

GENERAL TERMS (CG) of the Union des Industries de Traitements de Surfaces

A MEMBER OF THE FEDERATION DES INDUSTRIES MECANQUES

These General Terms constitute the customs of the material treatment and coating sector. As a result, they are filed with the Custom Office of the Business Court of Paris.

They shall apply to all contractual relationships between the « Contractor » and the client company hereinafter referred to as the « Instructing Party or IS », regarding any contract, any order, and orders placed in the framework of an « open order ». In accordance with article L441-6 of the business code, they constitute the basis of the business negotiation.

Any departure from these general terms shall be subject to the C's formal and written acceptance.

They supersede any clause to the contrary expressed in any way by the IS and not formally accepted in writing by the C.

« Written » shall be understood, in the meaning of these general terms, as any document made on paper or by fax or subject to the two parties' prior agreement, electronically.

Contracts and orders made between the C and the IS consist in custom order services (or work) made and/or processed on the IS's request and as a result, whatever their form, meet by nature the legal qualification of a job contract.

1 – CONTENTS AND FORMATION OF THE CONTRACT

1-1- Contents of the contract

Shall be part of the contract and solely constitute contractual documents :

- these general terms,
- specific terms accepted by both parties, including the specifications, when formally accepted
- the order accepted by any means, including by receipt acknowledgement or order confirmation,
- the documents of the C complementing these general terms,
- studies, estimations and technical documents provided before the formation of the main contract and accepted by the parties.
- the delivery slip
- the invoice.

1-2 – Specifications, call for bids and offer

Any call for bids, any order, shall include technical specifications including necessary specifications, specifically the nature of the material employed and treatments that were already applied to the latter, if any.

The offer shall be considered as firm only if it includes a validity date. In the same way, any change to the specifications or type parts submitted for testing as needed, may result in the revision of the offer accordingly.

1-3 - Order

The contract is completed subject to formal acceptance of the order by the C.

Order acceptance is expressed by all written means.

Any order formally accepted by the C, closed or open, shall be deemed to imply the acceptance by the IS of the Supplier's offer.

1-3-1- Closed order

A closed order indicate firm amounts, prices, deliveries and logistics terms.

1-3-2 – Open order

Without prejudice to the terms set in article 1174 of the civil code, an open order should meet the terms mentioned below.

- it is limited in time by the agreed delivery time.
- it defines the features and prices of the products – At the time of the conclusion of the open order, maximum, minimum amounts and completion times are provided.
- the delivery order frequency defines specific amounts and times which are within the range of the open order. If adjustments made by the IS to forecast quantity estimations in the schedule of the overall open order or of delivery orders depart by more than 15 % from the amount of the said estimations, the C shall estimate the consequences of such variations
- In the event of any upward or downward variation, the parties shall meet to find a solution to the consequences of such a variation, likely to affect the balance of the contract to the detriment of the C.

In the event of any variation upwards of the conditions, the delivery times shall be revised and the C shall make its best efforts to meet the IS's request within amounts and times compatible with its capacities (production, transport, sub-contracting, personnel, financial, etc...)

1-3-3 - Order modification and cancellation

Any change in the contract requested by the IS is subject to the prior and written acceptance of the C.

The order expresses the irrevocable consent of the IS ; it may therefore not cancel it, unless as agreed formally by the C. In that event the IS shall compensate the C for any costs incurred (including specific equipment, study costs, labour and supply expenses, tooling) and any direct and indirect consequences resulting therefrom. In addition, the instalment paid shall be retained by the C.

2. PRICE

2.1 - Failing an agreement by both parties on a price prior to the performance of the work, the price shall be charged by the C based on its proposal. Failing a costed proposal, the C shall appreciate the price of the manufacturing based on its own data and criteria, and the IS shall settle the price on that basis.

The prices are established before taxes and « ex works ».

The price only covers the products specified in the offer.

Payments shall be made in euros unless otherwise specified in the contract.

A fixed handling fee shall be charged by the C as a minimum invoicing amount.

2.2 - The prices shall apply to the customs order operations only, excluding any related costs such as : carriage, delivery costs, packaging, special checks, certificates of compliance, specific insurance, taxes, etc...

2.3 - If there is any contractual price revision system, an additional invoice to the one issued upon the delivery shall be prepared based on the index publishing date.

2.4 - In the event of repetitive orders, any variation in the nature, quality or presentation of the base material or parts shall result in a price renegotiation.

3. DELIVERY TIMES

3.1 - Delivery times start after the latest of the following dates :

- date of final acceptance of the order by the IS,
- date of arrival at the sub-contractors, of the parts to be processed as well as any technical documents or information necessary for the completion of the custom orders,
- date of acceptance of prototype parts,
- date of settlement of any agreed instalment.

Unless otherwise agreed, the delivery time or completion time is deemed given for informational purposes.

3.2 - The contractual times shall be extended for any cause making it impossible for the C or the IS to fulfil its duties : force majeure event or similar events such as bad weather, supply shortages, accidental production downtime, etc.

The failing party shall inform the other party of such impossibility upon its occurrence and both should then confer immediately to agree on steps to be taken.

3.3 - When the parts are not collected by the IS within one month after the notification of delivery, the C shall charge storage fees and they shall be stored at the risks of the IS.

Failing collection within two months as from the specified time, the C may alienate or destroy the parts, subject to notifying the IS.

3.4 - Any penalty clause shall be subject to the C's agreement.

No late delivery or customer order completion penalty shall be applied by the IS unless they have been specifically approved in writing by the C.

4. TRANSPORT

4.1 - As a rule, the C's terms are understood for parts deposited at and collected from its warehouses or workshops by the IS.

The goods travel at the risks of the IS whatever the origin of the packaging or transport method. This provision shall apply to the various transports, i.e. to incoming or outgoing parts, whatever the shipping or destination location.

4.2 - In the event of parts shipped by the IS to the C, such shipping should be carriage free, unless otherwise agreed. The weight or amounts of the parts mentioned in the shipping lists are deemed valid subject to receipt by the C.

4.3 - Packaging : unless otherwise provided, the IS shall deliver its parts appropriately packaged, to prevent any deterioration during transport. Such packaging should be reusable for the return trip.

In the event of deteriorated or insufficient packaging, the C may replace or charge the same, subject to advising the IS thereof previously.

4.4 - Upon the return of the processed parts, the IS shall be responsible, on receipt for any weight and amount check and for expressing any reserves as needed with the carrier, without causing any delay in the settlement of the C's invoices.

4.5 - If the C is responsible for carrying out or having carried out the shipping, it shall then act as agent of the IS, including in terms of payment. It shall then be justified in charging all its expenses and costs.

4.6 - The IS, when it call on the services of the carrier or forwarding agent or has designated the same, should be responsible for the solvency of that carrier or forwarding agent and shall hold the C harmless against the consequences of its failure.

4.7 - Should the IS call on a forwarding agent or carrier to collect the goods for a third party :

- That third party shall be an addressee in the meaning of article L 132-8 of the Business Code
- The IS shall have the capacity of sender in the meaning of that article and agrees to sign the waybill.

5. PERFORMANCE, RECEIVING AND GUARANTEE TERMS

5.1 - Performance terms

5.1.1 – The C agrees to fulfil its custom orders in accordance with the contract and in compliance with professional rules, according to the work and guarantee terms indicated in 5.4 below.

5.1.2 – In order to complete the operations successfully and in agreement with the IS, the C reserves the right to destroy the parts for setting or control proposes during or after manufacturing.

5.1.3 – While the parts are held by the C including during the performance of the work, the C's responsibility shall be governed by articles 1789 of the Civil Code et seq.

Unless otherwise agreed, the C's responsibility shall be limited to the loss of its work on parts lost or deteriorated unless evidence of a serious breach of prudence, competence and diligence rules normally required for such work is furnished.

5.1.4 – In pursuance of article 1790 of the Civil Code, should the material entrusted to the C have latent defects and be destroyed as a result of its poor quality, the value of the treatment or coating made by the C shall be the IS's responsibility.

More generally should the rough parts provided by the IS or defined by it have configuration or material defects, the C shall not be held responsible for any deterioration sustained by such parts and may charge the IS for all respective costs.

5.2 - Receiving conditions

5.2.1 – If an acceptance has been planned, the conditions thereof should be indicated by common agreement upon the order. Failing, they will be completed according to the following provisions.

5.2.1.1 – In the C's workshop

Acceptance shall take place in the workshops of the C on the date agreed between the respective parties.

Should the IS not attend or be represented at the acceptance test, such acceptance shall nonetheless be deemed completed jointly.

5.2.1.2 – At the IS' or user's

The acceptance may however be completed, on the IS's request, at the IS's or at the end user's, subject to the C's consent.

5.2.1.3 – On worked parts after coating or treatment

No acceptance test may take place after machining, assembling or installing, the parts being then considered as received and accepted by the IS.

However, written departure from that rule may be accepted if the defect can be identified only after machining or assembling.

If, during such operations, no defect is found, no claim shall be accepted.

5.2.2 – **After acceptance**, the C's liability shall be cleared for any apparent defect or defect that the control means used during the inspection of the parts should have normally identified.

5.3 - Post delivery check

5.3.1- Failing a jointly planned acceptance, the acceptance shall be deemed joint and accepted 48 hours after the provision and at any rate prior to the use or assembling in a set or sub-set.

5.3.2 – After such time, the C's responsibility is cleared for cleared for any apparent defect or defect that the control means used in that area or the special means used by the IS would have normally allowed to identify.

5.4 - Terms of the C's work

The C's responsibility is strictly limited to compliance with the specifications of the IS as they appear in the specifications or any other contractual document.

Indeed the IS is in a position, due to its professional competence and in its speciality and based on the industrial production means it has, to define the work exactly based on its own industrial data or that of its clients and according to the type of material to be processed, the intended use of the part and the industrial result.

The C shall perform the work requested by the IS, according to the professional rules of its trade.

6. COMPLAINTS

6.1 - Any complaint shall be made in writing immediately upon finding the defect. All facilities should be given to the C to acknowledge and reduce the consequences of the defect.

6.2 - No complaint shall authorise the IS to carry out itself or have carried out by a third party, the repair of the disputed parts, unless allowed in writing by the C.

7. RESPONSIBILITY OF THE C IN THE EVENT OF LOSSES, DETERIORATIONS AND PART SCRAPPING

7.1 - In the event if any loss or deterioration of parts during the work or of scrapping due to defects admitted by the C, the latter shall, at the IS's option, either provide a credit note corresponding to the work supplied, or perform the work again using, when possible, original parts, or new ones supplied by the IS.

If it is proven that a part cannot be used, the sub-contractor may then proceed with its replacement for an amount equal at most to its value before taxes expressed in cost price, and which, at any rate, shall not exceed two times the price of the coating or treatment.

In order to claim additional compensation, the IS shall request it upon the formation of the contract and consequently declare the value of the goods entrusted in writing, so as to allow the assessment of the additional price pertaining to that additional warranty it should bear.

7.2 - Those parts that the IS has secured the reprocessing of shall be returned for repair in the workshops of the C.

In that event, costs such as disassembling, reassembling, and withdrawal, shall be borne by the IS.

7.3 - Unless formally approved by the C, its liability shall be strictly limited to the thus defined duties, and it shall be bound to no further compensation for any reason.

8. LIABILITY EXCLUSION CASE

8.1 - The liability of the C is excluded in the following cases :

- if it is found that the material provided or imposed by the IS is defective, not compliance with the one announced, not defined or not suitable for the requested custom order ;

- in the event the C has not been in control of, or informed of treatments made previously to the delivery of the parts ;

- in the event of any defect pertaining either to the shape of the parts or to a design or deposit or treatment required by the IS, or improper use or storage or handling of the treated parts.

8.2 - In no event shall the C be held responsible for costs caused by non-compliant equipment sent to the site without having been checked and accepted prior to shipping.

8.3 - The C makes no representation for prototype parts or tests for which the IS shall be fully responsible.

8.4 - On the IS's request, the C may make treatment or coating proposals. The IS should check that such recommendations are compatible with the proper operation in use, which is beyond the C's control.

9. SETTLEMENT

9.1 – Payment terms

In accordance with article L441-6 of the Business Code such as it results from Economy modernisation Act (LME) n° 2008-776 dated August 4, 2008, the time agreed between the parties to settle amounts owed shall not exceed forty five days end of month or sixty days as from the invoice issuing date.

Payments shall be made, unless otherwise agreed, on the 30th day after the invoice issuing date.

Any clause or request attempting to set or secure a greater payment time than the time agreed or the thirty day time, which constitutes the professional custom of mechanical industries, may be considered as abusive in the meaning of article L442-6 I 7° of the Business Code such as it results from Economy modernisation Act n° 2008-776 dated August 4, 2008 and may lead to a civil fine up to an amount of two million euros :

Payment dates agreed upon contractually cannot be changed unilaterally by the IS for any reason, including in the event of any dispute. Early payments shall be made with no discount, except as otherwise agreed.

9.2 - Late payment

In pursuance of Article L 441-6 paragraph 12 of the Business Code amended by Act n° 2012-387 dated 22 March 2012, any late payment shall make payable automatically, upon the first day following the settlement date shown in the invoice :

1/ Late payment penalties.

The late payment penalties shall be determined by applying the refinancing rate of the European Central Bank increased by ten points.

2/ Fixed compensation for collection costs, in an amount of EUR 40.

Such compensation is owed in pursuance of a provision of the Act dated March 22, 2012 applicable as from January 1, 2013. Its amount is set by article D 441-5 of the Business Code.

In pursuance of above-mentioned article L441-6, when the collection costs incurred exceed the amount of that fixed compensation, the supplier may also seek additional compensation.

In the event of any late payment the Supplier In the event of any late payment, the Supplier may exercise its right of retention on all parts and tooling it has (products entrusted or made or in process and related supplies, tooling, etc) and suspend deliveries.

No failure by the C to claim one and/ or the other of these provisions shall deprive it from the right to implement the reservation of title clause specified in article 9.4.

9.3 – Payment offsetting

In accordance with article L442-6 of the business code, the IS shall not debit automatically or charge automatically the C for amounts not formally acknowledged by it as owed under its responsibility.

Any automatic debit shall constitute an unpaid amount and lead to the application of the provisions applying to late payments.

Only offsetting done according to the conditions specified by the law are allowed.

9.4 – Change in the situation of the IS

In the event of any deterioration in the situation of the IS found by financial information and attested by a late payment or when the financial situation differs significantly from the data provided, delivery shall be made in exchange for immediate payment only.

In the event of the sale, transfer, pledging or contribution to a company, of its business, or of a significant amount of its assets or equipment by the IS, as well as in the event of any failure to meet payment times or should a draft be returned without acceptance within seven days from sending, the Supplier reserves the right and without prior injunction :

- to pronounce an event of default and consequently immediate payability of outstanding amounts owed for any reason

- to suspend any delivery and any custom order

- to acknowledge firstly the termination of all current contracts and withhold, secondly, instalments received, tooling and parts held, until the possible compensation is set.

9.5 - Reservation of title

Should the C provide the material in addition to its work and be considered as seller, it is provided that the transfer of title shall take place only after the settlement of all amounts owed. The work shall be considered as a manufacturing contract for specific products upon specifications.

However, upon the delivery of the products, the IS shall become responsible for their proper conservation and tae insurance out for them.

10 - APPLICATION OF THE SUB-CONTRACTING LAW

When the contract that is entered into is part of a line of job contracts in the meaning of Act n° 75-1334 dated December 31, 1975, the IS is legally required to have the C accepted by its own IS. It should also have the C's payment terms accepted by it.

The IS, if it is not himself the end client, agrees to demand from it compliance with the formalities required by the 1975 Act.

In accordance with article 3 of that law, the lack of presentation or approval results in the impossibility for the IS to claim the contract against the C. Such impossibility covers, inter alia, disputes relating to possible specifications compliance defects. However, in accordance with the said article, the IS shall remain bound to the C, its sub-contractor, to perform its contractual duties.

In addition, the IS should, upon becoming aware of the existence of a sub-contractor, order the contractor to comply with the duties under the law. Failing, it incurs its responsibility under article 14-1 of the 1975 Act.

Under these general terms, the 1975 Act is considered as an absolute police law applicable through the IS to the end clients whatever the country they are located in.

11 INTELLECTUAL PROPERTY, CONFIDENTIALITY

The C shall retain all of the intellectual property and know-how pertaining to the tooling, sequences or processes that it uses.

The full or partial participation of the IS in the cost of the tooling shall not imply the transfer of the title to the tooling, nor the transfer of the intellectual property and know how pertaining thereto.

All documents provided to the IS including technical documents, are confidential and the IS agrees to keep the information they contain strictly confidential.

12 - JURISDICTIONAL CLAUSE

In the event of any dispute, the parties shall seek conciliation, possibly through their respective professional organisations.

Should such conciliation be impossible, **the dispute shall be brought to the courts in the jurisdiction of which the C is headquartered.**

These conditions are filed with the "Professional Custom Office" of the Business Court of Paris in the name of UNION DES INDUSTRIES DE TRAITEMENTS DE SURFACES –