



De Leeuw Metalen BV<sup>®</sup>

## CONDITIONS OF PURCHASE AND SALE DE LEEUW METALEN BV<sup>®</sup>

### ARTICLE 1. DEFINITIONS

- 1.1 De Leeuw Metalen BV<sup>®</sup> and the companies affiliated with it, as well as their legal successors under general title, are the users of these General Terms and Conditions and shall hereinafter be designated as: "Customer".
- 1.2 Under "Supplier" will be understood each (legal) person that offers materials and/or products for collection to Customer and/or that leases materials and/or products (including containers) from Customer.
- 1.3 Under "Counterparty" will be understood each (legal) person to whom Customer offers materials and/or products (for collection).
- 1.4 Under "materials and/or products" will be understood all materials and/or products that are offered by Supplier to Customer and all materials and/or products that are offered by Customer to Counterparty, including but not limited to the materials and/or products specifically identified in these GTC.

### ARTICLE 2. APPLICABILITY

- 2.1 These GTC are applicable to and form an inseparable and unbreakable part of all advice by, offers of, commissions of and to and agreements and legal relations with Customer.
- 2.2 Deviations of and additions to these GTC can only be agreed in writing.
- 2.3 Invalidity or invalidation of one or more stipulations of these GTC does not stand in the way of the applicability of the other stipulations. Customer and Counterparty/Supplier shall then enter into consultation to replace invalid or invalidated stipulations by stipulations that as much as possible connect with the purpose and the tenor of that stipulation.
- 2.4 Applicability of general terms and conditions, under whichever name, used by the Counterparty/Supplier is herewith explicitly rejected.

### ARTICLE 3. PRICES AND PAYMENT

- 3.1 Under "the price" will be understood the price agreed between Customer and Counterparty or Supplier concerning the sale by Customer respectively purchase by Customer of materials and/or products.
- 3.2 Payment of the price by the Counterparty must take place within two weeks after receipt of the invoice of Customer or after receipt by the Counterparty of the materials and/ or products (that the Customer offers to the Counterparty), whereby the earliest moment determines the payment obligation of the Customer.
- 3.3 Payment of the price by the Customer to the Supplier takes place either directly upon delivery (cash) or by banktransfer no later than within fourteen working days after the day of delivery.
- 3.4 Counterparty does not have the right to suspend payments or set-off obligations towards Customer.
- 3.5 Customer has the right to invoice on the basis of advance payment and/or in terms. Customer has the right to set-off its claims on the Counterparty/Supplier (or company affiliated to it), including but not limited to claims of Customer on the basis of lease and/or transport, with obligations of the Customer towards the Counterparty/Supplier (or company affiliated to it).
- 3.6 If the Counterparty has not paid the price within the applicable payment term(s), then the Counterparty is immediately in default and liable to pay, over the amounts, the trade interest by law. If the Counterparty does not pay the due monies after a first reminder, then the Counterparty is liable to pay the amount of the costs actually to be made by Customer for legal assistance in and out-of-court and court costs to Customer, which costs are set at least as 1% per month of the due amount in principal.
- 3.7 Customer is only in default after a registered letter, in which a reasonable term for compliance is given and in which the Customer is declared in default, and then only after expiry of aforementioned term. The Customer is never in default if the Counterparty/Supplier is in default. The Customer is never in default if the Counterparty/Supplier is in default.
- 3.8 If the Supplier delivers more products and/or materials than agreed in advance with Customer, then the Customer has the liberty to either settle the excess delivered against the price agreed in advance or against the price applicable on that moment. If by Supplier less is delivered than agreed, then Customer is only liable for a compensation for what has been delivered.
- 3.9 The payment obligation of Customer will be suspended for as long as the products and/or materials presented by the Supplier have not been approved by Customer and/or when Customer has made an objection against the manner of execution of the agreement by the Supplier.

### ARTICLE 4. DELIVERY

- 4.1 Unless agreed otherwise in writing, there is an instance of delivery of materials and/or products by Supplier to Customer when these materials and/or products have been delivered at the location of the Customer in Nijmegen, the Netherlands, at Scheepvaartweg 7 (therefore DDP – according to the latest published version of the Incoterms) and then only after inspection and explicit acceptance of the materials and/or products by Customer. The aforementioned applies notwithstanding if Customer in commission of Supplier arranges for transport of the products and/or materials in accordance with article 7 of these GTC.
- 4.2 The materials and/or products delivered by Supplier shall come only then for risk of Customer and become property of Customer on the moment of delivery in accordance with article 4.1.
- 4.3 The terms made known by the Customer to Supplier are fatal. The Supplier is required to deliver in/on the agreed manner, date and time. If the Supplier does not deliver timely and parties do not reach agreement regarding an extension of the delivery term, then the Supplier is, without that thereto a notification of default is necessary, in default.
- 4.4 Unless agreed otherwise in writing, the weighing data of the weighing bridge of Customer are binding for the Supplier.
- 4.5 Iron vats can only be returned if they are empty, rinsed and/or 'scraped clean'. The one and the other is solely at the discretion of the Customer. For the benefit of the visual inspection, the manhole must be removed from the vat.
- 4.6 Liquid holding tanks that have been cleaned are accepted solely and insofar by Supplier a cleaning certificate can be presented from a company expert and licensed thereto. For the benefit of the visual inspection, the manhole must be removed from the tank.
- 4.7 The returning and offering of materials and/or products that have a hazardous effect on the environment as well as explosive and inflammable materials including but not limited to gas bottles, cooling elements, freezers, products with Chloro Fluor Carbon (CFC's), tires, oil and/or oil holding parts, sand, asbestos, chrome 6, concrete and other debris (waste), wood, ink cartridges and all other materials that form a threat to public health, is not permitted. The Supplier warrants that the materials and/or products delivered by him do not contain materials or agents that are forbidden on the basis of the Dutch legislation.
- 4.8 If Customer knows or suspects that by the Supplier materials and/or products are returned that have a hazardous effect on the environment (such as stated before in article 4.7) then the Customer has the right to refuse the acceptance of these materials and/or products. The Supplier is required to take back and remove, upon first request of Customer, for his own account and risk the concerned materials and/or products. If Supplier does not meet at first request, then Customer is authorised to send back the materials and/or products for the account and at the risk of Supplier, to Supplier.
- 4.9 The Supplier must present the materials and/or products with an accompanying document (WMB form). The materials and/or products emerged and transported in and through foreign countries, the Supplier must present with the applicable documents according to the EVOA-guidelines.
- 4.10 If no other place of delivery is agreed, then the delivery of materials and/or products by Customer to Counterparty takes place at the enterprise of Customer. Customer is not obliged to deliver materials and/or products on another location than the agreed location.
- 4.11 Terms made known by Customer to Counterparty have been established to the best of the knowledge and form no essential part of the agreement. Customer is not in default by the mere exceeding of terms. Terms do not apply if those cannot be observed due to circumstances outside the control of the Customer, emerged after the conclusion of the agreement.
- 4.12 The Counterparty is obliged to take off the materials and/or products to be delivered within the agreed term, in the absence of which the Counterparty is immediately in default.
- 4.13 Materials and/or products delivered by Customer, against which the Counterparty has not protested within 7 days after the delivery, are deemed to comply with the agreement.

### ARTICLE 5. TERMINATION OF THE AGREEMENT

- 5.1 The Counterparty/Supplier solely has the right to dissolve the agreement if that is agreed in writing or the Counterparty/Supplier derives that right from mandatory legislation. If the Counterparty/Supplier (legally validly) dissolves the agreement, then the Counterparty/Supplier is obliged to deliver back rights delivered on the basis of the agreement simultaneously, terminate exercise of rights granted on the basis of the agreement simultaneously and to compensate to Customer the costs made by Customer in connection with the offer and the conclusion and the execution of the agreement. The performances of Customer are then no subject of undoing.
- 5.2 Only Customer has the right to terminate the agreement unilaterally with immediate effect in whole or in part and/or to suspend the execution of legal obligations deriving from the agreement with immediate effect in whole or in part, notwithstanding his right to

compensation of damage if one or more of the following events take(s) place:

- a. the Counterparty/Supplier does not comply with or comes short in one or more legal obligations that derive from an agreement - including the GTC - (imputable);
  - b. after the conclusion of the agreement Customer acquires knowledge of circumstances which give a good ground to fear that Counterparty/Supplier shall not comply with his obligations on the basis of the agreement;
  - c. the filing of a request purporting to the granting of (provisional) suspension of payment to the Counterparty/Supplier;
  - d. the submission of a request for bankruptcy of the Counterparty/Supplier;
  - e. the filing or a request to admission to debt sanitation by Counterparty/Supplier;
  - f. legal inability to act of the Counterparty/Supplier;
  - g. complete lack of authority to dispose of assets of the Counterparty/Supplier;
  - h. executorial attachment under Customer against the Counterparty/Supplier;
  - i. the conclusion of a resolution to dissolution and/or liquidation of the Counterparty/Supplier;
  - j. transfer of one or more shares in the Counterparty/Supplier to others than the shareholder(s) at the conclusion of the agreement;
  - k. entire or partial transfer of the enterprise exploited by the Counterparty/Supplier to one or more others;
  - l. Counterparty/Supplier has made an incorrect or incomplete statement, or has omitted to mention circumstances, insofar those incorrect matters or omissions are of such nature that unchanged maintaining of the agreement cannot be required of Customer.
- 5.3 The Counterparty/Supplier is obliged to notify Customer immediately in writing of the emergence of (one of) the events referred to in this article. Customer is because of the termination of the agreement and the suspension of legal obligations deriving from the agreement, on the basis of an event referred to in this article never liable to pay any compensation of damage to the Counterparty/Supplier.

#### ARTICLE 6. RETENTION OF TITLE

- 6.1 The property of all materials and/or products delivered by Customer for purchase, is only transferred to the Counterparty over if and after the Counterparty has complied with all that they are due on the basis of any agreement, concerning materials and/or products delivered or yet to be delivered as well concerning the claims because of shortcoming in the compliance with such agreements is due to Customer including the price due on the basis of article 3.1.
- 6.2 The Counterparty is, until complete payment of the price has taken place, not authorised to act with regard to rights, that have been delivered respectively granted under the suspensive conditions referred to before in article 6.1 and is obliged to notify interested parties - including envisaged parties acquiring rights - of that lack of authority to dispose.
- 6.3 If the Counterparty (also) forms from materials and/or products delivered by Customer a new good, then the Counterparty forms that good only for Customer and the Counterparty shall keep the newly formed good for Customer, and Customer remains owner of the newly formed good until the Counterparty has paid all amounts due on the basis of a (then existing) agreement.
- 6.4 The Counterparty is obliged, for as long as he has the materials and/or products delivered under retention of title, to carefully treat and to maintain these materials and/or products necessary carefully, the one and other on his own costs.
- 6.5 Customer or a person to be designated by him, has at all times free access to the enterprise of the Counterparty to take back if necessary the materials and/or products delivered under retention of title. With the enterprise, reference is made to all buildings and plots, cabinets, cellars, storage areas and other places where the materials and/or products are located, should be located or can reasonably be deemed to be located.

#### ARTICLE 7. TRANSPORT

- 7.1 Except for agreements to the contrary, Counterparty/Supplier will arrange for the transport of materials and/or products.
- 7.2 Solely upon request of Counterparty/Supplier, Customer will collect the materials and/or products from a location designated by the Supplier or Customer brings the materials and/or products to the location designated by the Counterparty, such for the account and risk of Counterparty/Supplier. Counterparty/Supplier is responsible for obtaining and keeping of the permits, exemptions and other prescriptions required for the transport.
- 7.3 Counterparty/Supplier is among others, but not limited to, required to pay or to compensate to Customer possible due surcharges, levies, taxes, fines, damage for third parties etc. that are connected with transport, upon first request of Customer.
- 7.4 Counterparty/Supplier pays the complete costs as referred to in article 7.2 and/or 7.3 upon first written request of Customer. Customer is authorised to set-off the costs for transport as referred to in article 7.2 and/or 7.3 with claims of Supplier on Customer.

- 7.5 Article 3 of these GTC is equally applicable to the costs that Counterparty/Supplier is liable to pay to Customer on the basis of the transport mentioned in this article.

#### ARTICLE 8. INSPECTION AND SAFETY

- 8.1 The Customer has the right to check and inspect the delivered materials and products before, during and after the unloading.
- 8.2 Upon the access to the industrial estate, the applicable security prescriptions and precautionary measures (including but not limited to the wearing of sturdy shoes and clothing) must be observed.
- 8.3 The Supplier is present on his own risk on the industrial estate of Customer and must at all times follows the instructions of the employees on the industrial estate.

#### ARTICLE 9. LEASE

- 9.1 All goods made available by Customer (hereinafter: the Leased) are and remain his property, unless agreed otherwise in writing.
- 9.2 The lease starts on the day of making available of the Leased to the Supplier and ends on the moment that the Leased is delivered at the location of the Customer in Nijmegen at Scheepvaartweg 7. Except for notification to the contrary, the Supplier is deemed to have received the Leased in a good state.
- 9.3 Supplier is required to pay the agreed lease price (hereinafter: the lease price) to Customer. Article 3 of these GTC is equally applicable to payment of the lease price to Customer.
- 9.4 Supplier must manage the Leased for his own account and risk, including to maintain this in a careful manner and in accordance with the agreed destination, use, treat and load. Hereto the instructions possible provided by Customer must be followed precisely. Hereto the instructions possible provided by Customer must be followed precisely.
- 9.4 Supplier is obliged to use the Leased solely in accordance with the nature and the destination The Supplier is not permitted to move the Leased to another location than agreed with Customer, to sublease, or otherwise give into (join) use to third parties or to introduce into a legal person or to put in lien or otherwise encumber it.
- 9.5 Supplier shall deliver the Leased at the end of the lease period in the original state to Customer.
- 9.6 Counterparty/Supplier is liable for loss, damage, theft and embezzlement of the Leased. In case of theft or embezzlement, Supplier is required to compensate the day value of the Leased to Customer, whereby the day value will be established by Customer. Damage to the Leased that comes for the account and risk of Supplier, will be repaired at the expense of Supplier.
- 9.7 Supplier shall notify Customer immediately in writing of established defects, loss, damage, theft or embezzlement.
- 9.8 Supplier must put the Leased on the agreed collection day on an accessible and safe terrain, at least on a place established that is easily accessible for persons and means of transport of Customer, so that this renders no danger for personnel of Customer or third parties.
- 9.9 Supplier is responsible for the safety and suitability of the standing location of the Leased and shall ensure that regarding the standing location, compliance shall take place with all applicable (traffic) regulations.
- 9.10 Supplier is responsible for the application for and maintaining of the required permits, exemptions and other prescriptions concerning the Leased and related Activities. Supplier is liable for all costs that will be brought into account to Customer, including fines, because of (incorrect) placement of the Leased.
- 9.11 Emptying of the Leased by Customer has to be regarded as the presentation of materials and/or products for collection so that all concerned stipulations are applicable hereto.
- 9.12 Costs that Supplier is due on the basis of this article to Customer, (including but not limited to costs on the basis of article 9.6 and/or article 9.10) must be paid upon first request of Customer to Customer. Customer is authorised to set-off these costs with possible claims of Supplier on Customer.

#### ARTICLE 10. LIABILITY

- 10.1 Liabilities and lawful obligations to compensation of damage of Customer are limited by the articles 10.1 up to and including 10.9. The articles 10.1 up to and including 10.9 are equally applicable to claims by the Counterparty/Supplier based on an illegal acts of Customer.
- 10.2 Customer is solely liable for shortcomings imputable by wilful intent or gross fault by Customer to Customer. As a shortcoming imputable shall in any case not be regarded as use of (unsuitable) help materials and/or products, (changes of) materials, shortcomings by acts of (other) suppliers of the Counterparty/Supplier, lost data, change of materials and/or products otherwise than by or on behalf of Customer, use of materials and/or products in violation of applicable conditions and/or external causes.
- 10.3 Liability of Customer can solely emerge, after the Counterparty/Supplier has declared Customer in default without delay, but no later than within 7 days after the delivery of the delivered materials and/or products, or in case of a shortcoming not

- detectable at a delivery without delay but no later than within 7 days after the establishment of the shortcoming, properly by means of a registered, and has enabled Customer during a reasonable term to repair the shortcoming.
- 10.4 An obligation of Customer to compensation of damage is limited to direct damage to the maximum of the amount of the agreed price, exclusive of turnover tax and other levies imposed by the government. In no case shall the compensation for damage due by Customer amount to more than the monetary sum that will be paid in connection with the concerned obligation to compensation of damage on the basis of the liability insurance of Customer. Customer is in no case obliged to compensate the damage suffered by third parties caused by, deriving from, or connected with access of the terrain of Customer by Counterparty/Supplier, terrorism, malevolent contamination, fireworks and/or explosives, asbestos or asbestos holding materials and/or products. Customer is furthermore in no case obliged to compensate immaterial and indirect damage, such as among others consequential damage, enterprise damage, image damage, environmental damage and damage because of loss of time, loss of savings, loss of data or documents and/or the missing of financial benefit (missed profits or missed savings). (Capital) damage includes also damage caused by death or injury.
- 10.5 Each right to claim of the Counterparty/Supplier and/or third parties towards Customer is forfeited 1 year after delivery of the delivered materials and/or products.
- 10.6 if Counterparty/Supplier has insured any risk connected with the agreement, then he is required to address his (liability) insurer before the Customer, and Counterparty/Supplier is required to safeguard Customer as much as possible from this risk.
- 10.7 if Customer suffers damage in the execution of the agreement and Counterparty/Supplier has insured the risk to which this damage is connected, then Counterparty/Supplier must immediately after receipt thereof make the pay-out of his (liability) insurer payable to Customer without that Customer needs to make a claim thereto.
- 10.8 The Counterparty/Supplier is liable for all costs and damage that for Customer are the consequence of any shortcoming of the Counterparty/Supplier in the compliance with his obligations or of illegal acts, as well as for all damage which are cause by shortcomings in the materials and/or products delivered by Supplier. Among others Supplier is liable for the damage to persons and materials and/or products as a consequence of the presence of the materials and products mentioned before under article 4.7 and for damage that is the consequence of transport of materials and/or products by Customer for which the required documents and/or permits for transport thereof have not been obtained or at least not provided by Counterparty/Supplier.
- 10.9 In case of presence of radioactive material, Customer shall give notification hereof in accordance with the regulations applicable on that moment to the authorities designated thereto). All costs that relate hereto will be for the account and risk of the Supplier.

#### **ARTICLE 11. PROTECTION**

- 11.1 The Counterparty/Supplier safeguards Customer for all (claimed) damage that Customer or third parties of Customer suffer by or in connection with the execution by the Counterparty/Supplier of the agreement or as a consequence of illegal acts, including but not limited to claims of third parties concerning the Leased, fines that Customer receives from third parties, claims on the basis of product liability, claims because of damage caused because Supplier has provided to Customer incorrect/incomplete information and/or damage that is connected with the transport of materials and/or products by Customer for the benefit of Counterparty/Supplier.
- 11.2 The Supplier safeguards the Customer for all damage that emerges from or is connected with the materials and/ or products left behind by the Supplier on the industrial estate of Customer.

#### **ARTICLE 12. FORCE MAJEUR**

- 12.1 If Customer by Force Majeure temporarily is not able to execute the agreement, he is authorised to suspend the execution of the agreement in whole or in part for as long as the Force Majeure continues. If Customer by Force Majeure permanently is not able to execute the agreement, then he has the right to cancel the agreement with immediate effect in whole or in part. Under Force Majeure will be understood among others shortcomings of (suppliers of) Customer and/or other help persons, defectiveness of materials and/or products, equipment, work interruptions and excess absence because of illness of employees and/or other help persons, government measures, network disruptions, incorrect network tension, transport problems and weather conditions.
- 12.2 If Customer by Force Majeure temporarily or permanently is not able to execute the agreement, the Counterparty/Supplier cannot make a claim to execution of the agreement, dissolution of the agreement and/or compensation of damage towards the Customer.

#### **ARTICLE 13. APPLICABLE LAW AND COMPETENT COURT**

- 13.1 Offers of and agreements with Customer are solely governed by the Laws of the Netherlands. The Treaty of the United Nations

- 13.2 concerning international purchase agreements regarding movable goods of 11 April 1980 is not applicable. All disputes deriving from or related to the agreements shall, insofar mandatory lawful stipulations do not object thereto, shall solely be submitted to the competent court in the district court of the seat of business of the Customer.