

Standard Terms and Conditions of Sale of Swissmetal UMS Swiss Metalworks Ltd.

Revision date: 1 March 2004

I. General

1. A contract shall be formed upon the Customer's receipt of the Supplier's duly signed confirmation of its acceptance of the order (order confirmation).
2. Offers not specifying any time limit for acceptance shall not bind the offeror.
3. These standard terms and conditions shall have application if so provided in the offer or in the order confirmation. The Customer's terms and conditions shall have no application unless expressly accepted by the Supplier in writing.
4. All agreements and legally relevant statements by the contracting parties shall not be effective unless in writing.
5. These standard terms and conditions shall also apply, without specific reference thereto, to future transactions with the Customer, even if the Supplier does not separately draw the Customer's attention to the application thereof.
6. Should any of these standard terms and conditions contain anything that is impossible or illegal, the contracting parties shall replace such provisions by such lawful provisions as most closely approximate what was intended.

II. Scope of deliveries and performance

The goods and services to be delivered by the Supplier are exhaustively set out in the order confirmation including any attachments thereto. The Supplier may make changes that represent improvements if no increase in price is thereby entailed.

III. Plans and technical documentation

1. Prospectuses and catalogues are non-binding unless otherwise agreed. Data contained in technical documentation shall not have contractual force unless expressly warranted.
2. Each party shall retain all rights in plans and technical materials that it shall supply to the other party. The receiving party acknowledges these rights and shall not, without the prior written authorisation of the other contracting party, disclose the items in question in whole or in part to any third party or use same for any purpose other than the purpose for which they were supplied.

IV. Provisions in force in the country of destination and safeguards

1. The Customer shall notify to the Supplier, not later than at the time of ordering, the regulations and standards applicable to the goods and services to be delivered.
2. Unless otherwise stipulated, the goods and services to be delivered shall conform to the regulations and standards in force at the Customer's place of business as notified by the Customer to the Supplier in accordance with the previous paragraph.

V. Prices

1. Unless otherwise specified, all prices quoted are subject to change and do not bind the Supplier. Quoted prices will be adjusted in all cases where the raw metal or production costs on which they are based have changed by the time of order confirmation. Value added tax is not included in the price and will be stated separately on the invoice. Where it is agreed that the metal price will be fixed, the Customer is obliged to take delivery of the entire order within six (6) months after the contract date. Once six months have elapsed, the Supplier shall be entitled to charge financing costs.
2. Where no special pricing provision has been agreed, the applicable price shall be the metal price ruling at the time of order confirmation with immediate hedging. The pricing basis shall be the daily alloy prices of the LME and the current exchange rate.

VI. Terms of payment

Unless otherwise agreed the following payment terms shall apply:

1. Thirty (30) days after invoice date, nett without discount; these payment terms shall also apply to contributions to tooling costs.

It shall be at the Supplier's discretion against which claims incoming payments shall be applied.

2. If an agreed advance payment is not received or if collateral security required to be provided at the time of contract is not provided as required, the Supplier shall be entitled either to maintain the contract or to terminate the contract and in either event to recover damages.
3. If the Customer fails to make a subsequent payment on time, for whatever reason, or if the Supplier has serious grounds to fear that payments by the Customer will not be made in full and on time, as a result of circumstances that have arisen after the contract date, the Supplier shall be entitled, without prejudice to its legal rights, to suspend further execution of the order and to withhold deliveries ready for dispatch until such time as new payment deadlines and new terms of payment and delivery have been agreed and the Supplier has received adequate security. If such an agreement cannot be reached within a reasonable time or if the Supplier is not provided with adequate security, it shall be entitled to terminate the contract and to recover damages.
4. Money transfer costs shall be borne by the Customer. If the amount due is not paid in full by the end of the 30-day payment period, the Customer shall be automatically deemed delinquent as from the 31st day. Arrears interest shall accrue in accordance with standard interest rate terms at the Customer's place of business but not in any case less than 4% over the discount rate for the time being quoted by the Swiss National Bank. The foregoing shall not prejudice the Supplier's right to recover further damages.
5. The Customer shall not be entitled to withhold payments save in the case where a complaint has been submitted in respect of a defect apparent on inspection. The Customer shall be entitled to set off payments only if its own claims are undisputed or have been conclusively upheld by a court or tribunal.
6. If the Customer becomes insolvent, all accounts shall fall due regardless of the agreed payment deadlines and immediate payment can be demanded. The Supplier shall in that event be entitled to suspend or to cancel all delivery obligations.

VII. Reservation of title

1. The Supplier shall retain title to all its deliveries pending receipt of the entirety of all payments due under the contract.
2. The Customer shall be under an obligation to assist in any measures necessary to defend the Supplier's title; in particular, the Customer authorises the Supplier, with effect as of formation of the contract, to register or record the reservation of title at the Customer's expense in public registries or similar records in accordance with the applicable local laws and to carry out all necessary formalities for that purpose.
3. The Customer shall maintain all articles delivered in good condition at its own expense for the duration of the reservation of title and insure same, with the Supplier as beneficiary, against theft, breakage, fire, water and other risks. The Customer shall take all other measures necessary to ensure that the Supplier's claim to title is neither diminished nor extinguished.

VIII. EXW clause

The INCOTERMS 2000 EXW (ex-works) delivery clause shall apply.

IX. Delivery dates

1. The confirmed delivery dates are ex-works.
2. Delivery dates shall be extended accordingly if the Supplier does not receive the information necessary for the performance of the contract in good time or if the Customer subsequently varies the said information thereby giving rise to a delay in the delivery of the goods or services or if obstacles arise which the Supplier cannot prevent despite exercising all due care, regardless of whether such obstacles arise at the Supplier, the Customer or a third party. Such obstacles shall include, by way of example, industrial dispute, war, rebellion, major disruption

of operations, accident, industrial dispute, late or defective delivery of the necessary raw materials, semi-finished products or finished articles, administrative acts or omissions, Acts of God.

3. In the event that the Supplier suffers a disruption of its operations through no fault of its own, the Customer shall be entitled to terminate the contract after fixing a reasonable extension of time for performance. No damages shall be recoverable in that event. If the disruption of operations should endure for more than eight weeks, the Supplier shall be entitled to resile from its obligation of performance without incurring any liability in damages.
4. In the event of a delay in delivery which the Customer can show to have caused it loss or damage, the Supplier shall be liable to pay damages of up to 0.5% of the contract price of the delayed items for each full week of delay, but subject to a maximum total of 5% thereof. No liability in damages shall accrue in respect of the first two weeks of delay.
5. The Customer shall have no rights or remedies arising out of late delivery of goods or services other than the damages expressly set out under section IX, paragraph 4, above. The foregoing limitation shall not apply in the case of wilful misconduct or gross negligence on the part of the Supplier. It shall however apply in the case of wilful misconduct or gross negligence on the part of the Supplier's sub-suppliers.

X. Volumes and weights

1. Volumes and weights quoted in offers and order confirmations are approximate and are subject to the following tolerances according to the size of the order: under 1,000 kg 20%, over 1,000 kg 10%.
2. In the case of partial deliveries, the volume and weight tolerances shall apply proportionately.

XI. Warranty, liability for defects

1. The Customer shall examine the delivery immediately after receipt at the destination and shall notify any defects that are apparent upon inspection within seven (7) days after receipt in writing, by telex or by telegraph, failing which the delivery shall be deemed to have been approved. Hidden defects shall be notified within seven (7) days after discovery, but not later than within one year after delivery to the destination, failing which the delivery shall be deemed to have been approved and the Supplier shall have no further liability in respect thereof. Every notice of defects should be accompanied by relevant samples.
2. Defects arising as a result of improper handling, storage, working or processing, overloading of the goods by the Customer or any other reason not attributable to the Supplier shall not give rise to any liability on the part of the Supplier under the warranty.
3. Where a substantiated, complete and timely notice of defects is received, the Supplier shall take back the unsatisfactory delivery and shall supply satisfactory goods in its place. In the alternative, the Supplier may compensate the Customer for the reduction in value. The Customer shall have no right of cancellation.
4. In the case where goods are manufactured to order according to the Customer's specifications, models or drawings, the Customer shall be liable for any resulting infringement of patents or of other rights.
5. Neither party shall be liable to the other for indirect loss or damage e.g. production downtimes or lost profit.
6. Only such representations as are expressly warranted in the order confirmation or in the specifications shall be deemed to constitute express warranties. Such express warranties shall not apply beyond the expiry of the warranty period.
7. The Customer shall have no rights or remedies other than that expressly set out in section XI, paragraph 3, above in respect of any defects in materials, design or workmanship or pursuant to any express warranty.

8. The Supplier shall be liable to the Customer for defective advice and similar matters or for the breach of any ancillary obligations only in the case of wilful misconduct or gross negligence.

XII. Tooling

1. All tooling shall be the property of the Supplier, even if the Customer has contributed to the cost of same.
2. Contributing to tooling costs shall not entitle the Customer to any right of exclusivity.

XIII. Taking back of waste (chips)

The taking back of waste from processing and reworking shall be subject to the requirements set out in paragraphs 1 to 3 below.

1. In the case of full price transactions, the Customer undertakes to return to the Supplier's plant within three months the waste yielded by the processing of semi-finished products delivered, in accordance with the return percentage and return price agreed in the order confirmation.
2. In the case of reworking transactions, the Supplier shall be entitled, subject to agreement on the contractual details (in particular, the price), to mix the material supplied by the Customer with similar material. The reworking accounts shall be kept in units of weight. The Customer warrants that it is the lawful owner of the material – even if supplied by third parties – and that the Supplier is accordingly authorised to work and process the material.
3. In all cases where waste is taken back the Customer shall be liable to the Supplier for compliance with all statutory and regulatory provisions and all relevant administrative requirements. In the event of loss or damage, the Customer shall be fully liable in damages to the Supplier. The Customer further agrees to comply with Euronorm EN 12861:1999, details of which will be provided upon request.

XIV. Exclusion of further liability on the part of the Supplier

1. All breaches of contract and the legal consequences of same and all claims of the Customer on any legal grounds whatsoever are exhaustively covered by these terms and conditions. In particular, all claims for damages, abatement of price, rescission of the contract or termination of same which are not expressly mentioned herein are excluded. Under no circumstances shall the Customer have any claim in respect of any loss or damage not directly concerning the delivery itself, including without limitation production downtime, loss of use, loss of orders, lost earnings or any other direct or indirect loss. The foregoing exclusion of liability shall not apply in the case of wilful misconduct or gross negligence on the part of the Supplier. It shall however apply in the case of wilful misconduct or gross negligence on the part of its sub-suppliers.
2. This exclusion of liability shall not apply where it is overridden by mandatory provisions of law.

XV. Governing law

1. These standard terms and conditions shall be supplemented by the **substantive law of Switzerland**; the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 shall have no application.

XVI. Jurisdiction

The courts of Bern (Switzerland) shall have jurisdiction over both parties in respect of all disputes arising directly and indirectly out of their legal relationship. However, the Supplier shall also have the right to bring proceedings against the Customer in the courts of the latter's place of business.