only one letter of credit per sales contract is acceptable. In the event of late opening or late confirmation of the Letter of Credit, all obligations of the Seller will be prolonged with the same period as the delay in the opening or confirmation of the Letter of Credit, without detriment to the right of the Seller to annul the contract per article 20 below. All costs related to delay in the performance of the agreement due to Buyer shall be invoiced to Buyer.

## **6. Storage costs**

Without detriment to any remedy for the Seller, Buyer shall pay all storage costs in addition to the contract price, if Seller is to store the ordered goods due to any event caused by the Buyer, such as, without limitation, late opening or change of L/C, late payment or any delay in the performance of the Buyer of his obligations.

## **7. Delivery**

Delivery periods are approximate and do not constitute an obligation to deliver at the indicated date.

Any costs and fees resulting from a delay in taking delivery as per the agreed ICC Incoterm (2010) are for Buyer's account. In case of failure to timely take delivery Seller has the right to take any protective measures at Buyer's expense and risk.

For FOB and FAS sales, Buyer undertakes to designate within three calendar days from receipt of first notice of readiness of goods the vessel name, loading point and delivery time at loading vessel, or to nominate their agents within the same lapse of time in the agreed shipping port, duly authorized to take delivery of the goods on quay at port of shipment.

Failure to call forward goods for shipment within 3 calendar days, entitles Seller, at his exclusive option (i) to annul the agreement or part thereof as per article 20 of these General Conditions or (ii) to consider Buyer's failure as an authorization from the Buyer to the Seller to effect shipment at Buyer's account and risk; in this hypothesis, Seller's invoice is to include ocean freight at prevailing market rates and, as the case may be, the FPA insurance premium.

## **8. Quality of the Goods - Bills of Lading and/or other transport documents**

Buyer accepts, without liability for the Seller, that the goods may show the following or similar conditions(that are inherent to the transport of steel products) and therefore accepts the following or similar clauses or comments on Bills of Lading and/or other transport documents:

For packed material:

- Bands/wrappers/ties rusty/rust stained
- Goods loaded from open area
- Some bands broken/missing
- Some ends/bundles bent/buckled/deformed
- Packing wet before shipment

For unpacked material:

- Goods atmospherically rusty/rust stained
- Bands/wrappers/ties/ rusty/rust stained
- Goods loaded from open area
- Some bands broken/missing
- Some ends/bundles bent/buckled/deformed
- Wet before shipment

## **9. Inspection of the goods - shortage - weight**

Buyer has the right to inspect the goods or to have them inspected by approved inspecting agencies upon delivery as per the applicable ICC Incoterm 2010. The degree of inspection and the names of the inspectors or agencies are to be given by Buyer and to be accepted by Seller at the time of contract. If contract stipulated no inspection, goods are deemed to have been accepted by Buyer upon delivery as per the applicable ICC Incoterm 2010.

For CIF sales, insurance policies are endorsed to the benefit of consignees. In the event of damage of any kind, the latter and/or the Buyer are to take all necessary precautions at arrival of the goods according to the instructions as laid down in the policy or in its riders.

If the Buyer believes that there is any damage to the goods or any shortage beyond the agreed tolerances, it is the Buyer's responsibility to contact the agent and/or transporter and/or any person who performed services on Buyer's behalf in relation to the goods after taking of delivery of the goods as per the applicable ICC Incoterm 2010 and to follow the procedures and guidelines set by those parties. Seller has no authority or liability in that respect.

In case of invoicing at actual weight, the weight declared by the original supplying mill is final and is used for invoicing. The Buyer can re-weigh the goods again at the time of delivery according to the applicable ICC INCOTERM 2010. The checking of the weight must be done in the presence of a representative of a neutral control organization (such as for example, but not limited to, SGS, Bureau Veritas), and must be done by exact calibrated scale. In case another neutral inspection office is used, then this has to be agreed upon between Buyer and Seller. The costs related to a re-weight will be borne by the Buyer. If the quantity proves to be incorrect, the Seller will bear the costs of the additional weight measurement. The agreed weight tolerance is 1% on the whole quantity of the contract (in comparison with the Bill of Lading). In case the difference is more than 1% of the total quantity of the agreement, then the portion above 1% tolerance will be subject to reimbursement.

No claim with regard to shortage on piece count shall be allowed and Buyer is to arrange for recovery of shortage under insurance coverage, considering that weight declared by them is ascertained on leaving the works by full car- or truckloads.

Seller does not guarantee actual partial weights or number of pieces, Seller's liability is restricted to the total weight only.

#### **10. Claims & time limitation**

Claims for non-visible defects in the goods or for non-conformity with the technical specifications under the contract, irrespective of whether the goods are packed or not, must be received in writing by Seller immediately after discovery by the Buyer of the alleged defect or non-conformity, but in any case within 30 calendar days from the day of arrival of the vessel at discharge port. All claims for defects in the goods or for non-conformity, shall be documented with an inspection report of the goods from an internationally recognized and independent surveyor (such as for example, but not limited to, SGS, Bureau Veritas). In case another independent surveyor is used, this has to be agreed upon between Buyer and Seller.

Claims filed after these dates are time-barred.

This inspection report shall be made at the expense of the Buyer and will not be binding on the Seller. If the claim proves correct, the costs of the report will be borne by Seller. Failing the timely submission of this inspection report, the claim from the Buyer against the Seller shall be deemed to be invalid and unfounded. Seller has the right to identify and inspect goods subject to a claim. Buyer shall not dispose of or make use of such goods without Seller's agreement and shall keep them as stored and insured as a good pater familias until a final settlement has been reached.

All expenses incurred are for Buyer's account, unless the claim proves to be justified. In that case, all expenses will be for Seller's account.

In addition to article 8 above, surface- and/or atmospheric rust for unpacked goods is recognized by Buyer and Seller as being unavoidable. Delivery of goods with such rust shall constitute good delivery.

Any claim in respect of quantity or quality of the goods, and/or any claim for losses or indemnities do not entitle Buyer from delaying payment or to make any deduction on the invoiced amounts by Seller.

#### **11. Limitation of liability**

Seller shall only be liable in case of proven fraud and proven intentional mistake.

In any case, except in the case of fraud by the Seller, the responsibility of the Seller is limited to the value of the goods. No other cost, nor tax, paid by the Buyer, can be recovered from the Seller.

The Seller will do everything within his power to send documents in due time, but cannot be held responsible for late arrival or theft of documents.

#### **12. Drawings and descriptions**

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.

Any drawings and technical descriptions provided by Buyer to 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 Buyer. 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 Buyer. However, they are the property of Seller if this has been expressly agreed.

### **13. Retention of title**

Although the risk passes to the Buyer according to the agreed ICC Incoterm 2010, the title to the goods shall not pass until Seller has received full payment for all goods delivered under any contract between Buyer and Seller, even if these contracts relate to future or earlier deliveries. All goods remain property of Seller until payment has been received in full from Buyer under all outstanding contracts.

### **14. Financial guarantees**

Without detriment to the remedies available to the Seller under article 20, should it transpire after the sales contract has been concluded, even after delivery of the goods, but before payment has been settled in full, that Buyer is experiencing credit difficulties or that Buyer's creditworthiness diminishes, Seller is entitled to demand any guarantee deemed necessary to ensure proper fulfillment of Buyer's obligations.

### **15. Insurance**

All shipments are governed by the ICC Incoterms 2010. The goods will always travel at the risk of the Buyer. Buyer must cover the adequate insurance to cover transport damages and risks as from delivery as per the applicable ICC Incoterm 2010. Seller takes no action whatsoever in case of CFR sales for insurance coverage.

Insurance under CIF offers is covered under FPA (free from particular average) provision and under the Antwerp Insurance conditions, also covering theft, pilferage, non-delivery, war and strike risks at ruling premium, but does not include rust and/or oxidation. Only at explicit Buyer's request and if such cover can be arranged, Seller will arrange for additional coverage for additional premium.

Seller cannot be held responsible for a non-insurance or insufficient insurance in case of damage or problems after delivery, i.e. during transport to and unloading at destination. Seller will never pay or participate to any refund because of non- or improper insurance of the goods, or refusal, or non-settlement, by the insurance company.

### **16. Antidumping precautions**

Seller is never liable or responsible for the observing antidumping norms, rules and procedures at destination, Buyer's national market and all markets of further sale or supply of the goods. At these markets Buyer cannot offer prices which are considered dumping by the local legislation and/or international agreements. Buyer is exclusively liable and undertakes to take all necessary actions. Buyer shall also bear all responsibility for any antidumping claims or similar.

### **17. Re-exportation precautions**

Any change in the country of destination mentioned in the sales contract has to be agreed upon between both parties in writing.

Should Buyer re-export the goods without the written consent of Seller, the former shall compensate the latter for the difference in price levels in the markets involved. Buyer shall also pay an additional penalty to Seller amounting to 50% of the value of the goods.

### **18. Force Majeure**

Force majeure or Acts of God are any and all circumstances caused by third parties or circumstances caused beyond the control of either Seller or Buyer and includes, but is not limited to, government restrictions, natural calamities, fire, acts of elements, war, military operations of any nature, blockades, strikes, fraudulent acts, which prevent seller and/or buyer from wholly or partially carrying out their contractual obligation. If disputed, a certificate issued or confirmed by the respective Chamber of Commerce, or equivalent government controlled organization, of Buyer's or Seller's country shall be sufficient proof of existence and duration of the existence of the circumstance.

In the event of force majeure, the affected party shall inform the other party without delay on the exact nature of the event, the cause thereof and the expected duration of the event.

The sales contract will be suspended for as long the force majeure exists. Seller shall inform Buyer on the number of days the agreement can or shall be suspended, depending on the terms and conditions of the Seller's supplier. Upon expiration of that suspension period and if the force majeure continues beyond that period, Seller shall have the right to cancel the agreement without any damages payable to Buyer.

Only in cases of Force Majeure at destination caused by riots, revolutions, war strikes and only provided that the goods are not on the process of manufacturing or delivery and/or shipment, Buyer may call upon Force Majeure at destination to request Seller to annul, wholly or partially the contract. In any event, events of force majeure at destination are at the sole risk of the Buyer and the Seller has no obligation to annul, suspend or cancel the sales contract.

If, after the termination of the Force Majeure, on the date(s) of shipment, the cost of the sales contract to the Seller shall be directly or indirectly increased by any governmental or legal action of any kind, the price of the sales contract for the unshipped goods shall be increased accordingly.

#### **19. Hardship**

Events of Hardship are unforeseen events, caused by other reasons than Seller's serious fault, that result in a fundamental change to the economic or legal equilibrium of the sales contract resulting in an excessive burden on the Seller. Events of hardship include the breach of a contract by a third party, non-performance by the supplying steel mill, delay in delivery caused by accident of machinery or equipment, loss or damage before or after shipment, delays in inland transportation, shortage of rolling stock, congestion of shipping port, detention or delay of vessels for whatever cause.

In events of hardship, Sellers shall not be liable for late delivery, if a firm delivery date is agreed. In an event of Hardship to the Seller, Parties will negotiate alternative contract terms and conditions which reasonably allow for the consequences of the event. If no alternative contract terms can be agreed, Seller will be entitled to cancel the sales agreement, without being liable for damages or for any indemnity to Buyer.

#### **20. Termination - suspension of the contract**

Seller is entitled to annul the sales contract in writing, without prior notice of default and without court intervention, with immediate effect and without owing any form of compensation to Buyer, in the event of:

- Bankruptcy or liquidation of Buyer;
- Negative credit advice from Seller's credit insurance;
- Seller has objective indications that Buyer is experiencing liquidity problems;
- Transfer of trade fund by Buyer;
- Late payment of the invoiced amount, non-payment any pre-payment (if agreed) or of an installment under a deferred payment plan;
- Protest of bill of exchange
- Late opening or late confirmation of correct L/C;
- Breach of contract by Buyer, if not remedied within the reasonable term set by Seller in a prior notice of default;
  
- Late change or notification of specifications as per article 3.

In the event of breach of contract by Buyer, Seller shall be entitled to a lump sum indemnity of 10% of the value of the agreement (i.e., invoiced or to be invoiced amounts). Parties agree that this lump sum indemnity as a genuine estimate of the commercial losses and not a penalty. Seller has the right to claim higher damages, if the actual damages exceed the agreed lump sum.

Seller is entitled to suspend the performance of any contract if Buyer fails to perform its obligations under any contract between the Buyer and the Seller, even if that contract is different from the contract of which the Seller suspends its obligations.

#### **21. Hold Harmless in connection with illegal acts**

The Buyer confirms and guarantees that his agreement with the Seller is under no circumstances related to money laundering practices, terrorism financing or other illegal acts, neither under its own legislation nor under international treaties or recommendations of intergovernmental working groups such as the Financial Action Task Force ([www.fatf-gafi.org](http://www.fatf-gafi.org)), regardless of whether the country of the Buyer is a party to those treaties or working groups. The Buyer shall hold the Seller harmless against any breach of this guarantee and any breach gives the Seller the right to immediately terminate the agreement in accordance with art. 20, par. 1 and 2 of these General Conditions.

#### **22. Changes to the contract**

If Buyer requires changes to the contract, these shall only be admitted if explicitly accepted by Seller and can result in an increase of the price of the contract.

### **23. Applicable law - jurisdiction**

All contracts between the parties are exclusively governed by Belgian law, including the provisions of the 1980 Vienna Convention on the International Sale of Goods. The courts of Antwerp have exclusive jurisdiction for all disputes arising out or in connection with any contracts between Buyer and Seller. However, Seller has the right to start proceedings before the courts of the State of the domicile of the Buyer or before the courts of the state where the goods are located at the time of the start of the proceedings.