



## General Terms and Conditions of Swiss Steel AG

As at: January 2007

### 01.0 General

- 01.1 The Agreement shall enter into effect upon receipt of the duly signed confirmation from the Supplier Swiss Steel AG that it accepts the order (order confirmation).
- 01.2 Offers not containing a deadline for acceptance shall not be binding.
- 01.3 The legal relationship between the Supplier and the Ordering Party shall be governed exclusively by these Terms and Conditions and any other agreements.
- 01.4 In order to be valid, any agreements and relevant declarations made by the contracting parties shall be in writing.
- 01.5 These General Terms and Conditions shall also automatically govern any future business with the Ordering Party, even if the Supplier does not specifically indicate the binding nature of these Terms and Conditions to the Ordering Party.
- 01.6 Specifications contained in catalogues, prospectuses, circulars, technical documentation, descriptions, diagrams and similar information are only approximate. They shall only be binding if expressly referred to in the Supply Agreement.
- 01.7 In the event that the content of any provision in these General Terms and Conditions is either not possible or is illegal, the contracting parties shall replace such provision with another that comes as close as possible to the intended provision, and is permitted by law.

### 02.0 FCA delivery clause

The INCOTERMS 2000 "free carrier" delivery clause shall apply to this Agreement, provided nothing in the Agreement specifies otherwise.

### 03.0 Prices

All of the Supplier's prices shall be deemed to be in freely disposable Swiss Francs unless otherwise agreed, and shall be discretionary and not binding. Value-added tax is not included in any prices, and will be indicated separately on invoices.

### 04.0 Payment terms

- 04.1 The purchase price shall be due on the date of delivery of the goods at the place of performance, and is to be paid within 30 days, calculated as of the date of the invoice, with no deduction for any discounts, expenses, taxes and fees of any kind. In the case of partial deliveries, payment of the cost of the part delivered shall be due and payable. The Supplier shall have the right to determine to which of its claims incoming payments shall be applied.
- 04.2 If payment is not made within the time allowed for payment the Ordering Party shall be in default, without a special reminder needing to be sent. Default interest shall be based on the standard rate of interest for short-term loans at the place of registered office of the Supplier. The rate shall be a minimum of 5%.
- 04.3 The purchase price may not be offset against any statute-barred or disputed counter-claims. The Ordering Party may not hold back any payments based on any claims by it that are disputed by the Supplier. The Ordering Party shall only have a right of set-off if its counter-claim is undisputed or has been conclusively established by law.
- 04.4 In the event that the Ordering Party is in arrears with a payment for any reason, or if the Supplier has good reason to fear, based on an event that occurred following conclusion of the Agreement, that it will not receive payment from the Ordering Party in full or when due, the Supplier shall be entitled, without limiting its right to legal recourse, to suspend any further fulfilment of the order, and to hold back any deliveries ready to be sent until new payment deadlines and new terms and conditions for payment and delivery

have been agreed, and the Supplier has received sufficient security. If the parties are unable to come to such an agreement within a reasonable period of time, or if the Supplier does not receive sufficient security, the Supplier shall have a right to withdraw from the Agreement and claim damages.

- 04.5 In the event that the Ordering Party becomes insolvent, all account balances shall become due, and may be called in immediately, notwithstanding any agreed deadlines. The Supplier shall have the right, in this case, to suspend or rescind all delivery obligations.

### 05.0 Inability to deliver

In the event that circumstances arise that are outside the control of the Supplier, which render it impossible for the Supplier to complete a delivery, the Supplier shall be released from its obligations under this Agreement. This shall not be grounds for any claim by the Ordering Party for damages.

### 06.0 Delivery deadlines and dates

- 06.1 Delivery deadlines and dates shall only be considered approximate unless promised by the Supplier in writing. Compliance with any delivery deadline shall be subject to the Ordering Party meeting its contractual commitments.
- 06.2 The delivery deadlines shall commence on the date of conclusion of this Agreement, but not before clarification of all details with respect to performance, and procurement by the Ordering Party of any required certificates.
- 06.3 The goods shall be deemed delivered within the deadline if they leave the plant on or before the delivery date, as well as upon notice that the goods are ready to be shipped, if they cannot be shipped in time due to no fault on the part of the Supplier.
- 06.4 Delivery deadlines shall be extended, as appropriate, if obstacles to a timely delivery arise that the Supplier, despite having used due diligence, cannot prevent, such as epidemics, mobilisation of troops, war, riots, major breakdowns, accidents, industrial conflicts, delayed or incorrect delivery of raw materials and semi-finished products, measures on the part of authorities, etc.
- 06.5 If timely delivery of the goods is not possible due to reasons for which the Supplier is not responsible, the goods shall be invoiced and stored by the Supplier at the expense and risk of the Ordering Party.
- 06.6 The Ordering Party shall have no rights or claims due to any delays in deliveries or services other than those set out in this clause. This limitation shall not apply to any illegal intent or gross negligence on the part of the Supplier, however it shall apply to any illegal intent or gross negligence on the part of any auxiliary support staff.

### 07.0 Warranty of quality

- 07.1 The Supplier warrants that any goods delivered shall possess the contractually agreed and/or customary characteristics, and that they do not contain any defects which significantly impair their value. This warranty shall remain in effect until expiry of the warranty period at the latest.
- 07.2 The following documents, in the sequence they are listed, shall apply to determine the condition, dimensions and weight of the goods delivered:
- Agreement
  - Factory standards of the Supplier
  - Standards
- 07.3 The Supplier shall be authorised to deliver amounts over or under the specified delivery amount to the extent of 10%.
- 07.4 The date pursuant to clause 06.3 shall apply with respect to the contractually agreed condition of the goods.



07.5 The Supplier gives no warranty in respect of any goods that are sold as degraded.

## 08.0 Inspection and approval of the goods

08.1 The Ordering Party shall inspect the goods at the place of destination immediately upon receipt, and give notice by way of letter, fax or e-mail of any obvious defects noted, within 14 days of delivery of the goods, and shall notify the Supplier of any missing units and any underweight, otherwise the goods shall be deemed approved, subject to clause 09.2.

08.2 The Supplier shall be notified immediately of any hidden defects discovered no later than three (3) months following receipt of the goods at the place of destination, otherwise the goods shall be deemed approved.

## 09.0 Clarification in the event of notice of defects

09.1 In the event that the Supplier receives notice of a defect, the Supplier shall immediately verify its accuracy. For this purpose, the Ordering Party shall provide the Supplier with an opportunity to verify the defective goods first-hand at the location where the goods were delivered. Upon request, the Ordering Party shall make the defective goods, or samples of same, available to the Supplier. Any returns shall require the approval of the Supplier.

09.2 The Ordering Party shall not have any claim for liability if it fails to comply with the obligations in clause 08.1.

09.3 Any defects due to improper handling, storage, working or processing, excessive use of the goods by the Ordering Party, and any other reasons for which the Supplier is not responsible, shall not be grounds for any liability claim against the Supplier.

## 10.0 Liability

10.1 If a notice of defect is justified, and was given in a timely and proper manner, the Supplier shall take back the goods in question and deliver in their place goods that are in good working order. The Supplier may instead refund the loss in value. The Ordering Party shall have no right of conversion.

10.2 The Supplier shall have no further contractual or non-contractual liability for damage including, but not limited to, consequential damage.

10.3 The Ordering Party shall be fully liable in relation to third parties due to any event causing damage or loss in connection with the delivery. In the event that a claim is made against the Supplier due to such an event, the Supplier shall have the right of recourse against the Ordering Party for all expenses. The Ordering Party shall be excluded from having any right of recourse against the Supplier pursuant to Arts. 50 and 51 of the Swiss Code of Obligations.

## 11.0 Title to goods and tools

11.1 Until payment in full of the purchase price and satisfaction of any other claims that the Supplier has against the Ordering Party, the following shall apply:

- The Supplier shall retain title to the goods delivered.
- Once the Agreement has entered into effect, the Ordering Party shall allow the Supplier to have the retention of title registered in a public register or other record in the appropriate form, and in compliance with any relevant national laws, and to fulfil all formalities relating to same at the expense of the Ordering Party.
- As long as title to the goods is retained, the Ordering Party shall be responsible for maintaining the goods and for insuring them in favour of the Supplier against theft, damage due to breakage, fire and water, and against other risks. Furthermore, the Ordering Party undertakes to take all measures to safeguard all aspects of the Supplier's retention of title.
- No new object may be created as a result of working on and/or processing the goods delivered except at the behest of the Supplier. Title to any such new objects shall therefore be retained by the Supplier.

- If the goods delivered are mixed with similar goods from the buyer or a third party, the Supplier shall remain the pro rata co-owner of such mixed goods.

- The Ordering Party shall only have the right to sell the goods delivered in the normal course of business at market terms and conditions. It shall not have any right to dispose of them in any other manner (e.g. by pledge or other third-party intervention in the Supplier's right of title). To secure the rights of the Supplier, the Ordering Party herewith assigns any claims arising as a result of any sale of the goods. In the event that the Ordering Party is in arrears with any payments, the Supplier shall have the right, without having an obligation, to give notice of this assignment to third-party purchasers, and to demand that payment be made to it. The Ordering Party shall provide the Supplier on a weekly basis with all information required to enable the Supplier to preserve its rights.

11.2 Any tools required to manufacture the goods shall remain the property of the Supplier, even if the cost of the tools was paid in full or in part by the Ordering Party.

11.3 The retention of title to goods destined for export shall be governed by the laws of the country of destination.

## 12.0 Packaging

Pallets and containers shall be unloaded promptly and returned to the forwarding company or exchanged.

## 13.0 Exclusion of any further liability on the part of the Supplier

13.1 All cases of breach of contract and the legal consequences thereof, as well as all claims to which the Ordering Party may be entitled, irrespective of the legal basis on which they are made, shall be conclusively settled pursuant to these Terms and Conditions. In particular, the Ordering Party shall not make any claim for compensation for damage or loss, reduction in value, rescission of or withdrawal from the Agreement not expressly specified in this Agreement. Under no circumstances shall the Ordering Party be entitled to claim for compensation for damage or loss not caused directly to the goods delivered, i.e. the Ordering Party shall not be entitled to claim for compensation due to any production stoppage, loss of use, loss of orders, lost profits, or any other direct or indirect damage or losses. This limitation of liability shall not apply to any illegal intent or gross negligence on the part of the Supplier, however it shall apply to any illegal intent or gross negligence on the part of any auxiliary support staff.

13.2 In all other respects this limitation of liability shall not apply if it is in contravention of any statutory requirement.

## 14.0 Applicable law

In addition to these General Terms and Conditions, **substantive Swiss law** shall also apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.

## 15.0 Jurisdiction

**The parties agree that the place of jurisdiction for any indirect or direct disputes arising out of or in connection with business between them shall be the registered office of the Supplier. This notwithstanding, the Supplier shall have the right to commence legal action against the Ordering Party at the place of its registered office.**