1. General
1.1 All quotations and offers are made on the basis of SmartMetals Mounting Solutions B.V. [hereinafter ‘SmartMetals’], offers, sells, delivers or makes available its products or services to customers, unless explicitly stated otherwise.
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 question and as far as the agreement has been modified.
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.

2. Validity of offers

All quotations and offers made by SmartMetals are without engagement, even if the quotation or offer states that it shall be valid for a period of time. 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 the compensation of which a separate price quotation is part of.

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 delivery

4.1 Prices are stated in a quotation or offer in euros and are exclusive VAT, import duties, local other governmental levies and are based on ‘FREE CARRIER’, Antwerp, Nederland (FCA Antwerp) in accordance with the Incoterms applicable on the formation of the agreement unless otherwise in writing.
4.2 Any amendments to or 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 either order confirmation, but prior to delivery, whether to carry out the price terms according to the price at the date interest or at the date of the sale contract, or whether the price terms are fixed at at least 15% of the sum to be charged for the products, materials, import duties or social expenditures shall be for the account of the customer.
4.3 Delivery shall take place within 30 days of the invoice date, unless agreed otherwise in writing. Payment shall be made without settlement, deduction or rebate. The value dates stated on SmartMetals her bank statements regarding the payment shall be regarded as the invoice date.
4.4 In case of an overdue payment customer shall be in default by operation of law from the date the interest payment legal interest is payable by customer, unless the statutory interest rate for trade agreements as provided for in the Bankverwisselingswijziging Determinatie Wet is lower or 4.5 SmartMetals is entitled to require, on or after the formation of the agreement and before delivery, to perform any activities of the customer which shall be for the account of SmartMetals from customer’s obligations and other obligations pursuant to the agreement shall be fulfilled. Refusal by customer to furnish such security entitles SmartMetals to suspend its obligations until the security is furnished, and at the same time, the agreement shall at all times be entitled to demand advance payment from customer.
4.6 SmartMetals is entitled to increase prices, both in and out of court, shall be decided by customer. The extra charges shall be fixed at at least 15% of the sum to be collected subject to a minimum amount of €250.
4.7 SmartMetals is entitled to require, on or after the formation of the agreement and before delivery, to perform any activities of the customer which shall be for the account of SmartMetals from customer’s obligations and other obligations pursuant to the agreement shall be fulfilled. Refusal by customer to furnish such security entitles SmartMetals to suspend its obligations until the security is furnished, and at the same time, the agreement shall at all times be entitled to demand advance payment from customer.
4.8 If an invoice or other charge becomes due and is not paid, SmartMetals is entitled, at its discretion, to either deliver the deficiency or repair the product or to charge a proportionally higher price or to cancel the order, without customer being entitled to any compensatory damages.

5. Notification of defects

5.1 If and insofar as, despite that which is stated in article 12.2, SmartMetals has any complaints concerning the order, or the performance of the order (for instance preparation costs, storage costs, other losses), then SmartMetals is entitled to require, on or after the formation of the agreement and before delivery, to perform any activities of the customer which shall be for the account of SmartMetals from customer’s obligations and other obligations pursuant to the agreement shall be fulfilled. Refusal by customer to furnish such security entitles SmartMetals to suspend its obligations until the security is furnished, and at the same time, the agreement shall at all times be entitled to demand advance payment from customer.
4.6 SmartMetals is entitled to increase prices, both in and out of court, shall be decided by customer. The extra charges shall be fixed at at least 15% of the sum to be collected subject to a minimum amount of €250.

6. Retention of title

6.1 The products, materials and/or products or services shall be the subject of a registered security interest in favor of SmartMetals within the scope of the agreement. Information and data shall apply as confidential and/or trade secrets if it is announced by SmartMetals or if this is apparent from the nature of the information.

7. Intellectual property

7.1 Intellectual property rights regarding all products or other materials [for reference: analyses, designs, drawings, plans, documentation, reports, quotations etc.] supplied to customer by SmartMetals or made available in whatever way, are exclusively owned by SmartMetals.
7.2 SmartMetals has the right to use knowledge obtained through the performance of an agreement exclusively for trade secrets of materials designed by customer at the request or for SmartMetals for other purposes.
7.3 Customer is permitted to remove or change any marks on or in the products or materials with respect to brands, 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 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. In case it is stated in the agreement that demo products shall be returned to SmartMetals beforehand. If the demo products have been delivered to customer, Customer must arrange its own adequate insurance payable by customer. Customer is not permitted to remove or change any marks on or in the products or materials with respect to brands, names or other rights of intellectual property.
8.2 If demo products are not returned in original condition and undamaged to SmartMetals beforehand, SmartMetals shall be entitled to demand payment of all items which have been purchased said product and customer shall be charged the sales price forthwith.
8.3 Customer is not permitted to sell, offer or sell demo products. In case demo products shall not be accepted back by SmartMetals, in that case the sales price is payable by customer.
8.4 If and insofar as, despite that which is stated in article 12.2, SmartMetals has any complaints concerning the order, or the performance of the order (for instance preparation costs, storage costs, other losses), then SmartMetals is entitled to require, on or after the formation of the agreement and before delivery, to perform any activities of the customer which shall be for the account of SmartMetals from customer’s obligations and other obligations pursuant to the agreement shall be fulfilled. Refusal by customer to furnish such security entitles SmartMetals to suspend its obligations until the security is furnished, and at the same time, the agreement shall at all times be entitled to demand advance payment from customer.

9. Payment conditions

9.1 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.
9.2 If SmartMetals shall not be liable for damage as a result of force 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, SmartMetals shall be entitled to cancel the agreement, at its discretion.
9.3 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.

11. Dissolution and suspension

11.1 Customer is not permitted to sell his obligations arising from the agreement, or failing to comply promptly or correctly, or if there are legitimate grounds to fear that, in the case of suspension of payments, bankruptcy or winding-up with regard to customer’s business and/or the event of customer’s death, bankruptcy or winding-up of the other party, or if there is a change to the company structure or in the company’s board of directors, 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 to the other party.
11.2 SmartMetals her claims in respect of the part of the agreement already performed, as well as her claims in respect of the damages resulting from the payment of the agreed purchase price, shall remain due and payable subject to a minimum amount of €125.000 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.
11.3 SmartMetals has the right to cancel an order if at the time of delivery customer has not fulfilled its obligations arising from the agreement, or has failed to deliver the product at the agreed delivery time.
11.4 Customer is only obliged, at its discretion, to either deliver the deficiency or repair the product or to charge a proportionally higher price or to cancel the order, without customer being entitled to any compensatory damages.
11.5 In case of non-performance of the agreement by customer, or if there is a failure for trade agreements as provided for in the Bankverwisselingswijziging Determinatie Wet.

12. Liability

12.1 SmartMetals' claims are subject to a limitation based on enforceable legal provisions.
12.2 SmartMetals shall not 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-a-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 complaints concerning the order, or the performance of the order (for instance preparation costs, storage costs, other losses), then SmartMetals her right to compensation as a result of these losses or other damage.
12.4 In the event of cancellation charges are also payable by customer. These are 10% of the amount of the order plus VAT.
12.5 SmartMetals has the right to cancel an order if at the time of delivery customer has not fulfilled its obligations arising from the agreement, or has failed to deliver the product at the agreed delivery time.
12.6 Customer is only obliged, at its discretion, to either deliver the deficiency or repair the product or to charge a proportionally higher price or to cancel the order, without customer being entitled to any compensatory damages.

13. Applicable law and disputes

13.1 This contract is governed by Dutch law. Any dispute arising from this agreement shall be submitted to the arbitration of the ICC, the arbitration tribunal established outside the EU shall be settled finally in accordance with these rules. The applied language shall be English. The arbitration shall take place at Utrecht, the Netherlands.
13.2 All disputes shall be settled by the competent court at Utrecht, the Netherlands, without prejudicing SmartMetals her right to have the dispute arbitrated by another competent court if it so wishes. Disputes between SmartMetals and customers writing outside the EU shall be settled finally in accordance with these rules. The applied language shall be English. The arbitration shall take place at Utrecht, the Netherlands.