

**GENERAL TERMS AND CONDITIONS FOR SALE  
AND DELIVERY OF MERWESTAAL OP MAAT  
B.V.**

Merwestaal op Maat B.V. ("Merwestaal") has its seat of business at Transitoweg 11 in (4782 SM) Moerdijk, the Netherlands and is registered at the Chamber of Commerce for Zuidwest-Nederland under number 20145227, where these General Terms and Conditions for Sale and Delivery (hereinafter: "the GTC") have been filed.

**1. Applicability of the GTC**

1.1. The GTC are applicable to each designated offer issued by Merwestaal, all commissions granted to Merwestaal and/or deliveries made by Merwestaal and/or activities executed or other kinds of performances.

1.2. The general terms and conditions applied by the counterparty of Merwestaal ("Buyer"), whether or not contrary to the GTC, are always deemed to be rejected and remain, under all circumstances, not applicable, also when the applicability envisaged by the Buyer after receipt of its (general) terms and conditions by Merwestaal has not again been contradicted and irrespective of when these have been sent by the Buyer or reference to them has been made.

1.3. If the GTC are reviewed, then the new text shall apply from the date of the filing of the review, notwithstanding the right of Merwestaal to stipulate deviating conditions.

1.4. Deviations of the GTC must be agreed explicitly and to be recorded in writing mutually.

1.5. Under "in writing" shall in the GTC also be understood per fax, e-mail, EDI or other (electronic) medium.

**2. Offers**

2.1. Offers, designated offers, price statements and other communications (suggestions and advice therein included) of Merwestaal about matters and/or services are non-binding.

2.2. If an offer is accompanied with documentation, such as estimates, product specifications, brochures, price lists etc. then these remain at all times the property of Merwestaal and these must be returned upon first request. This documentation may without explicit permission of Merwestaal neither be multiplied, nor handed over to third parties or given for viewing.

2.3. The designated offer issued by the Buyer

must state a complete description of the goods to be delivered and/or activities/performances to be executed.

2.4. Sending offers does not oblige Merwestaal to acceptance of an order/commission.

**3. Conclusion of the agreement**

3.1. An agreement with Merwestaal is only then concluded after a commission is accepted by Merwestaal in writing or as soon as Merwestaal has made a start with the execution of the commission. The order confirmation of Merwestaal is deemed to have reflected the agreement correctly and completely. In case of a difference between the order of the Buyer and the order confirmation of Merwestaal, the order confirmation shall prevail.

3.2. Agreements possibly made later and/or changes only bind Merwestaal if these have been confirmed in writing by Merwestaal.

3.3. For transactions, for which to the nature and scope no designated offer or order confirmation will be sent, the invoice is deemed to reflect the agreement correctly and completely, except for protest within seven days after the date of the invoice.

3.4. Each agreement with Merwestaal is concluded under the suspending condition that the Buyer is credit worthy in a demonstrable manner for the monetary compliance with the agreement. Merwestaal is authorised to gain information from financial institutions concerning the financial soundness of the Buyer.

3.5. Before (further) performing its obligations, Merwestaal is authorised to demand security from the Buyer at or after the conclusion of the agreement, that both payment obligations and the other contractual obligations shall be complied with, if there is a well-founded doubt about the financial soundness of the Buyer or in case of late payment.

3.6. Merwestaal is authorised to involve third parties for a correct execution of the granted commission, of which the costs shall be charged onward to the Buyer in accordance with the price statement provided by the third party.

3.7. Subsequent deliveries or other kinds of performances form independent agreements and do not constitute continuing performance agreements on the basis of which Merwestaal would be required to continue deliveries/performances, unless explicitly agreed so.

3.8. The Buyer is not permitted to transfer rights and obligations under the concluded agreement with Merwestaal to a third party or to transfer the claims that otherwise derive from the relation with Merwestaal.

3.9. Representatives or drivers are not authorised to the conclusion of agreements in the name of Merwestaal or to take payment of the Buyer into receipt.

#### **4. Prices**

4.1. The prices mentioned in the offer and/or the order confirmation are:

a. Exclusive of VAT, import duties and other taxes, levies, rights or government charges otherwise falling on the performance;

b. Based on delivery Ex Works/warehouse or other storage locations according to ICC Incoterms 2010;

c. Exclusive of the costs of the packaging/shipping material, loading and unloading, transport and insurance, the one and the other except for explicit agreement to the contrary.

4.2. In case of increase of one or more cost price factors after conclusion of the agreement, Merwestaal is authorised to increase the agreed price accordingly.

#### **5. Delivery**

5.1. Delivery takes place Ex Works, warehouse or other storage locations according to ICC Incoterms 2010, unless explicitly and in writing otherwise agreed.

5.2. The risk of the purchased is transferred to the Buyer at the moment of delivery.

5.3. If to Merwestaal a commission is granted to deliver the purchased otherwise than under 5.1, then Merwestaal is free in the manner of transport, shipping, packaging etc.

5.4. Transport and shipping takes place in all instances for the risk of the Buyer.

5.5. Upon request in writing of Buyer, Merwestaal will arrange for a transport insurance on all-risk basis with usual conditions.

5.6. Packaging and shipping material will be calculated at cost price and not be taken back.

5.7. If a part of the order is ready, then Merwestaal is authorised to deliver and to invoice this part. Merwestaal is authorised to wait with delivery until the entire order is ready.

5.8. Buyer is required to take delivered goods immediately into receipt.

5.9. Should the Buyer remain in default with the take-off of the goods, then Merwestaal is authorised at the expenses of the Buyer to transport the goods back and/or to store these, to sell these to a third party, without obligation to after delivery, the one and the other notwithstanding the right to compensation of damage and costs.

#### **6. Delivery times/periods**

6.1. Delivery times/periods with regard to goods to be delivered, executed activities or other kinds of performances are not guaranteed and are always by approximation.

6.2. The agreed delivery time/period does not create a fatal term and can be regarded as time to strive for.

6.3. Exceeding of the delivery time/period shall not entitle the Buyer to invoke any right to compensation of damages or dissolution of the agreement.

6.4. Liability for damages as a consequence of delayed delivery, in whichever form, direct or indirect, consequential damages therein included, is excluded.

#### **7. Payment/ prohibition of compensation and assignment**

7.1. Payment of the invoice must take place no later than thirty days after date of the invoice, by means of transfer into the bank- or giro account stated in the invoice. As date of receipt shall be regarded the date of crediting on the bank- or giro account of Merwestaal.

7.2. A claim to compensation of debts, suspension or otherwise set-off claims that Buyer has or pretends to have on Merwestaal, is excluded.

7.3. The Buyer is not permitted to assign his rights towards Merwestaal to a third party or to otherwise transfer his rights to a third party, except for explicit and written permission of Merwestaal.

7.4. In case of payment by Letter of Credit (hereinafter: "LC"), the Buyer must arrange for an irrevocable and completely workable LC opened by a first class bank for 100% of the amount of the invoice payable against presentation of the usual documents.

7.5. Refusal or non-timely availability of necessary modifications in the LC ("amendments") shall be regarded as non-compliance with the payment obligations of the Buyer.

7.6. The Buyer remains liable for payment of the complete amount of the invoice if for whichever

reason no or no complete pay-out under the LC takes place. In that case the Buyer must upon first request of Merwestaal proceed to payment by means of transfer into the bank- or giro account stated in the invoice.

7.7. Invoices of Merwestaal become immediately due and payable, therefore also before the expiry of the payment term, if there is reasonable doubt with regard to the financial soundness of the Buyer or if the Buyer is in default in the compliance with any obligation under other/preceding/later agreements.

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

8.1. If delivery takes place before payment, then the delivered remains property of Merwestaal and the Buyer shall be deemed to keep the goods for Merwestaal and it must store the goods as recognisable property of Merwestaal, insure and keep them insured properly, as well as not to proceed to treatment or processing, as long as it has not or not completely complied with the payment obligations and all other contractual obligations towards Merwestaal, payment of interest and costs therein included.

8.2. Delivered goods remain property of Merwestaal, also after these have been treated or processed into a new good, mixed with other goods or having become part of another good.

8.3. The retention of title of Merwestaal also stretches out to agreements concluded earlier or later. The delivered under a certain agreement therefore remains property of Merwestaal also if under that certain agreement has been paid, but has not been paid under earlier or later agreements.

8.4. In a case such as described in section 1 of this article, the goods must be returned by the Buyer to Merwestaal upon first request of Merwestaal. Merwestaal is entitled to take back the goods and is deemed to have been authorised by the Buyer to access the areas where the goods are located and to remove them at the expenses of the Buyer.

8.5. For as long as the property of the delivered has not been transferred to the Buyer, it may not sell these goods, process or treat them, mix them, give a lien or grant any other right to a third party to the disadvantage of Merwestaal.

8.6. All rights of intellectual and/or industrial property, resting on the purchased and delivered matters, including trade names, remain reserved to

Merwestaal or the owner of the rights.

8.7. Merwestaal reserves, also after delivery, all rights of intellectual and/or industrial property on the information and documentation it provided, such as designs, sketches, catalogues, images, drawings etc. The Buyer is not permitted to multiply, copy, store on datacarriers these data and/or make available for third parties for inspection and these data must be returned upon first request to Merwestaal.

8.8. Merwestaal is entitled to exercise the right of retention on goods, monies and/or documents, that Merwestaal has under it in connection with the agreement with the Buyer, for what the Buyer is or shall become due to Merwestaal, with regard to the concerned agreement as well as earlier or later agreements concluded with the Buyer.

#### **9. Limited warranty**

9.1. Merwestaal warrants during a period of 12 months after delivery that the delivered goods, whether or not after treatment by Merwestaal, solely comply with usual trade quality, with normal cutting, roller and weight tolerances and with the requirements of European product legislation such as applied in the Netherlands, unless agreed otherwise explicitly and in writing.

9.2. Merwestaal does not warrant the tradability and/or suitability of the delivered materials, neither for the treatment and/or processing options of the materials, nor for the (semi-) end product after treatment or processing.

9.3. No rights can be derived by the Buyer from possible images, descriptions, and information about price, size, weight and qualities of the goods on websites or in other publications by Merwestaal or third parties.

9.4. The warranty is limited to – at the discretion of Merwestaal - the repair or redelivery of the delivered goods, refunding of the purchase price or crediting of the concerned amount of the invoice, whether or not under taking back of the delivered goods, the one and the other without additional costs for the Buyer, if and insofar it has been established that the delivered goods are not in conformity with the agreement.

9.5. Any other claim or demand of the Buyer is excluded.

9.6. This warranty does not prejudice a claim of Merwestaal on the other stipulations in the GTC.

#### **10. Inspection/term for complaints**

10.1. The Buyer is obliged to inspect the delivered immediately upon delivery for possible defects, deviations, shortfalls or other shortcomings and to report these within 7 working days after delivery in writing to Merwestaal under precise description of the complaint. Shortfalls must also be noted on the freight letter or delivery slip.

10.2. For defects which are not visible or not noticeable upon normal inspection applies a term for complaints of 5 working days from the moment that the Buyer has become or could have become familiar with the defect, or after the defect has manifested itself.

10.3. After expiry of aforementioned terms of 5 working days or after treatment or processing or otherwise use or after onward sale of the delivered goods, the delivered is deemed to have been approved. Thereafter no more complaints can be made about defects, deviations, shortfalls etc. or other shortcomings.

10.4. If so requested, before delivery, the Buyer shall, be given the opportunity to inspect or have inspected the purchased) on conformity. The expenses of inspection are for the Buyer.

10.5. Samples shall only be provided by manner of designation. Small or technically unavoidable deviations and/or differences in quality, size, weight or finishing accepted in the steel industry or accepted earlier or later between parties do not render a shortcoming.

10.6. For examination of the validity of a complaint the Buyer must provide complete cooperation and keep the goods available for inspection. Expertise reports prepared upon request of the Buyer do not bind Merwestaal.

10.7. The right of complaint and any claim with regard to non-conformity or shortcomings otherwise of the delivered goods and/or executed performances become forfeit, at least the Buyer can make no claim anymore hereto, if:

a. The goods have been exposed to abnormal circumstances, or have not been treated in accordance with the user instructions or otherwise have been treated carelessly or inexpertly; and/or;

b. The goods have been stored longer than normal and it is likely that because of it loss of quality has emerged; and/or;

c. (Otherwise) not complete compliance with the above stipulations has taken place.

10.8. Complaints of whichever nature do not suspend payment obligations and/or other obligations of the Buyer towards Merwestaal.

#### **11. Force Majeure**

11.1. Merwestaal shall not be liable or deemed to be in default in the compliance with its obligations, delay in the delivery therein included, if the non or non-timely compliance is due to causes lying outside its powers or reasonable control.

11.2. There is an instance of Force Majeure in cases of, but not limited to, circumstances like trade restrictions, embargo's, sudden (cost) price increases, government measures, war, strikes, blockades, accidents, fire, explosion, drop-out of machines or other enterprise disruptions, power cuts, telecommunication disruptions, cyber-crime or in case of shortfalls, delay or interruptions in the factory of Merwestaal's supplier or any other events lying outside the direct control of Merwestaal that have led to non or non-timely compliance by Merwestaal's suppliers and subcontractors.

11.3. The execution of the agreement shall be suspended for as long as the force majeure situation continues, notwithstanding the right of Merwestaal to dissolve the agreement in case of Force Majeure.

#### **12. Exclusion and limitation of liability/indemnification**

12.1. Merwestaal is towards the Buyer not liable for any damage or costs, of whichever nature, direct or indirect, therein included consequential damage (including, but not limited to, stagnation damage, missed profits, loss of goodwill, fines etc.), irrespective of whether this finds its cause in the non-conformity of the goods delivered by Merwestaal or any other shortcoming of Merwestaal in the compliance with the agreement with the Buyer and neither with regard to services otherwise executed by Merwestaal, given instructions, provided information and/or advice, a wrongful act or other legal ground.

12.2. The Buyer indemnifies Merwestaal for all claims of third parties for compensation of damage, product liability therein included, connected with the use of the goods delivered and/or performances executed by Merwestaal under the agreement with the Buyer.

12.3. Any liability of Merwestaal on whichever basis, legal ground and under whichever circumstances, which liability might not be excluded or limited on the basis of the GTC, is in all

instances limited to the maximum of 10% of the amount of the invoice.

12.4. The Buyer indemnifies Merwestaal, its personnel and the third parties deployed by it, for claims of third parties towards whom Merwestaal, its personnel and the third parties deployed by it, cannot make a claim on the GTC.

12.5. Insofar a claim on the GTC does not legally come to Merwestaal for whichever reason by law, then its liability is limited to (a) the amount that the insurer of Merwestaal pays out in that respect increased with its own risk under the policy or (b) in the absence of any pay-out to the amount that has been received by Merwestaal for the good or service to which the liability relates.

12.6. A claim on the limitations of liability also belongs to employees involved by Merwestaal, its director(s), company management, representatives, suppliers and help persons.

12.7. The stipulations in the GTC are not intended to exclude or limit liability entirely for damages caused by wilful intent or conscious recklessness by the directors of Merwestaal.

### **13. Statute of limitations and forfeit**

13.1. Any claim of the Buyer towards Merwestaal must be instigated within 12 months after it has arisen before the competent entity, in the absence of which the claim shall have been time-barred, expired and/or become forfeit.

### **14. Default**

14.1. In the event of non-timely payment of the price of the invoice or a part thereof, the Buyer is in default by law, without any notification of default being required. In that event Merwestaal is authorised to charge the Buyer with all costs to be made for the collection of the outstanding amount in-court and out-of-court, inclusive of the cost of lawyers.

14.2. The costs for late payment amount to at least 10% of the amount due, while Merwestaal furthermore has a claim to statutory commercial interest rate then applicable.

14.3. If the Buyer is more than thirty days in default with the compliance of its payment obligations and/or other obligations, then Merwestaal is authorised to suspend its performance or – at its discretion - to dissolve the agreement immediately out-of-court.

14.4. In case of default the Buyer is liable for all damage suffered and/or yet to be suffered and costs

incurred by Merwestaal deriving from the shortcoming of the Buyer in the compliance with the agreement.

14.5. Payments by the Buyer serve firstly for the reduction of the interest due and costs and subsequently to the invoices that stand out the longest.

### **15. Termination**

15.1. Notwithstanding and in addition to the stipulations in the GTC, Merwestaal is authorised to terminate each agreement with the Buyer with immediate effect, without an intervention of the courts being required and without Merwestaal being required to any compensation of whichever damages, if:

a. There is reasonable doubt regarding the financial soundness of the Buyer or in case of late payment or if against the Buyer an attachment on parts of its capital has been put;

b. The Buyer files for suspension of payment, files itself for bankruptcy or if a request for bankruptcy of the Buyer has been submitted;

c. The Buyer is liquidated, dissolved or dies; and/or;

d. Merwestaal reasonably suspects that the goods are directly or indirectly destined for any country for which according to the United Nations ("UN") and/or European regulations for the concerned goods a sanction is in force, without therefore an exemption of license has been obtained from a competent authority designated by the UN or EU.

### **16. Confidentiality**

16.1. The Buyer is required to strict confidentiality and secrecy of all knowledge and information obtained from Merwestaal in the context of conducted discussions, negotiations and other communications prior to and during and after the conclusion of any agreement between parties, including prices, product specifications, brochures and other commercial information, including the enterprise or conduct of enterprise of Merwestaal, customers of Merwestaal etc. (hereinafter: "confidential information").

16.2. The Buyer shall refrain from providing confidential information to third parties or to make hereof (otherwise) commercial use, without prior written consent of Merwestaal.

16.3. This stipulation remains, for the avoidance of any misunderstanding, also in force after

termination of any agreement with Merwestaal.

**17. Partial nullity**

17.1. Should any stipulation of the GTC be null or be annulled, then the other stipulations shall completely remain in force.

17.2. Merwestaal shall then replace the null or annulled stipulation(s) of the GTC by (a) new, legally permissible stipulation(s) whereby as much as possible the purpose and scope of the null or annulled stipulation(s) shall be observed.

**18. Applicable law and dispute resolution**

18.1. All agreements concluded with Merwestaal are – insofar the Buyer has its seat of business outside the Netherlands – solely governed by the United Nations Convention on the International Sale of Goods of 11 April 1980 (CISG), insofar necessary with addition of the UNIDROIT Principles or International Commercial Contracts of 2010 (at least the latest version), and insofar not covered by the aforementioned rules by the Laws of the Netherlands.

18.2. Disputes, claims and all other matters deriving from and/or connected with the agreements concluded with Merwestaal must be submitted to the International Court of Arbitration of the International Chamber of Commerce in Paris, France, and shall solely and definitively be resolved in accordance with the current Rules of Arbitration of the International Chamber of Commerce aforementioned by one or more arbitrators appointed in accordance with this Rules of Arbitration. Place of arbitration is The Hague, the Netherlands. The arbitration shall be conducted in the English language.

18.3. With regard to counterparties having their seat of business within the Netherlands, the agreement will solely be governed by the law of the Netherlands, while disputes, claims and all other matter as referred to in this article will be resolved in accordance with the current Rules of Arbitration of the Nederlands Arbitrage Instituut. The arbitral tribunal will consist of one or more arbiters. Place of arbitration is The Hague.

18.4. Each party is required with regard to the arbitration to provide its financial contribution as requested by the arbitration institute and/or arbitrator(s). In the event a party fails to comply with this obligation, the other party can request the arbitrator(s) to order the other party to payment of that financial contribution, to let statements

submitted in the arbitration procedure outside consideration and/or to reject (counter) claims.

18.5. Arbitral awards are deemed to be binding and enforceable between parties. Parties waive the right to oppose to the execution or arbitral awards (including interim, partial and final).

18.6. This arbitration clause does not prejudice the right to take conservatory measures with permission of the competent civil court.

**19. Translations**

19.1. The Netherlands' text of these GTC shall prevail over translations in another language.