

General (supplementary) Rules concerning Orders and Acceptance in the Aluminium Industry

(Recommendation of the Professional Association of the Non-Iron Metal Processing Industry)

1. Scope:

These General (supplementary) Rules concerning Orders and Acceptance in the Aluminium Industry shall apply to all legal transactions concluded between our company concerning the supply of goods and the provision of services by our company to buyers, insofar as the latter party is also a company. They shall either apply in addition to the general terms and conditions of business of our company that are applicable in the relevant case or in place thereof, where such terms have not been validly agreed upon or are not applicable. Any agreements with contrary effect, including in particular any terms and conditions of business or of purchase of the buyer that stipulate otherwise shall not be binding unless expressly accepted in writing by our company.

2. Orders:

If a business relationship already exists between our company and the buyer and/or a framework agreement/general order has already been concluded, the buyer shall be bound by its (detailed) order/call-off until acceptance /confirmation by our company, even if (irrespective of the requirement of written form otherwise applicable) the (detailed) order/call-off is placed orally or by telephone. In the case that a (detailed) order/call-off is placed orally or by telephone, it may also be accepted by telephone/orally by our company and a legally valid agreement shall thereby be concluded. If we reserve the right in any individual case to issue written acceptance/order confirmation, the agreement shall be deemed to have been concluded upon receipt of our written acceptance/order confirmation by the buyer, irrespective of whether it is in turn acknowledged or not.

3. Acceptance:

3.1 Owing to the specific sectoral conditions of the aluminium industry (extrusion plants), including in particular the requirement for the timely supply of raw materials in order to fulfil orders, limited storage capacity and fluctuating raw materials prices, the buyer shall be obliged to promptly accept the supplies and services ordered in framework and supply agreements/general orders.

3.2 If the supply and provision of an overall long-term quantity is agreed to in contracts/framework agreements/general orders, in the event of doubt, if no provision is made upon conclusion of these contracts/framework agreements/general orders as to the time of detailed quantities accepted and if no interim deadlines are set, the buyer shall be deemed to be subject to a pro rata requirement for acceptance during each calendar quarter, with regard to the overall duration and the overall quantity of the order.

3.3 Notwithstanding the foregoing, our undertaking shall only be subject to an obligation to supply after the placing of a detailed order/call-off, which shall thereafter be fulfilled within a reasonable period of time, in accordance with prevailing framework conditions (including in particular the capacity utilisation and production capabilities).

3.4 If the buyer is late in submitting a detailed order/call-off, which shall be deemed to have occurred in the event that it does not issue a call-off no later than one month prior to expiry either of the interim time limit stipulated in the framework agreement or (in the event that clause 3.2 applies) prior to the end of the quarter, it shall be obliged to compensate to our company all additional costs thereby arising of any type whatsoever (including in particular for material procurement and storage, the provision of additional labour capacity and legal enforcement), in which regard our company shall be entitled to choose either to furnish proof of the additional costs actually incurred or to claim the standard rescheduling costs according to industry-standard metal coverage rules (Cotango surcharge which, based on the raw material prices published by the relevant exchanges, corresponds to the ratio between the raw material price on which the general order/ framework agreement was based to the price on the day of supply).

3.5 The buyer shall not under any circumstances be entitled to reduce the price in relation to a framework agreement/ general order on account of falling raw materials prices/exchange prices.

3.6 If the buyer is late in submitting a call-off/detailed order, our undertaking shall be entitled to charge an advance payment up to the amount of the overall price for the supply of the quantity for which purchase is overdue.

3.7 If the customer is late by more than three months in submitting a call-off/detailed order for specific partial quantities either according to the framework agreement /general order or in accordance with clause 3.2 (quarter rule), our undertaking shall be entitled to withdraw from the contract with respect to the specific quantity that is thereby classified as being in default, subject to the continuance of the remaining terms of the contract and to charge for the resulting additional costs in accordance with clause 3.4. The foregoing shall be without prejudice to any further claims of our company.