



**FOREST**<sup>®</sup>  
METAL GROUP

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## GENERAL TERMS AND CONDITIONS

in respect of:

the private limited company

FOREST METAL GROUP B.V.

with its registered office in Rotterdam, the Netherlands

at Boezembocht 35

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## Metal Group



## DEFINITIONS

- FMG:** the private limited company FOREST METAL GROUP B.V., with its registered office in Rotterdam at Boezembocht 35, also the user of these general terms and conditions and/or every company affiliated to Forest Metal Group B.V. that has declared these general terms and conditions applicable.
- Contracting party:** the natural person or legal entity with whom FMG holds negotiations or concludes or has concluded an agreement.
- Goods:** the item or items that form the subject of a (purchase or sales) agreement.
- Agreement:** a multilateral legal act, in the course of which FMG assumes an obligation towards a contracting party.
- Terms and conditions:** these General Terms and Conditions.
- Buyer:** the contracting party, both a natural person and a legal entity, who is in negotiations about concluding or has already concluded a purchase agreement.
- Seller:** the contracting party, both a natural person and a legal entity, who is in negotiations about concluding or has already concluded a sales agreement.
- In writing/written:** In writing/written is taken to mean every form of communication that stores the information in a way that facilitates representation in a tangible form.
- Registered office:** Registered office is taken to mean the registered office under the articles of association, and when a party has more than one registered office, the location which, given the facts known to or envisaged by the parties before concluding the agreement, is closest related to the agreement and the compliance thereof.

## APPLICATION

### Article 1

- 1.1 All legal acts and all agreements with FMG are exclusively governed by the laws of the Netherlands, with due observance of these terms and conditions. The terms and conditions used by a contracting party never apply. In the event of conflicting terms and conditions, these terms and conditions of FMG prevail.
- 1.2 All legal relationships with natural persons and legal entities not established in the Netherlands are, in addition to the provisions in article 1.1, subject to the principles of the UNIDROIT, the United Nations Convention on international purchase agreements for movable objects, concluded in Vienna on 1 April 1980, Treaty Series 1981, 184, English text, (Vienna Sales Convention), to the extent not deviated from under these terms and conditions and under FMG's written confirmation of the agreement.
- 1.3 All legal acts of and all agreements with contracting parties established in the Netherlands are governed by the laws of the Netherlands, to the extent not deviated from under these terms and conditions.
- 1.4 All legal relationships with all contracting parties, regardless of where they are established, are subject to the INCO TERMS.
- 1.5 Furthermore, all legal relationships that constitute an instruction to store and/or deliver goods and all legal relationships pertaining to the safekeeping of goods are subject to the Amsterdam-Rotterdam Warehousing Conditions filed at the Registries of the Courts in Amsterdam and Rotterdam on 3 October 2006, with the exception of the terms and conditions referred to in article 4.

## FORMATION OF AN AGREEMENT

### Article 2

- 2.1 A (purchase and/or sales) agreement is formed by FMG's written confirmation thereof. FMG's written confirmation serves as full proof of the agreements made, unless the contracting party immediately objects to the contents of the written confirmation.
- 2.2 Verbal agreements are made under the suspensive condition of a written confirmation from FMG.
- 2.3 Written confirmation is taken to mean a confirmation sent by letter, fax and/or e-mail, and with regard to which the copy to be kept by FMG serves as full proof.



- 2.4 Offers made by FMG are free from obligation and can be withdrawn by FMG at any time.
- 2.5 Every offer from FMG is made under the condition that acceptance by the contracting party does not create an agreement, unless FMG confirms the agreement in writing after having received the acceptance.
- 2.6 If no immediate objection is made to the contents of the written confirmation, the agreement is formed, subject to the terms and conditions given by FMG. If immediate objection is made against the contents of the written confirmation sent by FMG, no agreement is formed, unless the objections are of a fundamental nature, in which case the agreement is formed subject to the terms and conditions given by FMG.
- 2.7 A written notification sent by FMG and/or the contracting party comes into effect only when it has reached the person whom it is addressed to.

## **OBLIGATIONS OF THE BUYER**

### **Article 3**

- 3.1 The person who sold goods pursuant to the agreement, undertakes to transfer the full and unencumbered ownership of those goods and to deliver them at the agreed time and location, in accordance with the specifications in the agreement.
- 3.2 The contracting party guarantees FMG that the goods sold to FMG are free from third-party claims, were acquired legally and that the selling and delivery of those goods do not violate any applicable legal regulations or third-party rights, and the contracting party indemnifies FMG in full.
  - 3.2.a The contracting party guarantees FMG that the goods sold to FMG have been checked for radioactivity and that the values or limits permitted by law or legislation are not exceeded. On FMG's demand, the contracting party will furnish proof of the check for radioactivity and the results thereof. Any damage or loss, both direct and indirect, caused by or related to the goods sold to FMG being contaminated with radioactivity is at the full expense and risk of the contracting party, and the contracting party fully indemnifies FMG in that respect.
- 3.3 Regardless of the seller, delivery, which is taken to mean the actual transfer, must be made at the registered office of FMG, insofar as not stipulated otherwise in the agreement.
- 3.4 If the contracting party is a seller, ownership of the goods is transferred upon actual delivery at the address of FMG, unless the agreement stipulates a different delivery address, in which case the seller is expected to keep the goods for FMG from the moment the agreement is formed, in case the seller actually has the goods in his possession.
- 3.5 If the goods purchased by FMG are kept by a third party on behalf of the seller, transfer of ownership takes place following the notification to the third party that ownership has transferred from the seller to FMG, with regard to which the seller upon conclusion of the agreement is expected to have unconditionally authorised FMG to undertake all necessary acts of transfer of ownership.
- 3.6 If FMG is the seller, transfer of ownership does not take place until the contracting party has fulfilled all obligatory performances. Every actual delivery of the goods to the contracting party by FMG takes place subject to retention of title.
- 3.7 Delivery and transfer of ownership must take place with due observance of the above, on the agreed date.  
Failing an agreed date, delivery must be made within a reasonable term of conclusion of the agreement, subject to the provisions in the previous article.
- 3.8 In the event the seller is obliged to organise transport of the goods, the seller has to conclude appropriate agreements required for transport to the agreed location, using appropriate modes of transport and subject to the usual terms and conditions.
- 3.9 All documents required for the transport and cross-border traffic must be arranged by the party that has taken on the responsibility of transport.

## **COMPLIANCE OF THE GOODS WITH THE AGREEMENT**

### **Article 4**

- 4.1 The seller must deliver the sold goods and transfer ownership thereof in the agreed location on the agreed date, in accordance with the quantity, quality, description and packaging set out in the agreement.
- 4.2 The moment at which the goods are delivered determines whether or not the goods comply with the provisions in the agreement.
- 4.3 With regard to the quantity, the quantity determined by FMG by means of its weighbridge will be decisive for the parties and as such serves as full proof.
- 4.4 With due observance of the relevant provisions in these terms and conditions, the seller, from the moment of delivery, is liable for any non-compliance of the goods with the agreement.



- 4.5 If the parties have a dispute with regard to quality, both parties, by way of a binding opinion, will each appoint an independent expert who either jointly issue a unanimous opinion or who together appoint a third independent expert, which 3 appropriately expert will issue a unanimous binding opinion.
- 4.6 The fees of the experts are divided on the basis of wrong, to be assessed by the experts.
- 4.7 The buyer has to inspect or instruct a third party to inspect the goods within the shortest possible term of having been delivered, given the circumstances. If the agreement also encompasses transport of the goods, this inspection can be postponed until the goods have arrived at their destination.
- 4.7.a The contracting party who purchased the goods from FMG is obliged to check the goods for quality, quantity and the presence of radioactivity or other forms of contamination immediately and prior to treating and/or processing them. Failure to carry out these checks or not carrying them out properly releases FMG from any and all liability.
- 4.8 The right of the contracting party to invoke non-compliance of the goods with the agreement lapses if the contracting party fails to notify the seller accordingly within a reasonable term, but at least within 8 days of delivery or, in the case of transport, within 8 days of the goods arriving at their destination.
- 4.9 Goods sold must be delivered without any third-party rights or claims, with regard to which the seller fully indemnifies the buyer.

#### CONSEQUENCES OF THE SELLER'S FAILURE TO FULFIL HIS OBLIGATIONS

##### Article 5

- 5.1 If the seller fails to fulfil his obligations under the agreement and if the goods, in terms of weight and/or quality do not comply with the agreement, the agreed price will be adjusted proportionally and further set-off will take place, unless the seller offers to deliver alternative goods that do comply with the agreement and the buyer accepts this.
- 5.2 If the delivered goods are not suitable for the previously announced purposes for which the buyer purchased the goods, the buyer can dissolve the agreement and will not have to accept set-off or alternative goods.
- 5.3 By exercising other rights, the buyer will not lose his right, if any, to compensation.

##### Article 6

- 6.1 With due observance of the provisions in article 5.1, the buyer can demand that the seller fulfils his obligations, unless the buyer exercised a right that is inconsistent with such a demand.

##### Article 7

- 7.1 The buyer may stipulate an additional period with a reasonable term to allow the seller to fulfil his obligations.
- 7.2 Unless the buyer has received a notification from the seller that the latter will be unable to fulfil his obligations within the stipulated term, the buyer cannot exercise any rights regarding non-fulfilment during this term. However, this does not mean the buyer loses his right, if any, to compensation for late fulfilment.

##### Article 8

- 8.1 Subject to the provisions in article 7.2, the seller can remedy any failure to fulfil his obligations at his own expense even after the delivery date, if he can do so without causing an unreasonable delay and without unreasonable inconvenience for the buyer or to leave the latter in the dark about the seller's compensation for costs already incurred by the buyer.
- 8.2 If the seller asks the buyer to make it known he will accept fulfilment, the seller can fulfil his obligations after the buyer has agreed to the request in writing or subject to the terms and conditions stipulated by the buyer. During this term, the buyer cannot exercise any rights that are inconsistent with the seller's fulfilment.
- 8.3 A notification from the seller that he will fulfil his obligations within a specified term is expected to include a request to the buyer by virtue of the previous paragraph in order to make his decision known.
- 8.4 A request or notification from the seller by virtue of paragraphs 2 and 3 of this article is valid only if it has been received by the buyer.

##### Article 9

- 9.1 With due observance of the provisions in article 5.1, the buyer can declare the agreement dissolved:
  - a) if the seller's failure to fulfil his obligations under the agreement or these terms and conditions constitutes a considerable failure; or
  - b) in the event of non-delivery, if the buyer fails to deliver the goods within the additional term stipulated by the buyer in accordance with article 7.1, or if he declares not to deliver within the appropriately stipulated term.



- 9.2 However, when the seller has delivered the goods, the buyer loses the right to declare the agreement dissolved, unless he does so:
- a) on account of late delivery, within a reasonable term of discovering that delivery has been made;
  - b) with due observance of the provisions in article 5.1 on account of any failure other than late delivery, within a reasonable term:
- l) after he discovered or should have discovered the failure;
- ll) after the additional term stipulated by the buyer in accordance with article 7.2 has lapsed, or after the seller has declared he will not fulfil his obligations within that additional term; or
- ll) after the additional term stipulated by the seller in accordance with article 8 has lapsed, or after the buyer has declared not to accept fulfilment.

#### Article 10

- 10.1 If the seller delivers only some of the goods or if only some of the delivered goods comply with the agreement, articles 6 to 9 apply with regard to the missing or non-compliant goods.
- 10.2 The buyer can only declare the agreement fully dissolved if the fact that only some of the goods have been delivered or that goods have been delivered that do not comply with the agreement constitutes a considerable failure.

#### Article 11

- 11.1 If the seller delivers the goods before the specified date, the buyer can reject the delivery, unless reasonableness dictates otherwise.
- 11.2 If the seller delivers a larger quantity of goods than agreed, the buyer can accept or reject the delivery of the surplus goods. If the buyer fully or partially accepts the delivery of the surplus goods, he will have to pay for them in proportion to the agreed price.

### OBLIGATIONS OF THE BUYER

#### Article 12

- 12.1 The buyer is obliged to pay the purchase price and to take possession of the goods, in accordance with the requirements under the agreement.

### PAYMENT OF THE PURCHASE PRICE

#### Article 13

- 13.1 The obligation of the buyer to pay the price also means he will take measures and fulfils formalities required under the agreement or laws and regulations in order to facilitate payment.

#### Article 14

- 14.1 When the price is determined on the basis of the weight of the goods, the net weight will be decisive in the event of doubt.

#### Article 15

- 15.1 If the buyer is not obliged to pay the price at a certain different location, he must pay the seller:
- a) at the seller's registered office, or
  - b) if payment must be made on surrender of the goods or documents at the location where that surrender is made.
- 15.2 The seller must pay any increase of the payment-related costs that is the result of a change to his registered office after conclusion of the agreement.

#### Article 16

- 16.1 If the buyer is not obliged to pay the price at a yet to be specified date, he must pay it when the seller makes the goods or the documents related to that available to the buyer, in correspondence with the agreement. The seller can make such payment a condition for the surrender of the goods or the documents.
- 16.2 If the agreement also encompasses the transport of the goods, the seller can send the goods on the proviso that the goods or the documents related to that are surrendered to the buyer only against payment of the price.
- 16.3 The buyer is not obliged to pay the price before he has been given the opportunity to inspect the goods, unless the procedures for delivery or payment agreed by the parties are incompatible with this possibility.

#### Article 17

- 17.1 The buyer must pay the price at the date stipulated in the agreement and in the currency stipulated by the seller, without the seller having to ask for this or without having to fulfil any formality and without costs for the seller.
- 17.2 Payment of the price must be made in the manner stipulated by the seller, without any deduction or compensation, unless FMG agrees to it.



17.3 In the event that the contracting party fails to pay in time, FMG is entitled to lay claim to the goods delivered under retention of title and to gain factual ownership thereof, with regard to which the buyer irrevocably authorises FMG to enter those rooms where the goods delivered by FMG are stored and to do anything required to exercise its rights.

#### **TAKING DELIVERY OF THE GOODS**

##### **Article 18**

18.1 The obligation of the buyer to take delivery of the goods consists of:

- a) doing everything that can be reasonably expected from him in order to enable the seller to deliver the goods, and
- b) to take possession of the goods.

#### **CONSEQUENCES OF THE BUYER'S FAILURE TO FULFIL HIS OBLIGATIONS**

##### **Article 19**

19.1 If the buyer fails to fulfil his obligations under the agreement or these terms and conditions, the seller:

- a) is entitled to exercise the rights set out in articles 20 to 22;
- b) is entitled to demand compensation, as stipulated in articles 32 to 37;

19.2 By exercising any other rights, the seller will not lose his right to compensation, if any.

19.3 If the seller exercises a right with regard to non-compliance, a court or an arbitral tribunal cannot grant the buyer a postponement.

##### **Article 20**

20.1 The seller may demand from the buyer that the latter pays the price, takes possession of the goods or fulfils his other obligations, unless the seller has exercised a right that is incompatible with this demand.

##### **Article 21**

21.1 The seller may stipulate an additional period with a reasonable term to allow the buyer to fulfil his obligations.

21.2 Unless the seller has received a notification from the buyer that the latter will be unable to fulfil his obligations within the stipulated term, the seller cannot exercise any rights regarding non-fulfilment during this term. However, this does not mean the seller loses his right, if any, to compensation for late fulfilment.

##### **Article 22**

22.1 The seller can declare the agreement dissolved:

- a) if the buyer's failure to fulfil his obligations under the agreement constitutes a considerable failure; or
- b) if the buyer fails to fulfil his obligation to pay the price or to take possession of the goods within the additional term stipulated by the seller in accordance with article 21.1, or if he declares he will not do so within the appropriately set term.

22.2 However, when the buyer has paid the price, the seller loses the right to declare the agreement dissolved, unless he does so:

- a) on account of late fulfilment by the buyer, before the seller has concluded that fulfilment took place;
- b) on account of any non-compliance other than late fulfilment by the buyer, within a reasonable term:

I. after the seller discovered or should have discovered the non-compliance; or

II. after the additional term stipulated by the seller in accordance with article 21.1 has lapsed, or after the buyer has declared he will not fulfil his obligations within that additional term.

#### **RETENTION OF TITLE**

##### **Article 23**

23.1 All goods sold by FMG remain the property of FMG until the buyer has fully fulfilled his payment obligations towards FMG by virtue of any agreement concluded with FMG to deliver goods and/or provide services, which includes claims with regard to failure to comply with such an agreement.

23.2 If, at the time of delivery, the purchased goods are on the territory of the Federal Republic of Germany and/or German law would apply to the retention of title, the following text applies:

1. We reserve title to the delivered goods until full payment of all claims accrued to us or to accrue to us in the future, on any legal basis, in the context of the



business relationship.

2. The customer is authorised to process our products or their combination with other products in the context of his normal business operations. We accrue co-ownership of the products arising through said processing or combination to ensure our claims stated in Figure 1, which ownership the Customer transfers to us nunc pro tunc. The customer will store the products of which we are co-owners free of charge. The amount of our co-ownership shall be governed by the ratio of the value of our product and the product resulting from its processing or combination.

3. We irrevocably authorise our customers with regard to resale in the normal course of their business. This right expires in the event of cessation of payments. The customer grants us, nunc pro tunc, all claims with ancillary rights that may accrue to him through said resale. The ceded claims serve to secure all rights as per Figure 1. The customer is authorised to collect the ceded claims, as long as we have not revoked this authorisation. The right to collect also expires without the need for us to specifically revoke it if the customer stops making his payments. At our request, the customer must immediately inform us in writing to whom he has sold the product and what claims accrue to him from the sale, as well as providing us with publicly certified deeds concerning the cession of the claims.

4. The customer has no authorisation as to other disposal of the products for which we retain title or co-ownership or as to claims that have been ceded to us. The customer must inform us immediately with regard to seizure or other legal restrictions concerning the products of which we have partial or full ownership.

5. We are authorised at any time to demand the return of the goods that we own, if the customer is in arrears with a payment or his financial situation significantly deteriorates. If we make use of this authorisation, then a withdrawal from the contract is only possible - without prejudice to other imperative legal provisions - if we specifically declare this.

6. If the total value of the guarantees provided us exceeds our claims by more than 20%, at the request of the customer we will release relevant guarantees at our discretion.

23.3 If, at the time of delivery, the purchased goods are on the territory of Belgium and/or Belgian law would apply to the retention of title, the following text applies:

#### **EXPLICIT DISSOLUTION CLAUSE**

The following applies to deliveries to buyers established in Belgium:

‘In the event of non-payment on the due date, the seller can regard the sale invalid by operation of law and without demand.

The goods remain the property of the seller until full payment has been made. All risks are at the expense of the buyer.

Any advance payments remain the seller’s in compensation for potential losses upon resale.”

“In case of unpaid at the due date, the seller will be entitled to cancel the sale as of right and without prior formal notice.

The seller retains title to the goods until full payment of the price. The risks are born by the purchaser.

The deposits shall be retained to cover the prospective loss at the time of reselling.”

23.4 Until the buyer has fulfilled all his payment obligations towards FMG by virtue of any agreement concluded with FMG to deliver goods and/or provide services which includes claims with regard to failure to comply with such an agreement, the buyer is not permitted to sell and/or deliver goods subject to retention of title to third parties, to pledge them and to mix them, and they will be stored separately and identifiably.

#### **TRANSFER OF RISK**

##### **Article 24**

24.1 In the event that FMG sells goods to a contracting party, the risk of the goods transfers to the contracting party with effect from the agreement inception date, being the written of confirmation from FMG thereof, provided the goods are sufficiently determinable and identifiable.

24.2 If FMG has purchased goods from a contracting party, the risk of those goods does not transfer to FMG until the goods have been delivered at the address of FMG, or until ownership of the goods has been transferred to FMG and after FMG has inspected and accepted the goods.

24.3 If a contracting party has good reason to exercise his right to dissolve the sale or to replace the goods, or if he invokes invalidity or demands nullification thereof, it will not change the transfer of the risk of the goods during the period that starts when the agreement is formed until the moment the dissolution or replacement is invoked or until invalidity is invoked or nullification is demanded. As such, the goods remain at the risk of the contracting party during that period.

##### **Article 25**

25.1 The loss of or damage to the goods after the risk has transferred to the buyer does not release him from the obligation to pay the price, unless the damage or loss is the result of an act or omission by the seller.

##### **Article 26**

26.1 If the agreement also encompasses transport of the goods, the risk of the goods during transport, with due observance of the provisions in article 23 and unless the agreement stipulates otherwise, is vested in the party responsible for transport.

##### **Article 27**

27.1 The risk with regard to goods sold during transit transfers to the buyer from the moment the agreement is concluded. If the circumstances so dictate



however, the buyer will bear the risk from the moment the goods were handed over to the transporter who issued the documents in which the transport agreement is laid down. Nevertheless, the seller bears the risk of loss or damage, if the seller at the time the sales agreement was concluded was aware of or should have been aware of the fact that the goods had been lost or damaged and that he failed to notify the buyer.

#### Article 28

28.1 In cases that do not fall under articles 24 to 26, the risk transfers to the buyer when he takes over the goods or, if he fails to do so in time, from the moment at which the goods are made available to him and failing to take possession of the goods results in non-compliance.

28.2 If the agreement relates to goods that have not been identified yet, the goods are not deemed to have been made available to the buyer until the moment they are clearly destined for execution of the agreement.

### PROVISIONS RELATING TO THE OBLIGATIONS OF BOTH THE SELLER AND THE BUYER

Future non-compliance and agreements with regard to successive deliveries

#### Article 29

29.1 A party can suspend fulfilment of its obligations if after conclusion of the agreement it emerges that the other party will not fulfil a considerable part of its obligations as a result of:

- a) a serious failure of its ability to fulfil that part of its obligations, or a serious failure in its creditworthiness, or
- b) its behaviour during the preparations of fulfilment of its obligations under the agreement, or during fulfilment.

29.2 In the event that the seller has already shipped the goods before the reasons set out in the previous paragraph are identified, he can object to the goods being delivered to the buyer, even if the buyer already has a document that entitles him to acquire the goods. This paragraph only applies to the buyer's and seller's rights with regard to the goods.

29.3 A party that suspends fulfilment either before or after shipment of the goods, has to immediately notify the other party of the suspension and has to continue his fulfilment, if the other party furnishes sufficient security for the fulfilment of its obligations.

#### Article 30

30.1 In the event that it is clear, before the fulfilment date, that one of the parties will be guilty of considerable non-compliance, the other party can declare the agreement dissolved.

30.2 When time allows, the party that intended to declare the agreement dissolved, has to give proper notification to the other party in order to enable it to furnish sufficient security to fulfil its obligations.

30.3 The previous paragraph does not apply if the other party had declared it will not fulfil its obligations.

#### Article 31

31.1 In the event that for the agreement that provides for successive deliveries of goods, the failure of one party to fulfil its obligations with regard to a single delivery constitutes a serious shortcoming with regard to that delivery, the other party can declare the agreement for that delivery dissolved.

31.2 In the event that the failure to fulfil the obligations for one of the deliveries by one of the parties constitutes a good reason for the other party to conclude that non-compliance for future deliveries is likely, it can, provided it does so within a reasonable term, declare the agreement dissolved for the future.

31.3 A buyer who declares the agreement dissolved with regard to a delivery can at the same time declare the agreement dissolved with regard to past or future deliveries, if those deliveries cannot be used for the intended purpose agreed on by the parties upon conclusion of the agreement, due to their mutual relationship.

### COMPENSATION

#### Article 32

32.1 With due observance of the provisions in articles 36 and 37 and subject to the provisions in article 34, the compensation for non-compliance by a party consists of a sum that is equal to the damage or loss, including lost profits, suffered by the other party as a result of the non-compliance. However, such compensation can never exceed the damage or loss which the non-compliant party anticipated or should have anticipated upon conclusion of the agreement as a possible result of the non-compliance, given the facts it was or should have been aware of.

#### Article 33

33.1 In the event that the agreement is dissolved and the buyer or the seller has in a reasonable manner taken out covering purchase within a reasonable term



of dissolution, the party demanding compensation is owed the difference between the agreed price and that of covering purchase, without prejudice to its right to compensation for other damage or loss in accordance with article 31.

#### Article 34

34.1 In the event the agreement is dissolved and if the goods have a current price, the party demanding compensation is, insofar it has not taken out covering purchase as referred to in article 33, entitled to the difference between the price agreed on in the agreement and the current price as it stands on the date of dissolution, without prejudice to its right to compensation for other damage or loss in accordance with article 32. However, if the party demanding compensation has dissolved the agreement after having taken over the goods, the current price used is that as it is at the time of that takeover, instead of the current price as at dissolution.

34.2 For the application of the previous paragraph, the current price is the one that applies at the location where the goods should be delivered or, if no current price exists for that location, the price in another location that can reasonably replace it. The differences in the costs of transporting the goods are taken into account.

#### Article 35

35.1 A party that invokes non-compliance has to take reasonable measures, given the circumstances, in order to reduce the damage ensuing from the non-compliance, including lost profits. If it fails to take such measures, the non-compliant party can demand a reduction of the compensation to the extent of the amount by which the loss should have been reduced.

#### Article 36

36.1 The right to demand compensation from FMG lapses after a period of 3 months that starts no later than the moment at which the goods have been delivered to the contracting party or the loss event has taken place, if it takes place before the goods are delivered or the moment at which they should have been delivered, while every right to demand compensation lapses after a period of 6 months, starting the moment the goods have or should have been delivered to the contracting party.

#### Article 37

- 37.1 FMG's liability is in any case limited to an amount of € 15,000 per event and in the case of damage to and/or loss of the goods, liability is limited to an amount of the current price per kilo, subject to a maximum total of € 15,000.
- 37.2 FMG can never be held liable for indirect damage suffered by a contracting party. Indirect damage is in any case taken to mean: lost profits, intangible damage, third-party losses, environmental damage, etc. FMG can never be held liable for damage or loss caused by goods that have not yet been inspected by the buyer.
- 37.3 The contracting party indemnifies FMG against all third-party claims (claims from authorities and EU institutions included) that relate to or ensue from the goods delivered to the contracting party, as well as goods purchased by FMG. Among other things, this is understood to include claims in connection with obligations by virtue of competition regulations (such as anti-dumping legislation), with regard to contamination of goods with radioactivity (such as the obligations under the Nuclear Energy Act) and with regard to explosions in relation to goods received by FMG and/or resold goods.

#### Article 38

38.1 If a party fails to pay the price or any other amount due, the other party is entitled to interest on those amounts, without prejudice to its right to compensation in accordance with the previous articles.

### CIRCUMSTANCES IN DISCHARGE OF AN OBLIGATION

#### Article 39

- 39.1 A party is not liable for a failure in fulfilling one of its obligations if it proves that this failure was caused by an impediment beyond its control and that it could not have reasonably been expected, upon conclusion of the agreement, to have taken such impediment into account or that it would have avoided or overcome such impediment of the consequences thereof.
- 39.2 An impediment beyond its control includes but is not limited to: war, revolution, uprising, floods, international conflicts, fire, exceptional market price changes, weather conditions, illness, strikes, stagnation in the supply of raw products, legislative changes (changes to) governmental measures, permits required in connection with compliance not being granted, environmental conditions, orders and measures taken by the authorities, etc.
- 39.3 If the party's failure can be attributed to the failure by a third party charged by that party with the execution of the entire agreement or part thereof, that party will be released from its liability only if:
- a) it is released from that by virtue of the previous paragraph; and
  - b) the third party would have been released if the provisions in that paragraph applied to him.
- 39.4 The release referred to in this article applies to the period during which the impediment exists.



39.5 The party that fails to fulfil its obligations must notify the other party of the impediment and the consequences thereof on its ability to comply. If the other party does not receive the notification within a reasonable time after the non-compliant party became or should have become aware of the impediment, the latter is liable for any damage or loss ensuing from the notification in question not having been received.

39.6 Nothing in this article will stop the parties from exercising any right other than that for compensation.

#### Article 40

40.1 A party cannot invoke non-compliance by the other party insofar as that non-compliance was caused by the acts or omissions of the former party.

### CONSEQUENCES OF DISSOLUTION

#### Article 41

41.1 Dissolution releases both parties from their obligations under the agreement, without prejudice to any compensation due. Dissolution does not affect a provision in the agreement with regard to the settlement of disputes or other provisions in the agreement that regulate the rights and obligations of the parties after dissolution of the agreement.

41.2 A party that has executed all or part of the agreement can demand that the other party refunds anything the former party has performed by virtue of the agreement. When both parties claim the right to a refund, this refund must be made simultaneously.

#### Article 42

42.1 The buyer loses the right to declare the agreement dissolved or to demand that the seller delivers alternative goods if he is unable to return the goods mostly in the same condition he received them in.

42.2 The previous paragraph does not apply:

- a) if the inability to return the goods or to return them mostly in the same condition they were in when the buyer received them cannot be attributed to the buyer's acts or omissions;
- b) if the goods or parts thereof are lost or reduced in value as a result of the inspection stipulated under article 4; or
- c) if the buyer has sold the goods or parts thereof during his normal business operations or has used or processed them in accordance with a normal method of operation, before he discovered or should have discovered that they did not comply with the agreement.

#### Article 43

43.1 A buyer who has lost the right to declare the agreement dissolved or to demand that the seller delivers alternative goods in accordance with article 5, retains all other rights allocated to him under the agreement and these terms and conditions.

#### Article 44

44.1 If the seller is obliged to refund the price, he also has to pay interest on this, counting from the date on which the price was paid.

44.2 The buyer has to refund the seller the value of every gain he enjoyed from the goods or parts thereof:

- a) if he has to return the goods or parts thereof; or
- b) if he is unable to return all or some goods or if he is unable to return all or some goods mostly in the same condition they were in when he received them, but he nevertheless declared the agreement dissolved or has demanded that the seller delivers alternative goods.

### LOOKING AFTER THE GOODS

#### Article 45

45.1 If the buyer has been negligent in taking possession of the goods or if he, when the price must be paid upon delivery of the goods, fails to pay the price and the seller either has the goods or can otherwise control them, the seller has to take all reasonable measures, in the circumstances, to preserve the goods. He is entitled to keep the goods until the buyer has indemnified him for the costs reasonably incurred by him.

#### Article 46

46.1 If the buyer has received the goods and he intends to exercise any right by virtue of the agreement or these terms and conditions to refuse these goods, he has to take all reasonable measures, in the circumstances, to preserve the goods. He is entitled to keep the goods until the seller has indemnified him for the costs reasonably incurred by him.

46.2 If the goods sent to the buyer are made available to him at their destination and he exercises the right to reject them, he has to take possession of the goods at the expense of the seller, provided this can be done without payment of the price and without unreasonable inconvenience or unreasonable costs. This provision does not apply if the seller is at the destination or if someone locally is authorised to take charge of the goods on behalf of him. If the buyer takes possession of the goods by virtue of this paragraph, his rights and obligations are governed by the previous paragraph.



#### Article 47

47.1 A party that is obliged to take measures in order to preserve the goods can outsource the storage thereof to a third party at the expense of the other party, provided the related costs are not unreasonable.

#### Article 48

48.1 A party that, in accordance with article 45 or 46 is obliged to preserve the goods can sell them in an appropriate manner if the other party causes an unreasonable delay when accepting or taking back the goods or upon payment of the price or the storage costs, provided it has notified the other party in a reasonable manner of its intention to sell the goods.

48.2 If the goods are subject to quick deterioration or if the storage of the goods would lead to unreasonable costs, a party that, in accordance with article 45 or 46 is charged with the preservation of the goods, is obliged to take reasonable measures to sell them. To the extent possible, it has to notify the other party of its intention to sell the goods.

48.3 A party that sells the goods can reduce the proceeds with the expenses reasonably incurred to preserve and sell the goods. The remainder must be paid to the other party.

### COSTS INCURRED IN CONNECTION WITH EXERCISING RIGHTS

#### Article 49

49.1 If a contracting party has failed towards FMG and FMG incurs costs or suffers a loss in order to exercise its rights, FMG is entitled to recover those costs and the loss from the contracting party.

49.2 Those costs are also taken to mean the judicial and extrajudicial costs being a minimum of 15% of the principal sum, as well as internal and external costs, experts fees, as well as interest at 1.5% per month, part of a month included, calculated on the loss.

49.3 The accounts statement to be provided by FMG with regard to the costs it has incurred, as mentioned above, serves as full proof for the extent of those costs.

### SETTLEMENT OF DISPUTES

#### Article 50

50.1 Unless FMG prefers to submit a certain dispute to arbitrators, all disputes between FMG and a contracting party will be submitted to the competent court in Rotterdam.

50.2 In the event FMG wishes to submit a dispute to arbitrators, the dispute will be settled in accordance with the Arbitration Regulations of the Netherlands Arbitration Institute, arbitration location Rotterdam, the Netherlands, and the proceedings will be conducted in Dutch.

### GENERAL PROVISIONS

#### Article 51

51.1 Unless stated otherwise, all prices used by FMG:

- are exclusive of VAT and other taxes and/or levies, including import duties;
- are exclusive of the costs of packaging, transport and insurance, unless explicitly agreed otherwise in writing;
- are expressed in Euros, unless explicitly stated or agreed otherwise in writing;

#### Article 52

52.1 All payments first serve to pay the costs, then interest and finally the principal sum .

#### Article 53

53.1 Invoking an agreed deviation or change to the agreement is possible only if such deviation or change is confirmed in writing by FMG.

53.2 FMG is at all times entitled to unilaterally change these terms and conditions, and the changed terms and conditions will apply to existing legal relationships with retrospective effect.

#### Article 54

54.1 If the competent court / arbitrator or arbitrators in a certain case rule that a provision in these terms and conditions is not legally valid, the other provisions in these terms and conditions will continue in full force.



54.2 When the circumstances under which the parties concluded the agreement change to such a considerable extent that neither party can be reasonably expected to comply with all or part of the agreement, the parties will consult about an interim change to the agreement. FMG is entitled to make changes to these general terms and conditions, which changes also constitute a change to the then prevailing agreement or agreements.

#### Article 55

55.1 Every party has to behave in accordance with the general rules of good faith as they apply in industrial business.

55.2 If and insofar as these terms and conditions do not deviate from that, the parties have to behave in a manner generally known by the parties in their specific business and which is applied on a large scale.

#### Article 56

56.1 The parties have to observe secrecy towards each other with regard to information that should be regarded as confidential. Information sent is intended only for the addressee and only for the purpose for which the information is provided. The use of this information other than by the addressee is not permitted. This information may not be published, copied, distributed and/or made available to third parties. FMG cannot guarantee the correct and/or complete transfer of the information sent, nor the prompt receipt thereof.