

MANUCHAR GROUP

# General Terms and Conditions of Sale

**Manuchar**

Your partner in emerging markets



SA PARTS TRADING COMPANY NV

**ManucharSteel**

**Baubur**

## Table of Contents

Scope of Application	3
Offers and Orders	3
Prices	3
Delivery	4
Transport and Risk	4
Acceptance, Inspection and Claims	4-5
Retention of Title	5-6
Payments	6-7
Force Majeure, Hardship	7-8
Limitation of Liability	8
Sanctions, Export Control and Boycott	8-9
Anti-Corruption and Anti-Money Laundering	9
Data Privacy	9
Severability	9
Law and Disputes	9



## **1. Scope of Application**

**1.1.** All of our supplies, sales, services and related offers and contracts are governed by these general conditions of sale (hereinafter the “Conditions”), unless explicitly agreed otherwise in writing in a separate agreement. In the event of a continuing business relationship, the Conditions shall also apply to future transactions even if the Conditions are not explicitly referred to. By placing an order, accepting an offer or otherwise entering into a contract with us, the buyer (the “Buyer”) confirms and is deemed to have read and accepted these Conditions and to have renounced his own general terms and conditions, if any. The Buyer agrees that, except if explicitly confirmed in writing, no actions taken by us shall be interpreted as accepting any contractual provisions offered by the Buyer.

**1.2.** In these Conditions, Incoterms shall mean the International Commercial Terms as most recently published at the relevant time by the International Chamber of Commerce.

**1.3.** In the event of conflicting provisions, the specific provisions of the confirmed order, offer or contract shall prevail over these Conditions.

**1.4.** We reserve the right to amend, modify or otherwise alter the Conditions from time to time. The most recent version will always be available at [www.manuchar.com/legal-information](http://www.manuchar.com/legal-information) and will be effective immediately upon publication and will cover all pending and future orders and any contracts entered into after the date of publication.

**1.5.** The Conditions are also available in French, Spanish and Portuguese versions, which can be consulted on the website mentioned in Clause 1.4. of these Conditions. In the event of inconsistencies, the English version of these Conditions available on the mentioned website shall prevail.

## **2. Offers and Orders**

**2.1.** Our offers and quotations are non-binding. Any order of the Buyer, placed either orally or in writing, shall be considered a binding offer to us to enter into a contract, subject to the terms and conditions stipulated therein and the applicable Conditions. Contracts, as well as supplements, modifications or ancillary agreements, shall be deemed entered into only upon (i) our written confirmation through a pro forma invoice (without prejudice to any reservations to which the pro forma is made subject) or (ii) our signing of the (ancillary) contract, supplement or modification. The Buyer cannot cancel any order, except with our explicit written approval.

**2.2.** Unless we receive a copy of our written confirmation of the Buyer’s order in good time, which is countersigned for approval by the Buyer, we cannot be held liable in any way in relation to such order, whether contractually or extra-contractually. Except to the extent that our written confirmation of the order stipulates otherwise, the Buyer must return the countersigned order within two (2) business days of receipt.

**2.3.** All our offers are subject to credit cover approval and/or credit cover being available, unless agreed otherwise in writing.

## **3. Prices**

**3.1.** Prices include all taxes, levies, duties, costs, insurance and charges, including for transport, that are for our account in accordance with the prevailing Incoterm (as defined above). All other costs or charges, including value added tax or any similar foreign tax, levy or duty in any jurisdiction, are excluded and for the Buyer’s account.

**3.2.** We shall be entitled to increase any quoted prices further to any changes in the costs of supplying the goods to the Buyer (e.g. import/export duties or other levies, insurance premiums, freight or commodity market rates) or if relevant, with a hardship allowance (e.g. in the event of flood, low water or ice).

## **4. Delivery**

**4.1.** The delivery dates mentioned in orders and offers are non-binding, and they are merely given as an indication unless expressly agreed otherwise in writing. In any case, we will not be liable in respect of any loss or damage incurred by the Buyer arising from or in connection with any delay in delivery of the goods or performance of any service. Moreover, we shall only be obliged to supply within the scope of our existing capacities and taking account of prior orders placed by other customers.

**4.2.** Our obligation to supply shall be suspended as long as the Buyer is in arrears with any payment towards us or any company affiliated to us, this without notice and without prejudice to our or the relevant company's right to claim compensation. If any doubt exists as to the Buyer's ability to fulfil his payment obligations towards us, we reserve the right to suspend transport or deliveries until satisfactory securities have been provided or advance payment has been made, as requested by us at our sole discretion.

**4.3.** Unless otherwise agreed, we shall be entitled, at all times, to deliver the goods in instalments. Each instalment shall be treated as if it constituted a separate and distinct contract with the Buyer. Any failure, suspension or delay by us in respect of any part delivery of the goods or the discovery of any defect in any of the goods thus delivered shall not entitle the Buyer to cancel the remainder of the contract and shall not affect the obligations of the Buyer in respect of the remainder of the goods.

## **5. Transport and Risk**

All transport is carried out in accordance with the agreed Incoterm or, in the absence thereof, at the Buyer's risk. In case we arrange the transport, we reserve the right to determine or arrange for route, means of transportation, as well as packaging of the goods unless otherwise agreed upon in writing.

## **6. Acceptance, Inspection and Claims**

**6.1.** The Buyer must take delivery of the goods immediately upon presentation. All costs incurred by us relating to the Buyer's refusal to take delivery, or delay in taking delivery of the goods are for the Buyer's account, including costs of transportation and storage. If the risk for loss or damage to the goods has not been transferred yet to the Buyer according to the prevailing Incoterm, such risk shall in any event transfer to the Buyer on the moment of refusal to take delivery and the Buyer shall be deemed to have taken delivery.

**6.2.** The Buyer must inspect the goods without delay. If any discrepancies are noted, we shall be informed immediately and allowed to inspect or survey the goods. Failure to immediately inform us or not allowing us or our designated inspector or surveyor to survey the goods, will cause any claim whatsoever to become void and abandoned.

**6.3.** Any claim concerning quality or quantity must be received in writing by us within seven (7) calendar days after the Buyer has taken delivery of the goods or after the moment the Buyer is deemed to have taken delivery. However, quality defects that could not have been discovered even through diligent inspection upon delivery must be notified within seven (7) calendar days after discovery thereof and in any event within three (3) months from the date of delivery or from the moment the Buyer is deemed to have taken delivery. All claims filed after the relevant period set forth in this clause are time-barred.

**6.4.** Claims shall be sent to Manuchar by registered mail to the following address: **Rietschoorvelden 20, 2170 Antwerp, Belgium, to the attention of the Legal Department**, and our receipt date of the claim letter shall be considered as the date of presentation of the claim.

**6.5.** All claims shall be documented with an original inspection report of a neutral survey company accepted by us.

**6.6.** All goods under claim must be stocked separately, clearly marked, and must not be used until the claim is settled, unless we agree otherwise in writing.

**6.7.** No claims will be accepted once the goods are processed or resold. Furthermore, the Buyer shall lose all rights to claim for defects if the goods were improperly handled or stored by or for the account of the Buyer.

**6.8.** No express or implied warranties are made by us regarding the suitability of the goods for the purpose intended by the Buyer.

**6.9.** We shall bear no liability in respect of the quality and specification of the goods in case the Buyer had designated the party (e.g. manufacturer) supplying the goods to us. In such event, we shall use our commercially reasonable efforts to cooperate with the Buyer so that the latter may formulate a claim against our supplier.

**6.10.** For justified or accepted claims, we shall, at our sole discretion, either (i) supply additional goods or replace goods at our expense or (ii) refund the invoice amount partly or in full or issue a credit note. Any and all further claims or demands of the Buyer on whatever legal basis are hereby rejected.

**6.11.** The Buyer agrees that we may apply by way of set-off an amount equal to any monies or other liability owed from time to time by the Buyer or any member of the Buyer's group to us, against any monies owed by us to the Buyer. of our supplies, sales, services and related offers and contracts are governed by these general conditions of sale (hereinafter the "Conditions"), unless explicitly agreed otherwise in writing in a separate agreement. In the event of a continuing business relationship, the Conditions shall also apply to future transactions even if the Conditions are not explicitly referred to. By placing an order, accepting an offer or otherwise entering into a contract with us, the buyer (the "Buyer") confirms and is deemed to have read and accepted these Conditions and to have renounced his own general terms and conditions, if any. The Buyer agrees that, except if explicitly confirmed in writing, no actions taken by us shall be interpreted as accepting any contractual provisions offered by the Buyer.

## **7. Retention of Title**

**7.1.** Retention of title. All goods delivered by us shall remain our property until all outstanding debts (whether due or not) owed by the Buyer towards us and towards any of our affiliates have been fully settled. The Buyer shall be obliged to affix to the goods a sign clearly indicating that the goods are our property.

**7.2.** Ownership of processed goods. Retention of title under Clause 7.1. shall continue to apply where the goods under retention of title undergo treatment or processing. If the goods under retention of title are processed, combined and/or mixed with other materials by the Buyer, we shall acquire co-ownership of the new product in the ratio of the invoice value of the goods under retention of title to that of the other materials used. If our ownership ceases as a result of combining or mixing, the Buyer hereby assigns title to the new products or materials to the extent of the invoice value of the goods under retention of title and shall store these on our behalf free of charge. The goods subsequently co-owned by us shall be deemed to be goods under retention of title pursuant to Clause 7.1. above.

**7.3.** Re-sale by Buyer. The Buyer may only re-sell or process the goods under retention of title or mix them with other materials in the ordinary course of its business and if it is not in default. Pledges and transfer of ownership as security shall not be permitted. If payment of the purchase price by the customer is deferred, the Buyer shall ensure it retains title to the goods under retention vis- -vis its customer on the same terms and conditions applied by us to retain title of the goods.

**7.4.** Assignment and collection of claims. In the event of re-sale of the goods under retention of title, the Buyer hereby assigns to us as security all claims for sums due to the Buyer from the re-sale - where we co-own the goods under retention of title in proportion to our co-ownership rights. The same applies to any other claims superseding the goods under retention of title or otherwise arising with respect to these, such as insurance claims or tort claims in the event of loss or destruction. We hereby revocable authorize the Buyer to collect the claims assigned to us in its own name and for our account.

**7.5.** Duty of notification. In the event of seizure of the goods under retention of title by any third party, in particular by attachment, the Buyer shall immediately disclose to such third-party our ownership of the goods and notify us thereof accordingly to enable us to assert our ownership rights. To the extent that the third party is unable to reimburse us for the legal costs incurred in this connection, the Buyer shall be liable for payment of such costs.

**7.6.** Event of realization. Should we rescind the contract due to a breach by the Buyer of any terms of the contract, in particular in the event of delayed payment, we shall be entitled to demand the return of goods under retention of title.

**7.7.** If this retention of title is not enforceable towards third parties under any relevant law or in any relevant jurisdiction or as a result of any other reason, under any relevant law or in any relevant jurisdiction, we shall be conferred to the security and collateral rights permissible under such law/in such jurisdiction as security for due payment of the invoice. The Buyer shall inform us of the measures we have to take to safeguard our rights and shall co-operate in taking such measures.

## **8. Payments**

**8.1.** Payments are to be performed on the terms and in the currency as mentioned in the contract or invoice, the latter prevailing in case of conflict. The amounts shown on the invoice shall be due and payable without any deductions or set-off whatsoever, except in case of our express written consent. No claim or invoice-discussion shall entitle the Buyer to suspend the payment of the related invoice. Payments must be made at the address of our registered office, i.e. Rietschoorvelden 20, 2170 Antwerp, Belgium. Any claim relating to the invoice must be presented to us by registered letter or courier addressed as set forth in Clause 6.4. above, within seven (7) calendar days as from the date of the invoice.

**8.2.** Any loss as a consequence of the volatility in exchange rates is for the Buyer's account.

**8.3.** The Buyer undertakes to collect/accept all documents when presented by our bank or the bank's agents. He will also carry out all measures necessary for the immediate transfer of relevant funds.

**8.4.** Failure to pay the purchase price by the due date constitutes a fundamental breach of contractual obligations.

**8.5.** Interest shall accrue on overdue payments at the official rate established pursuant to the Belgian Law of 2 August 2002 on combating late payments in commercial transactions (Belgian Official Gazette of 7 August 2002) increased by two percent (2%).

**8.6.** Additionally, the amount of any overdue payment will automatically be increased by fifteen percent (15%) as contractual and irreducible damages for administrative expenses and commercial disruptions, without prejudice to our right to claim higher damages.

**8.7.** In the event the Buyer fails to meet a payment date under any contract with us or any of our affiliates, we may at our option and without prejudice to our other rights and remedies (i) terminate the relevant contract with immediate effect by written notice to the Buyer without any further action or formality being required, and/or (ii) suspend or cancel deliveries under the relevant or other contracts of the Buyer, until all amounts due are paid in full. Furthermore, all other outstanding invoices will become immediately due and payable without the need for any notice. Moreover, if the Buyer fails to make payment on the due date, we shall be entitled to exercise a lien over the goods, as set out in Clause 7 of these Conditions.

**8.8.** In the event that the Buyer makes an overpayment for whatever reason, such overpayment must be notified by the Buyer within a period of twelve (12) months starting from the date of overpayment. The Buyer shall have the right to request that the overpayment(s) are used as credit in relation to later orders or that the overpayment(s) are returned to the Buyer in which case the provisions of Clause 8.9. will apply. Any requests under this clause shall be submitted in writing and shall be subject to agreement from us.

**8.9.** In the event of a request from the Buyer that an overpayment is refunded, we will only issue a refund relating to the overpayment sum to the bank account it originated from and then only provided there are no other monies outstanding at the time the overpayment refund is requested. If there are any monies past due for payment, we shall be entitled to deduct such monies from the refund. No interest will be payable on the overpayment. The refund for the overpayment:

- if the request is made within six (6) months of the overpayment, will be less a thirty-five dollars (USD 35) administration fee and any bank charges;
- if the request is made more than six (6) months after the overpayment, will be less a seventy-five dollars (USD 75) administration fee and any bank charges.

**8.10.** If the Buyer receives any communication by e-mail or otherwise regarding a change of bank account numbers, he should contact his usual contact person immediately by phone to check this information, in order to prevent possible fraud. The Seller doesn't accept any liability in case the Buyer transfers money to an incorrect bank account number.

## **9. Force Majeure, Hardship**

**9.1.** We are entitled to suspend the performance of our contractual obligations towards the Buyer under any contract (including, for the avoidance of doubt, an accepted order of Buyer) without incurring any liability, to the extent that:

- force majeure; or
- any act of god, natural disturbance, adverse weather, war, employee accident, terrorism, riot, fire, explosion, accident, flood, epidemics, quarantine restrictions, highly contagious or infectious diseases, sabotage, mechanical breakdown, (supplier) plant shutdown, delay during transportation, the impossibility to obtain fuel, power, transporter, materials or equipment from our usual resources at reasonable prices, suspension of transport, governmental laws, regulations or orders; or
- any supply chain interruption, caused by any reason whatsoever; or
- any other cause beyond our reasonable control;

delays, restricts, limits or renders commercially infeasible such performance. We will notify the Buyer of such suspension as soon as reasonably possible. We will have no obligation to procure goods from other sources. If the aforementioned occurrence lasts for a period of more than one (1) month, we will be entitled to withdraw from the contract without the Buyer having any right to compensation.

**9.2.** If performance of our contractual obligations has become excessively onerous due to other events beyond our reasonable control which we could not reasonably be expected to have taken into account at the time of the conclusion of the contract, and we cannot at a reasonable cost avoid or overcome such event or the consequences thereof, the parties shall negotiate alternative contractual terms in good faith. If such negotiations fail or are not concluded within a reasonable time period, we shall be entitled to withdraw from the unfulfilled obligations of the contract without incurring any liability.

## **10. Limitation of Liability**

The aggregate liability of the Seller in connection with each contract to the Buyer for any loss or damage of whatever nature and whatever cause shall be limited to and in no circumstances, shall exceed (i) the price of the goods concerned or (ii) if the goods are delivered in instalments, the price of the instalment of the goods concerned. The Seller shall, moreover, not be liable to the Buyer, for any loss of profit, loss of use, loss of income, loss of production or accruals, loss of contracts, loss of goodwill or for any financial or economic loss or for any other indirect or consequential damage.

## **11. Sanctions, Export Control and Anti-Boycott**

**11.1.** "Sanctions" means any trade, economic and/or financial sanction or sanctions or export controls (including without limitation any relevant law, regulation, order, ordinance, resolution, decree, restrictive measure or other requirement having the force of law, as well as import and export restrictions related to military and dual use products and technologies, chemical precursors (drugs and explosives), dangerous chemicals, pesticides and substances that deplete the ozone layer), adopted by the US, UK, EU (or its respective Member States), UN, or the country of origin or destination of the goods.

**11.2.** The Buyer represents and warrants that neither it nor any person or entity that owns or controls it or that it owns and controls or for which it is acting is a designated target of any Sanctions. The Buyer agrees and undertakes to the other that it and its agents, contractors and representatives will fully comply with the requirements of all applicable Sanctions in the performance of this contract.

**11.3.** The Buyer agrees and undertakes that the goods will not be:

- resold to;
- disposed of by; or
- transported on a vessel, or otherwise dealt with in any way

which would cause a breach of Sanctions by us, our banks, insurers, agents, contractors or representatives or which would expose us, our banks, insurers, agents, contractors or representatives to the effects of any Sanctions.

**11.4.** The Buyer further represents and warrants that it will not make payment for the goods through or via such country, bank, or other entity or body or facility, as would cause a breach of Sanctions by us or our banks, insurers, agents, contractors or representatives, directly or indirectly or which would expose us, our banks, insurers, agents, contractors or representatives to the effects of any Sanctions and that it will ensure that payment is made for the goods in full without violating Sanctions.

**11.5.** The Buyer warrants that our products will not be used by their customer or onsupplied by their customer in a way which would cause a breach of Sanctions by us, our banks, insurers, agents, contractors or representatives or which would expose us, our banks, insurers, agents, contractors or representatives to the effects of any Sanctions.

**11.6.** The parties will not cooperate with, agree to, or comply with any terms or requests, including documentary requests, which violate or are otherwise prohibited or penalized under the Anti-Boycott laws or regulations of the US, UK, UN and/or the EU.



**11.7.** Without prejudice to the foregoing, the Buyer agrees to cooperate with our reasonable requests for information and/or documentary evidence to support and/or verify compliance with this clause.

**11.8.** Each and every obligation, warranty and undertaking in this clause shall be deemed to be a condition of the contract and breach of any of these warranties or undertaking entitles the party not in breach to terminate the contract immediately and unilaterally without any further notice nor any further liability towards the other party.

## **12. Anti-Corruption and Anti-Money Laundering**

Each party respectively agrees and undertakes to the other that, in connection with this contract, it will fully comply with all applicable laws, regulations, orders, ordinances, resolutions, decrees, or restrictive measures and/or other requirements having the force of law, adopted by any state or government or international organization such as, but not limited to, the EU or the UN relating to anti-bribery and anti-money laundering (hereinafter the “AML Legislation”). In particular, each party respectively represents, warrants and undertakes to the other that it shall not, directly or indirectly, pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to, or confer a financial advantage on:

- a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
- an officer or employee of a public international organization;
- any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organization;
- any political party or official thereof, or any candidate for political office; or
- any other private person, individual or entity;

in each case if this is in violation of, or inconsistent with, the AML Legislation.

Each and every obligation, warranty and undertaking in this clause shall be deemed to be a condition of the contract.

## **13. Data Privacy**

All personal data collected will be treated in accordance with applicable legislation. The most recent version of our privacy statement will always be available at [Privacy Statement for business and external relations | Manuchar](#).

## **14. Severability**

The invalidity, illegality or unenforceability of any provisions of these Conditions under a certain law or jurisdiction shall not affect the validity, legality or enforceability of any other provision in these Conditions, which shall remain in full force and effect.

## **15. Law and Disputes**

**15.1.** The contract shall be construed and governed in all respects by Belgian law, excluding the United Nations Convention on Contracts for the International Sale of Goods (1980) and excluding principles of International Private Law that would designate any non-Belgian laws to apply.

**15.2.** Any dispute arising in connection with the contract shall be exclusively submitted to the competent court in Antwerp, Belgium, or, at our option, the competent court of the Buyer’s registered office.