

PNJ Engineering LTD  
having its registered seat and headquarters in Unit 30, Kinwarton Farm Road,  
Arden Forest Industrial Estate, Alcester, Warwickshire, England, B496EH

**1. Definitions**

1.1 The following definitions apply to these general terms and conditions of sale:

**The Client**

Any natural legal person or legal entity that purchases Products from the Supplier or negotiates with the Supplier to this end.

**Confirmation**

A statement in which the Supplier confirms the execution of the Order placed by the Client.

**The Supplier**

PNJ Engineering LTD, a private company with limited liability having its registered office and principal place of business at Unit 30, Kinwarton Farm Road, Arden Forest Industrial Estate, Alcester, Warwickshire, England, B496EH, and its legal successors by universal or particular title.

**Order**

Any instructions from the Client to the Supplier in any form.

**Agreement**

The Agreement concluded by the Parties in accordance with Article 3 in relation to the sale of Products, including any relevant documents and customs that form an integral part of this Agreement.

**The Parties**

The Supplier and the Client.

**Products**

All goods and services that may be the subject of an Agreement.

**Business day**

All days, other than Saturdays, Sundays and public holidays in the United Kingdom.

**In writing**

By registered or regular post, by facsimile or by e-mail.

**2. Scope**

- 2.1 These general terms and conditions are part of all Agreements and apply to all acts and juridical acts performed by the Supplier and the Client. The Client agrees to these general terms and conditions upon purchase or Confirmation of the Order.
- 2.2 The Parties are free to depart from all or part of these terms and conditions provided that the different terms and conditions have been confirmed In Writing by the Supplier. In the event of a conflict between a provision in the general terms and conditions and the Agreement, the provision of the Agreement shall take precedence.
- 2.3 Insofar as the Parties have concluded a previous Agreement under these general terms and conditions, they hereby agree that these general terms and conditions shall also apply to any subsequent Agreements between them. This provision shall not apply to any agreed departures concerning the terms and conditions that are only deemed to apply to a single Agreement.
- 2.4 The Client's general terms and conditions shall specifically not apply.

**3 Conclusion of agreement**

- 3.1 All of the Supplier's offers are entirely free of obligation and shall not be binding on the Supplier. An Agreement is concluded when the Client has placed an Order with the Supplier and the Supplier has Confirmed the Order In Writing to the Client.
- 3.2 Except when the Client has given written objection, an Agreement between the Parties is deemed to have been indicated properly in the Supplier's Confirmation.
- 3.3 Except as otherwise provided in Article 17.3, such amendments and additions to any provision in any Agreement shall only be in force when these have been agreed between the Supplier and the Client In Writing. Verbal Agreements shall only be binding on the Parties once these have been Confirmed by the Supplier In Writing within 3 Business days following the Day the verbal Agreements were made and have not been contradicted by the Client within 3 Business days after receipt of the Supplier's written Confirmation.
- 3.4 All technical advice, figures, numbers etc. supplied by the Supplier shall only be binding insofar as these have been explicitly Confirmed In Writing by the Supplier. Without the written Confirmation as referred to above in the previous sentence, the Supplier cannot be held liable for damage arising from deviations of the information provided by it.
- 3.5 The Supplier shall be entitled to dissolve an Agreement, without judicial intervention, if the credit insurance company does not supply the Client with a credit limit or if a credit limit issued by a credit insurance company is withdrawn or if the Client's account is overdrawn beyond the credit limit for any reason whatsoever. In the event that an Agreement is dissolved as referred to in the preceding sentence, the Client shall in no way be entitled to payment or compensation.

**4 Supply**

- 4.1 The Supplier shall honour its delivery terms as far as possible. The delivery terms specified by the Supplier only provide an indication as they are based on circumstances applicable at the time of the conclusion of the Agreement and are therefore entirely free of obligation. All deliveries will be carried out according to Incoterms® 2010 (Ex Works), unless otherwise agreed In Writing.
- 4.2 The delivery term starts on the date the Agreement was signed in accordance with Article 3. If and insofar as the Supplier concerning compliance of the Agreement depends on information to be supplied by the Client, the delivery term shall only start from the moment the Client has supplied all the relevant information, to be assessed at the Supplier's discretion.
- 4.3 In the event the delivery term has been exceeded, the Client is not entitled to compensation or dissolution of the Agreement.
- 4.4 The Parties may agree that the Products purchased by the Client shall be specified and/or classified further. If this is agreed, the Client shall do this, unless agreed explicitly otherwise, within 2 months following the date the Agreement has been confirmed but in any event within 1 month before the agreed term of delivery. The delivery term will then only start after the purchased Products have been specified further.
- 4.5 In the event that the Client, within 5 Business days after he was summoned to do so by the Supplier, has not met its obligations arising from Article 4.6, the Client shall forfeit to the Supplier, without prejudice to the Supplier's right to compensation, an immediately due and payable penalty of 25% of the sales price of the Products – calculated on the basis of the rate prevailing on the day of the Client's demand – which the Client failed to specify or categorise.
- 4.6 Where the Parties agree that the Products will be delivered in parts, each partial delivery is considered a separate Agreement to which these general conditions apply.

**5 Transport**

- 5.1 In the event that the Supplier arranges the transport, the Client must have informed the Supplier of the forwarding instructions at least 5 Business days before the intended date of delivery.
- 5.2 In the event that the Client arranges the transport, the Client shall collect the Products or have the Products collected within 5 Business days after the Supplier has informed the Client that the Products are ready for collection.
- 5.3 Insofar as the Client does not collect the Products in time or does not submit the forwarding instructions as referred to in Article 5.1 and 5.2 in time or when delivery on demand has been agreed and has not been called in time, the Supplier shall be entitled to store the products at the Client's expense and risk or sell the said Products to third parties, without prejudice to the Supplier's right to dissolution under Article 12.1(a) and the Supplier's right for recovery of any damage incurred by it against the Client.
- 5.4 The Supplier shall be entitled to forward the Products intended for the Client from another place than its own warehouse. The warehouse from which the Supply shall be forwarded is then deemed to be the Supplier's warehouse and the provisions of these general terms and conditions shall remain in full force and effect.

**6 Inspections and complaints**

- 6.1 In the event that it has been agreed that the goods shall be inspected upon or after delivery, this inspection shall take place at the place of delivery, in the manner customary in the sector, by one or more persons appointed by the Parties. Unless agreed otherwise, the costs for the inspection shall be borne by the Client. In the event that the Client fails to appoint an inspector or fails to cooperate in the inspection, the Client shall be deemed to have accepted the Products.
- 6.2 Any complaints of the Client concerning visible quality defects and/or defects arising from the supply or otherwise, must be reported properly by the Client In Writing at the Supplier's office in Warwickshire within 48 hours following reception of the Products supplied. Failure to do so will result in the loss of the Client's rights.
- 6.3 Other defects must also be reported properly by the Client In Writing at the Supplier's office in Warwickshire immediately following discovery but no later than 10 Business days after receipt of the Products supplied. Failure to do so will result in the loss of the Client's rights.
- 6.4 Notwithstanding the provisions in Article 6.2 and 6.3, complaints concerning the absence and/or damage of Products supplied of which the cause apparently lies in one or more events related to the transport of the Products, must be reported by the Client through a reservation on the consignment. Failure to do so will result in the loss of the Client's rights. The complaints must also always be directed directly to the transport agent. Failure to do so will also result in the loss of the Client's rights.
- 6.5 Complaints regarding the quality of the Products supplied by the Supplier shall only be accepted by the Supplier if and insofar as the Supplier can invoke this complaint against the Supplier's supplier and the latter compensates the damage on the basis of this complaint.
- 6.6 Complaints can be rejected by the Supplier if the Client fails to cooperate in full with the Supplier in inspecting the substance of the complaint.
- 6.7 In the event of a well-founded complaint, the Supplier can either replace the Products supplied or provide a discount on the invoice amount that is reasonable in view of the complaint and in the opinion of the Supplier.
- 6.8 The Supplier need not accept any returned goods without its prior written consent. The costs for returning the goods are for the account of the Client whereas the Products supplied remain for the Client's risk.
- 6.9 Claims shall not entitle the Client to suspend all or part of the payment. Set-off by the Client is specifically excluded.

**7 Retention of title**

- 7.1 All products supplied remain the property of the supplier until the client has met all obligations arising from or connected with agreements in which the supplier has committed itself to supply. Until then, the client must store the products supplied by the supplier separately from any other products and ensure that the products are readily identifiable as the supplier's property.
- 7.2 Prior to the client obtaining title to the products, the client shall not have the right to lease the products to third parties, nor to have third parties use the products, nor to pledge the products, nor to vest any other rights in the products. The client shall only be entitled to sell, supply or process the products insofar as this is required for the client's normal business operations.

**8 Quality and quantity**

- 8.1 Unless explicitly agreed otherwise, the Supplier shall be deemed to have met its obligations when supplying normal commercial quality.
- 8.2 In the event that it is agreed that the supply of semi-finished Products or scrap metal shall take place on the basis of national or international standards, these must be interpreted in accordance with the most recent publication on the day on which the relevant Agreement was conducted, unless explicitly agreed otherwise.
- 8.3 Determination of the weight or the number of the Products supplied as well as, insofar as agreed, the manner of packaging shall be immediately prior to the supply of the Products from the Supplier to the Client or at the Supplier's request by the Supplier's supplier.
- 8.4 The Client shall at its own cost be entitled to be present or to be represented when the determination takes place as referred to in Article 8.3. In the event that the Client wishes to use this right, the Client must report this to the Supplier in time, i.e. at least 5 Business days before the intended date of delivery.
- 8.5 The determination as referred to in Article 8.3 shall be binding on the Parties. This shall also apply in the event that the Client has allowed the term referred to in Article 8.4 to expire or was not present when the determination as referred to in Article 8.3 took place.

## **9 Risk, liability, indemnification and forfeiture**

- 9.1 Unless explicitly agreed otherwise, the Products shall be for the risk of the Client from the moment of delivery.
- 9.2 The Client shall not hold the Supplier liable if the Products supplied correspond to a previously accepted sample or if the Products supplied correspond to information provided on composition and/or characteristics before concluding the Agreement.
- 9.3 The Client shall not hold the Supplier liable if the non-conformity of the Products can be attributed to inadequate or unsuitable raw materials from the Client.
- 9.4 In the event of declassified and second rate Products, other than scrap or non-ferrous waste as well as in the event of delivery 'as is', the Supplier shall not accept any liability regarding quality, including composition, thickness and surface condition.
- 9.5 The Supplier cannot guarantee that the metal wastes supplied are free of materials containing moisture and/or air, 'geschlossene Hohlkörper', etc. and accepts no liability in this respect.
- 9.6 Any liability for defects of Products sold to the Supplier shall lapse if the Client in the opinion of the Supplier has not reasonably taken measures required by the Supplier, including measures to limit damage to the Products or if the Products after the delivery:
- have been transported by the Client;
  - have not been stored in the proper manner;
  - have been mixed with other Products;
  - have been adapted or processed by the Client or third Parties.
- 9.7 The Supplier shall never be liable for any damage suffered by the Client or third Parties, including but not limited to: immaterial damage, environmental damage, damage due to loss of profits - attributable to a Product supplied by it, other than damage to the Product itself that would qualify for compensation under these general terms and conditions.
- 9.8 Supplier's liability shall always be limited to the amount paid out for the relevant case by the Supplier's insurance company. In the event that the insurance company does not pay any compensation for any reason, the Supplier's liability shall be limited to the invoice amount charged by the Supplier in connection to the relevant case and which amount has been paid in time by the Client.
- 9.9 In the event of the Supplier contracting out work to third parties, the Supplier can never - barring shortcomings of the Supplier itself, for which the provision in Article 9.8 apply - be held liable for shortcomings from third parties. In the event the Client claims directly against a third party or third parties, the Client shall indemnify the Supplier against any claim for liability from such third party or third parties and any related costs for the Supplier.
- 9.10 The Client shall indemnify the Supplier against any third-party claims for compensation of damage, costs or interest, in connection with the Products or arising from the use of the Products.
- 9.11 Any claim against the Supplier shall lapse by the simple expiry of one year from the date on which the partial or full delivery was made to which the relevant claim pertains.

## **10 Prices, fixation and payment**

- 10.1 Unless explicitly agreed otherwise, all prices provided by the Supplier are exclusive of VAT and exclusive of any other costs such as - but not limited to - transport costs, packaging costs etc.
- 10.2 Changes in factors that can influence the price, such as - but not limited to - purchase price, price differences, government measures, import and export duties, insurance premiums etc., may be charged on by the Supplier to the Client without the Client having the right to terminate the Agreement.
- 10.3 The Parties may agree that - and also agree conditions pertaining thereto - the Client has the obligation to fix the price of the raw materials included in the purchased Products.
- 10.4 In the event that the Client fails to comply with its obligations referred to in Article 10.3 within 5 Business days, after having been required to do so by the Supplier, the Client shall be deemed to have fixed the entire quantity of Products (which the Client failed to fix), as if the Client had complied with its obligations starting from the eighth day after having been required to do so, or, in case the London Metal Exchange (LME) is not open that day, on the next day that the LME is open.
- 10.5 Payment must be effected within 30 days after the invoice date, unless agreed otherwise In Writing.
- 10.6 The Supplier shall not be obliged to accept cheques or bills as payment. Should the Supplier nevertheless decide to do so, all costs related thereto shall be borne by the Client and payment shall only be deemed to have been paid if and insofar as the Supplier's bank account has been credited unconditionally for the entire amount.
- 10.7 From the moment the Client is in default, the Supplier shall be entitled to immediately demand all its claims against the Client and the Supplier shall be authorised to suspend further supplies under any Agreement until the outstanding invoices, including interest and costs, have been fully paid by the Client.
- 10.8 The Supplier shall be entitled to demand advance payment or security if the Supplier is of the opinion that the Client will not meet its obligations or will not be able meet its obligations in time.
- 10.9 All costs incurred by the Supplier in and out of court to collect payment from the Client shall be borne by the Client.
- 10.10 Any payment made by the Client shall be deemed to be the payment of the last outstanding invoice, plus any interest and costs, regardless of whether the payment explicitly states otherwise.

## **11 Settlement by the Supplier**

- 11.1 The Supplier shall be authorised to settle any payable debt it has against the Client for any reason whatsoever with exigible claims from the Supplier, unless otherwise agreed In Writing.

## **12 Termination without notice of default**

- 12.1 The Supplier shall be entitled to terminate any current Agreement in whole or in part without the need for any court order or notice of default and/or to suspend the Agreement if the Client:
- a. in any way is negligent in the performance of its obligations under the Agreement;
  - b. offers an out-of-court settlement, files for insolvency, is declared insolvent, ceases business operations, applies for or obtains (provisional) suspension of payments, or shows in any other way that it is insolvent, or loses the power to dispose of its property or parts thereof through attachment, placement under receivership or otherwise.
- These remedies are without prejudice to any other rights the Supplier has under any Agreement and without the Supplier being held to any compensation.

- 12.2 In the event a situation arises as referred to in Article 12.1 (a) the Client shall be liable for all damage incurred by the Supplier.
- 12.3 In the event that a situation arises or should arise as referred to in Article 12.1 (b), the Client must inform the Supplier of this as soon as possible.
- 12.4 In the event that a situation arises as referred to in Article 12.1, all claims the Supplier has on the Client shall become immediately payable in full and the Supplier shall be entitled to take back the relevant Products. In that case the Supplier or its authorised representative shall be entitled to enter the Client's premises in order to take possession of the Products. The Client shall be obliged to take the required action to enable the Supplier to effect its rights.

## **13 Obligation to take out insurance**

- 13.1 The Client shall take out sufficient insurance for any consequences arising from the obligations under the Agreement and the general terms and conditions.
- 13.2 On request, the Client shall produce its insurance policy evidencing that it has complied with the provisions in Article 13.1.

## **14 Secrecy**

- 14.1 The Client shall be bound by strict secrecy in relation to all confidential information it has received from the Supplier or third parties in connection with a Confirmation and/or Agreement, including the conversations and negotiations that have led to a Confirmation and/or Agreement, or in any other way.
- 14.2 The Client shall only disclose this confidential information to staff members directly involved in the performance of the Agreement and who need to know the aforementioned information to be able to perform their tasks properly. The Client shall ensure that these staff members are also bound by a pledge of secrecy.
- 14.3 In the event that the Client has to use third parties for the Agreement and the third parties therefore need to receive confidential information from the Client, the Client will require the prior written consent from the Supplier. The Client shall ensure that these third parties are also bound by a pledge of secrecy.

## **15 Force majeure**

- 15.1 In the event that the Supplier due to force majeure is unable to comply with its obligations under the Agreement, these obligations shall be suspended as long as the force majeure continues.
- 15.2 Should the situation of force majeure continue for more than 3 months, the Parties shall then each be entitled to terminate the Agreement by way of a written statement. In the event of force majeure, the Client shall not be entitled to any form of compensation.
- 15.3 Force majeure exists if the performance of part or all of the Agreement, is temporarily or permanently hindered by circumstances beyond the will and/or influence of the Supplier, regardless of whether these circumstances could have been envisaged at the time the Agreement was signed. These circumstances include: strikes and sit-downs at the work place, sickness of personnel, business interruptions, delayed or failed delivery by Suppliers, transport failures, measures imposed by supranational or national governments, etc.

## **16 Annulment / dissolution**

- 16.1 In principle the Client is not entitled to unilaterally revoke/annul/dissolve the Agreement. If the Client in spite of this completely or partially revokes/annuls/dissolves the Agreement he will be obliged to reimburse all costs reasonably incurred by the Supplier in connection with the execution of the Agreement (including but not limited to costs of preparation, storage costs and amounts paid and/or owed to third parties, such as costs of hedging currencies and/or metal prices) notwithstanding the right of the Supplier to claim any other damages.

## **17 Final provisions**

- 17.1 Where the text in these terms and conditions refers to articles or sections, they refer to the articles and sections of these general terms and conditions.
- 17.2 In the event that one or more provisions of the Agreement - including the terms and conditions - between the Supplier and Client should prove invalid, the other provisions of the Agreement shall remain fully in force. In that case the invalid provision must be deemed to have been replaced by a provision that closely resembles the invalid provision.
- 17.3 The Supplier reserves the right to amend these terms and conditions. The Client automatically agrees to any such amendments, unless these are unreasonable.
- 17.4 All existing or future Agreements that are governed by these general terms and conditions shall be construed in accordance with the law of the Netherlands.
- 17.5 Any disputes between the Supplier and the Client shall be brought before the competent court in Great Britain if it proves impossible to solve the matter out of court, or shall be settled by arbitration in accordance with the arbitration rules of Great Britain, as the Supplier deems best.