



# GENERAL TERMS AND CONDITIONS OF SALE for NGI Trading SA hereafter called 'the seller'

## 1. Application

- 1.1. These General Terms and Conditions of Sale govern all relations between the seller and the purchaser and set out the general terms and conditions upon which the seller will deliver goods to the purchaser.
- 1.2. Accordingly, all other terms and conditions, whether expressed or implied by law, documents, invoices and the like, are hereby expressly excluded and the purchaser waives his right to rely on any provision to the contrary included in his own terms and conditions or any other document exchanged with the seller prior to ordering. These conditions supersede any and all other terms and conditions referred to or agreed before and related to the purchase of the same goods.

## 2. Order and modification

1. Any order, as well as any modification to it, given in writing or verbally by the purchaser to the seller will be subject to confirmation and firm only once confirmed in writing (by post, fax or email) by a legal representative of the seller and will specify, if applicable, among other things the nature, quantity and description of the goods, the agreed price, the payment terms, the delivery terms, the place and date of delivery or collection, the invoicing address, and the requested securities.  
If a security is requested by the seller in the confirmation letter, orders shall only become binding and can only be put into execution if the meant securities (letter of credit, bank guarantee, delcredere-cover, or other), have been provided within the term indicated in the confirmation letter.
2. A request to modify or cancel an order will be entertained only if received in writing (by post or fax) by the seller within three (3) working days from the date of acceptance of the order by the seller. The, within this period, duly receiving of a modification/cancellation to an order does not imply that the seller is obliged to accept the meant modification/ cancellation, and the seller remains free to consider the acceptance of the request to modify or cancel the order at its sole discretion.
3. If a request to modify or cancel the order is not accepted by the seller, delivery of the goods must be accepted, moneys paid in advance will not be returned, and the amount of any balance will be due.

## 3. Delivery

### 3.1. Terms

Delivery shall be made in accordance with the terms of delivery specified in the order confirmation sent by the seller and subject to the Incoterms rules in force at the time of sale.

Should the purchaser fail to call and/or collect the goods at the agreed date, the seller retains the right (i) after the giving of written notice to cancel the sale and resell the goods, or (ii) to compel the purchaser by any legal means to take delivery. In each case all additional (storage) costs shall be borne by the purchaser. In the event the seller decides to cancel the sale the seller will, amongst other damages, be entitled to the difference in price obtained in the event of resale to another party plus the costs related to such resale and interest.

### 3.2. Times

Delivery times are estimates only and not binding. Late deliveries shall not create an entitlement to damages, hold-back, or cancellation of orders in progress.

## 4. Price

- 4.1. The conditions for determining the selling price of goods are defined in the order as confirmed by the seller.
- 4.2. Only the weights and quantities shown on the shipping documents (delivery note, consignment note, bill of lading, etc.) will be taken into account in raising invoices for all sales regardless of the destination. Prices are in the currency stipulated in the written confirmation. Except as otherwise provided and without prejudice to the Incoterms rules in force at the time of sale, prices are stated net of taxes, excluding customs duties and insurance, excluding postage and packaging. These costs will be added to the invoice.
3. The provided prices and tenders by the seller are merely approximate and not binding for the seller. The seller can change them at any time until the acceptance of an order. Once the order is accepted, the seller can still revise or adjust the price in accordance with the law of 30<sup>th</sup> March 1976 (article 57), namely in function of the parameters that make up the real costs of the price and this only for that part that they represent in the price and this to a maximum of 80 % of the finally determined price.
4. All invoices are payable at the registered office of the sellers, nett and without discount.

## 5. Late or non payment

- 5.1. In case of late payment, the seller retains the right to suspend any outstanding orders and any of its outstanding obligations without prejudice to any other remedies.
- 5.2. Any amount not paid by the due date shown on the invoice shall automatically, by law and without reminder, incur with the effect from the day following the payment date shown on the invoice interest, at the legal interest rate increased by 4%, even if terms of respite are given. In addition the amount due shall be increased by 10%, with a minimum of 500 €, even if terms of respite are given.
- 5.3. Without prejudice to the Retention of Title clause below, every delay in payment gives the seller the full right to declare, at its sole discretion, each current sale (whether delivered or not or pending delivery, and whether payment is past due or not) to be disbanded, cancelled or postponed. The seller retains also the right to take back the goods that were already delivered or that were in dispatch.
- 5.4. In all the above cases, any amounts owed for the other deliveries, or for any other reason, shall become immediately, by law and without further reminder, payable unless the seller chooses to cancel the corresponding orders. The purchaser shall be required to reimburse all costs incurred by legal action to recover sums due, including lawyer's fees.

## 6. Quantities delivered

Unless otherwise agreed, a variation of 10% more or less from the order shall be tolerated on the quantity delivered. The amounts invoiced shall be those actually delivered (as shown on the weighbridge ticket, scale ticket or measuring/tonnage certificate (as the case may be)).



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## 7. Acceptance – Control

- 7.1. The seller acts as an intermediary for the purchase and resale of goods. All the steps taken by the seller to control the goods and the sampling tests conducted notwithstanding, the seller cannot discount all possibility that goods delivered will not conform to the order. Accordingly, on receipt of the goods, the purchaser must check that the goods delivered correspond in quantity, quality and type to the goods specified in the order. To do so, the purchaser must keep the delivered goods separate from any similar goods to enable identification. In the event of a complaint, the goods must remain separate in order to enable sampling and control tests to be carried out. Should the purchaser determine that the **quantity** of goods delivered does not correspond to that specified on the order, he must notify the seller of the fact by fax or email within twenty-four (24) hours of receipt of the goods with sufficient substantiating evidence (such as a weighbridge ticket, scale ticket or measuring/tonnage certificate (as the case may be)). Without prejudice to any steps to be taken as regards the carrier, complaints concerning **defects or non-conformity** of goods delivered compared to the goods ordered or the shipping order must be made in writing (letter or fax) within seven (7) working days of receipt by the purchaser or third party supported by an impartial certificate drawn up by one of the internationally recognized sampling organizations included on the accompanying list (bottom of page 2 of 2). Complaints as to quality must be made and substantiated in writing in the same time and by the same procedure. Should the seller receive no deficiency notice within seven (7) working days of receipt of the goods, the goods shall be indefeasibly deemed to be in conformity.
- 7.2. In the event of disputes over the results of sampling, the seller shall be entitled to appoint separately another internationally recognized sampling organization to provide a second opinion on the disputed goods. To that end, the purchaser shall afford the seller and any person appointed or authorized by it every facility to have access to the goods to perform the requisite sampling tests on the disputed goods.
- 7.3. If after performing such sampling tests, the two organizations so appointed prove to produce conflicting results, the seller and the purchaser may by agreement within a period not exceeding fifteen (15) working days from receipt of the second report (at the initiative of the seller) appoint a third internationally recognized sampling organization whose findings shall be binding on both parties.
- 7.4. In the event of defect or non-conformity of goods delivered, duly established by the sampling organizations in the conditions provided above, the purchaser may obtain either replacement of the goods free of charge in complete conformity with the order as placed, or a reduction of the order price, or a refund of the goods at the invoice price (if a payment has already been made) as the seller's chooses, to the exclusion of any compensation or damages, as respects both the purchaser and third parties. In the event of replacement of the goods, a reasonable delivery time shall be set by agreement between the parties.
- 7.5. If non-conforming goods are not accepted (including in the event of reimbursement of non-conforming goods), the purchaser shall afford the seller the access needed to remove the said goods and assistance in loading them.
- 7.6. Each party shall bear the fees and costs of the sampling organization personally instructed by it. If a third organization is instructed, the costs and fees thereof (and such if any advances as may have been made) shall be borne by the party who incorrectly disputed the sampling results.

## 8. Retention of title

- 8.1. The seller shall retain property in the goods sold until the full price – principal and other amounts – of all orders placed by the purchaser is paid. The purchaser shall therefore ensure the safekeeping of the seller's goods until property is transferred to him. The purchaser must ensure that the goods remain appropriated as long as they remain subject to this retention of title clause. The purchaser shall likewise refrain from removing the labels displayed on unpaid goods existing unaltered in its stocks.
- 8.2. The purchaser shall not sell, pledge or assign as security the property of the goods. He shall likewise resist by all legal means any such claims as others might seek to assert, in particular by attachment, against goods which are the property of the seller and immediately notify the seller of any risk of dissipation to enable the seller to protect its interests.
- 8.3. If payment is not made on the agreed date, the seller may request the return of the goods without the need for any particular procedural requirement. The purchaser shall permit the seller or any of its officers or agents to enter into and upon its depots at any time in order to recover the goods. They shall be jointly identified and a release will be given to the purchaser who shall bear all costs related to the return (including the costs of carriage, customs fees, insurance costs, etc.).
- 8.4. If all or part of the goods have been processed into new goods, whether or not involving the addition of other goods or merchandise of whatsoever kind, the seller shall acquire legal title to the new goods resulting from such processing, but shall not acquire any liability of any kind whatsoever towards third parties in connection therewith. The purchaser shall indemnify and hold the seller harmless from all liability in this regard.

## 9. Passing of risk

The risks in the goods, especially those associated with carriage, shall pass to the purchaser upon the handing-over of the goods to the purchaser or the carrier in accordance with the Incoterms rules in force and agreed at the time of sale between the parties.

## 10. Labelling

To ensure greater security and the traceability of the goods, the purchaser agrees to preserve the labelling until the goods are used.

## 11. Warranty

- 11.1. Goods sold by the seller are of standard industrial quality. The purchaser must perform the test he deems necessary to take any decision about the use of the goods; he must satisfy himself that the goods are fit for the purpose for which he wishes to use them.
- 11.2. The seller shall not under any circumstances be liable for the consequences of misuse, negligent use or one not consistent with custom and practice; this relates equally to the handling, storage and carriage of goods sold and generally to any act carried out by the purchaser on the delivered goods.
- 11.3. In any event, and any provision to the contrary contained in the purchaser's General Terms and Conditions of Purchase notwithstanding, where goods are not in conformity with the order, the seller's liability shall be limited to the price of the goods in conformity with those specified in the order. The seller shall not under any circumstances be held liable for loss or damage related to the use of non-conforming goods.





## 12. Notices

12.1. All notices to be given by the purchaser to the seller shall be validly given only if sent by recorded delivery letter (preceded in such case by the sending of a fax or email), or by fax or email (with acknowledgement of receipt) followed by a surface mail letter at the seller's registered office of the seller, to the attention of:

Via Luigi Canonica, 4  
6900 – Lugano  
Switzerland

Email: [info@ngi-trading.com](mailto:info@ngi-trading.com)

12.2. Any notice given by the seller to the purchaser hereunder shall be validly given if sent by recorded delivery letter (preceded in such case by the sending of a fax or email), or by fax to the purchaser's registered office as stated in the order.

12.3. Notice by registered letter shall be deemed to be given within three (3) working days of the date of sending (the postmark being conclusive proof).

12.4. Any change of registered office or fax/telephone number or other must be notified to the other party as soon as possible.

## 13. Governing law and competent courts

The contractual relationships between the parties shall be governed by the law of Switzerland. The stipulations of the treaty of the 1<sup>st</sup> of July 1964 on the "international sale of moveable property" are not applicable to this agreement. The courts of the region Ticino are solely competent for the settlement of any disputes between the seller and the purchaser.

## 14. General provisions

14.1. Failure by the seller to enforce at any time any of the provisions of these General Terms and Conditions of Purchase shall not be construed as a waiver thereof.

14.2. If any provision of these General Terms and Conditions of Sale shall be determined null and void, it shall be deemed non-existent and shall not invalidate the remaining provisions.

14.3. The seller reserves the right to modify these General Terms and Conditions of Sale at any time.

### List of internationally recognized sampling organizations:

- Stockpile Surveying and Protection BV
  - A.H. Knight BV
  - Inspectorate BV
  - SGS



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