

# GENERAL TERMS & CONDITIONS

## Article 1: Definitions and scope

- In these general terms and conditions, the following capitalised terms are defined as follows:
  - 'Europe Metals': Europe Metals B.V., a private limited company registered in the Netherlands Chamber of Commerce under number 17076718 and the supplier of Goods. These general conditions are used by Europe Metals and may also be used by Europe Metals' affiliated companies. Insofar as these general conditions are used by any company affiliated to Europe Metals, 'Europe Metals' means that relevant company.
  - 'Customer': the legal entity or natural person acting in the exercise of a profession or business who enters into a Contract with - and places orders with - Europe Metals.
  - 'Agent': the (legal) person acting in the exercise of profession or business and engaged by Europe Metals or approached by Europe Metals independently in order to conclude Contracts between Europe Metals and the Customer.
  - 'Contract': an express or implied acceptance by Europe Metals of an order and other written agreements between Europe Metals and the Customer.
  - 'Goods': non-ferrous metals and other goods sold and delivered by Europe Metals to the Customer.
- These general conditions apply to every order and order confirmation and form part of every Contract between a Customer and Europe Metals. Europe Metals is entitled to make changes to these general conditions at any time.
- The Dutch version of these general terms and conditions is determinant.

## Article 2 – Formation of a Contract

- The Contract between Europe Metals and the Customer does not come into effect until an order is placed with Europe Metals, whether or not via an Agent, Europe Metals sends a written order confirmation to the Customer, and the Customer expressly or impliedly accepts the order confirmation (see section 5 of this article).
- Unless otherwise agreed in writing, the Customer is at all times the contracting party of Europe Metals, irrespective of whether the Contract is concluded with the Customer directly or via an Agent.
- Upon receipt of the order, Europe Metals will send the Customer a written order confirmation. This order confirmation must state at least the type, specification, as well as the quantity of the Goods to be delivered, the price, the terms of delivery and the expected delivery or shipment period. The final order confirmation and the specifications stated therein may differ from the written order.
- Europe Metals reserves the right to refuse all or part of the Customer's order in situations including, but not limited to, the following:
  - The Customer is in default of payment;
  - The desired Goods are not (fully) available, or at least not available in time;
  - The Customer's creditworthiness has deteriorated.
- The Contract is deemed to have been concluded upon either express or implied acceptance of the order confirmation by the Customer. There is deemed to be acceptance if the Customer does not object to the order confirmation and the specifications stated therein in writing within 36 hours after Europe Metals has sent the order confirmation. Europe Metals is not obliged to comply with objections raised after the objection period.
- Additional Contracts or amendments to the Contract, as well as undertakings, shall only bind Europe Metals if they have been confirmed in writing by Europe Metals.

## Article 3 – Performance of the Contract

- Europe Metals is authorised to engage third parties for the performance of the Contract, including for the storage/transfer/warehousing of Goods. Europe Metals is not liable for the third parties it engages, to the exclusion of Book 6 Article 76 of the Dutch Civil Code (see also Article 11 of these general conditions).
- Europe Metals is at all times permitted to deliver up to 10% more or less of the agreed quantity of Goods to be delivered.
- The procedures of Europe Metals with regard to inspection of Goods, as well as sale and delivery of Goods, comply with the relevant regulations under Dutch and European legislation. The Customer must inform Europe Metals in writing prior to the conclusion of a Contract of any deviations of the regulations in the country of destination from Dutch and European regulations, failing which it can lose its rights. If legislative or regulatory changes within the country of destination occur after the conclusion of the

Contract, the Customer must inform Europe Metals of this immediately and in writing.

## Article 4 - Prices and price increases

- Unless otherwise agreed in writing, the price applies only to the specific order confirmation and to the quantity offered therein. All Europe Metals' selling prices are in euros or dollars and exclude VAT, costs for insurance, clearance charges, packaging costs, transport costs, import and export duties, levies or other governmental costs. Any bank charges and adverse increases in exchange rates shall also be at the expense and risk of the Customer. Europe Metals charges VAT to the Customer.
- The prices for Goods indicated in the relevant order confirmation of Europe Metals are determined on the basis of the quoted and current daily price according to the London Metal Exchange (LME), or on the basis of the purchase prices of suppliers. Prices of Goods may fluctuate per Contract.
- If in the opinion of Europe Metals there are any foreseen and unforeseen cost-increasing circumstances attributable to the Customer, Europe Metals is entitled to charge these costs to the Customer.
- If the Customer fails to pay Europe Metals' invoice within the agreed payment term and cost-increasing circumstances subsequently arise, Europe Metals is entitled to charge this price increase to the Customer. In such a case, the Customer shall not be entitled to terminate (in Dutch: 'Opzegging') or dissolve (in Dutch: 'Ontbinding') all or any part of the Contract.

## Article 5 - Payment and deadlines

- Europe Metals is entitled to invoice the Customer immediately after delivery of Goods. The payment term is 14 days from the invoice date, unless otherwise agreed in writing. The payment term is a deadline. If the term is exceeded, the Customer shall be in default immediately and by operation of law.
- Notwithstanding section 1, Europe Metals is at all times entitled to demand a deposit or full payment in advance from the Customer prior to delivery of Goods. In addition, Europe Metals is entitled to require a form of security other than any full or advance payment from the Customer.
- If the Customer is in default then it is liable to pay all claims of Europe Metals immediately and by operation of law plus contractual interest of 1.5% per month as well as extrajudicial collection costs set at 15% of the principal sum or € 500.00, whichever is more.
- The Customer is deemed to be in default, or the consequences of non-performance already take effect, in respect of each Contract between Europe Metals and the Customer, if any event including, but not limited to, the following occurs:
  - Any breach by the Customer of performance of any of its obligations arising from a Contract (see also section 1 of this article);
  - The filing of an application for a natural persons debt rescheduling scheme/moratorium/bankruptcy (other than under the Dutch WHOA act) by the Customer;
  - A seizure order upon Europe Metals at the expense of the Customer;
  - A decision to liquidate and/or dissolve the business of the Customer, or the intention to do so;
  - The transfer/sale of (shares of) the Customer, in the broadest sense;
  - A negative assessment of the Customer's creditworthiness, or a decline in the Customer's creditworthiness after the conclusion of the Contract.
- Europe Metals is entitled to charge the Customer for all judicial costs it must incur to obtain performance by the Customer. Judicial costs include the costs of bankruptcy proceedings.
- Under no circumstances shall the Customer be allowed to suspend and/or set off its (payment) obligations in full or in part.
- Payments made by the Customer shall always first be applied to reduce the costs due, then the interest and after that the invoices that have been outstanding the longest, irrespective of the payment reference stated by the Customer at the time of payment.
- The Customer must have submitted any complaint about the amount of the invoice amount to Europe Metals in writing within the payment term, failing which it forfeits all its rights.

## Article 6 - Delivery conditions

- Unless expressly agreed otherwise in writing, delivery from Europe Metals to the Customer shall always be in accordance with Incoterm Ex Works at the business location of Europe Metals in Heeze or any other location in the Netherlands where Europe Metals has stored the Goods and makes

them available to the Customer, as described in Incoterms version 2020 of the International Chamber of Commerce (ICC).

2. The delivery and transfer of the risk of Goods (loss, theft and damage) to the Customer in the event of delivery Ex Works is effected when the Goods are made available at the business location of Europe Metals in Heeze, the Netherlands, or another location in the Netherlands designated by Europe Metals.
3. If delivery takes place in accordance with the Incoterm 'Delivered At Place' ('DAP'), Goods are transported at the expense and risk of Europe Metals. In all other cases, Goods are transported at the expense and risk of the Customer, in accordance with the agreed delivery condition as referred to in Incoterms version 2020.
4. Delivery and transfer of the risk of the Goods (loss, theft and damage) to the Customer under DAP, occurs when Europe Metals delivers at the agreed place of destination.
5. On delivery DAP, Europe Metals shall transport the Goods to where the vehicle can pass on public roads. Europe Metals is not obliged to transport the Goods to the site/branch address of the Customer, unless explicitly agreed otherwise. The Customer must take delivery of the Goods there and unload them immediately.
6. The Customer reserves the right to deliver Goods in parts. In deviation from Article 73 of the Vienna Sales Convention, each delivery is to be considered a separate Contract and Europe Metals is entitled to invoice that delivery separately.

#### Article 7 - Delivery and deadlines

1. The delivery period only commences once a Contract has been concluded and all data and/or materials required for the commencement of the performance of the Contract are in Europe Metals' possession. Where applicable, the delivery periods only start once the requested advance payment in full or on part has been made.
2. To the extent that sea freight is involved, then the Customer is responsible for timely and correct transmission of proper instructions regarding the preparation of the Bill of Lading. The Customer must check the Bill of Lading promptly for inaccuracies therein. If changes to the Bill of Lading are required, then the Customer must request Europe Metals for changes no later than prior to the sailing of the cargo vessel and in writing failing which it forfeits its rights. If the Customer requests any change to the Bill of Lading after sailing of the cargo vessel, Europe Metals is entitled to charge at least a sum of €200.00 per change, unless the Customer demonstrates that the change is the result of a Bill of Lading filled in incorrectly by Europe Metals and the Customer has correctly and fully passed on the instructions for preparing the Bill of Lading.
3. Unless otherwise agreed in writing, for deliveries with a destination outside the European Union, the Goods specified on the order confirmation shall be loaded on the first means of transport or made available at the agreed location within 30 days after the commencement of the delivery period referred to in section 1 of this article, depending on the agreed delivery condition.
4. Unless otherwise agreed in writing, for deliveries with a destination within the European Union, the Goods specified on the order confirmation shall be delivered to the Customer within 45 days after the start of the delivery period referred to in section 1 of this article in accordance with the agreed delivery condition.
5. The Customer shall provide all necessary cooperation to enable delivery by Europe Metals.
6. The Customer must take delivery of the Goods that have been made available for delivery.
7. Insofar as the Customer refuses the Goods or does not purchase them on time, or does not cooperate sufficiently to enable delivery by Europe Metals, the Customer shall be in default by operation of law and without notice of default being required. Goods will be deemed delivered in that case. Europe Metals is then entitled to store, destroy or sell the Goods to a third party for the account and risk of the Customer, as well as to charge the Customer for the related costs and loss suffered by Europe Metals and any liability of Europe Metals is excluded.

#### Article 8 - Inspections and advertising

1. The Customer must complain in time and in writing and about defects whereby a distinction is made between visible defects and invisible defects as regards the period within which a complaint must be made by the Customer failing which its rights are forfeited:
  - a) Visible defects such as quantity of Goods and externally visible defects: immediately and within 24 hours after the Goods have been made available to the Customer or - if Europe Metals takes the risk

for the transport of Goods - within 24 hours after the Goods have left the means of transport engaged by Europe Metals;

- b) Latent defects: immediately, but within 8 days of discovery, or at least after the defects could reasonably have been discovered.
2. The Goods shall be delivered subject to customary tolerances and deviations under Dutch and European law with regard to contamination, dimensions, quantity, quality, and weight.
3. In any case, there is no question of a defect and claims and complaints will not be accepted by Europe Metals if:
  - a) Goods have been processed or edited;
  - b) Goods have not been stored in the correct and prescribed manner;
  - c) If there is a difference in measurement of weight between the time of loading on the first means of transport and unloading at the destination of less than 1%;
4. The filing of a complaint by the Customer is not a valid ground for set-off, termination, dissolution, and/or suspension of the contract in whole or in part. Suspension and/or set-off by the Customer is not permitted.
5. The Customer is not permitted to return Goods without the prior written consent of Europe Metals.
6. The Customer must give Europe Metals the opportunity to assess complaints. Europe Metals is entitled to engage an expert to assess (on site) the merits of the complaint. The Customer must return the Goods to Europe Metals at its business address on demand and at its own expense and for the account of the Customer, so that Europe Metals can assess the merits of the complaint. The return costs incurred will be reimbursed by Europe Metals for those Goods for which Europe Metals has determined that the complaint is justified.
7. Europe Metals may, at its discretion, replace the defective Goods or send the Customer a credit note for the value of the defective Goods, as also provided for in Article 11 of these general conditions.
8. If the complaint is found to be unfounded or only partly well-founded by Europe Metals, the return costs remain wholly or proportionally payable by the Customer. Europe Metals is entitled to charge the Customer in full or pro rata for the other costs incurred by Europe Metals such as storage costs, costs for engaging expert and man-hours.

#### Article 9 - Extended retention of title and transfer of risk of Goods

1. All Goods to be delivered and already delivered by Europe Metals to the Customer, including Goods already paid for, are delivered under extended retention of title and remain the property of Europe Metals as long as Europe Metals has a right of action against the Customer. The risk of the Goods shall pass to the Customer at the time of the actual delivery or making available or at the time there is a default on the part of the Customer as referred to in Article 7(7) of these general conditions.
2. The Customer is only authorised to transfer conditional ownership on Goods, unless the full ownership of Goods has passed to the Customer as stipulated in the previous section of this article.
3. Europe Metals is entitled, if the Customer does not pay invoices on time or if there is good reason to assume that the Customer will not fulfil its payment obligations on time or at all, to repossess these Goods and to sell them to third parties.
4. If Europe Metals claims ownership of, and actually repossesses, Goods, Europe Metals shall send the Customer a credit note for these Goods in the amount of the market value of the repossessed Goods with a maximum of 100% of the invoice value of the Goods less the costs incurred by Europe Metals in the repossession.

#### Article 10 – Force majeure

1. Force majeure within the meaning of this article means force majeure as defined in Book 6 Article 75 of the Dutch Civil Code. Force majeure includes in any case, but is not limited to: strike, absenteeism of personnel, transport difficulties, insufficient products/raw materials, piracy, boycott, embargo, flooding, fire, war, vandalism, flooding, terrorism, government measures, theft and/or handling by the actions of suppliers of Europe Metals and/or third parties and resulting delays in the delivery of Goods, cybercrime, import and export bans, business interruptions at suppliers or Europe Metals, non-performance by suppliers causing a delay in the delivery, and all external causes over which Europe Metals has no control. This list is not exhaustive.
2. During a force majeure situation, the delivery obligations and other obligations of Europe Metals are suspended. If the force majeure situation continues for more than 3 months after notification by Europe Metals, both Europe Metals and the Customer are entitled to dissolve the Contract, without either party being obliged to pay compensation.
3. If, when force majeure occurs, Europe Metals has already partly fulfilled its obligations, or is able to only partly fulfil its obligations, Europe Metals

is entitled to charge separately for the part already delivered or deliverable. The Customer must pay this invoice as if it were a separate Contract.

#### **Article 11 – Liability**

1. Europe Metals is not liable for loss suffered by the Customer, its personnel, deployed auxiliary persons, and/or third parties, unless the loss arises from any deliberate act and/or gross negligence of the management board, (or individual directors) of Europe Metals.
2. 'Loss' is limited to direct loss, being loss that is the direct and immediate consequence of a substantial and attributable breach of contract or unlawful act, including costs for the repair or replacement of non-conforming or missing Goods;
3. Europe Metals' total liability is limited to either (at the choice of Europe Metals) restitution of part or all of the purchase price paid by the Customer for the Goods, or replacement of the Goods free of charge. If for any reason Europe Metals' insurance does not pay out, Europe Metals' liability shall at all times be limited to a maximum of twice the invoice value of Goods to which the liability claim relates.
4. Europe Metals is not liable to the Customer or persons/third parties engaged by the Customer in the event of:
  - a) Consequential or indirect loss, however called, which is not a direct consequence of an essential attributable contractual breach or unlawful act as referred to in section 2, including but not limited to loss of profit; loss of turnover; costs due to business stagnation; reputational damage; missed savings; impairment of goodwill or similar losses however caused, as well as labour costs of the Customer and/or third parties/(auxiliary) persons engaged by the Customer;
  - b) Loss arising from a default that does not qualify as a material breach within the meaning of Article 25 of the Vienna Sales Convention;
  - c) Loss that arises partly or fully from non-compliance by the Customer with its obligations under these general conditions or its failure to perform the Contract (see, inter alia, Articles 3(3) and 7(7) of these general conditions).
  - d) Loss caused by third parties regardless of whether Customer or Europe Metals, has engaged relevant third party. This is in derogation of Book 6 Article 76 of the Dutch Civil Code.

This list is not exhaustive.
5. The Customer indemnifies Europe Metals against all claims relating to loss incurred by third parties/(auxiliary) persons engaged by the Customer. Third-party claims are therefore not accepted by Europe Metals.
6. The Customer must, within one month after the loss-causing event has occurred, make a written claim against Europe Metals for the loss suffered failing which it loses its rights. All claims for compensation lapse upon expiry of 12 months after the start date of the said written notice of liability unless the Customer institutes court proceedings against Europe Metals prior to the said expiry date.

#### **Article 12 – Termination and/or dissolution of (continuing obligation) Contracts**

1. Unless otherwise agreed in writing, each accepted order/order confirmation is a stand-alone contract and it does not create any continuing obligation contract between the Customer and Europe Metals that requires termination (in Dutch: 'Opzegging').
2. If and insofar as the Customer can prove in writing that this is a continuing obligation Contract, it can always be terminated by giving 3 months' notice without any obligation to pay compensation for termination.
3. If the Customer is in default as referred to in article 5(4) of these general conditions, Europe Metals is entitled - without further notice of default being required - to terminate with immediate effect or to dissolve (in Dutch: 'ontbinding') all or part of the Contract(s) with the Customer with immediate effect, or to require additional securities from the Customer and/or to suspend its obligations under the Contract.
4. If the Customer wishes to terminate the Contract without there being any default on the part of Europe Metals and Europe Metals agrees to this, the Contract shall be terminated by mutual consent. Europe Metals is in that case entitled to compensation of at least 50% of the invoice value of Goods pertaining to the cancelled Contract, or all financial loss such as loss of profit and costs incurred if the financial loss exceeds the compensation of 50% of the invoice value. Insofar as the Customer has made any advance payment, Europe Metals is entitled to set off this advance payment against the compensation as indicated above and charge the remaining amount to the Customer.

#### **Article 13 – Jurisdiction and competent court**

1. Dutch law applies to all offers, quotations and order confirmations of Europe Metals as well as to Contract(s) between Europe Metals and the Customer.
2. All disputes relating to and/or arising from a Contract and/or legal relationship between the parties shall be settled by the competent court in the place of business of Europe Metals, unless any provision of mandatory law dictates otherwise. Nevertheless, Europe Metals has the right to have any disputes arising under a Contract or any further contracts arising thereunder settled by another court with jurisdiction under Dutch law, European regulations or international treaties.
3. Notwithstanding section 2, if the Customer is located outside the European Union, Norway, Iceland, Liechtenstein, Switzerland or Suriname, all disputes arising from or relating to the Contract(s) between Europe Metals and the Customer shall be finally settled by the Netherlands Arbitration Institute (NAI) in accordance with the NAI Arbitration Rules. The arbitration shall be conducted by one arbitrator appointed in accordance with the said rules. The place of arbitration shall be Rotterdam, the Netherlands. The arbitration proceedings shall be conducted in the Dutch language.