

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY of Arcus Holding B.V., Arcus Nederland B.V., Arcus Industrial Supplies B.V., Arcus Belgium N.V. and Arcus Edelstahl GmbH as per 1 May 2018

General Terms and Conditions published by the Dutch Steel Federation SFN, filed with the Chamber of Commerce (40409040) on 15 March 2018.  
P.O. Box 2600, 3430 GA Nieuwegein, The Netherlands. ©Staalfederatie Nederland

**Article 1: Applicability**

- 1.1 These terms and conditions are applicable to all offers made by the user of these terms and conditions, all agreements he concludes, and all agreements arising from them, to the extent the user of these terms and conditions is the supplier or the contractor.
- 1.2 The user of these terms and conditions is referred to herein as "the Seller." The counterparty is referred to as "the Buyer".
- 1.3 In the event of a discrepancy between the provisions of the agreement concluded by and between the Buyer and the Seller and these terms and conditions, the provisions of the agreement prevail.

**Article 2: Offers**

- 2.1 All offers are subject to contract.
- 2.2 The Seller is entitled to assume that where the Buyer provides information to the Seller, this information is correct and complete, and the Seller will use this information as basis for his offer.
- 2.3 All prices quoted in the offer are exclusive of VAT and packaging.
- 2.4 An agreement will only be concluded if confirmed in writing, including by email, by the Seller. If there is a difference between the Seller's written confirmation and that of the Buyer's, the Seller's confirmation will be binding.
- 2.5 Any models or samples shown or provided by the Seller to the Buyer are by way of indication only and the Buyer may not derive any rights from these.
- 2.6 The Buyer warrants that (i) when disposing of the goods, irrespective in what manner (by way of sale, lease, processing, or otherwise) he shall comply with all applicable laws and regulations, specifically all EU and UN export controls and systems of sanctions, and (ii) that the goods are not directly or indirectly intended or are not likely to be intended for a country on which sanctions are imposed in respect of the goods under UN or EU legislation, unless the Buyer has been granted exemption or received authorisation to do so from a competent authority designated by the UN or EU. The Buyer shall include this warranty by way of a perpetual clause in any subsequent agreements under which the goods are disposed of.
- 2.7 Minor deviations that are acceptable in the trade or that are unavoidable from a technical point of view, and minor differences in quality, colour, dimensions, weight or finishing do not constitute defective performance. The volume-based price and/or weight of steel and/or stainless steel is based on a steel density of 8.0 kg/dcm<sup>3</sup>.

**Article 3: Intellectual and industrial property rights**

- 3.1 Unless otherwise agreed in writing, the Seller retains all intellectual and industrial property rights to all offers, designs, illustrations, drawings, (test) models, software and the like he has produced or provided.
- 3.2 The rights to the information referred to in paragraph 1 of this Article shall remain the property of the Seller, irrespective of whether the Buyer has been charged any costs for the production thereof. This information may not be reproduced, used, or disclosed to third parties without the express prior written permission of the Seller. The Buyer shall owe the Seller an immediately payable penalty of €25,000 for each violation of this provision. This penalty may be claimed in addition to the statutory compensation.
- 3.3 At the Seller's first request the Buyer shall, at the Seller's discretion, either return or destroy the information provided to him as referred to in paragraph 1 of this Article within the period stipulated by the Seller. The Seller reserves the right to verify the destruction or return. The Buyer shall cooperate with this verification free of charge. The Buyer shall owe the Seller an immediately payable penalty of €1,000 per day for each violation of this provision. This penalty may be claimed in addition to the statutory compensation.

**Article 4: Secrecy**

All information, knowhow, and knowledge, of any kind and in any form, provided by or on behalf of the Seller to the Buyer is to be considered confidential and to be treated by the Buyer as confidential information indefinitely and may not be disclosed to third parties. The Buyer may not use this information, knowhow, and knowledge for any purpose, other than in the performance of the agreement concluded with the Seller, without the Seller's prior written consent.

**Article 5: Advice; information received**

- 5.1 The Buyer shall not derive any rights from advice and information received from the Seller.
- 5.2 The Seller is entitled to rely on the accuracy and completeness of any information provided by the Buyer in the performance of the agreement.
- 5.3 The Buyer agrees to indemnify the Seller against any third-party claims in connection with the use of advice, drawings, calculations, designs, materials, models, and the like provided by or on behalf of the Buyer.

**Article 6: Delivery / Execution periods**

- 6.1 All stated delivery or execution periods are by way of approximation only.
- 6.2 The delivery or execution period commences as soon as agreement is reached on all commercial and technical details; all information, final and approved drawings and the like are in the Seller's possession; the agreed payment, or instalment, is received; and all other terms and conditions applicable to the execution of the order have been complied with.

- 6.3
- a. If the circumstances are different from the circumstances as they were known to the Seller when he determined the delivery or execution period, the Seller may extend the delivery / execution period with the time he requires to execute the order under the new circumstances. If as a result of the altered circumstances the work can no longer be executed within the period scheduled by the Seller, it will be executed as soon as the Seller's schedule allows.
  - b. If the Seller suspends compliance with his obligations, the delivery or execution period will be extended with the duration of the suspension. If as a result of the suspension the work can no longer be continued in the period scheduled by the Seller, the work will be executed as soon as the Seller's schedule allows.
- 6.4 Where a delay in the delivery or execution period referred to in paragraph 3 of this Article is attributable to the Buyer, the Buyer shall compensate all costs the Seller incurs as a result of this delay.
- 6.5 The Buyer is not entitled to any compensation or to rescind the agreement due to the delivery or execution period having been exceeded.
- 6.6 If delivery cannot take place within the delivery or execution period, the Seller reserves the right to make partial deliveries.

#### **Article 7: Transfer of risk**

- 7.1 Delivery takes place ex works, from the place where the Seller is established, in accordance with Incoterms 2010. The risk to the goods shall pass to the Buyer as soon as the Seller has notified the Buyer that the goods are at his disposal.
- 7.2 Notwithstanding paragraph 1 of this Article, the Buyer and the Seller may agree that the Seller will take charge of the transport. The risk of storage, loading, transport, and unloading shall in that event rest on the Buyer. The Buyer may take out insurance against these risks.
- 7.3 The Buyer is obliged to verify whether the goods correspond with the agreed specifications immediately upon delivery.

#### **Article 8: Price changes**

The Seller reserves the right to pass on any increase in the cost price factors occurring after the date of concluding the agreement to the Buyer.

#### **Article 9: Force majeure**

- 9.1 If Seller is temporarily unable to comply with his obligations towards the Buyer due to an event of force majeure, he may suspend the performance of his obligations.
- 9.2 For the purpose hereof, "force majeure" means the circumstance that suppliers, the Seller's subcontractors, or carriers hired by the Seller are unable to fulfil their obligations, or to do so in time, due to adverse weather conditions; acts of God; fire; power outages; disruption of telecommunication; terrorism; loss, theft, or disappearance of tools or materials; road blocks; strikes or work stoppages; import or trade restrictions; or cybercrime.
- 9.3 The Seller may no longer suspend performance if the temporary inability to perform the agreement has lasted more than three months. After this period, either of the parties may rescind this agreement with immediate effect, but only in respect of those obligations that have not yet been fulfilled.
- 9.4 If performance is or becomes permanently impossible due to an event of force majeure, either of the parties may rescind this agreement with immediate effect in respect of those obligations that have not yet been fulfilled.
- 9.5 The parties are not entitled to any compensation of loss suffered as a result of the suspension or rescission referred to in this Article.

#### **Article 10: Liability**

- 10.1 The Seller's obligation to compensate on the basis of any statutory rule shall be limited to 15% of the aggregate contract price (ex. VAT). If the agreement is made up of different components or partial deliveries, the obligation to compensate shall be limited to 15% (ex. VAT) of the contract price for the component or partial delivery that has caused the damage.
- 10.2 The following are not eligible for compensation:
- a. consequential and indirect loss. This includes, but is not limited to, business interruption loss, fines, loss of production, loss of profit, transport costs, and travelling and subsistence costs. The Buyer may take out insurance against this loss if possible;
  - b. damage caused to goods during the performance of the work, or to goods that are located near the place where the work is carried out. The Buyer may take out insurance against this type of damage if possible;
  - c. disassembly and assembly costs;
  - d. damage caused by an intentional act or wilful recklessness on the part of ancillary persons or non-supervisory subordinates of the Seller.
- 10.3 The Seller shall not be liable for any damage caused to materials supplied by or on behalf of the Buyer due to an imperfectly executed process by the Seller.
- 10.4 The Buyer agrees to indemnify the Seller against any third-party claims for liability due to a defect in a product supplied by the Buyer to a third party and that consisted of or included products and/or materials supplied by the Seller. The Buyer shall reimburse any loss and costs incurred by the Seller in this regard, including the full costs of legal defence.
- 10.5 The provisions of this Article do not apply if the loss is caused by an intentional act or wilful recklessness on the part of a supervisor of the Seller.

#### **Article 11: Warranty; Other Claims**

- 11.1 Unless otherwise agreed in writing, the Seller warrants the proper execution of the order for a period of twelve months after delivery. The other paragraphs of this Article shall also be applicable if a different warranty period is agreed.
- 11.2 In the event of a defective performance, the Seller may, at his own discretion, either properly execute the order as yet, or reimburse the Buyer a proportional part of the invoiced amount. If the Seller opts for properly executing the order as yet, he undertakes to do so within a reasonable period of time.

- 11.3 At the Seller's first request the Buyer shall submit to the Seller, at the Buyer's expense, any parts or materials to be repaired or replaced by the Seller.
- 11.4 The Buyer shall give the Seller in all instances the opportunity to correct any defect.
- 11.5 The Buyer may only invoke the warranty if he has complied with all his obligations towards the Seller.
- 11.6 a. The following is excluded from warranty:
- normal wear and tear;
  - defects due to improper use;
  - defects caused by non or incorrect maintenance;
  - installation, assembly, alterations, or repairs carried out by the Buyer or third parties;
  - defects to or unsuitability of goods provided or prescribed by the Buyer;
  - defects to or unsuitability of materials or resources used by the Buyer.
- b. The following is also excluded from warranty:
- supplied goods that were not new at the time of delivery;
  - parts that are subject to a factory warranty.
- 11.7 Paragraphs 2 to 6, inclusive, of this Article apply *mutatis mutandis* to any claims submitted by the Buyer due to breach of contract, non-conformity, or on any other ground.

#### **Article 12: Transfer; Pledge**

The Buyer is not entitled to transfer or pledge the rights or obligations under any Article of these General Terms and Conditions or the agreement concluded on the basis thereof without the prior written consent of the Seller. This clause also has effect under property law.

#### **Article 13: Complaints**

- 13.1 If the Buyer has not submitted a written complaint to the Seller within fourteen days after a defect is detected or should in reason have been detected, the right to invoke the defective performance has lapsed.
- 13.2 All complaints concerning the accuracy of an invoice must be submitted to the Seller before the due date of the invoice, or the right to do so has lapsed. If the term of payment is more than 30 days, the complaint must be submitted within 30 days of the date of the invoice.
- 13.3 If the Buyer has not brought legal action within one year after he has timely submitted the complaint concerned to the Seller, the right to do so has lapsed.

#### **Article 14: Taking delivery of goods**

- 14.1 The Buyer shall cooperate with the Seller, free of charge, to enable the Seller to deliver the good or goods under the agreement.
- 14.2 The Buyer shall take delivery of the good or goods at the end of the delivery and/or execution period at the agreed place.
- 14.3 If no delivery is taken, the goods shall be stored at the expense and risk of the Buyer. The Buyer is not entitled to suspend payment of the storage charges on the ground that delivery has not yet taken place.
- 14.4 If the Buyer fails to comply with provisions 1 and/or 2 of this Article, the Buyer shall owe the Seller a penalty of €250 per day, with a maximum of €25,000. This penalty may be claimed in addition to the statutory compensation.

#### **Article 15: Payment**

- 15.1 All payments are to be made at the Seller's place of establishment or to an account to be designated by the Seller.
- 15.2 All payments are due within 30 days of the date of the invoice, unless otherwise agreed.
- 15.3 If the Buyer defaults on his payment obligation he shall be obliged, instead of payment of the agreed sum, to comply with a request from the Seller to transfer in lieu of payment.
- 15.4 The Buyer's right to set off his claims against the Seller or suspend payment is excluded, unless the Seller is declared bankrupt.
- 15.5 Anything the Buyer owes or will owe the Seller under an agreement shall be immediately due and payable, irrespective of whether the Seller has fully performed the agreed order, if:
- a. the Buyer defaults on his payment obligations;
  - b. a petition for bankruptcy or a request for suspension of payments is filed in respect of the Buyer;
  - c. the goods or receivables of the Buyer are seized;
  - d. the Buyer, being a company, is dissolved or liquidated;
  - e. the Buyer, being a natural person, requests that the statutory debt restructuring be applied to him, or he is placed under guardianship, or dies;
  - f. the Buyer, after having been held in default in writing whereby he is granted a reasonable grace period, fails to comply with his obligations under Article 14.
- 15.6 If no payment is received within the agreed term of payment, the Buyer shall immediately owe the Seller interest, at the higher of an annual rate of 12%, or the statutory commercial rate. When calculating the interest, part of a month shall be counted as a whole month.
- 15.7 The Seller may set off his debts to the Buyer with any claims any affiliates of the Seller may have against the Buyer. The Seller may also set off his claims against the Buyer with any debts owed by the Seller's affiliates to the Buyer. The Seller may furthermore set off his debts to the Buyer with claims against affiliates of the Buyer. For the purpose hereof, affiliates are companies that belong to the same group as the Buyer, within the meaning of Article 2:24b of the Dutch Civil Code, as well as participating interests within the meaning of Article 2:24c of the Dutch Civil Code.
- 15.8 If the Buyer defaults on his payment obligations, the Buyer owes the Seller all extra-judicial costs with a minimum of €150. These costs shall be calculated as follows (principal plus interest):
- |                           |     |
|---------------------------|-----|
| on the first €3,000       | 15% |
| between €3,001 and €6,000 | 10% |

between €6,001 and €15,000	8%
between €15,001 and €60,000	5%
€60,001 and up	3%

If the actually incurred extra-judicial costs are higher than would be payable according to the above table, the actual costs shall be due.

- 15.9 If in legal proceedings the court finds for the Seller, all costs incurred in connection with these legal proceedings shall be for the expense of the Buyer.

**Article 16: Security**

- 16.1 At the Seller's first request, the Buyer shall provide sufficient security, to be determined by the Seller, for the payment of his debts, irrespective of the agreed payment terms. If the Buyer fails to do so within the stipulated time, he shall immediately be in default and the Seller shall be entitled to rescind the agreement and demand compensation of the loss suffered as a result.
- 16.2 Any goods delivered shall remain the Seller's property until the Buyer:
- has complied with each of his obligations under this or any other agreements;
  - has paid all amounts due in connection with his failure to comply with the above-mentioned agreements, including losses, penalties, interests, and costs.
- 16.3 The Buyer is not entitled to charge or dispose of goods that are delivered subject to retention of title, other than in his normal conduct of business. The Buyer shall keep the goods delivered by the Seller separate and mark these as the property of the Seller and insure these at his own expense against the usual risks, including but not limited to loss, embezzlement, theft, disposal, damage, and full or partial destruction.
- 16.4 After the Seller has invoked his retention of title, he may repossess the delivered goods, with which the Buyer shall fully cooperate.
- 16.5 The Seller has a right of pledge and a right of retention to all goods in his possession or that he will acquire, on any ground, as well as to any claims he has or may acquire against the Buyer towards any party that demands surrender thereof.

**Article 17: Premature termination of the agreement**

- 17.1 The Seller may terminate the agreement with the Buyer with immediate effect, without intervention of the court, if:
- a situation as referred to in Article 15.5.a-f occurs;
    - the Buyer fails to comply with one or more of his obligations after having been demanded in writing to do so whereby he is offered a reasonable grace period;
    - the ownership or management structure of the Buyer is materially changed;
    - the Seller has reason to suspect that the goods are directly or indirectly intended for a country on which sanctions are imposed in respect of the goods under UN or EU legislation, unless the Buyer has been granted exemption or received authorization to do so from a competent authority.
- 17.2 If the agreement is terminated for the reasons referred to in paragraph 1 of this Article the Buyer shall not be entitled to any compensation.

**Article 18: Applicable law; Competent court**

- 18.1 Dutch law is applicable. The Vienna Sales Convention (C.I.S.G.) is not applicable, nor any other international regulation the exclusion of which is allowed.
- 18.2 Solely the competent Dutch civil court in whose area of jurisdiction the Seller has his domicile has jurisdiction to hear disputes, unless this is contrary to mandatory law. The Seller may deviate from this jurisdiction rule and apply the statutory rules of jurisdiction.
- 18.3 If a version is prepared of these General Terms and Conditions in a language other than the Dutch language, the Dutch version shall at all times prevail in the event of discrepancies.