

## **GENERAL CONDITIONS OF SALE – KIMETAL SRL**

### **General Provisions**

(a) The following terms and conditions (the “General Conditions of Sale”) are an integral part of the contracts entered into by Kimetal Srl the “Seller” and the Buyer for the supply of the Seller’s products and services (“Products”, “Services”).

(b) The General Conditions of Sale apply to all the transactions concluded between the Seller and the Buyer without the need for the same or a specific agreement to be explicitly referred to when concluding each single transaction.

Any other terms or conditions are applicable only if confirmed in writing by the Seller.

(c) The Seller reserves the right to amend, supplement or change the General Conditions of Sale, enclosing the amendment with the offers or with any written correspondence sent to the Buyer.

(d) Any Buyer’s general conditions are not applicable, even partially, unless explicitly accepted in writing by the Seller. The same provision applies to any annexes to these General Conditions or orders sent by the Buyer that contain provisions concerning guarantees, specific performance or use of the Products and/or the Seller’s liability other than that referred to herein and/or that in any case affect the Seller’s rights as defined herein, as far as the scope of said provisions is concerned.

(e) performance of the contract by the Seller, before specific written acceptance of any contractual conditions proposed by the Buyer, different to those in the Seller’s proposal, does not imply acceptance of the same. If the Buyer’s Orders are filled by the Seller before these General Conditions have been signed, the same will apply immediately if published on the Seller’s web site and if in any case the Buyer has been notified of the same in writing without the Buyer challenging the same or sending a request for amendment to be made before the first Order is sent.

### **2. Offers and Orders**

(0) These General Conditions regulate the relations between the Seller and the Buyer each time an Order is sent.

The subject of the order will be the Seller’s products and/or services (“Products”, “Services”), without prejudice to the Seller reserving the right to refuse orders for products/services and quantities different to those in the original Order.

(a) The Seller’s offers are not binding, in particular with reference to quantities, prices and delivery times until formal and complete acceptance within the required times. If acceptance arrives from the Buyer after the deadline for the Seller’s offer to be considered valid, the Seller is free to confirm or refuse the contract.

(b) Orders sent by the Buyer are understood not to be accepted until they are confirmed in writing by the Seller in accordance with the technical procedure for signing and sending the same defined each time in each offer.

(c) Orders and/or changes to orders made verbally or over the phone must be confirmed in writing by the Buyer. If this is not done, the Seller is in no way responsible for any errors or possible misunderstandings.

### **3. Prices and Terms of Payment**

(a) The Prices of the Products are excluding VAT. VAT will be added to the invoice in the cases in which it is due, and must be paid on consignment or in accordance with the specific payment terms in the invoice.

(b) Taxes, duties, shipping, insurance, installation, training of the final user, after-sales service are not included in the prices unless specified or referred to as per incoterms, and will be quoted separately.

(c) In addition to other solutions permitted by the applicable law or these General Conditions of Sale, the Seller reserves the right to apply interest on arrears for late payment starting from the date on which payment was due, calculated at the rate provided for by the applicable law on the basis of the choice of law, procedure and place of jurisdiction. In any case, for customers with a registered office, production unit, commercial unit, agency or branch in Italy, interest on arrears will be applied in accordance with Italian law.

(d) If the Buyer fails to make the payment by the deadline and in the way specified by the Seller or if the Buyer's activities are conducted in a way which fails to comply with ordinary business, this being understood to mean, merely by way of example, if orders for seizure are issued or unpaid bills are protested, or if payments are delayed or bankruptcy proceedings have been filed, the Seller has the right, at the Seller's own discretion, to suspend or cancel further deliveries and to declare any claim or payables deriving from the business relations to be payable on demand. Furthermore, in these cases the Seller may request down payments or a deposit to be held as a guarantee on payment in the form the Seller holds to be most suitable.

(e) The Buyer has no right to any compensation, deduction or reduction except in the case in which the relevant demand has been definitively upheld in court.

(f) Unless otherwise agreed, any bank charges or fees due in relation to the payment will be paid by the Buyer.

#### **4. Terms of Delivery**

(a) Unless otherwise agreed in writing, any specified delivery time is not binding for the Seller. Unless otherwise agreed by the parties, the indicative delivery time is that specified in the order confirmation.

(b) Force majeure

Either party is entitled to suspend performance of their contractual obligations if said performance is made impossible or becomes unreasonably costly due to events beyond their control; for example, in the case of one of the following impediments:

- war (whether declared or not), armed conflict or the serious threat of the same (including a hostile attack, blockade, military embargo), hostilities, invasion, an act of a foreign enemy state, major military mobilisation
- civil war, revolt, rebellion and revolution, military coup or seizure of power, insurrection, civil unrest or disorder, riot, civil disobedience
- acts of terrorism, sabotage or piracy
- acts issued by an authority whether legally recognised or not in relation to any law or government order, rule, regulation or provision, legal restriction, expropriation, compulsory take-over, seizure of works, requisitioning, nationalization, price controls or restrictions of the relevant duties
- acts of God, plague, epidemics, natural disaster, including violent storms, cyclones, typhoons, hurricanes, tornados, snowstorms, earthquakes, volcanic activity, landslides, tidal waves, tsunamis, floods, lightning strikes, drought
- explosion, fire, destruction of machinery, equipment, works and any type of installation, extended failure of transportation, telecommunications or electricity supply,
- labour disputes in general including boycotting, strikes, lockdowns, protests, sit-ins in works, factories and facilities,

The party that legitimately had recourse to this clause is released from any responsibility for damages or any other contractual claim for breach of contract.

(d) If delivery is delayed due to any of the circumstances mentioned in point 4(c) or due to the actions or non-fulfilment of the Buyer, an extension will be granted on the delivery times to reasonably allow for said circumstances.

## **5. Inspection and Acceptance of the Products**

(a) Unless there are other agreements between the parties, when taking delivery of the Products the Buyer must immediately:

(i) check the quantities of the Products and the packaging and note any objections on the delivery note;

(ii) check the Products comply with the order confirmation and note any discrepancies on the delivery note.

(b) If the Buyer wishes to report flaws, the following procedures and times must be observed:

(i) notification must be sent within and no later than [3 (three) working days] from when the Buyer took delivery of the Products. If the complaint concerns a flaw which was not noticed during the initial inspection, the complaint must be sent as soon as possible before the end of the working day on which the flaw was noticed and, in any case, no later than 2 (two) weeks after taking delivery of the Products;

(ii) the detailed notification must be sent in writing to the Seller within the above times. Phone calls cannot be accepted;

(iii) the notification must clearly specify the type and number of flaws found;

(iv) the Buyer agrees to make the disputed Products available so that they can be inspected; said inspection will be carried out by the Seller or an expert appointed by the Seller.

(c) No complaints referring to the quantity, quality, type and packaging of the Products can be accepted unless noted on the delivery note in accordance with the above procedure.

(d) Any Product for which no complaint was made in accordance with the above procedure and times will be considered approved and accepted by the Buyer.

## **6. Buyer's Responsibility – Traceability**

(a) The Buyer must ascertain that the Products comply with the laws in force in the country they will be marketed in and will inform the Seller of any changes to be made as soon as possible and in any case before the Products are shipped.

(b) The Buyer must provide the Seller with all the relevant documents and data for the purpose of the traceability of the Buyer's final customers the Products will be sold to or the final use of the same. Any events related to the Products that occur after the Buyer has assumed the risks, including any physical injury or material damage, are the sole responsibility of the Buyer, who will hold the Seller harmless and likewise agrees to take out a suitable insurance policy to cover every relevant risk, without the right to seek recourse from the Seller. The Buyer hereby agrees to stand as defendant in the case of proceedings brought against the Seller by third parties, including the Buyer's final customers.

## **7. Right to withdrawal**

(a) In the case of rescission of the contractual relations deriving from these General Conditions, without prejudice to the right to claim compensation for damages, the Seller may demand immediate payment of all sums due from the Buyer, which therefore become payable on demand; the Seller may dispose of all the product at his/her discretion, and is released of any further obligation to supply Products to the Buyer, who will reimburse all disputed damages or costs.

(b) The Seller can withdraw from the contractual relations deriving from these General Conditions and each single Order, by sending simple written notification to said effect to the Buyer, in the following cases:

- The Buyer has been declared bankrupt or becomes insolvent or is subject to any form of bankruptcy proceedings
- The Buyer goes into liquidation, whether voluntary or not
- The Buyer is taken over by or incorporated into or transfers its assets to a Seller's competitor
- Cancellation of the loans by the credit default insurance companies with (...) days prior warning

(c) In the case of withdrawal by the Seller, the Seller is not held to pay the Buyer any penalty, indemnity or compensation, notwithstanding the Seller must in any case fill any outstanding Orders.

## **8. Retention of Title**

(a) The Products supplied remain the full property of the Seller until the date on which the Buyer has paid the full price of the same and all sums payable to the Seller. Until the above date, the Purchaser holds the Products in the capacity of the Seller's trusted custodian and must keep the Products suitably stored, protected and insured.

(b) In the case of extended payments, the Products remains the Seller's property until the price has been paid in full, in accordance with the law in the country in which the Products are located.

(c) If administrative or legal formalities must be fulfilled such as, merely by way of example, the registration of the Products in public registers, or the specific marking of the same, in the country in which the Buyer elects domicile for the purpose of the validity of the retention of title in the Seller's name, the Buyer hereby agrees to collaborate with the Seller and to perform all the acts necessary for the Seller to obtain valid rights for the retention of title.

## **9. Processing Personal Data**

(a) The Buyer's personal data will be processed in accordance with the provisions of the Italian Privacy law (Italian Legislative Decree 196/2003). The Seller informs the Buyer that the Seller is the data controller and the Buyer's personal data will be collected and processed exclusively for the performance of this agreement. In accordance with Article 7 of Italian Legislative Decree 196/2003, the Buyer has the right to request the Seller update, correct, amend, cancel and anonymise the Buyer's personal data.

## **10. Applicable Law**

(a) If the Buyer is an Italian company or subject, these General Conditions of Sale and all the contracts entered into by the same with the Seller are regulated by Italian law.

(b) If on the other hand the Buyer is the subject of another state, these General Conditions of Sale and all the contracts entered into by the same with the Seller will be regulated by the 1980 United Nations Convention on Contracts for the International Sale of Goods. Or by way of departure by the various procedures specified by agreement between the parties.

## **11. Place of Jurisdiction**

(a) Any disputes that may arise between the parties concerning the interpretation, validity or performance of these General Conditions of Sale and the relevant contracts entered into come under the sole jurisdiction of the Law Courts of Turin.

**12. Final Provisions**

(a) The invalidity of all or part of the single provisions of these General Conditions of Sale does not make the remaining provisions invalid.

(b) These General Conditions of Sale are drawn up in triplicate in Italian, French and English. In the case of doubts concerning the interpretation, the Italian version shall prevail.