

GENERAL CONDITIONS (GC) OF THE NATIONAL TRADE UNION OF APPLICATIONS, COATINGS AND TREATMENTS OF SURFACES COMPANIES MEMBER OF THE FEDERATION OF MECHANICAL INDUSTRIES

These general supply conditions codify the commercial practices of the profession of Suppliers of mechanical mountings and accessory, related or associated products. They are compliant with the law of contracts and the law on competition and have been filed with the Bureau of Practices at the Clerk's Office of the Commercial Court of Paris. These general conditions apply to the whole contractual relations between "the Supplier, S" and the client company, hereinafter referred to as "the Client, C.", concerning any contract, fixed or open order. Any exemption must be subject to formal written acceptance of the S. The GC supersedes over any clause formulated by C and not expressly accepted in writing by S. By "written", it is understood, in regards to these GC, any document established on paper, or by fax, or submitted to prior approval of both parties by electronic media. The contracts and orders placed between S and C are provisions of services in shaping carried out at the request of C and answer by nature to the legal qualification of company contract.

1. CONTENTS AND ESTABLISHMENT OF THE CONTRACT

1.2 Contents of the contract

Belong to the contract and exclusively have the character of contractual documents:

- these general conditions (GC);
- the specific conditions expressly accepted by both parties and notably the schedule of conditions;
- the order accepted by any means, including by acknowledgement of receipt or by order confirmation;
- the Supplier's documents added to these general conditions;
- the studies, the cost estimates and the technical documents communicated before the establishment of the main contract and accepted by the parties;
- the delivery slip;
- the invoice.

1.2 Invitation to tender schedule of conditions and offers

Any invitation to tender, any order, must be supplied with a schedule of conditions comprising the specifications necessary and specifying the nature of the material employed and the treatments which could have already, if applicable, been carried out on his material. The offer is considered irrevocable only if it is subject with a validity period. Any modification of the schedule of conditions or of the model parts provided for trial purposes may give way to the revision of the offer.

1.3 Order

The contract is only concluded once the order is formally accepted, by any written means, by the Supplier. Acceptance of the order is formalized by any written means. Any order formally accepted by the Supplier shall be deemed having received the acceptance of the Client of the Supplier's offer.

1.3.1 Fixed order

A fixed order specifies the firm quantities, prices, time and conditions of delivery.

1.3.2 Open order

Without prejudice to the conditions defined by article 1174 of the French Civil Code, an open order must meet the conditions set out below:

- it is limited in duration by the time constraint set;
- it specifies the characteristics and the price of the products;
- it specifies the maximum, minimum quantities and the deadline set for execution;
- it specifies the clocking of the delivery orders specifying the precise quantities and deadlines which fall within the range of the open order.

If the modifications made by the Client to the quantitative estimates of the projected schedule of the global open order or the delivery orders differs over 15% of these estimates, the Supplier assesses the consequences of these variations.

In the event of a variation upwards or downwards, the parties shall consult one another in order to find a solution to the consequences of this gap, which consequences may affect the balance of the contract to the detriment of the Supplier. In the event of a variation upwards, the conditions notably in term of deadline shall be reviewed and the Supplier shall strive to satisfy the Client's request within the quantities and deadlines compatible with its industrial capacities.

1.3.3 Modification and cancellation of orders

Any change to the contract requested by the Client is subject to the formal written consent of the Supplier. The order irrevocably commits the Client, he cannot cancel the order without prior formal acceptance of the Supplier. In such case, the Client shall indemnify the Supplier for all expenses incurred (specific equipment, engineering costs, labor and supply costs, tools) and for all direct and indirect consequences resulting there from. Moreover, the deposit made shall remain vested to the Supplier.

2. PRICE

2.1 Without agreement of the two parts, before the completion of the work, the price will be invoiced by S on the basis of his proposal. In the absence of quantified proposal, the S will appreciate the price of the work according to its own data and criteria, C having to pay the price on this basis. The prices are established out of tax "departure of factory" and exclusively correspond to the products and works specified in the offer. The payments take place in euros except particular provisions provided in the contract. An initial lump sum shall be invoiced by the supplier, by means of a minimum invoicing.

2.2 The prices apply to the sole operations of shaping, excluding all additional expenses such as: transport, delivery costs, packing, specific controls, certificates of compliance, specific insurances, taxes, etc...

2.3 If there is a contractual formula for the revision of price, a complementary invoice to that made at the time of the delivery shall be established according to the date of publication of the index.

2.4 In the case of repetitive orders, the variation of nature, quality or presentation of basic material or parts result in a renegotiation of the price.

3. DELIVERY TIME-LIMIT

3.1 The delivery time-limit runs as from the last of the following dates:

- date of the final acceptance of the order by C,
- date of arrival to the subcontractors of the parts to be treated as well as all technical documents or material elements necessary to the realization of the shapings,
- date of acceptance of the prototype parts,
- date of payment of the first installment eventually agreed.

Except if agreed differently, the delivery or execution is deemed to be for information purposes.

3.2 The contractual schedule set shall be prolonged for any cause having placed S or C in impossibility of fulfilling their obligations: cases of *force majeure* or similar event such as bad weather, difficulties in supplying, accidental ceasing of production, etc. The failing part must inform the other of this impossibility as soon as it arises and both parties must then immediately concert so as to convene of the measures to be taken.

3.3 If the parts are not removed by C within one month after the notification of the completion of the work, the S will invoice storage costs and the parts will be preserved on the client's responsibility. In the absence of removal within two months of the time set, the S will be able to do as he wishes with these parts or destroy them, provided he notifies C.

3.4 Penalties upon late delivery or execution of the work may be applied by C, provided they were subject to a specific written agreement of S.

4. TRANSPORT

4.1 Generally speaking the conditions of S are intended to be for parts deposited and picked up in its stores or workshops by C. The goods travel to the expenses and under the responsibility of C whatever the origin of packing or the means of transport are. This provision applies to the various transportations, that is to the parts on arrival or departure, whatever the places of shipping or destination are.

4.2 In case of shipping of the parts by C to S, it must be done "free of port", except prior agreement. The weight or the quantity of the parts mentioned on the shipping forms are held as valid only after receipt by S.

4.3 Packing: except if provided otherwise, C will have to deliver its parts suitably packed to avoid any deterioration during transport. This packing will have to be re-useable for the return. In the event of deteriorated or insufficient packing, the S has the right to replace them and to invoice them, C being beforehand advised.

4.4 Upon return of the treated parts, it is up to C to make, upon receipt, any control of weight and quantity and to eventually express all reserve to the conveyor, without this possibly justifying any delay in the payment of the invoices of S.

4.5 If S is charged to proceed with shipping or have shipping been carried out, he only acts on behalf of C, in particular in regards to payment. He is then founded to invoice the whole of his outlays and his own expenses.

4.6 Should C, resort to the services of the conveyor or commission agent, or have chosen it, he must be responsible for the solvency of this conveyor or commission agent and guarantees S against the consequences of its failure.

4.7 If C resorts to a commission agent or conveyor for the removal of the goods to the attention a third party:

- this third party will have the quality of recipient within the meaning of section L 132-8 of the French Commercial Code
- C will have the quality of shipper within the meaning of this section and commits to sign the freight bill.

5. CONDITIONS OF IMPLEMENTATION, RECEPTION AND GUARANTEE

5.1 Conditions of implementation

5.1.1 S is committed to carry out its shapings in accordance with the contract and in compliance with the code of practice, according to conditions of intervention and guarantee specified in section 5.4 hereafter.

5.1.2 To carry out well the operations and in agreement with C, S reserves the right to proceed to the destruction of parts for adjustment or control in the course of or after manufacturing purposes.

5.1.3 While the parts are between the hands of S and in particular during the completion of the work, the responsibility for S is governed by section 1789 and following of the French Civil code. Except if expressly provided otherwise, the responsibility of S is limited to the loss of his work on the lost or deteriorated parts unless a serious breach of the rules of prudence, competence and diligence normally necessary for a work of this kind is proven.

5.1.4 By application of section 1790 of the French Civil code, if the material entrusted to S had hidden defects and perished or was deteriorated in consequence of its bad quality, the value of the treatment or the coating carried out by S shall be bore by C. More generally, if the rough parts given by C or defined by him presented defects of configuration or material, S could not be held

responsible for the deteriorations undergone on these parts and will be able to invoice C all corresponding expenses.

5.2 Receipt requirements

5.2.1 If a receipt was provided for, the conditions must be specified by mutual agreement at the time of the ordering. Otherwise, they are carried out according to the conditions hereafter.

5.2.1.1 In the workshops of S

The receipt will take place in the workshops of S at the date agreed upon between the parties concerned. If C does not go or is not represented for the acceptance tests, the receipt is nevertheless deemed to have been contradictorily carried out.

5.2.1.2 At C or the user

The reception can however at the request of C be carried out at his place or at the final-user's after agreement of S.

5.2.1.3 On worked parts, after coating or treatment.

No acceptance test can take place after machining, assembly or installation, the parts then being considered as having been received and accepted by C. However, a written exemption to this rule can be admitted if the defect is practically detectable only by machining or after assembly. If during these operations, no defect was detected, no complaint will be admitted.

5.2.2 After reception, the responsibility of S is released for any apparent defect or defect that the methods of control used during the examination of the parts should normally have permitted to detect.

5.3 Control after delivery

5.3.1 In the absence of receipt to be made contradictorily, the receipt is considered as contradictory and is accepted 48 hours after the provision of the goods and in any event before their use or their assembly in a unit or subset.

5.3.2 After this time, the responsibility of S is released for any apparent defect or any defect that the methods of control normally used in this field or the special means employed by C, should have made possible to detect.

5.4 Conditions of intervention of S

The responsibility of S is strictly limited to the respect of the specifications of C stipulated in the schedule of conditions or any other contractual document. Indeed, C is capable, because of his professional competence in his specialty and according to his industrial resource of production, to define with precision the work according to its own industrial data or to those of his customers and according to the type of material to be treated, of the use which is intended for the pieces and of the industrial result. S will have to carry out the work required by C, in compliance with the code of practice of his profession.

6. COMPLAINTS

6.1 Any complaint must be carried out in writing, immediately after the discovery of the defect. All easiness must be granted to S in order to identify and limit the consequences of this defect.

6.2 A complaint does not authorize C to carry out himself the repair of the litigious parts or have it carried out by a third party, without the written authorization of S.

7. RESPONSIBILITY OF S IN THE EVENT OF LOSSES, DETERIORATIONS AND REJECTS OF PARTS

7.1 In the event of loss or deterioration of parts during work or rejects for defects recognized by S, the latter will be held, as C wishes, either to establish a credit note corresponding to the work provided, or to re-execute work with, when possible, the original parts, and if not, with new parts provided by C. If it is proven that a part cannot be re-used, the subcontractor can be brought to take part in its replacement for an amount at most equal to its value net of tax expressed in cost price and which would in no case exceed twice the price of coating or treatment. To be able to claim for a complementary compensation, C will have to require it as from the establishment of the contract and in consequence declare in writing the value of the good entrusted so as to allow the evaluation of the additional charge of this complementary guarantee he shall support the cost of.

7.2 The parts for which C obtained for reprocessing are returned for repair to the workshops of S.

In this case, the expenses such as disassembling, reassembly and withdrawal are bore by C.

7.3 Unless expressly agreed otherwise by S, his responsibility is strictly limited to the obligations thus defined and he will not be held responsible of any other compensation for any cause whatsoever.

8. CASE OF EXCLUSION OF RESPONSIBILITY

8.1 The responsibility of S is excluded in the following cases:

- if it arises that the material provided or imposed by C is defective, not conform to that announced, non-defined or not adapted to the shaping requested,
- if S would not have been a in charge or informed of treatments carried out before the parts was handed over,
- in the event of defect coming either from the geometry of the parts, or from the conception or from a deposit or treatment imposed by C, or from a use or a storage or a handling unsuitable for treated parts.

8.2 In no case S could be held responsible for expenses incurred by material not in conformity, sent on site without having been controlled and receipted before shipping.

8.3 S does not make any commitment in regards to the prototype parts or test parts for which C holds the full responsibility.

8.4 Upon request of C, S can make proposals in regards to treatment or coating. C must check that these recommendations are compatible with a correct use in work which S does not master.

9. PAYMENT

9.1 Schedule of payment

Payment are made, following section L441-6 of the French Commercial Code, such as it results from law n° 2008-7, dated August 4, 2008.

Unless otherwise specifically agreed, payments are made on the thirtieth (30th) day following the date of delivery. Any clause or request aiming at fixing or obtaining a term of payment exceeding this term of thirty days, could be considered abusive within the meaning of section L 442-6-7 of the French Commercial Code, such as it results from law no. 2008-776 dated August 4, 2008. The contractually agreed dates of payment cannot be called into question unilaterally by C for any reason whatsoever, including in the event of dispute.

Early payments are made without discount, unless specifically otherwise agreed.

9.2 Late payment

In application of section L441-6/12 of law n° n° 2008-7, dated August 4, 2008, any delay of payment shall result in the application of a penalty interest equal to the most recent refinancing rate of the European Central Bank increased by 10 (10) points. Any delay of payment results, if the Supplier so sees fit, in forfeiture of the contractual term, the total amount of the sums due becoming immediately payable. In the event of delay of payment, S will be able to exercise his right of retention on all parts and tools in his possession (goods deposited or manufactured or in the course of manufacture and related supplies, tools, etc) and to proceed to the suspension of deliveries. The fact for S to exercise one and/or the other of these provisions does not deprive him, in the particular case of a sale contract, of the possibility to implement the reservation of property clause stipulated in section 9.5.

9.3 Compensation of the payments

The Client forbids himself to any illegal practice resulting in debiting automatically or billing S for any sum that would not have formally acknowledged has falling under his responsibility. Any automatic debit shall constitute an outstanding sum and results in the application of the provisions on late payment. Only the compensations operated under the conditions envisaged by the law are possible.

9.4 Changes in the Client's situation

In case of deterioration of C's situation established by financial data and attested by a late payment, or when the financial situation differs sensibly from the data made available, delivery shall take place only against immediate payment. In the event of sale, transfer, putting up for pledge or assets brought into business of his business, or that of a significant part of his assets or of his material, as also in the event of late payment or if the draft has not come back with acceptance within seven (7) days of its sending, S reserves the right, and without prior notice:

- to pronounce an event of default and consequently the immediate obligation to pay the sums still due for any reason whatsoever;
- to suspend all delivery and work;
- to ascertain, firstly, the termination of all undergoing contracts and, secondly, to retain the deposits collected, the tools and parts held, until setting of a possible indemnification.

9.5 Reservation of property

Should S provide the material in addition to his work and could be considered as vendor, it is specified that the transfer of property only takes place after complete payment of the sums due. The work shall be considered as contract of fabrication of specific goods on schedule of conditions. However, as from the delivery of the goods, C becomes responsible for their good conservation and must proceed to their insurance.

10. APPLICATION OF THE LAW ON SUBCONTRACTING

When contract concluded is part of a chain of company contracts within the meaning of the law n° 75-1334 of December 31, 1975, C is under the legal obligation to have S be accepted by his own client. He is also under the obligation to have S's terms of payment be accepted by his own client. C, if he is not himself the final client, endeavors to require from the latter the respect of the formalities set by law of 1975. In application of section 3 of the law of 1975, the absence of presentation or consent results in the impossibility for C to evoke the contract against S. This impossibility concerns notably any calling into question of responsibility related to potential defect of compliance with the schedule of conditions. However, in application of the said article, C remains liable to S, his subcontractor, for fulfilling its contractual obligations. By virtue of these GC, the law of 1975 is considered an international policy law applicable through C to foreign final clients, whatever the country where they may be established.

11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

S serves the whole of the intellectual property and know-how related to the tools, sequences or process which he uses. The total or partial participation of C in the cost of the tools results neither in the transfer of the property of the tools, nor in the transfer of the intellectual property and the know-how which are attached thereto. All the documents transmitted to the client and in particular the technical documents, are confidential and the client commits to keep the strictest confidentiality on the information they contain.

12. ATTRIBUTION OF JURISDICTION

In case of dispute, the parties will seek conciliation, possibly via their respective professional organizations. Should this conciliation prove to be impossible, the dispute will be submitted to the court competent for the location where the registered office of S is located.

These conditions are deposited at the "Office of the professional uses" of the Commercial court of Paris in the name of the NATIONAL TRADE UNION OF THE COMPANIES OF APPLICATIONS, OF COATINGS AND TREATMENTS OF SURFACES (SATS).

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