

METAL BUSINESS MANAGEMENT B.V. – TERMS AND CONDITIONS OF PROCUREMENT

Quotes, Invoices, Order Acknowledgements – Revised Jan. 1th 2008.

1. Acceptance

These conditions define the general terms of this Purchase Contract entered into between the Buyer (Metal Business Management B.V. hereafter Metal Business Management) and the supplier (Supplier). Unless otherwise agreed in writing and signed by Metal Business Management and Supplier, no other terms shall apply to the Purchase Contract. Supplier shall be deemed to have assented to these Conditions unless within five working days of the date shown on the Purchase Contract by notice in writing to Metal Business Management. These conditions are an integral part of the Purchase Contract with the Supplier.

Unless otherwise agreed in writing these Conditions shall prevail over any inconsistent terms expressed or implied by law or by trade custom practice or course of dealing and any inconsistent terms are hereby expressly excluded.

All orders for the Material shall be deemed to be an offer by Metal Business Management to purchase Material pursuant to these Conditions.

2. Specification

The material (Material) to be supplied under this Purchase Contract shall conform to the description on the purchase order. If that description incorporates a generally recognized description for good quality new alloy material, it shall conform to that description. If that description incorporates a national or international metallurgical standard, it shall conform to that standard.

If that description incorporates a requirement that Material shall be free from other elements or contaminant, it shall conform to that requirement. If that description permits a specified proportion of other material or contaminant, the proportion of other material or contaminant shall not exceed the specified level. In the event that Material supplied does not conform to the description on the Purchase order, Metal Business Management may at his sole discretion either reject and not pay for Material or accept and pay for Material or accept and pay a reduced price for Material which is mutually acceptable to Metal Business Management and Supplier.

3. Quantity Kg

On the Purchase Order is shown the Quantity (volume) in Kg which Supplier has agreed to supply and Metal Business Management has agreed to purchase. Metal Business Management and Supplier agree that the quantity supplied is according to the Purchase Order. In case more or less will be supplied, permission should be asked from and given by Metal Business Management.

4. Price per Kg

The price (Price) which Metal Business Management agrees to pay Supplier for Material shall be the price per Kg. The weight which shall apply for the purpose of determining the Price shall be the weight shown on Seller's weighbridge ticket. Seller's weighbridge shall at all times have a valid certificate of calibration, which shall be made available to Metal Business Management for inspection, if requested.

5. Delivery / Collection

Metal Business Management may show under the heading Delivery / Collection a date by which, or period of time within which, Supplier has agreed and is required to deliver Material or to make Material available to Metal Business Management for collection, as agreed. In the event that Material is not delivered or made available for collection as the case may be within the specified date or time period, Metal Business Management has the right at his sole discretion to terminate this Purchase Contract or to require Supplier to deliver other material to an equivalent value to Material or to compensate Metal Business Management for any loss or damage that he may have sustained as a consequence of failure by Supplier to perform his obligations under this Purchase Contract.

6. End user

The Seller is not allowed to contact the End-user of the materials or to damage in other ways the position or integrity of Metal Business Management.
All communication with the End-user will be exclusively channelled through Metal Business Management only.

7. Penalty Clause for Non-Performance

Any default in this contract (be a shipment, quality etc), Metal Business Management reserves the right to purchase replacement material on the free market, the cost of this and any additional associated charges will be born by the original contracted supplier for this contract.

8. Quality and Liability

The Seller shall indemnify Metal Business Management from and against all costs, expenses and claims arising out of damage, injury and /or consequential loss suffered or alleged to be suffered by Metal Business Management, its agents, workmen or servants or any third parties directly or indirectly due to the use by Metal Business Management or its agents, workmen or servants of the Material and from and against any negligent action or failure to act, or breach of duty including statutory Duty of Care on the part of the Seller or its agents, workmen or servants and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with this Purchase Contract and shall whenever so required produce evidence satisfactory to Metal Business Management that the Seller is adequately insured against all such liability as aforesaid.

9. Damage Or Loss In Transit

The Seller will replace or credit any Material damaged or lost in transit. The Seller is responsible for any risk in delivery of the Material until it reaches Metal Business Management's address or its customer as directed, unless any other arrangement confirmed by the Metal Business Management in writing to the Seller is made.
The address could be a harbour, factory, customer or other address as specified on the Purchase order.

10. Insurance of Metal Business Management's Goods, Etc.

The Seller shall insure any Material sent to Metal Business Management for any purpose in connection with this Purchase Contract against any damages which may occur to the Material whilst in the Seller's custody, unless agreed in writing otherwise.

11. Insolvency or Liquidation

In the event of:

(a) the Seller committing any material breach of any of these Conditions and which (in the case of a breach capable of being remedied) shall not have been remedied within ten (10) days of a written request to remedy the same; or

(b) the Seller convening a meeting of its creditors or if a proposal shall be made for a voluntary arrangement or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the Seller shall be unable to pay its debts or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Seller or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Seller or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) then the Metal Business Management shall be at liberty;

(a) to cancel this Purchase Contract summarily by notice in writing without compensation to the Seller;
or

(b) to give any such trustee, receiver, administrative receiver or other such person the option of carrying out this Purchase Contract

Provided always that the exercise of any right granted to the Metal Business Management shall be without prejudice to and shall not affect or be deemed to affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Metal Business Management.

12. Invalidity and Severability

If any provision of this Purchase Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Purchase Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

13. Assignment

The Supplier shall not be entitled to assign this Purchase Contract and / or any or all of its rights and obligations hereunder without the prior written consent of the Metal Business Management.

14. Proper Law

The Purchase Contract and these Terms and Conditions of Procurement and any dispute or litigation arising there from shall be governed by Dutch law for the Court of 's-Hertogenbosch in the Netherlands.