

## **Conditions of Sale of Metals Chemicals Maastricht BV**

Version of April 2019

### **Article 1. Definitions**

1. The following terms have the meaning set out below, unless these conditions of sale dictate otherwise:
  - a) offer: an offer made by MCM, which also includes quotes, stocks lists and official lists;
  - b) customer: the party to whom MCM makes an offer or with whom MCM concludes an agreement;
  - c) call-off contract: an agreement in which the parties have stipulated that the customer will purchase a certain monetary value or a certain quantity of goods from MCM within the call-off period;
  - d) call-off period: the period agreed on by the parties in the call-off contract within which the customer will purchase the products for the monetary value or quantity stipulated in the call-off contract;
  - 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 customer that is subject to these conditions of sale;
  - i) the parties: MCM and the customer collectively;
  - j) product: goods manufactured or traded by MCM, as well as a property right that it sells and services it provides;
  - k) conditions of sale: these conditions of sale of MCM.

### **Article 2. Applicability**

1. The conditions of sale apply to offers from MCM and to the agreement between the parties.
2. General terms and conditions or other conditions of the customer 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 of the customer.

### **Article 3. Offers**

1. Offers from MCM are free from obligation.
2. If the customer accepts a no-obligation offer from MCM, an agreement between the parties is not concluded until that offer is confirmed in writing by MCM (order confirmation). After the customer has accepted MCM's offer, MCM will not be obliged to confirm the customer's acceptance.

### **Article 4. Delivery time**

1. MCM is bound by a delivery time only if the parties have agreed on a delivery time in writing.
2. The delivery time commences after MCM has confirmed the customer's acceptance in writing, when all preparations and formalities required for product delivery have been fulfilled by the customer, when MCM has received all the required documents and data and when the customer has paid any instalments agreed on.

3. Delivery is deemed to have been made the moment the product has left the premises of MCM or, if the product is located on third-party premises, when it has left the premises of that third party.
4. If the delivery time is exceeded, MCM will not be in default. Furthermore, the fact that the delivery time is exceeded does not give the customer any right to compensation, dissolution of the agreement or a suspension of the fulfilment of his obligations.
5. The customer cannot demand compliance with any agreed penalty clause in connection with the delivery time being exceeded if this is the result of a force majeure event within the meaning of Article 10.
6. If as a result of force majeure within the meaning of Article 10, MCM is unable to make a delivery within the agreed delivery time, MCM, after the force majeure event has ended or within a reasonable term, can still make the delivery without owing the customer compensation or it can fully or partially dissolve the agreement without owing the customer compensation.
7. If the customer exceeds the call-off period if a call-off contract is in place, MCM may demand compliance, compensation and/or it may fully or partially dissolve the agreement. When the call-off period is exceeded, the customer will be in default without a notice of default being required.
8. If the delivery cannot be made at the agreed time due to circumstances that can be attributed to the customer, the customer cannot invoke suspension. MCM will look after the products to be delivered at the expense and risk of the customer until delivery is made after all.
9. If the customer does not or cannot inspect the delivered products, it will be at the expense and risk of the customer, but this will not result in any liability for MCM or the dissolution of the agreement by the customer.

#### **Article 5. Delivery and transport**

1. The customer is obliged to take delivery of the product he has ordered.
2. The risk for damage that may affect the product to be delivered by MCM transfers to the customer at the time of delivery. Article 4.3 applies by analogy.
3. MCM will take out general insurance for the product to be delivered at the expense of the customer only if the customer asks MCM to do so.
4. Unless the parties have stipulated otherwise, delivery is made at the expense and risk of the customer. That also applies to delivery carriage paid.
5. Unless the customer has stipulated a transport method, MCM is free to decide on the transport method and it will not be liable for damage to the product that may be caused by the transport method chosen by MCM.
6. The documents enclosed with the goods to be delivered on account of the legislation and regulations of the European Union and/or the Dutch government and which related to the matter must be used by the client/buyer and the relevant applicable procedures must be followed.

#### **Article 6. Quality and quantity**

1. MCM delivers products of a quality that befits such products, also with a view to the specifications regarding the shape and/or composition of the product agreed on by the parties at the time of MCM's order confirmation and referred to in Article 3.2
2. If the parties agree that the product should be subjected to a quality check, that check should be carried out by (a third party on the instructions of) the customer at a time and place to be determined by MCM. If the customer is unable to carry out the quality check or if he cannot be present during the check, MCM will carry out the quality check at the expense of the customer, in accordance with the method decided on by the parties. If MCM concludes that the results of the quality check correspond with the

quality that befits such a product or if they meet the specifications agreed on by the parties, the customer is considered to have accepted the products.

3. The product quantity to be delivered by MCM is subject to a margin that is customary for the product in question. In this case, a margin of 10% is considered customary. If a higher margin is customary for a product, that higher margin will apply.
4. The weight or the quantity of the product confirmed at the customer's determines the price that is payable for the product unless the parties have agreed otherwise in writing.
5. Data, including brochures, advice, user instructions, drawings or shipping documents that MCM may or may not enclose with the offer do not form a part of the agreement concluded between the parties unless stipulated otherwise in writing.

### **Article 7. Complaints**

1. The customer can no longer invoke a defect if he fails to complain to MCM about it in writing within 14 days of delivery. The complaint must clearly explain the nature and the extent of the defect. Article 4.3 applies by analogy.
2. If the customer has complained about a defect, he has to store the products in question until MCM has dealt with the complaint. Until MCM has dealt with the complaint, the customer is not permitted to use or allow the products to be used, to sell them or to incorporate them in a new product. When asked, the customer gives MCM the opportunity to test or inspect the products about which the customer has complained.
3. Any acts or omissions in violation of paragraph 1 or 2 mean that the customer can no longer invoke the defect.
4. MCM's liability is limited to damage to the product itself, which will be compensated by MCM by delivering products (again) free of charge, which products are of the quality referred to in Article 6.1. MCM is not liable for other damage, including consequential damage and losses due to delays.
5. The customer has to fulfil his obligations under the agreement. The customer is not entitled to suspension or set-off, even if the product were to be defective and/or if the customer has complained to MCM.

### **Article 8. Cancellation**

The customer can cancel his order before MCM has started transporting or delivering the product. In the event of cancellation, the customer immediately owes MCM a fixed refund of 10% of the value of the cancelled order, without a notice of default being required.

### **Article 9. Liability**

1. MCM is not liable for damage caused by a violation of third-party rights, including intellectual property rights and exclusivity rights, as a result of the customer using instructions or information issued to MCM by the customer. The customer indemnifies MCM against third-party claims.
2. If MCM has delivered the product in accordance with instructions or information issued to MCM by the customer, MCM will not be liable for damage caused by the application of the customer's instruction of information in question.
3. MCM is not liable for damage inflicted on the customer's or third-party goods as a result of or during its activities on, with or in which these activities and/or delivery take place. The customer indemnifies MCM against third-party claims. The previous two sentences apply by analogy to (auxiliary) persons and suppliers hired by MCM.

### **Article 10. Force majeure**

1. In the event of force majeure, MCM, without being obliged to compensate damage, may decide:

- a. to suspend its obligations under the agreement and, after the force majeure event has ended, to perform the agreement within a reasonable term after all;  
or
  - b. to fully or partially dissolve the agreement.
2. Force majeure does, in any case, include every external cause that cannot be attributed to MCM and which prevents the performance of the agreement, or which temporarily or permanently impedes or inconveniences the performance to such an extent that performance cannot be reasonably required from MCM.
3. Among other things, force majeure includes war, revolution, unrest, mobilisation, floods, fire, strikes, a lack of staff, attachments, embargoes, a ban on currency transfers, a lack of modes of transport, a lack of raw materials, restrictions in energy consumption beyond the parties' control, sabotage, a considerable increase of import duties, duties and/or taxes, government measures that affect the business operations of MCM, shortcomings by suppliers or hired third parties, devaluation, inflation, liquidity or solvency issues, as well as other circumstances that obstruct or seriously impede MCM's normal business operations.

### **Article 11. Payment**

1. The payment term is 30 days after the invoice date unless the parties have otherwise agreed in writing.
2. The payment term is a final deadline. The customer will be in default after the expiry of the payment term, without a notice of default being required.
3. In principle, payment is made by giro, into a bank account to be stipulated by MCM. A different payment method is possible only if the parties have agreed on that in writing. The costs of a different payment method are payable by the customer.
4. After the expiry of the payment term, the customer immediately owes interest on the amount due at 1.5% per month or a part thereof, without a notice of default being required. The interest works cumulatively (interest on interest).
5. Furthermore, when the payment term is exceeded, the customer must pay an immediately due and payable fine of 10% of the amount due, subject to a minimum of €100.00, without a notice of default being required and without prejudice to MCM's right to compensation.
6. The judicial and/or extrajudicial costs incurred by MCM in order to collect its claim are payable by the customer.
7. In the event of a dispute about the liability to pay the amount invoiced by MCM, the customer is on MCM's demand obliged to deposit the invoiced amount with a bank or into a bank account, both of which to be stipulated by MCM. The previous paragraphs apply in full in the event of a deposit.
8. The customer is not entitled to set-off or suspension.

### **Article 12. Security**

1. On MCM's demand, the customer is obliged to provide sufficient security for the fulfilment of his fulfilments towards MCM.
2. If the customer fails to provide security, despite MCM's demand to that end, MCM can suspend its fulfilments under the agreement and/or it can dissolve the agreement without being obliged to compensate any damage and without prejudice to its right to compensation for the damage it suffers.

### **Article 13. Retention of title**

1. The product delivered by MCM remains the property of MCM until the customer has fulfilled all his obligations towards MCM with regard to claims about the consideration for goods delivered or to be delivered by MCM to the customer by virtue of the

agreement or by virtue of any agreement for work undertaken or to be undertaken by the customer, as well as with regard to the claims in connection with a failure to fulfil such agreements.

2. As long as the ownership of the product has not transferred to the customer, the customer is not entitled to alienate, encumber or sell the product or to transfer all or some of the actual control over the product to a third party.
3. Paragraphs 1 and 2 apply by analogy to products delivered by MCM that have been incorporated in another or a new product following accession, merger or specification, for instance.
4. MCM is entitled to demand the surrender of the product delivered subject to retention of title, if the customer fails or if MCM has good reason to believe the customer will fail to fulfil his obligation or obligations. Among other things, MCM is entitled to claim surrender if the customer is declared insolvent or if he has been granted a moratorium, as well as when a winding-up petition is filed, a moratorium has been applied for or will be applied for in the short term.
5. If MCM demands the surrender of the product, the customer is obliged to transfer the ownership of the products to MCM. The products are surrendered at the expense and risk of the customer. The customer is obliged to compensate the damage suffered by MCM for demanding the surrender of the products, subject to a minimum of €250.00.
6. The product surrender may be of a temporary or of a permanent nature. If MCM is entitled to demand the surrender of the products, it is also entitled to fully or partially surrender the agreement which the customer has failed to comply with. The product surrendered to MCM serves as security, even if the surrendered product falls under an agreement other than the agreement which the customer has failed to comply with.

#### **Article 14. 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 15. 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.