

General Terms and Conditions of Sales and Delivery SmartMetals Mounting Solutions B.V. 01-03-2017

1. General

1.1 These general terms and conditions shall apply to all transactions whereby SmartMetals Mounting Solutions B.V., (hereinafter: 'SmartMetals'), offers, sells, delivers or makes available its products and/or services (hereinafter: 'products') to customer.

1.2 Deviations from these terms and conditions shall only be binding if and insofar as this has been agreed explicitly in writing. Deviating clauses shall only apply with respect to the agreement in respect of which they have been made.

1.3 The applicability of any purchase or other terms and conditions of customer is explicitly rejected, unless these terms and conditions have explicitly been accepted by SmartMetals in writing.

1.4 For the purpose of these terms and conditions 'written' shall mean: by letter, by fax or by electronic means.

1.5 Insofar as these terms and conditions are translated into a language other than Dutch, the Dutch text shall always prevail in the case of disputes.

2. Validity of offers

All quotations and offers made by SmartMetals are without engagement, even if the quotation states an acceptance period. In the case of a compound price quotation SmartMetals shall not be under the obligation to perform a part of what has been agreed for a corresponding portion of the price quoted for the whole.

3. Formation of an agreement

3.1 An agreement shall be formed once SmartMetals has confirmed the order in writing.

3.2 After the agreement has been formed additional agreements or amendments made, as well as (verbal) agreements and/or commitments by SmartMetals her staff or by third parties on behalf of SmartMetals, shall only be binding for SmartMetals if and insofar as these have been confirmed by SmartMetals in writing.

4. Prices and payment

4.1 Prices are stated in a quotation or offer in euros and are exclusive VAT, import duties and other governmental levies and are based on 'FREE CARRIER', Arkel, Nederland (FCA 1) in accordance with the Incoterms applicable on the formation of the agreement, unless agreed otherwise in writing.

4.2 Any amendment to one or more of the factors determining the cost price such as purchase prices, exchange rates, prices of materials, import duties or social expenditures shall entitle SmartMetals to choose after order confirmation, but prior to delivery, whether to charge a proportionally higher price or to cancel the order, without customer being entitled to any compensatory damages.

4.3 All invoices must be paid by customer within 30 days of the invoice date, unless agreed otherwise in writing. Payment shall be made without settlement, deferment or deduction. The value date stated on SmartMetals her bank statements regarding the payment shall apply as the payment date.

4.4 In case of an overdue payment customer shall be in default by operation of the law with effect from the expiry of the term of payment. From that date interest of 1% a month is payable by customer, unless the statutory interest rate for trade agreements as provided for, in Directive 2000/35/EC, is higher, in which case the last stated interest rate shall apply. Furthermore, in that case all collection charges, both in and out of court, shall be payable by customer. The extrajudicial expenses shall be fixed at at least 15% of the sum to be collected subject to a minimum amount of €250.

4.5 SmartMetals is entitled to require, on or after the formation of the agreement and before performing or continuing to perform the agreement, security from customer that the payment and other obligations pursuant to the agreement shall be fulfilled. Refusal by customer to furnish such security entitles SmartMetals to suspend its obligations and ultimately shall entitle SmartMetals to partly or wholly dissolve the agreement. SmartMetals shall at all times be entitled to demand advance payment from customer.

4.6 Each payment made by customer shall first be used to pay interest, collection and administrative charges if these are due, and thereafter to pay the outstanding invoices, of which the oldest shall be paid first.

5. Confidential information

Customer undertakes vis-à-vis SmartMetals to observe secrecy with respect to all confidential information and/or trade secrets of SmartMetals that customer receives from SmartMetals within the scope of the agreement. Information and data shall apply as confidential and/or trade secrets if this is announced by SmartMetals or if this is apparent from the nature of the information and data.

6. Retention of title

6.1 All products delivered and still to be delivered shall remain the property of SmartMetals exclusively until all claims SmartMetals has on the client or will have, including any interest rates, penalties and (court) costs are paid in full.

6.2 In the case of failure to pay a due sum, SmartMetals shall at all times be entitled to the return of its property.

6.3 For as long as a retention of title rests on the delivered products customer is not permitted, except within the framework of its regular business operations, to sell, encumber or pledge said products or to give them into the hands of third parties in any other way. Customer is, however, not permitted to sell the products within the framework of its regular business operations when customer has requested suspension of payment or if customer has been declared bankrupt.

7. (Intellectual) Property rights

7.1 All rights and intellectual property rights regarding all products or other materials (for instance: analyses, designs, drawings, plans, documentation, reports, quotations etc.) supplied to customer by SmartMetals or made available in whatsoever way, are exclusively vested in SmartMetals or its suppliers.

7.2 SmartMetals has the right to use knowledge obtained through the performance of an agreement and/or to use the materials designed by customer at the request of SmartMetals for other purposes.

7.3 Customer is not permitted to remove or change any marks on or in the products or materials with respect to brands, trade names or other rights of intellectual property.

7.4 If SmartMetals has developed specific material at the request of customer, SmartMetals is entitled to charge the costs associated with this work, even if customer does not accept the material.

8. Demo products

8.1 Any demo products supplied by SmartMetals to customer shall remain the property of SmartMetals at all times. Customer is under the obligation to take good and proper care of the demo products. The risk attached to the demo products shall at all times be borne by customer. Customer must arrange its own adequate insurance payable by customer.

8.2 If demo products are not returned in original condition and undamaged to SmartMetals before or on the final day of the agreed period, customer shall be deemed to have purchased said products and customer shall be charged the sales price forthwith.

8.3 Incomplete and/or damaged demo products shall not be accepted back by SmartMetals. In that case the sales price is payable by customer.

9. Delivery periods and delivery conditions

9.1 Unless otherwise agreed in writing, delivery shall take place as 'FREE CARRIER', Arkel, Nederland (FCA 1) in accordance with the Incoterms applicable on the formation of the agreement.

9.2 Customer is under the obligation to accept the products when they are delivered to customer. If customer refuses to provide information or instructions needed for delivery, or is negligent in doing so, SmartMetals has the right to choose between (i) storing the products at the risk and expense of customer; (ii) dissolving the agreement; (iii) shipping the products at the risk and expense of customer. All costs arising as a result of the above, including any decline in profits shall be for the account of customer.

9.3 SmartMetals is entitled to deliver the products in instalments, in which case the (payment) conditions described hereunder shall also apply to each delivery instalment.

9.4 None of the (delivery) periods stated by SmartMetals are deadlines. SmartMetals shall not be in default with regard to the delivery period until SmartMetals has received a written notice of default from customer in which SmartMetals is given the opportunity to still deliver within a reasonable period of time, and SmartMetals has failed to do so.

9.5 Only if the agreed delivery period is exceeded excessively (more than 12 weeks) does customer have the right to dissolve the agreement, unless the exceeding of the delivery period

is the result of *force majeure*. However, customer is never entitled to any penalty payment or compensatory damages.

9.6 SmartMetals shall not be liable for damage as a result of failure to deliver on time, if and insofar as this failure to deliver on time can be attributed to circumstances over which SmartMetals has no control, also including the failure of suppliers to deliver (on time).

9.7 The failure of customer to comply with any payment obligation or to comply with any payment obligation on time, shall suspend SmartMetals obligation to deliver.

10. Warranties and claims

10.1 The products to be delivered by SmartMetals comply with the customary requirements and standards that can reasonably be applied to the products at the time of delivery.

10.2 The warranty mentioned in paragraph 10.1 of this article shall be valid for a period of 5 years after delivery. Warranty conditions are based on carry-in.

10.3 All warranties shall lapse, if a defect arises as the result of incorrect or inexperienced assembly or installation, improper use or any use not in accordance with the instructions, normal wear and tear, or if, without obtaining the written consent of SmartMetals, customer or a third party have introduced changes to the product or have attempted to do so, if other items have been attached to the product that should not be attached, if products were processed or revised in some way other than was instructed or if customer or a third party engaged by customer performed repairs without the written consent of SmartMetals beforehand.

10.4 Customer is responsible for the examination of the delivered products immediately upon delivery or to have them examined. During the examination customer must check whether the quantity and/or quality of the delivered products conform to that which has been agreed. Any observable defects must be reported to SmartMetals in writing within seven days of the delivery using the RMA form. Any non-observable defects must be reported to SmartMetals immediately upon detection thereof. The report should contain an as detailed as possible description of the defect, making it possible for SmartMetals to respond adequately. Customer must allow SmartMetals to investigate the complaint or to have the complaint investigated.

10.5 If a complaint is reported promptly and accepted by SmartMetals, SmartMetals is only obliged, at its discretion, to either deliver the deficiency or repair the product or to replace the product. Replaced parts become the property of SmartMetals. SmartMetals shall never be obliged to pay other expenses and/or damages.

10.6 Claims regarding invoices must also be reported in writing and must be received by SmartMetals within eight days of the dispatch date of the relevant invoice. If customer fails to comply with the above, customer will be deemed to have accepted the invoice.

10.7 Reporting a complaint shall never release customer from any payment obligation vis-à-vis SmartMetals.

10.8 Customer can only return a delivered product, whether or not a claim has been reported, after SmartMetals has given its prior written consent to do so and subject to conditions.

11. Dissolution and suspension

11.1 If customer fails to fulfil customer's obligations arising from the agreement, or fails to do so promptly or correctly, or if there are legitimate grounds to fear this, and in the case of suspension of payments, bankruptcy or winding-up with regard to customer's business and in the event of customer's death or customer's dissolution or termination if customer is a company, or if there is a change to the company structure or in the company's board or in the activities of the company, SmartMetals shall have the right to dissolve the agreement or suspend the agreement for a reasonable period of time, without a formal notice or the intervention of the courts being required, and without being under the obligation to pay any compensation.

11.2 SmartMetals her claims in respect of the part of the agreement already performed, as well as in respect of the damage, including lost profits, resulting from the suspension or dissolution shall be immediately payable.

12. Liability

12.1 SmartMetals her liability vis-à-vis customer is confined to fulfilling the obligations described in article 11.

12.2 Notwithstanding gross negligence or intent on the part of SmartMetals and notwithstanding the statutory liability based on enforceable legal provisions, SmartMetals shall never be liable for any damage incurred by customer. Liability with respect to indirect damage, consequential damage, immaterial damage, loss of profits, or consequential loss or damage as a result of liability vis-à-vis a third party is also explicitly excluded.

12.3 If and insofar as, despite that which is stated in article 12.2, SmartMetals has any liability on whatsoever grounds, this liability shall be limited to a sum equivalent to the net value of the invoice regarding the products concerned, subject to the understanding that SmartMetals shall only be liable for a maximum sum of €1.250.000 per incident. A series of connected events causing damage shall, for the application of this article, be deemed to be a single event/damage incident.

13. Cancellation

13.1 If it is not in principle possible for customer to cancel an order. If customer nevertheless cancels an order in full or in part, for whatever reason, customer shall be under the obligation to compensate SmartMetals with respect to all costs reasonably incurred in connection with the performance of the order (for instance preparation costs, storage costs etc), without prejudicing SmartMetals her right to compensation as a result of lost profits and other damage.

13.2 In the event of cancellation charges are also payable by customer. These are 10% of the amount of the order plus VAT.

13.3 SmartMetals has the right to cancel an order if at the time of delivery customer has not yet fulfilled customer's previous payment obligations vis-à-vis SmartMetals or other creditors in a timely fashion. SmartMetals can also use this right if the information regarding the creditworthiness of customer is deemed unsatisfactory by SmartMetals. Customer can derive no rights from such a cancellation and it shall not be possible for customer to hold SmartMetals liable.

14. Force majeure

14.1 SmartMetals shall not be under the obligation to fulfil any obligation if it is prevented from doing so by reason of *force majeure*. For the purpose of these general terms and conditions *force majeure* shall mean all external causes, foreseen or unforeseen, over which SmartMetals can exercise no influence, including but not limited to: impeding government measures, transport problems, failure of SmartMetals her suppliers to deliver or to deliver on time, strikes, fire, war or threat of war.

14.2 SmartMetals is entitled to suspend compliance with its obligations arising from the agreement for the duration of the *force majeure*. If this period exceeds two months, either party is entitled to dissolve the agreement, without being under the obligation to pay damages to the other party.

14.3 If at the time the *force majeure* commences SmartMetals has partly fulfilled its obligations arising from the agreement or shall be able to fulfil part of said obligations, SmartMetals is entitled to invoice that which has been fulfilled or shall be fulfilled separately. Customer is under the obligation to pay this invoice as if there is a separate agreement.

15. Applicable law and disputes

15.1 These terms and conditions and all offers and quotations made by SmartMetals as well as all agreements concluded between SmartMetals and customer shall be governed exclusively by Dutch law. The applicability of the Vienna Sales Convention is explicitly excluded.

15.2 All disputes shall be settled by the competent court at Utrecht, the Netherlands, without prejudicing SmartMetals her right to have the dispute heard at another competent court if it so wishes. Disputes between SmartMetals and customers established outside the EU shall be settled finally in accordance with the arbitration rules of the ICC by one or more arbitrators appointed in accordance with these rules. The applied language shall be English. The arbitration shall take place at Utrecht, the Netherlands.