

# **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**



**BULMETAL BVBA,  
VAN PRAETSTRAAT 90, 2660 HOBOKEN**

## **1. SCOPE OF APPLICATION**

**1.1** Notwithstanding any communications to the contrary in the past or future, the Buyer accepts by requesting a quotation from BVBA BULMETAL ('BULMETAL') that only the following provisions apply to all contractual, pre-contractual and non-contractual legal relationships between BULMETAL and the Buyer, both current and future: (in descending ranking order, the next in the absence or by implication of the previous one) (1) the written and signed special agreement; (2) the written order confirmation; (3) these Terms and Conditions of Sale and Delivery; (4) Articles 4-39 and 41-88 of the Vienna Convention on International Sale of Goods; (5) the Unidroit Principles; (6) Belgian law.

BULMETAL rejects all other provisions and conditions, only with the exception of terms and conditions that BULMETAL expressly signs as agreed. Exceptions expressly signed as agreed only apply to the project to which they relate and cannot be invoked for other, even similar projects.

**1.2** If one or part of a provision of these General Terms and Conditions of Sale and Delivery should be rendered null and void, the rest of the provisions and/or the remainder of that provision shall remain valid. If one or part of the provisions is rendered null and void, BULMETAL and the Buyer, as far as is possible and according to their own loyalty and convictions, shall negotiate to replace the invalid provision with an equivalent provision in the general spirit of these General Terms and Conditions of Sale and Delivery.

**1.3** BULMETAL reserves the right to amend and/or adjust its General and/or Special Conditions at any time whatsoever.

**1.4** Buyer is understood to mean anyone who calls on BULMETAL's services in the name and/or for the account of a third party.

## **2. QUOTATION, ORDER AND ORDER CONFIRMATION**

**2.1** BULMETAL can withdraw any quotation at any time whatsoever. All quotations issued by BULMETAL are in any case without obligation and shall be solely deemed an invitation for the Buyer to place an order.

An agreement only comes about when a person who is authorized to bind BULMETAL in law confirms the Buyer's order in writing, or when BULMETAL starts to implement the order.

**2.2** BULMETAL is free to select the parties with which it wishes to enter into an agreement.

## **3. PRICE**

**3.1** All prices exclude VAT and are expressed in Euros and/or US Dollars.

A separate individual price is calculated for every sale. This price is only valid for a specific defined sale and therefore does not apply to other, even similar sales.

**3.2** All deliveries of goods and/or services that are not expressly provided for in the quotation and/or sales agreement, are deemed to be additional work requested by the Buyer and are therefore charged as such to the Buyer.

**3.3** The following costs are not included and are for the Buyer's expense, unless expressly agreed otherwise: prices of packaging, containers, transportation and travel costs, including transport insurance, storage costs, including additional costs linked to any extended storage, costs of carriage, import duties, taxes, levies, etc.

**3.4** Transport and travel costs are calculated from BULMETAL's registered office and are invoiced per movement and on the basis of fixed prices.

**3.5** All prices relating to delivery of services apply to work activities performed on business days between 8.00 a.m. and 4.30 p.m. Higher prices apply on Saturdays, Sundays and public holidays, outside office hours and/or during official construction industry holidays.

**3.6** Currency fluctuations, increases in prices of materials, auxiliary materials and raw materials, wages, salaries, social security charges, costs imposed by the government, levies and taxes, transportation costs, import and export duties, or insurance premiums, arising between the order confirmation and delivery of sold materials entitle BULMETAL to increase the agreed price accordingly.

**3.7** BULMETAL has the right to request a bank guarantee from the Buyer for orders and/or assignments for a value exceeding EUR or USD 50,000, VAT excluded, before implementing the agreement.

## **4. DELIVERY AND COLLECTION**

**4.1** If the Parties agree that BULMETAL is going to deliver materials outside its company, the materials will travel for the Buyer's account and risk.

**4.2** The stated implementation and delivery times are always indicative and are not an essential part of the agreement.

If the stated time limit is exceeded, BULMETAL and the Buyer will agree on a reasonable additional time limit.

Any delay, whether in the original or additional time limit, will not give rise to the cancellation of the order or to any compensation whatsoever.

Changes to an order, quotation and/or sale agreement automatically result in lapse of the proposed expected delivery times.

**4.3** BULMETAL has the right to deliver/transport sold materials in various consignments. Partial implementation or delivery does not result in cancellation of the agreement.

**4.4** BULMETAL is not liable for delays incurred as a result of failures on the part of suppliers to BULMETAL, the Buyer and/or any other third party.

**4.5** If the Parties agree that the Buyer is going to collect the materials, the Buyer will collect the materials himself at his own expense from the place and at the time indicated by BULMETAL.

If the Buyer fails to collect materials within 5 business days, he will be liable for storage expenses of 1% of the entire invoice amount per week. If the scheduled collection date is exceeded by two weeks, BULMETAL has the right to declare the special agreement cancelled from the date when the cancellation notice is sent, without notice of default and without judicial intervention. The Buyer is in that case liable for fixed compensation equal to 35% of the total invoice amount, notwithstanding BULMETAL's right to prove further damages.

## **5. RISK**

Risk to the sold materials transfers to the Buyer at the time that the agreement is concluded.

## **6. GUARANTEE, COMPLAINTS AND LIABILITY**

**6.1** The Buyer shall carry out an initial check immediately on collection and/ or delivery of materials. This immediate compulsory check concerns among other things (this list is purely an example) the quantity and weight, compliance of the delivery, visible defects, correct location(s), etc.

The Buyer will note immediately apparent deviations on the delivery note, failing which he will be deemed to have accepted the materials as agreed.

**6.2** The Buyer shall carry out a thorough inspection of the materials within 24 hours of delivery and/or collection.

Making use of, processing and/or selling on the materials is deemed to constitute approval and acceptance and final handover of materials as delivered and/or collected.

**6.3** The Buyer forfeits the right to rely on non-compliance or defects in materials, unless he notifies BULMETAL by registered letter thereof within 24 hours of discovering or after he should have discovered the non-compliance or defect, stating the invoice number and/or the number on the delivery note, with precise identification of the materials and a detailed statement of the non-compliance or the defect.

**6.4** The Buyer will in any case forfeit the right to invoke non-compliance or defects in materials, unless he notifies BULMETAL thereof at the latest within a time limit of 3 months starting from the date of the final invoice in the manner set out above.

**6.5** BULMETAL will under no circumstances be held liable for any damage incurred during transport, incorrect use of sold materials, damage caused by the Buyer and/or third parties, and/or failure of the Buyer to comply with statutory and/or other obligations.

BULMETAL will under no circumstances be obliged to compensate indirect damage, or damage that exceeds the invoice amount and/or the Commercial Liability insurance policy taken out by BULMETAL.

BULMETAL will under no circumstances be held liable for mistakes attributable to incorrect or incomplete information or data notified by the Buyer.

**6.6** In case non-compliance or defects are notified on time and correctly, BULMETAL will at its own discretion: (1) replace the non-compliant or faulty materials or parts of materials; or (2) compensate for the non-compliance or fault.

In the event of (partial) replacement of materials in connection with non-compliance or fault that is covered by a guarantee set out in the sale agreement or these General Terms and Conditions of Sale and Delivery, the work hours and travel costs, etc. (this list is merely given as an example) are for the Buyer's expense.

**6.7** BULMETAL will under no circumstances be held liable for any damages and/or additional costs because materials contain hazardous goods and/or harmful substances. If materials contain hazardous goods and/or harmful substances, the Buyer shall notify BULMETAL immediately and at the latest within 24 hours after he discovered or should have discovered the hazardous goods and/or harmful substances, by registered letter and stating the invoice number and/or the number on the delivery note, with precise identification of the materials and a detailed description of the hazardous goods and/or harmful substances.

If the Buyer notifies BULMETAL on time and correctly that the materials contain hazardous goods and/or harmful substances, BULMETAL will at its own discretion: (1) inform the Buyer of the legal entity or natural person from whom BULMETAL bought the materials, so the Buyer can claim compensation from that legal entity or natural person for the damage and/or additional costs; (2) collect the hazardous goods and/or harmful substances from the Buyer, without BULMETAL thereby in any way accepting responsibility/liability; (3) (partially) compensate the damage and/or additional costs, without BULMETAL thereby in any way accepting responsibility/liability.

BULMETAL's ultimate decision to collect the hazardous goods and/or harmful substances from the Buyer, or the decision to (partially) compensate the damage and/or additional costs will be solely based on commercial considerations and under no circumstances implies acceptance of responsibility/liability.

**6.8** The Buyer shall under no circumstances return materials or buy goods to replace those to which the contract relates.

**6.9** BULMETAL reserves the right to examine the defects and investigate the causes on site with the Buyer, either itself or through a representative.

**6.10** Complaints do not in any case release the Buyer from his payment obligations within the stated time limit under these General Terms and Conditions of Sale and Delivery, the quotation, the sale agreement and/or the invoice. The Buyer is required to compensate costs incurred in connection with unjustified complaints.

## **7. BUYER'S OBLIGATIONS**

**7.1** The Buyer is responsible for:

- notifying BULMETAL prior to delivery of materials of possible standards and statutory regulations which the materials need to fulfill;
- taking out the necessary insurance policies, including in relation to (this list is merely given as an example): transportation, retention of title as set out in Article 11.3 of these General Terms and Conditions of Sale and Delivery, etc.

The Buyer grants BULMETAL consent to examine on first request the policies and proofs of payment for the above-mentioned insurance policies.

**7.2** If the Buyer does not comply with these obligations, BULMETAL reserves the right to suspend the sale agreement. Costs associated with this interruption will be invoiced to the Buyer. These costs concern, among other things (this list is given purely as an example): additional hours worked, additional transportation and travel costs, etc.

## **8. FORCE MAJEURE AND HARDSHIP/IMPREVISIE**

**8.1** BULMETAL is not liable for any shortcoming in the performance of any obligation caused by force majeure or hardship/imprevisie.

**8.2** In case of force majeure or hardship/imprevisie BULMETAL may at its discretion (1) temporarily suspend performance of its obligations; (2) cancel the agreement by registered letter; and/or (3) invite the Buyer to renegotiate the agreement. If the Buyer does not participate in good faith in the renegotiation, BULMETAL may, in accordance with Article 16 of these General Terms and Conditions of Sale and Delivery, request one or more arbitrators to decide new contractual conditions and/or order the Buyer to pay compensation.

**8.3** By force majeure and hardship/imprevisie are understood, among other things (this list is purely given as an example): unavailability/scarcity of sold materials, scarcity of raw materials, ice formation, exceptional weather conditions, strikes, mobilization, wars, disease or accidents, communication and information technology breakdowns, government measures, export bans, delays in deliveries, transport and/or travel obstacles, including lack or withdrawal of transport facilities, export obstacles, import obstacles, breakdowns, traffic jams, etc.

## **9. BILLING AND PAYMENT**

**9.1** The Buyer shall notify any complaints concerning invoices in writing within three business days after receipt of the invoice.

**9.2** All invoices are payable in cash by transfer to the bank account number stated on the invoice.

No discount will be granted for cash payments.

The Buyer is not allowed to make payments to intermediaries. Only receipts signed by persons authorized to bind BULMETAL in law are valid.

**9.3** BULMETAL reserves the right to request an advance payment of at least 50% of the total invoice amount.

**9.4** In case of non-payment or incomplete payment on the due date of *one* invoice:

- interest at 10%, capitalized annually, will become payable, by force of law and without notice of default;
- the Buyer will be liable for fixed compensation equal to 10% of the invoice amount, with a minimum of two thousand five hundred euros (€ 2,500), notwithstanding BULMETAL's right to prove further damages.
- the Buyer is liable for all collection costs in court and otherwise;
- all other invoices, even those that have not fallen due, issued by BULMETAL to the Buyer will immediately become due and payable;
- BULMETAL will have the right to take back all materials already delivered and/or collected, to suspend further implementation of the relevant and/or one or more other agreements with the Buyer, and/or cancel these by registered letter, without requiring notice of default or judicial intervention.

**9.5** Acceptance of partial payment is subject to reservation of all rights and will be charged in the following order: (1) collection costs, (2) compensation for damages, (3) interest, (4) principal amounts.

## **10. CANCELLATION**

Subject to the express written agreement of BULMETAL, the Buyer is not allowed to cancel the agreement.

In the event that an order is cancelled by or on behalf of the Buyer, even with the express written agreement of BULMETAL, the Seller will be obliged to pay fixed compensation in the amount of 35% of the total purchase price, without prejudice to BULMETAL's express right to claim higher compensation on submission of proof.

## **11. RETENTION OF TITLE**

**11.1** Rights of ownership to sold materials only transfer to the Buyer at the time of full payment of the price, costs, interest and all other related amounts.

**11.2** The Buyer needs always to do what can be reasonably expected of him to secure ownership rights to unpaid materials. If third parties seize materials or wish to establish or enforce rights to materials, the Buyer is obliged to notify BULMETAL immediately.

**11.3** The Buyer also undertakes to insure unpaid materials against fire, explosion, water damage and theft. The Buyer grants BULMETAL consent to examine on first request the policies and proofs of payment for the above-mentioned insurance policies. Any pay-out from such insurance policies is for the benefit of BULMETAL

**11.4** If the Buyer does not comply with his obligations, or if BULMETAL suspects that the Buyer will not comply with his obligations, the Buyer shall return the materials within 24 hours on demand to BULMETAL for his own account and risk. The exercise of this right will result in immediate and automatic cancellation of the agreement.

**11.5** In case of a breach of the retention of title clause, BULMETAL will automatically acquire a right of pledge to the sale price that is realized for the materials, and the Buyer will be liable for fixed compensation equal to 35% of the total invoice amount.

## **12. FORFEITURE OF RIGHTS**

**12.1** If BULMETAL fails, even repeatedly, to enforce any right, this can only be deemed toleration of a certain situation and will not result in forfeiture of rights.

**12.2** Any, even temporary, failure by the Buyer to enforce any right, will result in forfeiture of rights.

## **13. NETTING**

**13.1** In accordance with the Belgian Act on Financial Guarantees of 15 December 2004, BULMETAL and the Buyer will automatically set off all currently existing and future debts towards each other by operation of law. This means that in the long-term relationship between BULMETAL and the Buyer the largest amount receivable will always remain on balance after the above-mentioned automatic set-off.

**13.2** This set-off will in all events be enforceable against any trustee in bankruptcy and other joint creditors, who will therefore not be able to object to the set-off performed by the Buyer and BULMETAL.

## **14. SUSPENSION AND CANCELLATION**

In case of any change to the situation of the Buyer, such as decease, conversion, merger, takeover, transfer, liquidation, suspension of payments, collective composition or out of court settlement, application for postponement of payment, closing down activities, seizure or any other circumstance that could harm confidence in the Buyer's creditworthiness, BULMETAL reserves the right simply for that reason: either to suspend execution of one or more agreements with the Buyer until the Buyer has offered sufficient payment guarantees; or to declare one or more agreements with the Buyer cancelled from the date of sending the cancellation, without prior notice of default and without recourse to a court of law, without prejudice to the right of BULMETAL to claim additional compensation.

## **15. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

**15.1** Any documents and information of any nature provided to the Buyer during the negotiations, execution or delivery of goods and services, must be treated as confidential.

The above-mentioned documents must be returned at BULMETAL's first request.

**15.2** Such documents and information remain the property of BULMETAL and shall not be disclosed to third parties, or used directly or indirectly, wholly or partially for purposes other than those for which they are intended, except with the express written consent of BULMETAL.

**15.3** The obligation to observe confidentiality also continues after the end of the agreement, at least until the information in question has entered the public domain without the fault of the Buyer.

## **16. DISPUTES**

Any disputes between BULMETAL and the Buyer shall be definitively settled according to the Arbitration Rules of CEPINA, by one or more arbitrators appointed in accordance with those rules. Proceedings shall be heard in Antwerp. The arbitration will be conducted in the Dutch language.

## **17. LANGUAGE**

These General Terms and Conditions of Sale and Delivery are available on request and can also be consulted on [www.bulmetal.be](http://www.bulmetal.be) in Dutch, English, French and German.

Only the Dutch version of these General Terms and Conditions of Sale and Delivery is legal valid.