

## **General Terms and Conditions of Purchase of Purified Metal Company B.V.**

### **version 1.0 dated 31 January 2020**

These General Terms and Conditions of Purchase - version 1.0 January - are used by Purified Metal Company B.V., with registered office in Rotterdam, registered in the Trade Register of the Chamber of Commerce with file number 59672978. These General Terms and Conditions of Purchase are also used by companies affiliated to Purified Metal Company B.V.

#### **1. Applicability**

- 1.1. These General Terms and Conditions of Purchase apply to all agreements to which Purified Metal Company B.V., hereinafter referred to as "PMC" and/or a subsidiary and/or an otherwise affiliated company, is a party in connection with the purchase of goods/services and/or work.
- 1.2. The Terms and Conditions of Purchase mean these General Terms and Conditions of Purchase.
- 1.3. Applicability of general term and conditions of purchase of another party, hereinafter referred to as "Supplier", is expressly rejected, regardless of when the Supplier has referred to those terms and conditions.
- 1.4. "Party" means Purified Metal Company B.V. or the Supplier, depending on the context.
- 1.5. What is specifically stipulated in the Agreement between PMC and the Supplier will always prevail over these General Terms and Conditions of Purchase, but these General Terms and Conditions of Purchase may supplement and clarify what has been agreed.
- 1.6. Modifications or additions to the Agreement between PMC and the Supplier or deviations from (parts of) the General Terms and Conditions of Purchase are only binding in so far as they have been explicitly agreed upon in writing between both Parties.

#### **2. Contact persons**

- 2.1. Both Parties will designate a contact person who will communicate about the implementation of the Agreement. The Parties will inform each other of the person they have designated as contact person.
- 2.2. Contact persons can only represent and bind the Parties as far as the execution of the Agreement is concerned. They are not authorised to amend the Agreement, unless otherwise agreed in writing.

#### **3. Notices**

- 3.1. Notices, including promises or (further) agreements, made by one Party to the other, which relate to the execution of the Agreement, only bind the Parties if they are made or confirmed in writing by a person authorised to do so.
- 3.2. In these General Terms and Conditions of Purchase, "in writing" will also be understood to mean "by electronic means".

#### **4. Offer and acceptance**

- 4.1. Every offer to PMC will be made in writing. PMC cannot be bound by any verbal offer or promise, even if made by a contact person as referred to in Article 2.1 of these General Terms and Conditions of Purchase.
- 4.2. PMC will only be bound towards the Supplier after a written acceptance (order) has been given by an authorised representative of PMC.
- 4.3. All orders and modification orders issued by PMC must be confirmed by the Supplier by means of a confirmation within 7 days unless another term is stated in the order. PMC may revoke an order if the Supplier has not confirmed it in time. Confirmation must be made by an authorised representative of the Supplier.
- 4.4. An offer cannot be revoked after PMC has sent a written acceptance.

#### **5. Prices**

- 5.1. All prices offered to PMC are fixed and in accordance with the market, unless explicitly agreed otherwise.
- 5.2. All prices are, unless expressly agreed otherwise, including but not limited to the costs of labour, transport, storage, delivery, packaging sufficiently adapted to transport, stowage materials, drawings, calculations, licence fees, assembly, installation, instruction and all accompanying documents and instructions in both Dutch and English.
- 5.3. During the term of the Agreement, PMC is entitled to investigate and compare prices and products of the Supplier with other suppliers in order to assess the price and other conditions of the Supplier against the possibly changed market circumstances. If another supplier is willing to deliver under conditions more favourable to PMC, PMC offers the current Supplier the possibility to deliver under those conditions as well. If the Supplier does not make use of this possibility, PMC has the right to dissolve the Agreement with the Supplier with due observance of a notice period of at least 1 month unless agreed upon otherwise in writing.
- 5.4. Prices are exclusive of turnover tax ("VAT").

#### **6. Indicative price and subsequent calculation**

- 6.1. If no price has been agreed, but an indicative price has been issued, this will be converted into the final price on the basis of subsequent calculation.
- 6.2. The final price will never exceed the indicative price unless PMC has been informed and has agreed in writing to the exceeding of the indicative price. The final price also includes that which is included in clause 5.2 of these General Terms and Conditions of Purchase.
- 6.3. Overtime for which the Supplier charges costs will only be permitted with the prior written consent of PMC.

#### **7. Price revision**

- 7.1. Price revision is only possible if the Agreement states which circumstances may give rise to revision, as well as the method of revision. In case of a price increase within three months after the conclusion of the Agreement, PMC is entitled to immediately dissolve the Agreement, without observing the notice period. In that case, the Supplier is not entitled to any compensation.
- 7.2. If the Parties cannot agree on a price revision, PMC has the right to dissolve the Agreement. PMC will observe a notice period of 1 month, unless otherwise agreed upon in the Agreement.

## **8. Delivery**

- 8.1. Unless otherwise agreed in writing, the delivery of goods/services and/or work takes place on the agreed delivery date(s), or within the agreed delivery period(s), to the delivery address and place specified by PMC and the Supplier will bear all costs and risks associated with possible transport on the basis of Delivered Duty Paid/Franco including rights (Incoterms).
- 8.2. The agreed delivery date(s) or period(s) will be deemed to be fixed and final. If the delivery of goods/services and/or work has not been delivered to the agreed place within the agreed period, the Supplier will be in default without notice of default being required.
- 8.3. In case of dissolution of the Agreement, PMC is entitled to return to the Supplier, at the Supplier's expense and risk, the goods that were already delivered on the basis of the same Agreement but that can no longer be used effectively and to claim from the Supplier the payments that they may have made for these goods.
- 8.4. If the Supplier foresees or can foresee that they will not be able to comply on time, they will immediately inform PMC in writing, stating the reason and the expected duration of the delay. This does not affect the rights to which PMC is entitled.
- 8.5. PMC is entitled to postpone the delivery of goods/services and/or work free of charge, unless this entails a disproportionate burden for the Supplier, in which case the Parties will consult with each other in order to reach a reasonable and acceptable arrangement for both Parties.
- 8.6. Each shipment must be accompanied by a packing list containing the following information: sender, delivery address/contact person, order number, amount and names of the goods.
- 8.7. All goods to be delivered must be properly packed and secured in such a way that they reach their destination in good condition during normal transport. The Supplier will be responsible for compliance with national and international laws and regulations concerning transport and packaging.
- 8.8. The Supplier will give PMC instructions with regard to preserving, marking, sending and taking out insurance for the transport risk and to strictly follow the shipping documents to be delivered. In accordance with Article 8.1 of these General Terms and Conditions of Purchase, the Supplier will bear all costs and risks related to possible transport.
- 8.9. PMC will notify the Supplier in writing of any loss of and/or damage to and/or defect in delivered goods within 21 days after the agreed delivery date at the latest. PMC can no longer invoke any loss of and/or damage to and/or defect in the delivered goods after the expiry of this period if PMC has not notified Supplier of this in writing.

8.10. The Supplier will, without any costs being charged, fully repair any loss of and/or damage to and/or defect in the delivered goods if PMC notifies the Supplier in writing within the period mentioned in Article 8.8.

8.11. In so far as applicable, the Supplier will install and deliver the goods fully functioning in accordance with Article 5.2 of these General Terms and Conditions of Purchase on site, including sufficient explanation of use. In order to be able to install the goods fully functioning, the Supplier will timely provide a statement of the provisions to be made by PMC. If the Supplier fails to do so, they will not charge any resulting costs and will still complete the installation, taking into account PMC's planning.

8.12. PMC is not obliged to make any payment to the Supplier before delivery of goods/services and/or work has taken place, unless agreed otherwise in writing.

## 9. Warranty

9.1. The Supplier guarantees that the delivery of goods/services and/or work is free of defects and/or suitable for the purpose for which they are intended. The Parties may agree a warranty period in writing.

9.2. The Supplier guarantees to PMC that:

- a. the goods delivered with regard to quantity, description and quality are in accordance with what is stated in the order;
- b. the goods delivered are in all respects equal to the samples or models made available or provided by the buyer and/or the seller;
- c. in so far as PMC has not given any other description of goods/services or work, the delivered goods/services or work must be of good quality, free from design, construction, execution and material errors and viruses and must at least comply with the usual requirements and usual industry regulations regarding quality, safety, health and environment.
- d. the delivered goods/services and/or work are in accordance with the latest state of art and fully comply with all applicable legal standards and regulations;
- e. only explicitly agreed materials, services and working methods are used;
- f. all defects that arise during the warranty period as agreed in writing between PMC and Supplier, with the exception of normal wear and tear, will immediately be repaired and/or replaced at the first request of PMC at the expense of Supplier.
- g. PMC, at its request, will have access to the agreements concluded with subcontractors and suppliers;
- h. the delivered goods/services and/or work do not infringe any rights of third parties;
- i. if the performance to be delivered consists of the supply of labour, it will meet the legal requirements and the labour force will meet the agreed or, if no specific agreements have been made in this regard, the generally applicable requirements of professional competence and that the agreed number of labour force will be continuously available during the agreed period.

- 9.3. If in the Agreement and/or its annexes reference is made to technical, safety, quality and/or other regulations that are not part of the Agreement, the Supplier is deemed to be aware of these, unless PMC is notified to the contrary.
- 9.4. The Supplier also guarantees that all relevant items have been delivered, including all parts, auxiliary materials, accessories, tools, spare parts, user and instruction manuals and everything that reasonably contributes to the realisation of the stated purpose by PMC. PMC is free to use this documentation for its own use.
- 9.5. If the Supplier fails to comply with their obligations under the warranty provisions, or does so incompletely or improperly, PMC is entitled within a reasonable period of time, at the expense of the Supplier, itself or through the intervention of a third party to be engaged by it, to replace or repair the delivered goods or to perform the services and/or work.
- 9.6. A new warranty period will apply to parts of the goods/services and/or work that have been replaced or repaired. This can be determined in writing by PMC and the Supplier.
- 9.7. The expiry of the warranty period does not affect PMC's rights towards the Supplier under the law and/or the Agreement.

## **10. Inspection and acceptance**

- 10.1. PMC will at all times have the right to inspect the delivery or the goods/services and/or work relating to it (or have them inspected) or to test or have them tested and/or to carry out progress checks (or have them carried out). If PMC wishes to do so, the Supplier will, within reasonable limits, make the necessary personnel and material available at no cost to PMC. In addition, the Supplier will at all times provide access to the place where the order is to be executed by PMC or by a body designated by PMC, as well as to the area where the order is to take place. The inspection will be carried out, if required by the Supplier, in their presence or in the presence of an expert appointed by the Supplier. The costs involved will be borne by the Supplier. Furthermore, the Supplier will provide PMC with a certified copy of their inspection reports at the latter's request.
- 10.2. If (interim) inspections, tests and trials have been agreed on the initiative of the Supplier or PMC, the Supplier will communicate to PMC the intended time of inspection, test or trial in writing or, unless otherwise agreed, verbally so that PMC can be present if required.
- 10.3. All costs relating to (interim) inspections, tests and trials, with the exception of the costs of PMC personnel and/or other persons designated by PMC as representatives, will be borne by the Supplier.
- 10.4. Interim inspections, tests or trials, or the absence thereof, do not imply acceptance. In case of a final inspection or test, the Agreement is deemed to have been performed if PMC has finally approved/accepted the delivered goods or services and/or work performed.
- 10.5. In case the goods/services and/or activities do not comply with the requirements described in the order and/or specification, PMC will inform the Supplier in writing. In this case, PMC has the right to refuse delivery or to return the goods to the Supplier. In that case, the Supplier is obliged to replace and/or improve the rejected goods/services and/or work within a reasonable period of time and at their own expense and risk and to offer them for re-inspection.

- 10.6. The rejected goods will be made available to the Supplier. If the Supplier fails to collect the rejected goods within a reasonable period of time, PMC reserves the right to return or destroy the rejected Goods at the Supplier's risk and expense.

## **11. Penalty clause**

- 11.1. Unless contractually agreed otherwise, a penalty will be payable to PMC by the Supplier who imputably fails to fulfil their obligations. The penalty is determined as follows;
- a. if the agreed term is exceeded, the Supplier forfeits to PMC an immediately due and payable penalty of 0,1 % of the price of the goods/services and/or work, increased with VAT, for each day that the failure continues, up to a maximum of 10%;
  - b. if delivery and/or performance of goods/services and/or work have become impossible, this penalty will be immediately due in full.
- 11.2. The penalty accrues to PMC without prejudice to all rights or claims, including its claim for compliance, its right to damages and the right to suspend its obligations.
- 11.3. The penalty can be set off against any payments PMC may owe, regardless of whether the claim for payment has been made to a third party.

## **12. Invoicing and payment**

- 12.1. The Supplier will invoice PMC for the delivered goods/services and/or work at the agreed price. The Supplier will send the invoice digitally to the email address provided by PMC, stating;
- a. PMC contact person;
  - b. Date;
  - c. VAT amount;
  - d. the (purchase) order number of PMC;
  - e. a clear specification of the goods/services and/or work delivered;
  - f. amount per item number;
  - g. the item description of the Supplier;
  - h. to the extent applicable, with work orders and delivery documentation.
- 12.2. Invoices that in PMC's opinion contain insufficient data or do not meet fiscal invoice requirements will be returned to the Supplier for completion.
- 12.3. If in the framework of the Agreement, advance payments are made, PMC is at all times entitled to demand a bank guarantee from the Supplier.
- 12.4. Payment will take place within 45 days after the invoice date and will only be due if the delivered goods/services and/or work fully comply with the Agreement. Invoices for partial deliveries will - under the same conditions - only be paid after the last (partial) delivery, unless explicitly agreed otherwise in writing.

- 12.5. Payment of an invoice does not imply recognition that the delivered goods/services and/or work fully comply with the Agreement and does not release the Supplier from any warranty and/or liability arising from the Agreement and/or these General Term and Conditions of Purchase. Delivery takes place exclusively to the authorised persons designated by PMC. No payment of invoices will take place without delivery documentation signed by the aforementioned authorised person.
- 12.6. PMC is entitled to set off the Supplier's claims on PMC against its claims on Supplier. PMC is at all times entitled, if PMC is of the opinion that the Agreement has not been properly fulfilled by the Supplier, to suspend its obligations under the Agreement, including its payment obligations.

### **13. Transfer of ownership and transfer of risk**

- 13.1. Ownership of all goods ordered by PMC, including the related intellectual property rights to drawings, models, calculations, user instructions and the like, will pass from the Supplier to PMC at the moment of actual delivery, or at the moment of payment of the goods (whichever occurs first), without any right to claim.
- 13.2. In case of delivery by PMC of goods for the benefit of the goods to be delivered, the former will remain the property of PMC and will be kept separate by the Supplier from goods belonging to the Supplier or third parties.
- 13.3. The Supplier will bear the risk of damage to or loss of the good until the moment of acceptance by PMC, or if this is at a later moment, until the moment of actual delivery of the goods at the agreed place of delivery. The risk does not pass to PMC as long as the Supplier has not (fully) fulfilled their delivery obligation.
- 13.4. In the event that the goods are not approved by PMC, the ownership and risk for the goods will return to the Supplier from the moment the Supplier has received the relevant notification from PMC.

### **14. Liability and indemnity**

- 14.1. The Supplier accepts full liability for all damages that PMC and/or its employees and/or third parties may suffer as a result of not, not timely or not fully meeting any obligation under the Agreement. The Supplier indemnifies PMC against claims of third parties due to alleged infringements by third parties of their patents or models or other intellectual property rights with regard to the manufacture, repair or use of the delivered goods. Furthermore, the Supplier will indemnify PMC against claims of third parties for compensation of damage as a result of shortcomings in the delivered performance, including safety defects within the meaning of the product liability legislation, respectively as a result of acts or omissions of Suppliers or their auxiliaries.
- 14.2. The Supplier will take out liability insurance against risks reasonably to be considered present during transport for an amount of at least EUR 1,000,000 (one million euros) as a maximum per event - where a series of related events counts as one event - and EUR 2,500,000 (two and a half million euros) as a maximum per year or as much higher as required by the Agreement concluded between the Parties. Upon first request, PMC will receive an insurance certificate proving the insurance in question, as well as proof that the

premium due has been paid. If the documents referred to are not conclusive enough, PMC has the right to demand inspection of the policy and its conditions.

- 14.3. PMC will not be liable for any damage or injury of any nature whatsoever and in any way caused or inflicted upon the Supplier, their employees or third parties, unless in case of intent or gross negligence on the part of PMC. Any liability in that respect will be limited to the maximum amount that PMC can claim under its own liability insurance.

## **15. Force majeure**

- 15.1. In the event of temporary force majeure, the Supplier will notify PMC in writing immediately after the circumstance of force majeure has occurred, stating the cause of the force majeure. In that case, PMC is entitled to choose between:
- a. granting postponement to the Supplier for the fulfilment of their obligation under the Agreement. If the Supplier is not able to fulfil their obligations under the Agreement after the postponement has ended, PMC is entitled to dissolve the Agreement with immediate effect extrajudicially, without being obliged to pay damages and any costs to the Supplier; or
  - b. dissolving the Agreement out of court with immediate effect, without being held to compensate damages and any costs to the Supplier.
- 15.2. In the event of permanent force majeure on the part of the Supplier, PMC will immediately notify PMC and PMC is entitled to dissolve the Agreement with immediate effect extra judicially, without being obliged to pay damages and any costs to the Supplier.
- 15.3. Force majeure does not include lack of personnel, strikes, illness of personnel, shortage of raw materials, transport problems, shortcoming or non-fulfilment of obligations by suppliers, disruptions in the Supplier's production and liquidity or solvency problems on the part of the Supplier or shortcomings on the part of third parties engaged by them.

## **16. Engagement of third parties**

- 16.1. The Supplier is not allowed to transfer or outsource their obligations and rights resulting from the Agreement to third parties, neither in whole nor in part, unless prior written permission has been given to PMC.
- 16.2. If the Supplier engages third parties for the execution of an order, as subcontractor, suppliers or otherwise, these third parties will be bound by these General Terms and Conditions of Purchase, with the exclusion of any general terms and conditions of these third parties.
- 16.3. A permission given by PMC to engage third parties does not release the Supplier from any obligation or liability under the Agreement. The Supplier remains fully responsible and liable for goods/services and/or work delivered by third parties and will fully indemnify PMC against all claims of a third party engaged by the Supplier, including claims under the Dutch Sequential Liability Act (*Wet Ketenaansprakelijkheid*) and will reimburse all payments made by PMC to (a) third party(ies).

## **17. Publicity**

- 17.1. Without the prior written consent of an authorised representative of the other Party, neither Party is entitled to refer to the existence of the Agreement in brochures, advertisements, newspapers or any other form of media.

## **18. Confidentiality**

- 18.1. The Supplier will not in any way disclose any data and knowledge provided by PMC or made known to them in any other way and knowledge of which they know or can reasonably suspect to be confidential, except in so far as any statutory regulation or a judicial decision obliges them to disclose such data and knowledge.
- 18.2. The Supplier obliges all persons engaged by them in the execution of the Agreement to observe the aforementioned obligation of confidentiality and guarantees that these persons comply with this obligation.
- 18.3. If an Agreement is not concluded or is terminated, all information and documents provided on both sides will be returned and copies thereof destroyed.
- 18.4. In the event of damage arising as a result of the Supplier's breach of the confidentiality obligation, PMC has the right to impose an immediately payable penalty on the Supplier in accordance with Article 11.1 sub b of these General Terms and Conditions of Purchase.

## **19. Dissolution and termination**

- 19.1. PMC can, without prejudice to its other rights, at all times fully or partially dissolve the Agreement with immediate effect, out of court and without any damage obligations towards the Supplier:
- a) if the Supplier applies for suspension of payment or offers their creditors an agreement;
  - b) if a petition is filed for the Supplier's bankruptcy or if the Supplier is declared bankrupt;
  - c) if the Supplier ceases their business activities or a substantial part thereof;
  - d) if any or part of the Supplier's goods are seized, as a result of which the continuity of the Supplier's business operations is jeopardised;
  - e) if the Supplier can no longer reasonably be deemed capable of fulfilling their obligations under the Agreement with PMC;
  - f) if any relevant licence of Supplier is revoked;
  - g) if the Supplier or one of their subordinates or representatives has offered or provided any benefit to a person who is part of the business of PMC or to one of its subordinates or representatives.
- 19.2. If the Agreement is dissolved on the basis of the previous paragraph, the Supplier will reimburse PMC for the payments already made to them, increased by the statutory interest on the amount paid, calculated from the day of payment. If the Agreement is partly dissolved, the repayment obligation only exists as far as the payments relate to the dissolved part.

- 19.3. Without prejudice to the provisions of the previous paragraph, PMC is at all times entitled to dissolve the Agreement in whole or in part with due observance of a notice period of at least one month for each full year that the Agreement has lasted, however with a maximum of three months.

## **20. Competent Court and applicable law**

- 20.1. All disputes which may arise between the Parties in connection with or as a result of an Agreement entered into between them will be submitted to the District Court of Noord-Nederland, location Groningen, unless the Parties agree on another form of dispute resolution.
- 20.2. The Agreement is governed by Dutch law. The Vienna Convention on Contracts for the International Sale of Goods (United Nations Convention on Contracts for the International Sale of Goods, Vienna 11 April 1980, Dutch Government Gazette 1981, 184 and 1986, 61) does not apply to this Agreement.

## **21. Perpetual provisions**

- 21.1. If one or more provision(s) of these General Terms and Conditions of Purchase is/are null and void or otherwise non-binding, this will not affect the validity of the remaining provisions. In that case, the Parties undertake to make such arrangement(s) as close as possible to the purport of the non-binding provision(s).
- 21.2. If the Parties make agreements that partially deviate from these General Terms and Conditions of Purchase, or if it follows from the conduct of the Parties that they deviate in parts from these General Terms and Conditions of Purchase, this does not affect the applicability of the other provisions of these General Terms and Conditions of Purchase.