

DE GROOT METALS B.V. GENERAL TERMS AND CONDITIONS OF DELIVERY  
Filed with the Court of Rotterdam, location Dordrecht on 2 December 2015

Article 1 – Scope

- 1.1 These general terms and conditions apply to all legal transactions with contracting parties, e.g. purchasers and/or clients and/or intermediaries (hereinafter to be referred to as: “Purchasers”) concerning the sales and/or delivery of items, goods and services (hereinafter to be referred to as: “the Agreement”) or negotiations the conclusion thereof.
- 1.2 Deviations from or additions to these general terms and conditions of delivery will only be binding if and insofar as the user of these terms and conditions (hereinafter to be referred to as “De Groot Metals B.V.”), has consented with these in writing.
- 1.3 These terms and conditions are also stipulated on behalf of any third parties contracted by or on behalf of De Groot Metals B.V., e.g. employees, executive staff, suppliers or subcontractors.
- 1.4 The terms and conditions of purchase of the Purchaser shall not apply, unless De Groot Metals B.V. has agreed with these conditions explicitly and in writing.
- 1.5 De Groot Metals B.V. has the right to amend these terms and conditions. The amended terms and conditions shall take effect from the moment De Groot Metals B.V. has forwarded these to the Purchaser or has communicated the amendment.

Article 2 – Special offers and confirmations of sale

- 2.1 All offers are free of engagement, unless agreed otherwise explicitly and in writing. Written proposals shall expire if they have not been accepted in full within 14 days.
- 2.2 Agreements where De Groot Metals B.V. acts as the vendor shall only be binding after De Groot Metals B.V. has given written confirmation of the sale or has commenced the performance of the agreement.
- 2.3 If the Purchaser fails to protest the content of the confirmation of the sale within 5 business days and in writing, the content of the agreement shall be deemed as having been rendered correctly.
- 2.4 If the Purchaser acts on behalf of a third party, he shall be (individually) liable for the existence and scope of an adequate authorization.

Article 3 – Delivery, purchase and risk

- 3.1 Delivery and purchase shall take place via Free Carrier on the location appointed by De Groot Metals B.V. in accordance with the most recent version of Incoterms 2010, unless otherwise agreed.
- 3.2 The goods shall be shipped at the expense and risk of the Purchaser, unless agreed otherwise.
- 3.3 The risk of the sold goods shall pass on to the Purchaser from the moment of delivery as per the INCO term agreed, or, as the case may be, the moment the delivery is offered.
- 3.4 Unless expressly agreed otherwise, the agreed or specified terms of the delivery are not to be considered as firm times, so that if the delivery period is exceeded De Groot Metals B.V. must first be served written notice of default allowing it a reasonably further delivery period.
- 3.5 At all times De Groot Metals B.V. has the right to make partial deliveries.
- 3.6 The Purchaser must accept delivery of the goods ordered within the agreed period, in default of which De Groot Metals B.V., at its discretion, has the right, without a prior notice of default being served, to claim payment of the sales price of the part not received by the buyer or to terminate the Agreement, insofar it has not been performed yet, without prejudice to its right to claim full damages. In the first instance the good shall be deemed to have been purchased by the Purchaser ex-factory, after which these shall be stored at the expense and risk of the Purchaser and against payment to De Groot Metals B.V. of all the ensuing costs. If no such term was agreed on, De Groot Metals B.V. has the right to take the aforementioned measures if the ordered goods have not been collected within 4 months after the order confirmation.
- 3.7 De Groot Metals B.V. has the right to deliver goods that deviate from the Agreement if the deviation is a modification that is required in order to comply with statutory provisions or that it is an improvement.

Article 4 – Security

- 4.1 At all times De Groot Metals B.V. has the right, before proceeding with the (further) performance of the Agreement, to claim security from the Purchaser in respect of the performance of its obligations.
- 4.2 Security can be demanded, at the exclusive discretion of De Groot Metals B.V., in the form of e.g. a mortgage right and/or a pledge and/or a bank guarantee.
- 4.3 If the Purchaser fails to provide the requested security in time, De Groot Metals B.V., after serving a written notice of default, has the right to terminate the Agreement without having to pay any damages.

Article 5 – Act of God

- 5.1 In the event of an Act of God, De Groot Metals B.V. has the right, at its discretion, to either change the term

of delivery or to terminate the Agreement insofar as it has not been performed yet, without having to pay any damages.

- 5.2 An Act of God shall mean any circumstance that is independent of the will of De Groot Metals B.V. – even if it might have been foreseen at the time this Agreement was concluded – that either permanently or temporarily hampers or complicates the performance of the Agreement, including governmental measures, trade barriers, (the threat of) war, civil war, riots, terrorism, strikes or lockouts at De Groot's company or at any affiliate company or supplier of De Groot Metals B.V. or logistic service providers, or transportation issues, fire, Internet/telephone problems, gales, flooding and/or ensuing damages, hampered supply of the raw materials and/or semi-finished products required by De Groot Metals B.V. and other serious disturbances at the company of De Groot Metals B.V. or its suppliers.

#### Article 6 – Prices

- 6.1 All prices are exclusive of the relevant value added tax (VAT) and further governmental import and export levies.
- 6.2 The prices stipulated are Free Carrier (FCA, Incoterms 2010) at the location as specified by De Groot Metals B.V. unless agreed otherwise.
- 6.3 Insofar as the agreed price factors in costs of transportation, insurance and the like to be paid by De Groot Metals B.V., these are based on the rates known to De Groot Metals B.V. when the Agreement was concluded, assuming normal circumstances. Unless agreed otherwise in writing, packaging has not been included in the price. This will be invoiced separately.
- 6.4 If, in view of the delivery of considerable amounts during a particular period, the Purchaser claims price discounts, such discounts shall only apply if during the agreed contracting period the agreed amounts have indeed been received by the Purchaser in full.
- 6.5 If at the time of performance of the order or part thereof, wages, the price of raw materials and/or other costs price factors have increased, De Groot Metals B.V. has the right to increase the agreed price accordingly. De Groot Metals B.V. furthermore has the right to increase the price in view of the devaluation of the agreed currency. If the increase amounts to more than 10% of the agreed price, either party has the right to terminate the contract.

#### Article 7 – Payment

- 7.1 If no term of payment has been agreed on in writing, payment must be made within 30 days after the invoice date. The Purchaser does not have the right to factor in any discount, settle any amount or to defer payment.
- 7.2 Payment must be made in Euros, unless a different currency has been agreed on.
- 7.3 If the amount due is not paid in time, the Purchaser shall be in default *ipso jure* and must pay 1% monthly interest from the day the invoice became due. The extrajudicial collection costs in relation to the recovery of the claim are set at 15% of the amount due.

#### Article 8 – Retention of title

- 8.1 All goods supplied by or on behalf of De Groot Metals B.V. shall remain property of De Groot Metals B.V. until all its claims against the Purchaser under sale- and purchase agreements have fully been paid by (or on behalf of) the Purchaser.
- 8.2 If for whatever reason the Purchaser does not comply with its payment obligation towards De Groot Metals B.V., or if it fails to do so in a timely fashion, without any notice of default have to be served or without judicial intervention, De Groot Metals B.V. is irrevocably authorized by the Purchaser to take repossession of any goods delivered, such without prejudice to its further rights. To this end, the Purchaser shall give De Groot Metals B.V. and De Groot Metals B.V. service providers all reasonable required assistance. Such on forfeiture of a penalty sum equal to 10% of the order value for each day that this obligation is not complied with.
- 8.3 In the event that goods are made available to the Purchaser in order for these to be processed or reworked, or in order for these to be joined or merged with goods that are not the property of De Groot Metals B.V., De Groot Metals B.V. shall retain title or, as the case may be, shall become the owner of the goods that are so created. Furthermore, the Purchaser shall provide De Groot Metals B.V. with a pledge on the new goods so created. The Purchaser is obliged to keep all goods described here as clearly visibly owned by De Groot Metals B.V.
- 8.4 Claims the Purchaser has against third parties in connection with the reselling, damaging or disappearing of goods supplied by De Groot Metals B.V. subject to retention of title, will be pledged by the Purchaser to De Groot Metals B.V., whether or not the goods supplied subject to retention of title have been used or consumed or have been sold to multiple purchasers, in the broadest sense of the word. The pledged claim mentioned in this paragraph serves as security for all claims De Groot Metals B.V. has against the

Purchaser, without prejudice to its further rights.

- 8.5 The Purchaser shall not encumber the goods and shall insure these goods and keep these insured against the usual risks and it shall submit the insurance policies to De Groot Metals B.V. on the latter's first demand.

#### Article 9 – Complaints

- 9.1 The Purchaser shall inspect the supplied goods immediately upon delivery, to check whether the supplied goods are in conformity with the Agreement, in terms of quality, price and quantity.
- 9.2 The Purchaser is obliged to keep any rejected goods separate for further inspection by or on behalf of De Groot Metals B.V.
- 9.3 In the event of rejection, the Purchaser must submit a written complaint to De Groot Metals B.V. within 1 (one) business day after the inspection meant in article 9.1. If this term passes without any written specified report of sound complaints the goods supplied are considered to have been accepted and the Purchaser's right of complaint shall lapse.
- 9.4 All complaints concerning observable defects and immediately detectable faults can only be submitted by the Purchaser to De Groot Metals B.V. at the time of the delivery of the goods on penalty of a lapse of rights.
- 9.5 Complaints regarding hidden defects must be submitted within 7 days following their discovery of the moment on which discovery could reasonably have been expected from the Purchaser, yet ultimately within 3 months after delivery, all on penalty of a lapse of rights.
- 9.6 Complaints do not give the Purchaser the right to suspend payment either entirely or in part, to settle amounts or refuse future (partial) deliveries.
- 9.7 The burden of proof to that the complaint is justified falls upon the Purchaser. Complaints that are found to be justified, in deviation of the provisions laid down in the Netherlands Civil Code, will at most give the Purchaser the right, if reasonably possible, to a free (re)delivery of an equal amount of equivalent goods in exchange for the goods supplied earlier.
- 9.8 Without the prior written consent of De Groot Metals B.V. the Purchaser does not have the right to return any goods.

#### Article 10 – Liability

- 10.1 De Groot Metals B.V. liability is expressly limited to the performance of the obligation to deliver as described in these terms and conditions
- 10.2 De Groot Metals B.V. shall never be liable howsoever to the Purchaser for any loss, damage, delay or expenses of any nature whatsoever, whether direct or indirect (including but not limited to loss of profit and/or other consequential damage arising out of or in connection with the Agreement) and howsoever arising, unless the damage is proven by the Purchaser to have been caused by an act or omission of De Groot Metals B.V. itself done either with the intent to cause that damage or recklessly and with the knowledge that such damage would probably result therefrom.
- 10.3 The Purchaser indemnifies and holds harmless De Groot Metals B.V. against any and all claims of third-parties in respect of damages in relation to the performance of the Agreement in the broadest sense.
- 10.4 If and insofar as De Groot Metals B.V. is liable, the damages to be compensated by De Groot Metals B.V. will be limited to the amount of the value of the (partial) delivery in question, the maximum amount being the amount that will be paid in that case by De Groot Metals B.V. business liability insurers under the business liability insurance policy of De Groot Metals B.V..

#### Article 11 – Suspension and cancellation

- 11.1 In the event of the temporary impossibility to perform the Agreement, De Groot Metals B.V. has the right, without judicial intervention, either to suspend the delivery, or to cancel the Agreement entirely or in part, without having to pay any damages.
- 11.2 During such suspension period De Groot Metals B.V. is authorized, and at the end of the period of suspension is obliged to choose between either the partial performance or the full cancellation of the Agreement.
- 11.3 Both in the event of suspension and in the event of cancellation pursuant to paragraph 1 De Groot Metals B.V. has the right to demand immediate payment of the purchase price for the goods already delivered under the Agreement, for the value pro rata to that delivery. In the event of cancellation of the Agreement pursuant to paragraph 1 the Purchaser, after payment of the amount due pursuant to the previous sentence, must take receipt of the goods concerned.
- 11.4 If the Purchaser fails to meet any of its obligations pursuant to any Agreement with De Groot Metals B.V., or fails to do so properly or in a timely manner, or if there is good reason to fear that the Purchaser is or will not be able to fulfill its contractual obligations towards De Groot Metals B.V., and in the event of the bankruptcy, moratorium on payments, closing down, insufficient credit limits or an exceeding thereof,

winding-up, discontinuation or partial transfer – whether or not to serve as security – of the Purchaser's company, De Groot Metals B.V. has the right, without having to serve a notice of default and without judicial intervention, to either suspend the performance of each of such Agreements, or to cancel these Agreements entirely or in part, such without De Groot Metals B.V. having to pay any damages or offer any warranty in respect of such suspension and/or cancellation, and without prejudice to De Groot Metals B.V. further rights.

- 11.5 In the event of suspension, the agreed purchase price is due and payable on demand, whilst any part payment already made will be deducted from the total amount due, and De Groot Metals B.V. is authorized to store any goods reserved or purchased by De Groot Metals B.V. for purpose of delivery by De Groot Metals B.V. to the Purchaser for the latter's risk and account. In the event of cancellation of the Agreement, the agreed purchase price – provided there has not been any prior suspension – is due and payable on demand.
- 11.6 Upon cancellation of the Agreement by De Groot Metals B.V., the Purchaser will become liable towards De Groot Metals B.V. for all costs and damage of De Groot Metals B.V. resulting from the cancellation of the Agreement.

#### Article 12 – Applicable law and jurisdiction

- 12.1 These General Terms and Conditions and all ensuing Agreements are exclusively subject to Dutch Law. The provisions of the Vienna Sales Convention ( 11 April 1980, *Tractatenblad* 1981, 84 and 1986, 61) are explicitly excluded.
- 12.2 Any disputes (including any disputes that are only regarded as such by one of the parties) that may arise in relation to the Agreement or any ensuing Agreements shall exclusively be presented to the Rotterdam Court location Dordrecht. However, De Groot Metals B.V. is at liberty to submit the case to the court having jurisdiction in the place of residence / establishment of the Purchaser.