



METAL SERVICE EUROPE

GENERAL CONDITIONS OF SALE AND DELIVERY OF METAL SERVICE EUROPE BV; VERSION 2007/2

1. General; applicable conditions

1.1 These general conditions of sale and delivery shall apply to all sales, deliveries and services between Metal Service Europe BV and their buyers. Metal Service Europe BV hereafter shall be named MSE. All "goods" to be delivered by MSE will be referred to as "materials".

1.2. MSE will upon the receipt of an order form that call for applicability of the general conditions of the buyer, specifically declare such general conditions excluded, even if these conditions were applicable to earlier orders between MSE and the buyer.

1.3. Any other conditions demanded by the buyer will be deemed to be inapplicable to any order placed with MSE unless expressly agreed to by MSE in writing when acknowledging the order in question. For these conditions to be applicable in future orders, MSE has to acknowledge these conditions in writing for each and every order.

2. Written offers and the coming about of an agreement

All written offers made by MSE are free of obligations until such offers are confirmed in writing by MSE to the customer.

3. Prices

3.1 All prices as mentioned by MSE - in written offers, letters of confirmation, price lists or any other communication to the customer - are based on the latest available prices charged by the manufacturers of the materials and/or on the relevant direct costs of MSE and/or other relevant aspects of MSE's price calculations, such as exchange rates, surcharges on alloy and scrap, labor costs, prices of raw materials and applicable costs of transport. If any of these costs and prices change and therefore influence the price calculations, MSE has the right to change any offered price to the customer accordingly.

3.2 All price quotations made by MSE include cost of transport to the address of the customer, unless otherwise agreed upon. If a written offer states "free destination" of the equivalent in Dutch "franco huis", then this will indicate that all costs of transport, duties and insurance fees are included in the prices quoted this means DDU acc. Incoterms 2000

3.3 All prices quoted by MSE are excluding costs of packaging, unless otherwise agreed upon.

3.4 For all packaging and wrapping, if necessary, the cost price will be charged and not taken back by MSE, unless otherwise agreed upon.

4. Payment conditions; postponement of payment obligations

4.1 Payment will have to take place within thirty days of the invoicing date. All money transfer costs will be paid by the customer. The place of payment shall be the place at which MSE has its office. At the time of adopting these general conditions the place where MSE holds office is Leerdam, The Netherlands.

4.2 A customer will be in default, without the necessity of a demand for payment or proof of default, if no payment has been made within the term as stated under 4.1, or in case of a moratorium, bankruptcy or debt restructuring has been requested or pronounced.

4.3 In a situation as mentioned under 4.2, the customer is due the legal trade interest concerning the remainder unpaid until the day of full payment. Trade interest is the interest due under article 119a of the Dutch civil code, of which, according to article 6:120 of the Dutch civil code, the interest foot is equal to the refinancing interest as mentioned in last mentioned article, as such interest foot is periodically determined by the European Central Bank, plus seven percent, all in accordance with the directive 2000/35/EC of the European Parliament and the Council of the European Union of the 29th of June 2000 concerning the combat of late payment in commercial transactions.

4.4 All expenses made by MSE for collecting a late payment, shall have to be reimbursed by the default customer, including all of MSE's attorney costs, regardless if these attorney costs involved litigation or were made merely out of court. To compensate these costs a fixed minimum

compensation of 15% of the unpaid invoice(s) can be charged to the default customer. If MSE's costs exceed the 15%, then the amount due by the default customer is equal to the actual costs.

4.5 At any moment, MSE has the right to ask for payment in advance or for any other certainty of payment, such as a bank guarantee, irrespective of the solvency of the customer. After a request of payment in advance, MSE's obligation to fulfil the order will be suspended until all (present or additional) payment conditions have been satisfied. Irrespective of this suspension, the customer's obligation to purchase the materials as ordered and to satisfy the payment conditions remain in full force. If the customer has not fulfilled the payment conditions after 30 days, he will be in default, with all consequences that these conditions and the law bind to the default of the debtor.

4.6 Under no circumstances, is the customer entitled to suspend his payment obligations towards MSE on account of an outstanding debt, including a claim for damages.

5. Terms of delivery

5.1 With respect to the terms of delivery, only that which has been confirmed in writing by MSE applies exclusively.

5.2 In all cases, the specified terms of delivery are merely indicative for when a delivery can be expected. In addition, a general reservation that the needed alloys have to be in time available, is applicable to the terms of delivery. If the needed alloys are not available, then new terms of delivery apply in accordance to the newly expected dates of delivery.

5.3 MSE has no liability for any damage resulting from any delay in delivery, unless the case occurs as mentioned under art.5.5 of these general conditions.

5.4 Exceeding the delivery term by MSE does not give the customer the right to dissolve or terminate the agreement, in whole or partially, unless the customer demanded in writing delivery by MSE and both of the following requirements have been satisfied: (a) MSE had failed to notify the customer in writing, within a period of 10 working days, about the certainty that MSE will still deliver within a period of 3 months and (b) MSE has a similar right to dissolve or terminate in whole or partially its own agreement with the manufacturer on the same ground (uncertain term of delivery).

5.5 Dissolution or termination of a contract based on grounds provided in art. 5.4 does not entitle the customer to any compensation, unless MSE itself is entitled to compensation for any damage and the compensation is also effectively paid by the manufacturer to MSE. Such damage compensation received by MSE will be shared with the customer in equal parts, in such a manner that damage that MSE itself suffers will be compensated.

6. Delivery of more or less

With regards to delivery of semi finished products, MSE has the right to deliver 10% more or less than the weight or quantity expressed in the initial order confirmation. In case of "more" delivery, the % of more delivery will be added to the initial order amount and charged to the customer. In case of "less" delivery, the % of less delivery will be deducted from the initial order amount. If the delivery exceeds the 10% more or less, consultation will take place between parties and the manufacturer with regard to an appropriate solution.

7. Non attributable shortcomings and force majeure

7.1 In the event of unforeseen circumstances which make it impossible to deliver the material in the quality as ordered and due to circumstances which can not be influenced by MSE, then MSE will not be held accountable for these circumstances, also if it is not a case of force majeure under art.6:75 of the Dutch civil code. For example this will be the case if the engaged manufacturer of the materials ordered by the customer, itself remains in default due to not timely delivery of the quality as ordered or if circumstances occur such as sickness of personnel, operational failure, strike and exclusion, war, government measures (including measures with regard to currency restrictions and import and export embargo's), transport difficulties, lack of raw produce and materials and energy problems, irrespective of by whom these circumstances occur (at MSE, the manufacturer or any other link in the delivery chain).

7.2 In the event of unforeseen circumstances as mentioned under 7.1 occurs, MSE has the right to suspend the (further) performance of the order until the circumstances that cause such encumbrance or prevention cease to exist. In case of a notification by MSE to the customer within 90 days after the development of such circumstances - stating that MSE cancels the order or the part of the order not yet performed - then that (part of the) order can be cancelled or that (part of the) order that due to these circumstances can not be performed at this moment.

7.3 After a notification under 7.2. the order will be cancelled with no lia-

bility for MSE to compensate for any damage that may have occurred.

8. Property reservation; non possessory right

8.1 MSE remains the owner of the delivered materials, until full payment has taken place of (a) the invoices for these materials, (b) all previous and future invoices concerning the delivery of materials by MSE to the customer and (c) all claims of MSE based on failure by customer to take delivery of the materials, among which the outstanding trade interest as under 4.3 and the outstanding costs as under 4.4 (attorney costs etc.) and all other costs in pursuance of art. 6:96 lid 2 of the Dutch civil code are paid.

8.2. The transfer of property, which has not taken place due to a circumstance as mentioned under 8.1, does therefore not take place before the customer has nothing left to pay on account of an agreement with MSE concerning the delivery of materials, all this in accordance to art. 3:92 of the Dutch civil code.

8.3. MSE has the right to take back an adequate quantity of materials upon which the property rights of MSE still rest, in case of any event of default that has not been made undone by subsequent payment and has the right to enter the premises of the customer after warning the customer that MSE will exercise that right.

8.4. The processing of the materials by the customer is done at his sole risk. If MSE wishes to exercise its right of property - in case of a serious event of default to pay one or more invoices - the customer will on first request of MSE cooperate in the undoing of the confusion of materials (being the result of such processing) and to reprocess any materials of which such reprocessing is possible.

8.5. When closing an agreement with MSE, the customer will be deemed to grant and establish a non possessory right of pledge upon all future goods of the customer in which materials of MSE will be processed. MSE has, with regards to the non possessory right of pledge, at all times the right to register the document of the order of the materials (to be) delivered, together with a copy of these general conditions, at the department of succession and registration of the tax administration and, at the option of MSE, to request that the customer signs said order documents and this page of these general conditions as prove of its acceptance of the non possessory right, all this to establish non possessory rights of pledge on future goods that are no longer MSE's property because of confusion, in accordance with article 3:98 jo 3.97 jo 3.327, sub section 1 of the Dutch civil code.

9. Transition of risk

9.1 The risk of the materials rests on the customer from the moment that these materials leave the place of manufacture, in order to be transported to the customer. This applies irrespective of who is accountable for the payment of transport and/or insurance therefore also when these costs are accountable to MSE.

9.2. If the materials are ready for transport and this transport is delayed due to circumstances for which MSE in accordance to 7.1 can not be held accountable, then the risk of the ready for transport materials will transfer to the customer at the moment that the materials are ready for transport and the customer is notified about the circumstances of delay.

9.3. MSE will not be liable or pay any damage occurred to the materials after leaving the place of manufacture, regardless of the nature of the damage (loss, exchange, damage, etc.). The company responsible for the transport and/or any other accountable party and/or the transport insurance company are with exclusion of MSE, the only parties that can be addressed and held liable for the compensation of the occurred damages.

10. Customer research duty; complaint regulations; purchase conformity

10.1 The customer has the obligation to (let) examine the delivered materials for any defects or shortcomings, as soon as possible after delivery and not later than after ten working days, at which moment the customer also has the obligation to examine if the delivered material is in conformity with the order.

10.2. If and when the customer during this examination discovers defects or shortcomings, or that in any other manner the materials are not in conformity with the order, then the customer has the obligation to inform MSE in writing about these complaints within five working days. A notification by email concerning such complaints is only valid, if followed by a letter of confirmation addressed to MSE.

10.3 In the absence of a complaint within the set periods as under 10.1 and 10.2, the materials are considered to be delivered without defects or shortcomings and therefore in conformity with the order.

10.4 MSE's obligation to deliver materials without defects or shortco-

mings and in conformity with the order agreement is limited to the obligation that the manufacturer has towards MSE. When a complaint is made by a customer, MSE will at once forward the complaint to the manufacturer and exercise the rights that MSE has towards the manufacturer in consultation with the customer. In so far as MSE can not exercise its rights towards the manufacturer, the customer will have no rights whatsoever towards MSE.

10.5 Any investigation after an untimely complaint will be made without waiving any right of MSE to claim under 10.3 that the materials were accepted.

10.6 Complaints of the customer within the set periods as under 10.1 and 10.2, will not discharge him from his payment obligations. All (future) invoices received by the customer, will remain due and payable pursuant to paragraph 4.6. of these general conditions.

11. Liability

11.1 Without prejudice to the provisions as under 10.4 and/or any other article of these general conditions which give MSE the right to claim that, through MSE or directly, only the manufacturer of the materials, the transporter or any other accountable party can be held liable, MSE's liability for the damages will be limited to a maximum of 50% of the amount as invoiced to the customer by MSE for the materials delivered with defects or shortcomings or otherwise not in conformity with the agreement.

11.2 Without prejudice to the restriction of the right of the customer as stated in these general conditions to dissolve a purchase agreement on the basis of article 6:265 of the Dutch civil code, a possible repayment to the customer due to such dissolution will be made by MSE with the exclusion of any other payment. Thus dissolution of a purchase agreement with additional damages is excluded.

11.3 Without prejudice to the restriction as under 11.1 of these general conditions, each possible liability of MSE will be limited to the compensation of direct damage, among which particularly the costs for replacement of the materials delivered with defects or shortcomings and the costs meant under article 6:96 lid 2 of the Dutch civil code. MSE is not liable for any consequential loss, such as loss of profits or any other negative result for the customer as a consequence of the defects or shortcomings in the materials delivered by MSE, or as a consequence of the non delivery of such materials.

12. Applicable law; jurisdiction; final provisions

12.1 These general conditions and all agreements concluded by MSE on which these general conditions are applicable, are only subject to the laws of the Netherlands.

12.2 All disputes which may arise from any agreement concluded by the customer with MSE and/or with respect to the general conditions of MSE will be judged by the courts of Dordrecht in the Netherlands with the exclusion of any other court and of any other jurisdiction. In the case that MSE has decided to bring a dispute for a court of the place and country where the customer holds office, then this court will have jurisdiction concerning such dispute.

12.3 If a provision of the general conditions or an agreement which has been closed in accordance with the general conditions is or will be legally not binding, then that will have no consequences for all remaining provisions and agreements.

12.4 As far as these conditions are drawn up in another language than the Dutch Language, such as this version of the general conditions of MSE in English, then in case of any differences with the Dutch text, the text of the Dutch version will be decisive.