

## **GENERAL TERMS & CONDITIONS**

**Overdie Metals B.V., with its registered office and principal place of business in Alkmaar, registered with the Chamber of Commerce for Alkmaar under number 37110466**

### **1. Definitions**

The definitions below are applied in these general conditions.

*Supplier*

The private limited company Overdie Metals B.V., with its registered office and principal place of business at Kitmanstraat 231, Alkmaar, as well as its legal successors under universal or singular title.

*Customer*

Every natural person or legal entity that purchases Products from the Supplier or enters into negotiations with the Supplier for that purpose.

*Parties*

The Supplier and the Customer.

*Agreement*

The agreement entered into by the parties relating to the sale of Products, including the associated documents and customs, which form an integral part thereof.

*Products*

All goods and services that are the subject of an agreement.

*Order*

Every assignment of the Customer, in whatever form.

### **2. Applicability**

- 2.1 These general terms and conditions apply to all offers made by Supplier to the Customer and to all agreements between Supplier and the Customer, and apply to all Products to be delivered by Supplier.
- 2.2 Deviations from these terms and conditions shall only be valid if and insofar as they have been agreed in writing between the Supplier and the Customer.
- 2.3 The applicability of the Customer's general terms and conditions (referred to in documents originating from the Customer) is hereby expressly rejected.
- 2.4 Insofar as the parties have previously concluded an agreement on the basis of these general terms and conditions, they declare that they agree that these general terms and conditions shall also apply to subsequent agreements between them. This provision does not apply to any agreed deviating conditions that are always deemed to apply to a single agreement.

### **3. Offer and acceptance**

- 3.1 All offers made by the Supplier are entirely without obligation and are not binding on the Supplier.
- 3.2 The Supplier cannot be held to an offer if the credit insurer does not issue a credit limit to the Customer or if a credit limit issued by the credit insurer is withdrawn or - for whatever reason - becomes inadequate.
- 3.3 An agreement shall first be concluded after an order has been confirmed by the Supplier in writing to the Customer or when the Supplier commences the execution of the order.
- 3.4 Except in the event of written protest by the Customer, an agreement between the parties shall be deemed to be accurately reflected in the confirmation sent by the Supplier to the Customer.
- 3.5 Any changes and additions to an already existing agreement are only binding on the Supplier if and insofar as they have been confirmed by the Supplier in writing.
- 3.6 All announcements made by the Supplier regarding quality, composition, treatment in the broadest sense, application possibilities, properties, technical advice, numbers, measurements, etc., are only binding insofar as the Supplier has explicitly confirmed these in writing. If this is not the case, the Supplier shall not be liable for damage arising as a result of deviations from the information provided by it.

### **4. Delivery, transport and risk**

- 4.1 Delivery takes place "ex works", in accordance with Incoterms 2010 or the most recent edition, unless expressly agreed otherwise in writing.
- 4.2 Part deliveries are permitted and may be charged by the Supplier immediately.
- 4.3 The delivery periods for goods and execution periods for services stated by the Supplier shall be regarded as indicative, shall never be regarded as final deadlines and shall not bind the Supplier.
- 4.4 Exceedances of the delivery and execution periods shall not entitle the Customer to claim damages in any form whatsoever, to refuse acceptance or to terminate the agreement in full or to suspend the

fulfilment of all or part of the Customer's obligations under the agreement, unless the Customer is entitled to do so on the basis of statutory provisions (mandatory law). The Supplier's obligation to deliver shall be fulfilled by offering the goods once. The receipt signed by the Customer or by the person representing the Customer serves as full proof of delivery.

- 4.5 If the Customer does not take delivery of the goods (on time), the Supplier shall be entitled to store the goods at the risk of the Customer or, at its discretion, to sell them to a third party, without prejudice to the right of the Supplier to recover any damage from the Customer.  
Storage and other costs shall be borne by the Customer.
- 4.6 The Supplier shall be entitled to send the Products intended for the Customer from a location other than that where its business premises are located. The location from which the goods are delivered shall then be deemed to be the Supplier's business premises and the provisions of these general terms and conditions shall remain in full force and effect.
- 4.7 Unless expressly agreed otherwise, the Products shall be at the Customer's risk from the time of delivery.

## **5. Force majeure**

- 5.1 The Supplier shall under no circumstances be obliged to fulfil its obligations under the agreement, and shall not be obliged to pay any compensation in the event of force majeure. The following circumstances shall in any case be regarded as force majeure on the part of the Supplier:
  - a. mobilisation, fire, smoke, explosion, extinguishing water, theft, natural disasters, strikes, traffic obstructions, road blockades, war, danger of war, export and import bans, transport problems, obstructive measures of any government, industrial accidents and/or operational disruptions;
  - b. illness of the Supplier's personnel or of personnel of auxiliary persons engaged by the Supplier;
  - c. a general lack of necessary raw materials and other goods and/or services required for the realisation of the goods, services or other performances to be delivered by the Supplier;
  - d. unforeseeable stagnation at suppliers or other third parties on which the Supplier depends;
  - e. failure by the Customer, third parties or persons for whom the Supplier is liable, to comply (in full) with any regulation or instruction given by the government or on the part of the Supplier (including those contained in these terms and conditions);
  - f. any negligence in the performance of anything that has not been explicitly or separately assigned to the Supplier;
  - g. all other circumstances which the Supplier could not reasonably have avoided or prevented, even if these circumstances could already have been foreseen at the time of the conclusion of the agreement. This also includes such circumstances at auxiliary persons as well as default on the part of auxiliary persons.
- 5.2 In the event of force majeure, the Customer shall only be entitled to terminate the agreement insofar as the agreement cannot be performed or it is established that fulfilment will not be possible.

## **6. Prices**

- 6.1 Unless expressly agreed otherwise, all prices quoted by the Supplier are exclusive of VAT and exclusive of any other costs such as - but not limited to - transport costs, packaging costs, etc.
- 6.2 Changes in factors that may affect the Supplier's price, such as - but not limited to - purchase price, exchange rate differences, government measures, import and export duties, insurance premium, etc., may be passed on by the Supplier to the Customer without the Customer being entitled to terminate the agreement.

## **7. Payment**

- 7.1 Payment shall be made within 30 days of the invoice date, unless otherwise agreed in writing.
- 7.2 The Supplier is not obliged to accept cheques or bills of exchange as payment. If the Supplier does so nevertheless, all related costs shall be for the Customer's account and a payment shall only be deemed to have been received if and to the extent that the Supplier's bank account has been unconditionally credited with the relevant amount.
- 7.3 From the moment that the Customer is in default, the Supplier shall be entitled to immediately demand all other claims it has on the Customer and the Supplier shall be entitled to suspend further deliveries until the outstanding invoices, including interest and costs, have been paid in full by the Customer.
- 7.4 The Supplier shall be entitled, if it believes that the Customer will not be able to fulfil its obligations (in time), to demand advance payment or security from the Customer.
- 7.5 All extrajudicial collection costs incurred by the Supplier that go beyond sending a single (possibly repeated) letter of demand or making a single (not accepted) settlement proposal, gathering simple information or compiling the file in the usual manner, shall be for the account of the Customer. These extrajudicial costs shall be set at a minimum of 15% of the amount to be collected, with a minimum of € 1,000.
- 7.6 Every payment made by the Customer shall be deemed to relate to the oldest outstanding invoice, possibly increased by interest and costs, regardless of whether or not explicitly stated otherwise on making the payment.

## **8. Retention of title, pledge and right of retention**

- 8.1 The Supplier shall deliver the goods to the Customer under the condition president that the Customer fully meets its obligations towards the Supplier existing at any time. The retention of title included herein shall also extend to (i) new goods made with the delivered goods, (ii) all claims relating to compensations of goods, services and/or other performances delivered or to be delivered by Supplier to the Customer under this agreement or any other agreement of any nature whatsoever, and (iii) claims due to failure to comply with the agreements referred to under (ii), including compensation for damages and extrajudicial and judicial costs, contractual and legal interest, penalties and penalty payments.
- 8.2 In the event that the Customer fails to fulfil its obligations, the Supplier shall be entitled to recover the delivered goods without any warning, notice of default or judicial intervention being required, this without prejudice to the Supplier's other rights in connection with the Customer's failure to fulfil its obligations. The Customer shall make the delivered goods available to the Supplier and shall, if necessary, provide the Supplier with access to all spaces where the Supplier's goods are located.
- 8.3 All items, monies, monetary instruments, insurance payments and/or documents which Supplier holds and/or will hold for or on behalf of or on account of the Customer or which it owes and/or will owe the Customer for whatever reason and/or order, shall serve as a possessory pledge for all claims which Supplier has and/or may acquire against the Customer.
- 8.4 The Supplier shall have a right of retention in respect of all goods, monies, monetary instruments, insurance payments and/or documents in its possession and/or to be obtained by the Supplier on whatever grounds and/or order.
- 8.5 In the event of non-payment of the claim by the Customer, the Supplier shall be entitled to (publicly) sell the collateral or what the Supplier holds in its possession by virtue of the right of retention in accordance with the manner determined by law.

## **9. Quality and quantity**

- 9.1 Unless expressly agreed otherwise, the Supplier shall always be deemed to have fulfilled its obligations following the delivery of normal trade quality.
- 9.2 If it is agreed that delivery of scrap metal shall take place on the basis of the quality descriptions from the European Classification for non-ferrous Metal Scrap or from the Scrap Specifications of the Institute of Scrap Recycling Industries Inc., these shall be interpreted in accordance with the most recent edition in force on the date on which the relevant agreement was concluded.
- 9.3 Unless expressly agreed otherwise, the following provision shall apply to the agreed quantities:  
In the case of agreements relating to the delivery of metal scrap, the following deviations from the agreed quantity shall be permitted:
  - ± 2% if a given quantity is quoted without further ado;
  - ± 5% when a certain quantity is indicated, preceded by the indication "approx.";If two quantities are mentioned as the upper and lower limit, the quantity to be delivered must lie between the indicated quantities.
- 9.4 The parties shall, with binding effect, determine the weight of the delivered Products as well as, insofar as agreed, the manner of packaging, immediately prior to the delivery of the Products to the carrier by the Supplier.
- 9.5 The Customer is entitled, at its own expense, to be present or represented at the weighing and/or counting. If the Customer wishes to exercise this right, it shall inform the Supplier thereof in good time, i.e. at least 8 days before the scheduled delivery date. If the Customer allows the aforementioned period to expire, it shall be deemed to have accepted the weight and/or number determined by the Supplier upon delivery to the carrier, as well as the manner of packaging used.

## **10. Defects; investigation and complaint periods**

- 10.1 In case of the delivery of goods, the Customer shall examine the delivered goods within 5 working days after receipt and shall notify Supplier in writing of any complaints regarding visible defects and/or defects that can be observed following examination within 3 working days after expiry of the examination period, failing which any claim of the Customer against the Supplier shall lapse.  
Complaints regarding defects that only come to light later on use or use by the Customer shall be reported to the Supplier in writing within 3 working days after they should reasonably have been discovered by the Customer, but no later than 14 working days after receipt of the delivered goods, failing which any claim of the Customer against the Supplier shall lapse.
- 10.2 In the case of services, the Customer shall examine these within 5 working days of their completion and shall notify Supplier in writing of any complaints relating to visible defects and/or defects that can be observed following examination within 3 working days after expiry of the examination period, failing which any claim by the Customer against the Supplier shall lapse. Complaints relating to defects that only become apparent later on use or consumption by the Customer shall be reported to the Supplier in writing within 3 working days after they should reasonably have been discovered by the Customer, but no later than 14 working days after completion of the services, failing which any claim of the Customer against the Supplier shall lapse.
- 10.3 Any complaints regarding the quality of delivered goods that correspond to a sample accepted in advance by the Customer, or regarding the quality of delivered goods that correspond to information

- provided by the Customer prior to the conclusion of the agreement regarding composition and/or properties, shall not be accepted by the Supplier.
- 10.4 If it has been agreed that the Products will be inspected on or after delivery or completion, this inspection will take place at the place of delivery, in the manner customary in the sector, by one or more persons designated by one or more parties in mutual consultation. Unless otherwise agreed, the costs of the inspection shall be for the account of the Customer. If the Customer remains in default with the appointment of an inspector, or fails to cooperate with the inspection, it shall be deemed to have accepted the Products.
- 10.5 Complaints relating to defects of Products delivered by Supplier, the cause of which apparently lies in one or more events related to the transport of the Products, shall be reported directly to the carrier by the Customer within 7 working days of transport at the latest.
- 10.6 The Supplier does not guarantee that the delivered scrap metal will be free of materials with moisture and/or air bubbles, "geschlossene Hohlkörper", etc., and accepts no complaint in this respect and no liability whatsoever.
- 10.7 Any liability for defects in the Products sold by the Supplier shall lapse if, in the opinion of the Supplier, the Customer has not taken the reasonable measures to be taken by it with regard to the Products, including to limit the damage, or if the Products after delivery:
- a. have not been stored correctly
  - b. have been mixed with the other Products
  - c. have been processed by the Customer or third parties.
- 10.8 Complaints may be rejected by the Supplier if the Customer does not fully cooperate with the Supplier in order to investigate the merits of the complaint.
- 10.9 Unless the Supplier has given written permission for this, returns will not be accepted. The costs of returning the Products shall be borne by the Customer, while the Products delivered shall remain at the Customer's risk.
- 10.10 In the event of a well-founded complaint, the Supplier shall have the choice between replacement of the Products delivered and a discount on the invoice amount that is reasonable in view of the complaint.
- 10.11 The Supplier is not obliged to compensate any damage caused by a defective product supplied by him, other than the damage to the product itself on the basis of these general terms and conditions.
- 10.12 Despite any complaints about defects, the Customer shall pay the agreed price on time and the Customer has no right to compensation.

## **11. Liability**

- 11.1 The Supplier's liability shall be limited to the amount paid out under the Supplier's liability insurance. In the absence of payment under the liability insurance, the Supplier's liability shall be limited to the net invoiced value of the Products in question, unless the Customer proves that the damage was caused intentionally on the grounds of wilful recklessness on the part of the Supplier itself or its managers.
- 11.2 Subject to mandatory provisions of law with regard to (product) liability, the Supplier shall not be liable for damage resulting from improper use or processing of the delivered goods, whether or not in violation of the standards and values applicable in the sector.
- 11.3 However, the Supplier shall never be liable:
- a. damage caused by intent or equivalent wilful recklessness on the part of subordinates of the Supplier and/or auxiliary persons engaged by Supplier;
  - b. indirect damage, including indirect damage caused by a defective good, consequential damage, loss of profit, lost savings, damage caused by recall actions, damage caused by business interruptions, loss of customers, and damage to name and/or goodwill;
  - c. damage, including damage caused by or during the performance of services and/or other activities to goods located in the vicinity of the place where the work is being carried out.
- 11.4 Notifications by or on behalf of the Supplier regarding the quality, composition, treatment in the broadest sense, application possibilities, properties, etc., of the Products shall not be binding on the Supplier, unless they are made in writing and explicitly in the form of a guarantee.

## **12. Suspension and termination**

- 12.1 The Supplier shall have the right to suspend the performance of the agreement or to terminate the agreement in whole or in part with immediate effect at its discretion by means of a written statement and without prior notice of default, notification or judicial intervention, while retaining all its rights to compensation of costs, damage and interest, and without the Supplier being obliged to pay any compensation, if:
- a. the Customer is declared bankrupt, has applied for a suspension of payments or bankruptcy, or is placed under administration;
  - b. the Customer fails to fulfil one or more of its (payment) obligations arising from, or otherwise related to, the agreement, or fails to fulfil them properly, in full or in time, or it is certain that fulfilment without default will be impossible;
  - c. the Supplier has good reason to fear that the Customer is not able and/or willing to meet its obligations;

- d. The Supplier's credit insurer does not issue a credit limit for the agreement with the Customer or if a credit limit issued by the credit insurer for the agreement is withdrawn or - for whatever reason - becomes insufficient.
  - e. the Customer makes a decision to liquidate and/or shut down the Customer's enterprise/activities
  - f. the Customer loses control of its assets or, if the Customer is a natural person, is placed under guardianship or dies;
- 12.2 All claims that the Supplier may have on the Customer at the time of the existence of one or more circumstances referred to in paragraph 1 of this article shall be fully and immediately due and payable.

**13. Indemnification**

The Customer indemnifies the Supplier against claims by third parties for compensation of damage arising from or in connection with the Supplier's delivery of Products. In the context of its obligation to indemnify, the Customer shall reimburse the Supplier, among other things, for the reasonable costs of defending against claims by third parties, unless the damage is the result of an intentional act or omission or wilful recklessness on the part of the Supplier itself or its managers.

**14. Expiry period**

All legal claims and defences of the Customer and third parties against the Supplier shall lapse after 12 months calculated from the date of delivery of the goods or performance of the services.

**15. Price fixing**

- 15.1 Parties may agree that - and under what conditions - the Customer shall fix the price of the raw materials included in the purchased Products.
- 15.2 If the Customer has not fulfilled its obligations arising from Article 15.1 within 7 days after being summoned to do so by the Supplier, it shall be deemed to have fixed the price of the entire quantity of Products (in respect of which he has failed to fix the price) as if it had fulfilled said obligations on the eighth day after having been summoned to do so, or, in the event that the London Metal Exchange (LME) has not been open on that day, on the next day that it is open.

**16. Setoff**

- 16.1 The Supplier is at all times entitled to set off its claims and/or of affiliated companies against the claims of the Customer.
- 16.2 If a situation arises as described in Article 14 of these general terms and conditions, any claims of companies affiliated with the Supplier against the Customer shall also be immediately due and payable.

**17. Changes**

The Supplier reserves the right to change and/or supplement these general terms and conditions. The Customer agrees to any additions and/or changes in advance, unless this cannot reasonably be expected of it.

**18. Applicable law and competent court**

- 18.1 All agreements and legal relationships to which these terms and conditions apply shall be governed by the laws of the Netherlands, on the understanding that:
- a. the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) does not apply and is expressly excluded;
  - b. the retention of title determined in these terms and conditions in Article 11, insofar as more favourable to the Supplier, after the relevant goods have been imported into a country other than the Netherlands, shall be governed in full and in particular in its scope by the law of that country.
- 18.2 All disputes arising between the Supplier and the Customer shall be submitted to the Amsterdam District Court, to the exclusion of any other court.

**19. Decisive text, changes to conditions, nullity and invalidity of articles**

In the event of any difference between the Dutch text of these general terms and conditions and the text of these general terms and conditions in any other language, the Dutch text shall prevail.

- 19.1 Should any article of these terms and conditions be void or declared invalid, the validity of the remaining articles shall not be affected. Instead of the void and/or nullified article, the provision shall be deemed to have been agreed which, in the context of what is legally possible, most closely approximates the intention and spirit of the void and/or nullified article.