

Purchase Conditions of Metals Chemicals Maastricht BV

Version of April 2019

Article 1. Definitions

1. The following terms have the meaning set out below, unless these purchase conditions dictate otherwise:
 - a) offer: a verbal or written offer from the supplier, which also includes quotes, stocks lists and official lists;
 - b) order: an acceptance by MCM for an offer made by the supplier;
 - c) purchase conditions: these purchase conditions of MCM;
 - d) supplier: the party whose offer MCM accepts or with whom MCM concludes an agreement;
 - e) delivery:
 - i. in the case of goods, delivery within the meaning of Section 3.4.2 of the Dutch Civil Code, for instance, the actual delivery of the goods;
 - ii. in the case of a service, the performance of the service;
 - f) delivery time: the time within which or the date on which delivery should be made;
 - g) MCM: Metals Chemicals Maastricht BV;
 - h) agreement: the agreement between MCM and the supplier that is subject to these purchase conditions;
 - i) the parties: MCM and the supplier collectively;
 - j) product: goods manufactured or traded by the supplier, as well as a property right that he sells and a service he provides.

Article 2. Applicability

1. These purchase conditions apply to offers from the supplier that are accepted by MCM, as well as to the agreement between the parties.
2. General terms and conditions or other conditions or provisos of the supplier have no applicability and they are explicitly rejected by MCM unless and insofar as MCM agrees in writing with the applicability of (part of) the (general) terms and conditions or provisos of the supplier.

Article 3. Orders

1. When MCM places an order, an agreement between the parties is concluded only if MCM places the order in writing.
2. Verbal orders placed by MCM have no effect if MCM does not confirm the verbal order to the supplier in writing. After placing a verbal order, MCM is not obliged to confirm that verbal order in writing.
3. If a permit or consent from a national and/or a national government body is required, the order is completed on the suspensive condition that the permit or consent is obtained. If the permit or consent in question is not obtained, the supplier cannot claim compensation for damage or costs from MCM.

Article 4. Delivery and transport

1. Delivery is made in the location and manner and at the time stipulated by MCM.
2. The supplier delivers the products unencumbered and free from third-party (restricted) rights or claims. Ownership of the product transfers to MCM as a result of delivery. If the ownership has not transferred to MCM at the time of delivery or if it is not transferred unencumbered or free from third-party (restricted) rights or claims, the supplier will be liable for the damage consequently suffered by MCM and MCM will be entitled to fully or partially dissolve the agreement.

3. If the product has been delivered, the supplier cannot claim back the ownership or possession of the product for any reason.
4. The product is transported and delivered at the expense and risk of the supplier. The supplier bears all foreseen and unforeseen costs associated with the delivery, including the costs of product packaging, loading and unloading, transport, the costs in connection with the import and export of the products, as well as taxes, if any. The supplier is liable for damage, defects or weight differences that may or may not occur as a result of or during transport or delivery.
5. The supplier ensures that the products are properly packed for the purposes of transport and delivery. The packaging has to comply with all applicable national and international legislation, including legislation in the fields of safety and the environment.
6. The supplier encloses an extensive dispatch note with the products to be delivered, stating, among other things, the quantity and quality of the products delivered, as well as the (order or reference) number of MCM. The supplier also encloses all documents with the products that are required by virtue of applicable national or international legislation.
7. MCM is not obliged to take over the packaging of the product from the supplier, free of charge or otherwise. When asked, the supplier will take back the packaging after delivery. If the supplier leaves the packaging with MCM at the time of delivery, MCM can return the packaging to the supplier. The supplier bears the risk and costs of the packaging being returned. MCM is not liable for damage to the packaging that may occur as a result of being returned or other causes.

Article 5. Delivery time

1. The delivery time agreed on by the parties is binding and is a final deadline. If the supplier does not fulfil the delivery in accordance with the agreed delivery time, the supplier will be in default without any notice of default being required.
2. The supplier is liable for all damage suffered by MCM as a result of delivery not being made in accordance with the agreed delivery time. If the supplier does not fulfil the delivery in accordance with the agreed delivery time or if MCM has good reason to believe the supplier will not fulfil the delivery within the agreed delivery time, MCM is also entitled to dissolve the agreement and it will still be entitled to compensation for damage it suffers because the agreement is dissolved and/or delivery is not made in accordance with the agreed delivery time.
3. The supplier can no longer invoke force majeure if he has not done so by sending a registered letter to MCM within three days of the force majeure event arising.
4. If the supplier invokes force majeure, MCM is entitled to fully or partially dissolve the agreement. If MCM does not exercise its right to dissolve the agreement, delivery will be made after the force majeure event has ended, at a time to be determined by MCM, without the supplier being entitled to compensation.

Article 6. Quality and quantity

1. The supplier delivers the product in accordance with the order and/or instructions issued by MCM. Furthermore, the product, also with a view to the order and/or instructions issued by MCM, has to be free from defects and it has to be of a quality that befits the product. The supplier also ensures that the product complies with applicable national and international legislation.
2. The supplier has an obligation to warn. Among other things, the supplier warns MCM if the supplier knows or should have known that the product or its composition is not

suitable for normal use or for the special use envisaged by MCM if the supplier is aware or should have been aware of the special use envisaged by MCM. This obligation to warn also applies if the products are composed or delivered in accordance with the instructions issued by MCM. Furthermore, the supplier will warn MCM for all relevant matters or circumstances in relation to the product. Warnings by virtue of the obligation to warn are made to MCM in writing.

3. The product must be free from environmentally hazardous substances, as well as explosives unless the order and/or instructions issued by MCM say otherwise.
4. If one or more of the previous paragraphs are not complied with, MCM will be entitled:
 - a. to refuse delivery of the product;
 - b. to return the product to the supplier;
 - c. to demand that any missing (element of the) products is delivered without delay;
 - d. to demand that the delivered product is repaired without delay;
 - e. to repair the delivered product; as well as
 - f. to demand that the delivered product is replaced without delay.
5. MCM can exercise the powers referred to in paragraph 4 during a period of at least 90 days after the day on which it emerges that one or more of the first four paragraphs have not been complied with or on which it emerges that MCM or, if MCM has sold the product, a third party has taken the product into use. If the provisions of the previous sentence result in more than one period, the period that is the last to expire applies. If and insofar as MCM has an obligation to complain, the term within which MCM has to submit a complaint will not be shorter than the longest period of at least 90 days as referred to in the first two sentences.
6. MCM will exercise the powers referred to in paragraph 4 at the expense and risk of the supplier. The foregoing is applicable, regardless of whether the product is held by MCM or by third parties.
7. If one or more of the first three paragraphs are not complied with, MCM will also be entitled to use the product at the expense and risk of the supplier and to repair, replenish or replace the (end) product. The use of the product does not imply acceptance by or approval from MCM regarding the product and it does not affect the (other) rights and powers of MCM.
8. If MCM invokes (one of) the powers from paragraph 4 or 7, it will also be entitled:
 - a. to suspend its obligations towards the supplier; as well as
 - b. to fully or partially dissolve the agreement.
9. The supplier is liable for damage suffered by MCM if one or more of the first three paragraphs are not complied with or because MCM exercises one or more of the powers mentioned in paragraphs 4, 7 and 8. Damage also includes the cost of inspection with regard to the provisions of the first three paragraphs.
10. The weight or the quantity of the product confirmed at the time of delivery determines the price that is payable for the product.

Article 7. Inspection

1. If so desired by MCM, the supplier, within a reasonable period of time, notifies MCM prior to transport that the product is ready for transport and he will give MCM the opportunity to test or inspect the product.
2. If during or after the inspection, the weight or quantity of the product proves to be less than quoted in the order placed and/or the instructions issued by MCM, the price payable by MCM will be reduced accordingly and MCM is entitled to a fixed refund of 10% of the initial invoice amount. The refund referred to in the previous sentence will not be deducted from the price reduction referred to in the previous sentence or from any compensation MCM may be entitled to for any reason.

3. If during or after the inspection, the product displays defects, is not of the required quality or if it otherwise does not comply with the order placed and/or the instructions issued by MCM, Article 6.4 will apply by analogy.
4. The provisions of this article do not affect the provisions of Article 6. If MCM accepts or approves the products during or after the inspection, MCM retains its rights and powers derived from Article 6.

Article 8. Payment

1. Invoices must be paid within 60 days of the invoice date.
2. The payment term starts on the day after the product is delivered and Article 6.1 has been complied with.
3. If a delivery is not complete or if it forms a part of a series of deliveries, MCM's consideration for the non-delivered (part of the) products is not due and payable. The payment term for the non-delivered (part of the) products commences on the day after the delivery thereof and when Article 6.1 has been complied with.

Article 9. Other provisions

1. The supplier is not permitted to pass on data from or intended for MCM to third parties, subject to a fine of €10,000.00 per event and to the obligation to compensate MCM for all damage it suffers as a result of that. The fine does not replace compensation. Among other things, 'data' refers to instructions, information, announcements, drawings, specifications, prices, as well as commercial and technical business information.
2. The rights and powers from these purchase conditions accrue to MCM, without prejudice to all other rights, powers and claims it has, for instance by virtue of the law, including the right to compliance, dissolution and/or compensation.

Article 10. Applicable law and choice of forum

1. The agreement concluded between the parties is governed by the laws of the Netherlands, with the exclusion of the Vienna Sales Convention.
2. The court of Limburg, Maastricht location, has exclusive jurisdiction to take cognizance of disputes ensuing from or relating to the agreement concluded between the parties.