

## GENERAL CONDITIONS OF CONTRACTING FOR EUROPEAN FOUNDRIES ©

### 1. GENERAL REMARKS

- (a) These general conditions of contracting were established according to the current customs in the member countries of the COMMITTEE OF ASSOCIATIONS OF EUROPEAN FOUNDRIES.<sup>(1)</sup>

Each member country therefore recognises their legal value, which is attributed by its own legislation to professional customs.<sup>(2)</sup> They apply to the client whatever its own nationality.

They define the rights and obligations of the foundry and the client for supply contracts for foundry products in ferrous and non ferrous metals, associated materials as well as settlements/benefits and services which the foundry could be led to give/supply to the client.

They therefore constitute the legal basis of these contracts for all provisions, which do not come under particular written conventions.

- b) They block all contrary clauses made in any way by the client, if the foundry has not accepted them in writing.
- c) Where a client or group of clients decide to establish firmer relations in an industrial partnership agreement with their sub contracting foundries, the current general conditions for contracting shall serve as a basis, in concurrence with the general conditions of purchase of the clients, for the establishment of the text of general exchange conditions which will put the agreement between the two parties in a concrete form.

### 2. OFFERS AND ORDERS

- a) The invitation to tender or the order of the client must be accompanied by the technical specification which fixes the specifications which define the parts to be made in all aspects, as well as the nature and types of control, inspection and tests required for acceptance.

The invitation to tender, the order and the technical specifications take the form of a written document. This document may be accompanied by a data processing medium, but this medium has no legal value.

- b) The foundry's offer may not be claimed as firm, if it is not expressly accompanied by a validity deadline. The same situation also applies in each case where the client makes modifications to the technical specifications or to the type of part, which may be supplied, to him by the foundry.
- c) The foundry may only be bound by the conditions of his express acceptance of the firm and definitive order from the client, by letter or all other means of communication which produce a document.
- d) The client is not entitled to cancel any order. If he breaches this commitment, the client shall compensate the foundry for all its expenses borne and works already carried out at the date of the cancellation, for all that the foundry could have earned in the performance of the order and, more generally, for all other direct and indirect consequences of said cancellation.

In case of an open order in the frame of which take place binding calls for delivery beside simply projected and non binding quantities, the quantities said to be cancelled shall not only be binding ones but also those which are being manufactured at the time of cancellation in order to keep up with the estimated requests of the client according to the regular manufacturing cycle for the said parts.

- e) The client is not entitled to ask for any postponement of the performance and/or the delivery of an order without the agreement of the other party.

In case of postponement agreed with the foundry, the client shall pay every and all fees (storage, financial, administrative fees etc...) caused by the postponement. These fees shall be paid by the client immediately on receipt of the corresponding invoice from the foundry.

The agreed upon postponed parts shall be paid at least at the initially agreed price and in case of price increase since the initially agreed delivery date, at the price conditions in force at the date of the actual delivery.

<sup>(1)</sup> Germany, Austria, Belgium, Spain, Finland, France, Great Britain, Italy, Norway, Netherlands, Portugal, Sweden, Switzerland, Czech Republic, Hungary, Lithuania, Poland, Denmark.

<sup>(2)</sup> These General Conditions are registered to the professional custom service of the Trade Court of PARIS.

### 3. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- a) The foundry belongs to the industrial subcontracting field. When the client enlists the foundry's services, he only decides to enlist the services of a foundry specialist and because he considers that the foundry has equipment and abilities suited to its needs.

Unless otherwise agreed, the foundry does not design the pieces that it makes. The contract can however specify that the foundry will carry out all or part of the casting design on the condition that the client, who keeps the control of his product, keeps liability of the design according to the industrial result he is looking for.

As a consequence, each proposal of the foundry, which is agreed by the client, and which is aimed at an improvement of the technical specifications or a modification of the drawing of the part and laid down, notably, by economic requirements or requirements which are specific to the manufacturing process in foundry, never bring about a transfer of responsibility. This applies, notably, in the case of industrial partnership or any relationship, which includes a stage of development. In this case, the contract specifies the field of intervention of each party.

- b) The delivery of parts does not transfer to the client any rights of ownership belonging to the foundry on its manufacturing studies, software, any research and patents. As a consequence the client promises to keep the confidentiality of all kind of information, written or not, such as industrial drawings, outlines, technical instructions, that the foundry will bring to his knowledge.

The same applies to studies proposed by the foundry to improve quality or cost price of parts by a modification of the original technical specification. If the client accepts this, he must agree with the foundry conditions of use within the framework of the order.

Just as the price of manufacturing tools designed by the foundry, whether or not they are made by the foundry, does not include intellectual property rights of the foundry on these tools, that is the contribution of the foundry's expertise or patents for their study and development.

The same applies for possible adaptations that the foundry makes on tools provided by the client to ensure that the parts are well made.

- c) In no instance may the client use foundry studies for his own purposes, nor divulge them without first having expressly obtained ownership of them.
- d) The client guarantees the foundry against all consequences of actions which may/could be taken against him because of the carrying out of the order for parts covered by industrial ownership rights or intellectual property rights such as patents, trademarks or registered designs, or by any private right/law.
- e) In the specific case where the foundry is the sole designer and manufacturer of the parts for the client, the client shall draw up a special contract, which is outside the scope of these general conditions.
- f) Art foundries are reminded of their commitments which also adhere to the conditions of contracting. If the case arises, the current general conditions will be interpreted in the light of the rules peculiar to this matter.<sup>(3)</sup>

### 4. PATTERNS AND TOOLS

- a) When they are provided by the client, all manufacturing patterns and tools (patterns, core boxes, templates, strickles/formers, machining equipment or inspection equipment, etc..) must clearly bear obligatory marking, assembly references or usage references and must be supplied free of charge to the site specified by the foundry.

The client is responsible for making sure that the tools match the drawings and specifications perfectly. However, and also if the client requests it, the foundry may check this and may reserve the right to invoice the cost of the operation.

If the foundry deems it to be necessary to modify parts in order for them to be better produced, the costs will be charged to the client, written notice having been given beforehand.

Generally, without previous written agreement from the client, the foundry cannot guarantee the life of these tools.

Moreover, in the case where they are provided by the client with drawings and specifications which do not allow a thorough check of complete agreement between the different elements, the shapes/forms, dimensions and thickness of the parts finally obtained shall thus be determined wholly or in part by these tools. The responsibility for the end result of this information/tools given, will therefore exclusively be that of the client, to whom the foundry shall send written notice beforehand.

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<sup>(3)</sup> For example, "Code of Deontology of Art Foundries".

In all cases, if the tools received by the foundry do not conform to the use for which they were reasonably intended, the foundry may require the initially agreed price to be revised. An agreement with the client must be obtained before any parts are made.

- b) When the foundry is required by the client to make patterns or tools, the foundry shall make them in agreement with the client, according to the requirements of the foundry's own production techniques.

The cost of making the tools or patterns, as well as the cost of replacing or maintaining them after use, shall be paid independently of the parts supplied.

The foundry may not be held responsible for costs of replacing tools designed to be only used once, in the case of a part being discarded due to the normal manufacturing risks/hazards.

Unless written agreement is obtained beforehand with the foundry concerning an increase of price to cover this risk, the client is held responsible to either provide a new tool or to commission one from the foundry.

- c) The tools and the appropriate drawings belong to the foundry when the contract specifies that the client will only pay a contribution towards the tooling cost. The special invoice also specifies this point.

In the opposite case, the tools belong to the client and remain stored at the foundry after the order has been completed. They shall be returned to the client at his or the foundry's request, in the normal wearing and ageing condition in which they are at the moment of their restitution.

However the client cannot come into possession of these tools without having paid all the bills owed to the foundry including those which relate to the studies, patents and know-how provided for in article (3 b).

They shall be retained free of charge for three years from the date of the last delivery. After this deadline, they shall be put at the client's disposal with the reserve of the retention right provided for in the previous paragraph. However, the client can agree with the foundry a storage extension in principle and associated forms.

If there is no agreement, the foundry may either proceed to destroy them after a deadline of three months which is running from a notice given to the client, or to invoice the storage, or to return the tools carriage due.

- d) The foundry may never use the tools referred to in the above paragraphs a, b and c, for a third party, regardless of whether the foundry owns the tools or not, except where previous written authorisation is given by the client.
- e) It is the client's responsibility, who remains entirely responsible for prototypes and tools mentioned in the above paragraphs a, b and c which he owns, to insure himself that they do not deteriorate or are not destroyed at the foundry, renouncing all recourse against the foundry.

## 5. INSERTS

Inserts provided by the client for insertion into the part by previous incorporation in the mould before casting are from all points of view his sole responsibility and must be faultless. They must be delivered free of charge and carriage free to the foundry and in a sufficient quantity to allow for normal manufacturing hazards.

## 6. DELIVERY DEADLINES

- a) The delivery deadlines run from the date of confirmation of the order by the foundry but at the earliest, from the date when all documents, materials and details for carrying out the order have been supplied by the client, the latter having first fulfilled all conditions which he is obliged to fulfil.
- b) The strictness of the delivery deadline agreed must be stated clearly in the contract, together with the type of deadline (deadline for availability, presentation for inspection or acceptance, effective delivery deadline etc.) If no such specification is made, the deadline is taken to be indicative.
- c) In case of late delivery with respect to the agreed strict delivery deadline, if a special agreement provides for penalties for late delivery, these penalties shall in no event globally exceed 5 % of the contractual value (taxes excluded) of the late parts.

In any case, no penalty will be due to the client unless it proves that the delay results from a fault of the foundry.

If such evidence is produced, penalties, calculated as afore specified, will only be due as far as they will correspond to the actual prejudice suffered by the client as agreed between the parties. On the other hand, if the amount of the prejudice actually suffered by the client is higher than the maximum aggregate amount hereinabove defined, the client shall not be entitled to other remedies for the concerned delay than this aggregate amount which is a maximum, inclusive and final assessment of said prejudice.

## **7. DELIVERY AND TRANSFER OF RISKS**

- a) The delivery of parts is always recognised to be carried out at the foundry, whatever stipulations of the contract on payment of transport costs. This is carried out by direct transfer of the supplies, either to the client, or to the transporter specified in the contract by the client, or if this is not the case, specified by the foundry.

If there are no instructions on the destination or it is impossible to independently dispatch goods from the foundry, delivery shall be deemed to have been carried out when a notice of availability is sent, the parts being stored and invoiced at the client's expense and risk.

Except in the case of a contrary instruction specified in the contract, partial dispatch is permitted, if the foundry wishes.

- b) The transfer of risks to the client is achieved at the moment when the delivery as described above is completed, notwithstanding retained rights of ownership.

## **8. PRICE**

- a) Except in the case of a contrary agreement, the contract prices for supplies are per unit, exclusive of tax, from the foundry, the parts being delivered in the condition specified in the contract when, if there are no instructions on this point, they shall be gross from the foundry, trimmed and with deadheads removed.

- b) They are, according to the agreement in the contract:

- either listed, in rise or decrease, according to the appropriate forms/formulae, taking into account variations in exchange rates, material prices, energy costs, wage costs, transport costs and/or other costs associated with the order, which appear between the contract date and the contract delivery date, in the absence of any other applicable dates specified on the contract
- or fixed in an agreed period of time.

## **9. WEIGHT**

In the particular case of parts sold by weight, the actual measured weight is the proof weight. Those weights stated on the offer and the order are only for purposes of indication.

## **10. QUANTITIES**

From the point of view of quantity, the number of parts indicated on the contract shall be binding, especially for parts which are hand cast. In the case of series production by a machine, a certain tolerance of the number of parts made and delivered is permitted. This must be agreed between the foundry and the client when the contract is negotiated. If no preliminary agreement is made, the general permissible tolerance should be +/- 5 % of the number of parts indicated on the contract.

## **11. PAYMENT TERMS**

- a) Payments shall be deemed to have been made to the head office of the foundry. The deadlines and method of payment, as well as payment of possible deposits, must be agreed specifically in the contract. In the absence of any agreement, payments are made, without any reduction, within a deadline of 30 days from the date specified on the bill.

Unless otherwise agreed, the cost of producing the tools must be paid within a deadline of 30 days running from the delivery of the prototypes or part-types.

- b) The non-return of bills with acceptance and bank details within 7 days of their being sent, the non-respect of any failure to pay a serious breach of the client's credit, in particular the revelation of any protest or pledge against commercial funds will be followed, if the foundry wishes with all legal powers and without giving notice by:
- either the loss of the deadline and as a consequence the immediate obligation to pay the remainder of sums still due for whatever reason and the suspension of all dispatches.

- or the annulment of all the current orders, and retention of deposits on the one hand and retention of the tools and parts on the other hand, until the indemnity owed to the foundry is valued.
- c) Each sum which is falling due, is automatically yielding interest. The level of interest shall be the sum of the interest rate applied by the European Central Bank to its most recent refinancing operations and at least eight percentage points<sup>(4)</sup>.

For the first semester of the year concerned, the applicable rate shall be the rate in force on 1 January of that year and, for the second semester of the year concerned, the applicable rate shall be the rate in force on 1 July of that year.

The client may not refuse to pay part or all of a sum owed to the foundry because of any claims on his part, especially because of guarantee rights, without the agreement of the foundry.
- d) In the case of subcontracting, the client, according to the legislation, will request his own client to guarantee the payment of the sums owed to the foundry.

## **12. PART TYPES, INSPECTION AND ACCEPTANCE**

For production/series orders, the client must request the manufacture of part types which are submitted to him by the foundry for acceptance at his pleasure after all necessary inspections and tests. The acceptance must be addressed to the foundry by the client by letter or by any other means of communication which results in a document.

In all cases, and even when acceptance does not follow delivery, the type and extent of inspection and required tests, standards and strictness classifications concerned, as well as all types of tolerances must be specified in the drawings and the specification, which must be provided by the client with his request for a quote and confirmed in the contract agreed between the foundry and the client.

In the case of manufacturing composite parts or parts assembled by welding in the foundry, the parties must agree on the definition of each of the composite parts and on the extent of the nature of transition areas.

The principles and types of non-destructive inspection may only be defined in relation to the design of the parts. The client must therefore always state in his request for a quote and in his order, the inspection he requires, which parts of the pieces are required to be inspected and the strictness classifications which apply, to determine in particular the conditions under which guarantee will apply as defined in article 14.

In the case of there being no specification concerning the inspection and tests to be carried out on the parts, the foundry will only carry out a simple visual and dimensional inspection.

The inspection and tests deemed necessary by the client are carried out at his request by the foundry, by himself or by a laboratory or third party organisation. This must be stated in the conclusion of the contract at the latest, as well as the type and extend of the inspection and test.

In the case where acceptance is required, the extent and conditions of the acceptance must be established at the latest in the conclusion of the contract.

The price of inspection and tests is generally distinct from that of the parts but may be incorporated in to the parts price if so agreed by the client and the foundry.

This price takes into account the cost of special work necessary to obtain conditions required for the carrying out of the inspection at a high level, especially in the case of non-destructive testing.

Unless the contract specifies the contrary, acceptance shall be carried out at the foundry, at client's expense, at the latest in the week following the availability for acceptance notice addressed to the client by the foundry or to the organisation in charge of the acceptance. In the case of a shortcoming on the part of the client or the organisation in charge of inspection, the parts shall be stored by the foundry at the client's expense and risk. After a second notice from the foundry has had no effect, after two weeks from the date when it was sent, the material is deemed to be accepted and the foundry has the right to dispatch it and invoice for it.

In each case, these inspections and acceptances are carried out within the appropriate standards, according to the conditions defined by the drawings and the technical specification, as they have been agreed by the client and accepted by the foundry.

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<sup>(4)</sup> In case French law is applicable, each sum which is falling due, is automatically yielding interest. The level of interest shall be the highest of the two following rates: thrice the legal interest rate or the interest rate applied by the European Central Bank to its most recent refinancing operations plus ten percentage points. In the latter case, the applicable rate for the first semester of the year concerned shall be the rate in force on 1 January of that year and, for the second semester of the year concerned, the applicable rate shall be the rate in force on 1 July of that year. For any amount remaining unpaid after the due date, the debtor is also as of right debtor to the creditor of a fix sum of 40 Euros as compensation for its recovery costs.

### 13. QUALITY ASSURANCE

The supplies made within the Quality Assurance system require that this condition is specified by the client in his request for a quote and in his order, the foundry shall confirm this in his offer and in his acceptance of the order, without prejudicing the provisions of the previous articles.

### 14. WARRANTY AND LIABILITY

a) The foundry is obliged according to the terms of the contract. Consequently, unless otherwise agreed in writing, the foundry is only bound to deliver parts which comply with the contractual plans and specifications, as defined hereinabove, or validated because of the acceptance by the client of part-types or prototypes.

#### b) Warranty

i. The parts must be checked by the client upon delivery.

Any claim, reserve or dispute relating to missing parts and/or apparent non-compliances must be reported as soon as they are discovered and, in any event, no later than within 15 days of the relevant date of delivery. At the end of this period, the client permanently forfeits any warranty right in this respect and any claim or demand, including counterclaim, is no longer admissible.

Claims, reserves or disputes relating to any other non-compliance should be formed within a month, for serial parts, and six months in the other cases, each period running from the relevant date of delivery. At the end of this period, the client permanently forfeits any warranty right in this respect and any claim or demand, including counterclaim, is no longer admissible.

The client must provide any evidence as to the reality of the alleged non-compliances given the foundry reserves the right to directly or indirectly proceed with any on-site findings and verifications. In the event that the part in question is actually compliant or that the proof of accountability for its non-compliance to the foundry cannot be provided by the client, an indemnity to cover notably all costs, including staff costs, incurred by the foundry is due as of right by the client to the latter.

ii. Except for gross or willful misconduct of the foundry, the foundry's warranty consists exclusively in

- remedying by itself, or, at its sole discretion, in having remedied by a third party, for any non-compliance eligible for its warranty under this section,
- or, where appropriate, because the foundry considers it as preferable or because no other solution is possible, in replacing the part.

It is only if the foundry considers that it is not able to rectify the non-compliance, to have it rectified by a third party or to replace the non-complying part that the foundry will decide to credit the client with the value of the non-complying part as specified hereunder in paragraph (iii).

Therefore, the foundry's warranty shall notably in no way cover

- costs of operations performed on the non-conforming part and, where appropriate, on the one replacing it including but not limited to treatments, machining, inspections and tests...,
- other costs of any kind and, in particular, of assembly, disassembly and withdrawal from service of non-conforming parts.

iii. Any process carried out by the client to remedy for the non-compliance of a part without the previous agreement of the foundry on said process and its cost, will result in the forfeiture of any right of the client to warranty and any claim or demand, including counterclaim, is then no longer admissible.

The parts, which are replaced by the foundry, shall be the object of a credit note, replaced parts being invoiced at the same price as those parts which they replace.

The process carried out to remedy for the non-compliance of a part or the replacement of a part may not alter the strictness of the warranty.

The foundry will not pay any cost for parts transportation unless it has previously accepted in writing such transportation and related cost.

### c) Liability

- i. The foundry can in no way be held liable for the consequences of any act and/or omission whatsoever of the client or of a third party.

In order to validly engage the foundry's liability, the one who intends to bring a claim on this ground must provide evidence

- that the foundry has breached one or more of its obligations,
  - of certain damage which was foreseen or which could have normally been foreseen at the time of the conclusion of the contract,
  - of the direct causal link between said breach(es) and damage.
- ii. In any case, the foundry's liability shall notably in no way cover
    - damages to goods and to persons and generally all damages caused by a defective part during use, when the defect is attributable to the design of the part or of the whole unit in which the part is incorporated, to instructions of all kinds given by the client to the foundry, or to all work or modification carried out on the part after delivery;
    - damages to goods and to persons and generally all damages caused by a defective part during use, if the client has used the part without first having carried out, or had carried out all the inspections and tests which the design, use and end industrial result sought, necessitate;
    - direct and/or indirect consequential damages including but not limited to loss of business, loss of profits, loss of opportunity, commercial loss, revenue shortfall etc. ...
  - iii. When the foundry may be held liable, the maximum compensation from all causes the foundry may be required to pay will yet be limited to the price of the part in question actually paid by the client to the foundry, unless gross negligence or willful misconduct.

### d) Waiver

The client waives, and shall guarantee and vouch for same waiver from its insurers and any third party engaged in a contractual relationship with the client, any and all claims whatsoever against the foundry and / or its insurers beyond the warranty and liability limits set out in these general conditions.

## 15. FORCE MAJEURE

The foundry shall be released from the consequences of the non-performance of one or more of its commitments provided this non-performance is due to an impediment beyond its control and that it could not reasonably be expected that it have taken the impediment into account at the time of the conclusion of the contract or have avoided or overcome it or its consequences. Are notably deemed to be such impediment releasing the foundry from its liability the following events: total or partial strike, lockout, interruption or disturbance of transport services, fire, storm, other natural disasters, supply difficulties etc...

## 16. RESERVED RIGHT OF OWNERSHIP

The delivery of parts is carried out under guarantee of the reserved right of ownership, to the extent that the legislation of the country where the parts are at the moment of recourse allows it, and when all necessary conditions for the laws to apply have been fulfilled.

The present clause signifies that the transfer of ownership of the parts will take place after the complete payment of their price.

## 17. HARDSHIP CLAUSE

Due to an event and/or, more generally, a change in the general situation, beyond the parties' control, compromising the organisation of the contract and rendering its performance by a party excessively onerous, the parties agree to negotiate in good faith modification to the contractual terms in order to take into account the consequences of this event or change.

Without any agreement concerning such a modification within 45 days from receipt of the registered letter with acknowledgement of receipt sent by the affected party to the other referring to the terms of this article, the affected party will be entitled to automatically terminate the contract subject to a 15 calendar days prior notice given by registered letter with acknowledgement of receipt.

Notably, competing offer made to the client by one or several thirds under more attractive conditions (for instance, lower price or shorter delivery period...) or change in the client's relationship with his client(s), whatever it can be (for example, lower purchasing quantities, breach of contract etc...) and whatever the validity or cause of such a change, will not be regarded as compromising the organisation of the contract and therefore as justifying the application of the current article.

## **18. JURISDICTION**

The current general conditions of contracting and the contracts that they bring into play are governed by the legislation of the country of origin of the foundry. The parties reciprocally state that they do not intend to apply UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (11 April 1980).

The parties must attempt to solve all differences relative to the interpretation and execution of the current general conditions of contracting and the contracts which they affect in an amicable manner.

In the case where this is not possible, the parties being deemed to have failed in this attempt if no written agreement between them is signed within 60 calendar days from the first notification of the difference of opinion given by the most diligent party to the other by registered letter with acknowledgement of receipt and if a contrary convention is not available, a Tribunal or Court of competent jurisdiction which may settle all differences about the contract for supply is the court of the head office of the foundry, whatever the conditions of these contracts and the agreed method of payment, even in the case of a request under guarantee or a plurality of defendants.