

General terms and conditions of sale and delivery

1. Preamble

These General Terms and Conditions of Sale and Delivery (“GTCSD”) of Dockweiler B.V. (“Dockweiler”, “we” or “us”) shall apply exclusively to all offers, orders and agreements of sale of us with customers in relation to any goods sold, offered or made available by us (“products”). Deviating, conflicting or supplementary general terms and conditions on the part of the customer shall only be valid if we confirm them in writing for the respective order. Individual agreements made with the customer in individual cases shall always take precedence over these GTCSD.

2. Conclusion of Contract

2.1 As a rule, purchase orders placed by the customer shall be deemed to represent a contractual offer. This shall also apply even if we have previously provided the customer with cost estimates, price lists or a document designated as an offer. All offers made by us, including the sales prices specified in our price lists, shall be subject to change and are non-binding, unless expressly designated otherwise. Documents such as brochures, illustrations, drawings as well as the products and services presented on the Internet shall also not be binding for us with regard to design, dimensional and property specifications, unless they are designated by us as binding. All offers shall be subject to change, i.e., a contract is only concluded when we send an order confirmation confirming the precise scope of delivery as well as the delivery period for an individual order in writing, or when we have commenced the execution of an order. The written form requirement for the order confirmation shall also be met if the order confirmation is sent in text form by means of remote data transmission (e.g. e-mail).

2.2 We reserve the right of ownership and copyrights to illustrations, drawings, calculations and other documents. This shall apply not only to such written documents that are designated as “confidential”. We may reclaim any documents provided at any time without any right of retention being able to be asserted. The customer shall require our express written consent prior to any disclosure to third parties, duplication or storage of any kind whatsoever in the customer’s own databases.

3. Delivery

3.1 Delivery periods and delivery dates that are not expressly designated as binding in the order confirmation shall always be deemed to be approximate and not binding.

3.2 For delivery Incoterms clause (ICC 2020) DAP shall apply, unless otherwise agreed between the contracting parties. The choice of the shipping route and the mode of transport shall be determined at our discretion.

3.3 If we have taken out transport insurance, then any claim for compensation in the event of damage shall be limited to the amount reimbursed by the insurance. In any case, the customer shall notify not only the carrier, but also us, of any recognizable transport damage and shall leave the damaged products in the condition in which they were delivered until we have released them.

3.4 If the shipment is delayed due to culpability on the part of the customer, then the risk of the products shall pass to the customer already upon notification of readiness for shipment. We shall be entitled to store the products at our discretion at the customer’s expense and risk and to have such insured against any risk.

3.5 Compliance with the period of delivery shall presuppose clarification of all technical and commercial details and fulfillment of all obligations incumbent upon the customer. If this is not the case, then the delivery period shall be extended by a reasonable period of time.

3.6 In the event of late delivery, we must be notified in writing, and we must be granted a reasonable term of at least fourteen (14) working days as of the date of the receipt of notification to fulfill our obligations. If this extended term is exceeded, the customer will be entitled to dissolve the order or agreement or part of the order or agreement only with respect to the products not delivered. In such event, we will not be liable for damages, unless such damages are the consequence of willful misconduct or gross negligence by our executive management. This shall be without prejudice to our rights under clause 3.8 below.

3.7 We shall be entitled to make partial deliveries as well as render partial services, unless the partial delivery or partial service proves to be unreasonable for the customer. We shall be entitled to separately invoice any partial deliveries of products or services.

3.8 In the event of late delivery or if we expect late delivery we shall be entitled to deliver, either in whole or in part, products of higher quality than the products ordered which delivery is or may be late, at the price agreed with the customer for the originally ordered products. If we opt for this, the customer shall not have any other rights in relation to the late delivery of the originally ordered products (and the customer's rights under clause 3.6 shall not apply). For the avoidance of doubt, we may grant this right under this clause 3.8 at our sole discretion, and this right to any products of higher quality at the price for lower quality products shall not apply to any other orders or agreements of the customer.

4. Prices and Terms of Payment

4.1 Unless otherwise agreed and confirmed by us, our prices are on a DAP (Incoterms 2020) basis and – for the avoidance of doubt – shall include packaging and freight.

4.2 Our invoices shall be due and payable without deduction within 30 days of the date of invoice. This payment term shall also apply to any partial deliveries. Any deviating provisions shall be agreed in writing and shown on the respective invoice. Deduction of a discount shall require a special written agreement. Invoices may be sent either in written form or in text form by means of remote data transmission (e.g. e-mail). The timeliness of payment shall be determined by the date of our receipt of the respective amount. If the customer fails to pay any amount when due, the customer shall immediately be in default of payment without the need for a notice of default or other reminder.

4.3 We shall be entitled to claim default interest at the statutory rate in the event of default in payment, the date of our receipt of payment being decisive. Assertion of further damages shall not be excluded by this clause and this clause shall be without prejudice to our rights by virtue of law or otherwise.

4.4 The customer shall not be entitled, on any basis whatsoever, to suspend performance of its obligations under any offer, order, or agreement. The customer shall neither be entitled to any deduction, discount or set-off. Submission of a complaint will not suspend customer's obligation to pay.

4.5 To the extent permissible by applicable mandatory law, the customer shall not be entitled to assign claims arising out of any agreement to third parties without our prior written consent (and this shall have property law effect).

5. Packaging

5.1 The choice of the type of packaging shall be at our discretion.

5.2 The return of any packaging is subject to our applicable return policy, a copy of which will be sent upon your request.

6. Reservation of Title

6.1 We shall retain title to all products delivered and to be delivered to the customer until we have received full payment of all purchase amounts of all products delivered and to be delivered on the basis of agreement, as well as any amounts owed by the customer pertaining to work performed for the customer's benefit in connection with such agreement and any claims pursuant to any failure in the performance of such agreement on the part of the customer ("secured claims").

6.2 Any products delivered by us shall remain our property until full payment of all secured claims. The delivered and to be delivered products that are covered by the retention of title in accordance with the following provisions are hereinafter referred to as "conditional commodities".

6.3 To the extent permitted by applicable mandatory law, any conditional commodities subject to retention of title may not be pledged to third parties or assigned prior to full payment of the respectively secured claims. The customer shall immediately notify us in writing if an application for the opening of insolvency proceedings is filed or if the conditional commodities are attached, seized or otherwise subject to disposition by third parties.

6.4 The customer shall hold the conditional commodities in safe custody for us free of charge and shall be obliged to handle such with care. In particular, the customer shall be obliged to sufficiently insure the conditional commodities in accordance with their replacement value at the customer's own expense against damage by fire, water and theft. If maintenance and inspection work is required for proper maintenance of the products, then the customer shall perform such work as the customer's own expense.

6.5 If the law of the country in which the products are located does not permit retention of title, but allows us to reserve other rights to the products, then we shall be entitled to exercise all rights of this kind. The customer shall cooperate in the measures which we shall take to protect our right of ownership – or any other right to the products that replaces the right of ownership.

6.6 If (i) we cancel or withdraw from any agreement in accordance with statutory provisions, (ii) if the customer fails in the performance of any obligation towards us, or (iii) we have good reason to fear that the customer will fail in the performance of any obligation towards us, then the customer's right to possession of the conditional commodities shall expire and we may demand their return. In this case we shall be entitled, following consultation with the customer, to enter the customer's business premises and to take possession of the conditional commodities at the customer's expense and, without prejudice to the customer's payment and other obligations, to exploit them in the best possible manner by way of private sale or by auction; the proceeds of such exploitation shall be set off against the customer's liabilities following deduction of the costs incurred; we shall disburse any remaining surplus to the customer.

7. Complaints and Defects

7.1 We undertake to deliver the products in conformance with the material specifications for a period of 12 months from delivery. Those material specifications are included in our catalogue, available on our website or we will make those otherwise available.

7.2 The customer must check the products delivered upon delivery with respect to numbers and visible defects and any shortages or visible defects must be reported to us immediately after delivery in text form (e.g. email) or in writing and in any event within 10 working days from delivery. The customer must report defects not visible upon delivery within 30 days of their discovery in text form (e.g. email) or in writing. This is without prejudice to clause 8.7.

7.3 In the event of a complaint on good grounds and notified in due time, the customer shall be entitled, at our discretion, to rectification of the defect or delivery of an item free of defects ("subsequent performance"). This subsequent performance is the sole obligation of us and the sole right and remedy of the customer in relation to any defective or non-conforming products or breach of warranty and is without prejudice to clause 7.2 and 8.1. The customer shall grant us the time required in order to carry out such subsequent performance. In the event of a replacement delivery, the customer shall return the defective product to us. Replaced parts shall become our property.

7.4 In case of a complaint on good grounds, then we shall bear the costs of inspection and subsequent performance, in particular transport, travel, labor and material costs (however, not the costs of removal and installation). In case of a complaint not on good grounds, we may demand compensation from the customer for the costs incurred as a result of the unjustified request for rectification of the defect or delivery of any product free of defects.

7.5 Any rights of the customer with respect to the products shall lapse if (i) the customer fails to handle the products in a proper manner and in accordance with the respective technical requirements (including but not limited to transport and storage), and/or (ii) if the products have been processed in or with respect to other products or items (such as incorporation in or attachment to another good). This shall apply in particular if the product is exposed to the influence of moisture although this has a negative effect on the product's properties, or any product which has been finished under clean room conditions is not processed or handled under adequate conditions.

7.6 We shall not assume any warranties unless they have been expressly agreed.

8. Liability, Intended Use

8.1 Our total, aggregate liability, on any basis whatsoever, with respect to any offers, orders and agreements, these GTCSD and any products, services or work, will be restricted to the provisions laid down in clause 7.3.

8.2 The product descriptions published by us are of a general nature and may be subject to change within the scope of technical developments. Therefore, they are not binding and merely serve to provide information with regard to possible uses and applications.

8.3 We undertake to deliver our products in conformance with the material specifications. The quality of the welding of our products is beyond our control. Since this depends on the interaction of alloy components and technical circumstances at the place of use, we exclude any liability for the quality of the welding of the products that we supply. We recommend purchasing trial quantities from the available production batches and welding them under the conditions at the place of use prior to ordering larger quantities. By placing an order for delivery of the products, the customer acknowledges that any complaint with regard to the welding results shall be excluded. Thus the customer is not entitled to demand reduction, subsequent delivery or return or to claim any consequential costs or pecuniary losses due to unsatisfactory welding results.

8.4 Nothing in these GTCSD is intended to limit or exclude any liability that (i) is a result of gross negligence or wilful misconduct of our executive management, or (ii) cannot be excluded or limited under applicable mandatory law.

8.5 Notwithstanding anything to the contrary elsewhere, in no case and regardless of the legal basis (contract, tort [including negligence], statutory liability, misrepresentation, indemnity or any other area of law) shall we be liable for any loss of profits or revenue, loss of use or production, loss of data, cost of capital, cost of substitute goods, damage to property other than the contracted products, and any damage, expenses or losses arising out of such damage, or for incidental or consequential damage, or punitive damages, or any of the aforementioned damage suffered by third parties.

8.6 The customer shall solely be responsible for the final determination of the appropriate products to be used and applied.

8.7 Any claims of the customer with respect to the products (including a claim for (re)payment of money), on any basis whatsoever, including non-conformity or breach of warranty, as well as any right to dissolve any agreement on any basis whatsoever (if any), will lapse at the earliest of the following moments: a) upon late reporting pursuant to clause 7, or b) 12 months after delivery.

9. Force Majeure

9.1 Neither of the contracting parties shall be liable to the respective other party for, or entitled to, damages if the performance of one party's obligations is delayed or prevented by events such as natural disasters, strikes, lockouts, sabotage, export or import restrictions, labor disputes, war, civil war or warlike acts, epidemics or pandemics, terrorist threats or attacks by terrorists, civil disturbances, usurpation of civil or military government, restrictions on the use of energy and delays in deliveries by subcontractors or sub-suppliers caused by such circumstances referred to in this clause or other circumstances beyond the reasonable control of the affected party ("force majeure"), whether the occurrence of such circumstance was foreseeable or not. However, an instance of force majeure shall not excuse non-payment of the remuneration owed by one contracting party to the other.

9.2 The contracting party claiming to be affected by an instance of force majeure shall immediately notify the respective other party in writing with regard to the occurrence and cessation of such circumstance. If we are prevented by force majeure from fulfilling our obligations in a timely manner, then the delivery period shall be extended by the duration of the hindrance and an appropriate period for response.

9.3 If performance of an agreement or any part thereof is prevented, impeded or delayed for a period of more than six months, then the contracting parties shall attempt to find a mutually satisfactory solution.

10. Final Provisions

10.1 Should individual clauses of these General Terms and Conditions of Sale and Delivery or of any agreement be or become invalid, then this shall not affect the validity of the remaining clauses. In place of the invalid clause, a clause shall be deemed agreed that corresponds to its spirit and purpose. The same shall apply to any gaps in any agreement.

10.2 The place of performance shall be Zeewolde.

10.3 These General Terms and Conditions of Sale and Delivery and the contractual relations between us and the customer shall be governed by the laws of the Netherlands.

10.4 The place of jurisdiction shall be our principal place of business. However, we shall also be entitled to assert claims at the customer's principal place of business.

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