

## **GENERAL TERMS AND CONDITIONS**

of Nedal Aluminium B.V., with its registered office in Utrecht, the Netherlands, as filed with the court registry of the Utrecht District Court under number 222/000

### **1. General**

#### 1.1

The present General Terms and Conditions apply to all offers, tenders and agreements under which Nedal Aluminium B.V., hereinafter to be referred to as the “Seller”, provides goods and/or services to the buyer/principal, hereinafter to be referred to as the “Buyer”.

#### 1.2

Supplements to or deviations from these General Terms and Conditions shall only be binding upon the Seller if acknowledged by the Seller in writing.

#### 1.3

Any terms and conditions submitted by the Buyer shall not be applicable, unless the parties expressly agree otherwise in writing.

#### 1.4

If any of the provisions in these General Terms and Conditions is declared null and void or unenforceable, the remaining provisions of these General Terms and Conditions shall remain in full force and effect and the Seller and the Buyer undertake to enter into consultations in order to replace the provision declared null and void or unenforceable with a new provision, whereby the object and purport of the provision declared null and void or unenforceable shall be observed to the extent possible.

#### 1.5

If the Buyer is referred to as more than one (legal) persons or enterprises, these shall be jointly and severally liable.

### **2. Offer and agreement**

#### 2.1

All offers made by the Seller shall be without any obligation whatsoever, unless the contrary is expressly stated in the offer in writing.

#### 2.2

If a tender of the Seller contains an offer free of obligation and this offer is accepted by the Buyer, the Seller shall be entitled to withdraw this offer within two working days after having been informed of the Buyer’s acceptance of the offer.

#### 2.3

If the agreement is concluded in writing, this agreement shall be deemed to take effect on the date the Seller signs the agreement, or on the day the Seller sends the written order confirmation.

2.4

Any verbal promises and agreements made by subordinates of the Seller shall not be binding upon the Seller until these have been confirmed by same in writing.

**3. Prices**

3.1

The prices as submitted by the Seller are exclusive of VAT and any other governmental charges governing sale and delivery and shall be based on delivery ex factory. In this context, factory shall be understood to mean the business premises of the Seller.

3.2

If, following the date of conclusion of the agreement, one or more cost increasing factors arise, the Seller shall be entitled to increase the price agreed on accordingly.

3.3

The packaging shall not be included in the price and shall be charged separately. Packaging cannot be returned to the Seller.

3.4

The costs of loading and unloading and of transportation of raw materials, semi-finished products, models, tools and other matters provided by the Seller shall not be included in the price and shall be charged separately. The costs paid by the Seller in connection herewith shall be considered to be an advance chargeable to the Buyer.

**4. Term of delivery**

4.1

The term of delivery shall commence on the latter of the times referred to below:

- a. The day the agreement is concluded;
- b. The day on which the Seller receives the documents, data, licences, etc. required for performance of the assignment;
- c. The day on which the formalities required in order to commence the activities have been fulfilled;
- d. The day on which the Seller receives the amounts payable as an advance under the agreement prior to commencing the activities.

If a delivery date has been agreed on, the term of delivery shall be the period between the date of conclusion of the agreement and the delivery date.

4.2

The term of delivery has been based on the working conditions applicable upon conclusion of the agreement and on the timely delivery of the materials ordered by the Seller for performance of the work. In case of delays as a result of a change in the aforesaid working conditions or if the materials required for performance of the work, which were ordered by the Seller in a timely fashion, are not delivered on time, the term of delivery shall, to the extent necessary, be extended without written notice being given.

4.3

The term of delivery shall be extended with the period of a delay arising on the part of the Buyer as a result of the Buyer's failure to comply with any of the obligations arising from the agreement or a failure on the part of the Buyer to provide the assistance demanded for performance of the agreement.

4.4

In respect of the term of delivery, the product shall be deemed to have been delivered when it is ready for shipment or, in case inspection at the site of the buyer is agreed on, when it is ready for inspection, all this after informing the Buyer hereof in writing and without prejudice to the Buyer's obligation to comply with any assembly and/or installation requirements.

4.5

Exceeding of the term of delivery shall not entitle the Buyer to fully or partly dissolve the agreement. Exceeding of the term of delivery - regardless of the cause- shall not entitle the Buyer to carry out any activities in performance of the agreement or have these activities carried out without judicial authorisation.

4.6

As soon as the Seller proceeds to delivery, the Buyer shall be held to take possession thereof. Products that have been completed and cannot be sent through no fault of the Seller shall be stored at the Seller's factory or elsewhere at the account and risk of the Buyer.

## **5. Inspection and acceptance test**

5.1

If the Buyer wishes to conduct an inspection, this inspection may take place at the Seller's factory in the way customary for the Seller, and by persons or institutions to be designated by the Buyer and the Seller in joint consultation. The costs of such examination shall be for the account of the Buyer.

5.2

The Buyer shall inspect the product no later than 10 days after the delivery as referred to in Article 5, paragraph 4, or - in case assembly and/or installation has been agreed on - no later than 10 days after assembly/installation. If this terms lapses without any written and specified notice of any valid complaints, the product shall be deemed to have been accepted.

5.3

For the acceptance test and any other tests, the Buyer shall provide the Seller with the required facilities, as well as representative samples of any materials to be treated or processed, such at the designated place, in sufficient amounts, in a timely fashion and free of charge, so that the parties are able to simulate the intended circumstances of use of the product as much as possible. If the Buyer fails to comply with this, paragraph 2, concluding sentence shall apply.

5.4

In case of any minor deficiencies, especially those which do not or hardly affect the intended use of the product, the product shall be deemed to have been accepted regardless of these deficiencies. The Seller undertakes to remedy such deficiencies as soon as possible after delivery.

5.5

Without prejudice to the Seller's obligation to comply with the guarantees made, acceptance pursuant to the foregoing paragraphs shall constitute waiver of claims on the part of the Buyer in respect of a failure to perform by the Seller.

**6. Retention of title**

6.1

The Seller retains the right of ownership in respect of all goods or services delivered to the Buyer, as long as the Buyer has not fully complied with its payment obligation towards the Seller in respect of the product delivered or the activities performed or to be performed pursuant to the agreement, as well as with the payment obligation in respect of the amounts payable pursuant to Article 10.3.

6.2

The Buyer shall only be granted rights, or, as the case may be, rights shall only be transferred to the Buyer, on the condition of full and timely payment by the Buyer of the fees agreed on.

6.3

Any extraordinary way of holding the goods, such as in pledge, as surety, etc., shall only be allowed with the permission of the Seller. The Buyer undertakes to inform the Seller without delay in case third parties seize goods delivered under retention of title.

**7. Guarantee**

7.1

Without prejudice to the restrictions referred to below, the Seller guarantees both the soundness of the delivered product and the quality of the material used and/or delivered, insofar as it pertains to deficiencies in the delivered product which could not be detected at inspection or in the acceptance test, and in regard to which the Buyer is able to prove that these have arisen within six months after delivery according to Article 4, solely or primarily as a direct consequence of a fault in the construction applied by the Seller, or as a result of inadequate finishing or the use of improper material.

7.2

Paragraph 1 shall apply by analogy to deficiencies which could not be detected in tests or in the acceptance test and which are exclusively or primarily caused by the improper assembly and/or installation by the Seller.

7.3

Any of the deficiencies falling under the guarantee referred to in paragraphs 1 and 2 shall be remedied by the Seller by repair or replacement of the deficient part, either at the Seller's factory or by shipment of the replacement part, such at the discretion of the Seller. All costs exceeding the obligation referred to in the preceding sentence, such as, but not restricted to transportation costs, travel and accommodation expenses, as well as the costs of disassembly and assembly shall be for the account of the Buyer.

7.4

The guarantee shall in any event not include deficiencies arising from, or partly caused by:

- a. failure to observe the instructions for use and maintenance, or any use other than the intended, normal use;
- b. normal wear and tear;
- c. assembly or installation by third parties, including the Buyer;
- d. application of any governmental regulation in respect of the nature or quality of the materials used;
- e. materials or matters used in consultation with the Buyer;
- f. materials or matters provided by the Buyer to the Seller for processing;
- g. materials, matters, working methods and constructions, insofar as applied on the explicit instructions of the Buyer, as well as materials and matters provided by or on behalf of the Buyer;
- h. parts purchased by the Buyer from third parties, insofar as these third parties have not given the Seller a guarantee;
- i. non-observance by the Buyer of the instructions and advice given by the Seller to the Buyer.

7.5

If the Buyer fails to comply, or fails to comply in a timely fashion, with any of the obligations arising from the agreement concluded with the Seller or from any ensuing agreement, the Seller shall be excluded from liability for any of the guarantees - regardless of their nomenclature- under any of such agreements. If the Buyer proceeds to

disassembly, repair or other activities in connection with the product or allows third parties to do same without the advance written approval of the Seller, any and all claims under the guarantee shall lapse.

7.6

Any complaints concerning deficiencies must be lodged in writing within fourteen days after detection. If this term is exceeded, any and all claims against the Seller in respect of these deficiencies shall lapse. Any legal action in this respect must be submitted within one year after filing the complaints in a timely fashion, such on penalty of cancellation. If the Seller replaces parts or products in compliance with its obligations under the guarantee, the title of such parts or products shall pass to the Buyer [noot vertaler: de brontekst spreekt van verkoper, maar dit lijkt onjuist].

7.7

Any alleged non-compliance on the part of the Seller with its obligations under the guarantee, shall not release the Buyer from its obligations arising from any agreement concluded with the Seller.

## **8. Liability**

8.1

The Seller's liability is restricted to compliance with the obligations under the guarantee as stipulated in Article 7 of these Terms and Conditions.

8.2

Save gross negligence on the part of the Seller's management and save the provisions of paragraph 1, the Seller's liability for loss of profits, other consequential damage and damage on account of liability towards third parties shall be excluded.

8.3

Hence, the Seller cannot be held liable for:

- infringement on patents, licences or any other third-party rights as a result of use of data provided by or on behalf of the Buyer;
- damage to or loss, regardless of the cause, of raw materials, semi-finished products, models, tools and other matters provided by the Buyer.

8.4

The Buyer indemnifies the Seller against any and all third-party claims on account of product liability resulting from a deficiency in a product or system delivered by the Buyer to a third party and consisting (in part) of raw materials, semi-finished products, models and/or other products delivered by the Seller.

8.5

The Buyer undertakes to indemnify Seller and/or hold same harmless against all third-party claims for compensation of damages, in respect of which the liability of the Seller in its relationship with the Buyer has been excluded under these Terms and Conditions.

## **9. Force majeure**

9.1

The Seller cannot be held to comply with any of its obligations if prevented from compliance as a result of a circumstance that cannot be attributed to it, and for which it cannot be held responsible pursuant to law, a legal act or generally accepted standards.

9.2

In addition, force majeure on the part of the Seller shall include failure to perform of suppliers, lack of raw materials, materials or employees, illness, strike, plant occupation, technical disturbances in the company, traffic obstructions (such as road blocks) or transportation problems, import/export restrictions, and any other events falling outside the Seller's sphere of influence as well as any circumstances dependent on the Seller's will -even if such circumstance could already be anticipated at the time of conclusion of the agreement - constituting permanent or temporary impediments for performance of the agreement.

## **10. Payment**

10.1

Unless otherwise agreed on in writing, payment of the price agreed on must be effected at the office of the Seller or into an account designated by the Seller within 30 days after the invoice date.

10.2

The Buyer shall not be allowed to suspend its payment obligations, set these off, or refuse to fulfil these for whatever reason.

10.3

If the Buyer fails to comply with its (payment) obligations, or fails to comply in a timely fashion, the Buyer shall be automatically in default, without any notice of default being required, and the Buyer shall be liable to pay an interest rate of 1% per month as from the date the invoice is due, with any part of a month being regarded as a full month. The Buyer shall, moreover, be liable towards the Seller for all costs involved in collection,

such including the out-of-court collection costs which are set at a minimum of 15% of the total amount due.

## **11. Suspension and dissolution**

### 11.1

In case of inability to execute the agreement as a result of a case of force majeure, the Seller shall be entitled, without judicial intervention, to suspend performance of the agreement for a maximum of 6 months or to dissolve the agreement in whole or in part, without being held to pay any damages.

### 11.2

Both in case of suspension and dissolution pursuant to paragraph 1, the Seller shall be entitled to demand immediate payment of the raw materials, materials, parts and other matters reserved, processed and manufactured by it, such in the amount to be assigned to these in all reasonableness. In case of dissolution pursuant to paragraph 1, the Buyer shall be held, after payment of the amount payable pursuant to paragraph 1, to take possession of the matters referred to in this paragraph, failing which the Seller shall be entitled to have the matters stored at the expense and risk of the Buyer or to sell these matters for the account of the Buyer.

### 11.3

If the Buyer fails to comply, or fails to comply in a proper or timely fashion, with any of the obligations arising from the agreement concluded with the Seller or any ensuing agreements, or if there is valid reason to fear that the principal is not able or will not be able to comply with its contractual obligations towards the Seller, as well as in case of bankruptcy, suspension of payments, debt rescheduling, strike, lock-out, liquidation or transfer -whether by way of security or not - of part of the Buyer's business, including the transfer of a significant portion of its claims, the Seller shall be entitled, without a notice of default or judicial intervention being required, to suspend performance of this agreement, or to dissolve this agreement in whole or in part, such without being held to pay any damages or bound to any guarantee and without prejudice to any other rights of the Seller.

### 11.4

In case of suspension pursuant to paragraph 3, the price agreed on shall be immediately due and payable, such with deduction of instalments already paid and the costs not made by the Seller on account of the suspension; and the Seller shall be entitled to have any of the raw materials, materials, parts and other matters reserved, processed and manufactured by it in performance of the agreement stored at the expense and risk of the Buyer.

11.5

In case of dissolution pursuant to paragraph 3, the price agreed on - provided suspension has not taken place beforehand - shall be immediately due and payable, such with deduction of instalments already paid and the costs not made by the Seller on account of dissolution; and the Buyer shall be obliged to pay the amount referred to above and to take possession of the matters included in the amount, failing which the Seller shall be entitled to have the matters stored at the expense and risk of the Buyer, or to sell these matters at the Buyer's expense.

11.6

The Buyer shall not be entitled to demand dissolution of the agreement with retroactive force.

**12. Intellectual property**

12.1

Any and all intellectual or industrial property rights to materials provided and/or manufactured by the Seller, such as analyses, designs, illustrations, drawings, diagrams, materials lists, documentation and other materials shall exclusively be vested in the Seller or its supplier. Without the explicit, advance written approval of the Seller, the illustrations, drawings, diagrams, materials lists, documentation and other materials may neither be multiplied, in part or in whole, nor made public, nor handed to third parties by means of a print, photocopy, micro film or any other way whatsoever.

12.2

All designs, illustrations, drawings and photographic reproductions furnished to the Buyer must be returned upon the Seller's first request.

12.3

The Seller shall not be liable for actions and/or claims of third parties on account of infringement of any of their copyrights, patent rights, licence rights, trademark rights, model rights and any other intellectual property rights - regardless of their nomenclature - in connection with the matters delivered or services provided and/or activities performed, in case the Seller should have violated these rights by means of using data, documents or objects provided by or on behalf of the Buyer for performance of the agreement.

12.4

Except specific agreements dies remains property of seller, even in the event that buyer has participated in the costs of these dies.

12.5

Four (4) years after the last production-run on a die, Nedal has the right to destroy these dies without pre-notification.

12.6

In the event that a tool ordered by Nedal for a specific profile becomes unusable by any reason in whole or in part, Nedal is not obliged to replace this die., even taken into account that the involved buyer has made a contribution in development of the concerned die

**13. Disputes**

13.1

Any and all disputes that may arise from an agreement to which the present General Terms and Conditions apply in whole or in part, of from any agreements ensuing from such agreement, shall be exclusively submitted to the competent court in Utrecht, the Netherlands.

**14. Applicable law**

14.1

All agreements to which these General Terms and Conditions apply in whole or in part, shall be governed by Dutch law. The applicability of the Vienna Sales Convention is herewith excluded.