

The General Terms and Conditions of Sale
Edition: 2010.12

1. Definitions

- In these General Terms and Conditions, the word:
 - 1) "KWE" shall mean Kobelco Welding of Europe B.V. and subsidiary sales companies.
 - 2) "Buyer" shall mean the person or company with whom the Offer is placed.
 - 3) "Goods" shall mean the products and related services and works thereof to be furnished by KWE under the Contract.
 - 4) "Offer" shall mean the offer placed to the Buyer by KWE for the supply of the Goods.
 - 5) "Contract" shall mean the sales and purchasing agreement to be entered into by and between KWE and the Buyer.
 - 6) "Delivery Time" shall mean the date on which the Goods shall be ready for dispatch from KWE.
 - 7) "Specifications" shall mean any technical descriptions, specifications and drawings of the Goods or other instructions contained or referred to in the Contract.

2. Complete Agreement

- 1) The Offer is valid for a period of [fourteen (14) days] from the date of issue, unless otherwise expressly stated in the Offer, provided however that KWE may revoke the Offer at any time prior to receiving the Buyer's acceptance.
- 2) The Contract shall become binding and be deemed to have been entered into by and between KWE and the Buyer when the Buyer accepts the Offer.
- 3) These General Terms and Conditions shall form an integral part of the Contract. Any terms and conditions of sale put forward by the Buyer in its order or otherwise shall not be considered in the Contract. The Buyer shall be deemed to have accepted KWE's "the General Terms and Conditions of Sale" unless the Buyer has noted specific exceptions thereto in written form and acquires KWE's prior written acceptance in the Contract.

3. Price and Payment

- 1) Price
 - a) Price for the Goods specified in the Contract shall be firm and final shall not be subject to any adjustment for any reason whatsoever.
 - b) Price for the Goods shall exclude Value Added Tax (VAT) and any and all of taxes, duties or other charges which may be imposed on the sale of the Goods, unless otherwise expressly agreed. If KWE is for any reason required to pay any of such charges, the Buyer shall reimburse KWE for these costs plus overdue interest as stated below in respect of KWE's payment thereof.
- 2) Payment
 - a) If no payment terms are agreed, the Buyer's payment under the Contract shall be made in advance before delivery of the goods.
 - b) Payment shall be made in [Euro] without any deduction, set-off or counterclaim of any kind whatsoever, unless otherwise indicated on the invoice.
- 3) Delay in Payment
 - a) Prompt payment is of the essence of this Contract and a delay or default in any payment will, at the option of KWE, operate as a fundamental breach of this Contract. All costs incurred by KWE as a result of non-payment or delay in payment by the Buyer including collection costs and attorney's fees, shall be paid by the Buyer.
 - i) In this regard, KWE may charge at least [€ 50, Fifty Euro] per reminder to the Buyer to cover all administrative costs.
 - b) Past due payments shall bear overdue interest computed daily at the lesser of (i) [15%] per annum; or (ii) the maximum rate of interest permitted by law.
 - c) Furthermore we will hand over the outstanding debt to Atradius for collecting the money.

4. Delivery

- 1) KWE shall perform the delivery of the Goods as described in the Contract. KWE, at its sole option, is entitled to divide and deliver the Goods in full pallets.
- 2) If no Delivery Time is agreed, delivery shall be made according to KWE's capacity planning.
- 3) Delivery of the Goods shall be made Ex Works (Incoterms 2011) KWE shall apply unless otherwise expressly agreed. Upon delivery, such delivery shall be deemed complete.
- 4) If it becomes apparent to KWE that delivery of any of the Goods will be delayed, KWE shall forthwith notify the Buyer of the foreseeable extent of such delay and shall, from time to time thereafter, notify the Buyer whenever the nature or foreseeable extent of such delay shall change.
- 5) Should the delivery be delayed by more than [eight (8) weeks], the Buyer shall as its sole remedy be entitled to terminate and cancel the purchase of the Goods delayed by giving written notice thereof to KWE.
- 6) In the event that the quantity of the Goods is agreed on the basis of weight, the quantity to be supplied can be adjusted by KWE to deviate up to 10% (+/-) from the agreed weight of the total delivery for each type of product grade, and the price shall be adjusted accordingly. The weight or quantity printed or otherwise stated on the Goods supplied by KWE shall be deemed to be correct, unless proven otherwise.
- 7) In no event shall KWE be liable for any direct or indirect damage or consequences attributed to a delayed delivery, except in the event of KWE's gross negligence.

5. Title and Risk of Goods

- 1) The risk of loss or damage to the Goods delivered under this Contract shall pass from KWE to the Buyer at the facility of KWE under this Contract, in accordance with the provisions of Incoterms 2011
- 2) Title to the Goods delivered under this Contract shall pass to the Buyer at the time of completion of payment of the price for the Goods delivered to the Buyer in accordance with Clause 3 thereof.
 - a) KWE holds the title to the Goods delivered until the Buyer: (i) makes full payment for the Goods; or (ii) makes full payment of all other monies due from the Buyer to KWE.
 - b) Until the title of the Goods passes to the Buyer, KWE has the right to recover any of the Goods in the Buyer's possession or control to which it holds the title and KWE is hereby given the right to enter any land or building where such goods are stored to collect such goods.

6. Inspection, Test and Notice

- 1) The Buyer, at the Buyer's expense, shall be obligated to inspect the Goods within [one (1) week] after arrival at the Buyer's premises or such other place, as may be mutually agreed between KWE and the Buyer.
- 2) In the event of any latent defects or shortages in the Goods, the Buyer shall give notice to KWE in writing of it. Such inspection, however, does not relieve KWE from any obligations hereunder.
- 3) The Goods shall meet the Specifications. If no specifications are agreed, the Goods shall meet the general specifications of KWE at all time of delivery. Statements presented in product information, handbooks, web sites, price lists or other information regarding the goods will only be binding on KWE if expressly referred to in the Contract.

7. Warranties

- 1) KWE, as manufacturer, warrants that the Goods shall be free from any liens or encumbrances in title, and that the Goods shall be as expressly set forth in the Specifications. Except as set forth in the preceding sentence, KWE makes no warranties of merchantability, or fitness for a particular purpose or special circumstances, nor any other warranties whether written or oral, statutory, expressed or implied.
- 2) For defects that could not reasonably have been detected upon arrival of the Goods, the Buyer

shall notify KWE of it in writing. However, KWE has no liability for failure to conform to the Contract, including but not limited to nonconformity of the Specification, unless KWE receives notice thereof at the latest within a period of [six (6) months] from the date of delivery.

- 3) If the Goods fail to meet the above warranty, KWE shall, at its sole option, replace or undertake and/or perform such remedial work as is necessary to ensure that the product conform to the standard set out in the warranty in a timely manner. The above remedial actions shall be the sole liability and obligation of KWE with respect to any claim that the product fails to meet the warranty. KWE shall not be liable for any incidental or consequential or indirect damages resulting from the use of the product including but not limited to damages relating to the use or loss of use of the equipment, or delays in manufacture, production, delivery, plant operation and/or loss of revenue, whether in contract, tort or otherwise. In no event shall any damages in the aggregate payable by KWE as a result of any claims of any kind made exceed the price of the Contract.

8. Suspension of Performance

- 1) KWE may suspend the performance of its obligations if, after the conclusion of the Contract, it becomes apparent that the Buyer will not perform a substantial part of its obligations as a result of:
 - a) a serious deficiency in its ability to perform or in his creditworthiness; or
 - b) its conduct in preparing to perform or in performing the Contract.
- 2) It is considered as becoming apparent that the Buyer will not perform its obligations if it has failed or delayed in any payment due on a previous contract made with KWE prior to any payment under a subsequent contract.

9. Force Majeure

- 1) Neither party shall be liable for delay in performing or failure to perform its obligations if the delay or failure results from an impediment outside its reasonable control such as war, terrorism, fire, explosion, flooding or other extreme weather, major machine break down, strikes, lockouts and other labor disputes, trade disputes, refusals to grant licenses.
- 2) The party which delays in performing or fails to perform its obligations due to the impediments set forth above shall give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the failing party knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.
- 3) Delay or failure due to such impediment shall not constitute a breach of contract, with the effect that the affected party is relieved from liability and all contractual claims against it in respect thereof. The time for performance shall be extended by a period equivalent to that during which performance is so prevented.
- 4) If such a delay or failure persists for more than [three (3) months], either party shall be entitled to terminate the Contract in respect of the Goods not yet delivered to the Buyer. In the event of such a termination, neither party will be entitled to any compensation, providing however that any prepayment for the Goods not delivered shall be refunded and the Goods in transit not delivered shall be re-vented.

10. Termination

- 1) In the event of a breach of this Contract, the non-breaching party shall provide written notice to the party in breach requiring it to remedy such breach. Should the party in breach fail to remedy such breach within [sixty (60) days] after receipt of such notice, or within any longer period as may be agreed between the parties, the non-breaching party shall, without prejudice to its other rights and remedies under this Contract, be entitled to terminate this Contract forthwith upon notice either in whole or in part.
- 2) A party may forthwith terminate this Contract in whole or in part upon a written notice if the other party:
 - a) becomes insolvent or files a voluntary or involuntary petition in bankruptcy or for

corporate reorganization or for any similar relief or is filed by or against a party, or if a receiver is appointed with respect to any of the assets of a party, or if a liquidation proceeding commenced by or against a party; or
b) if the whole or any important part of the business of the other party is transferred to a third party by agreement, order of court or otherwise.

11. Entire Agreement

This Contract constitutes the entire agreement between KWE and the Buyer and shall supersede any and all previous and contemporaneous negotiations, commitments and understandings, whether writing or oral, with respect to the Contract or the subject matter thereof. Any change, amendment, or modification of any of the terms and conditions of the Contract shall be made in writing and executed by KWE and the Buyer.

12. Governing Law

The Agreement shall be governed by the laws of Netherlands with exclusion of the United Nations Convention on the International Sale of Goods (CISG).

13. Resolution of Disputes

- 1) Any dispute, controversy or claim arising out of or in connection with the Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration pursuant to the rules of the Arbitration Committee of International Chamber of Commerce in accordance with provisions, rules and procedures promulgated by the said Arbitration Committee. The arbitration shall be taken place in Amsterdam, Netherlands. The arbitration shall be conducted in English language.
- 2) Notwithstanding the paragraph set forth above, KWE shall, in its sole discretion, be entitled to choose to have recourse to competent courts and execution authorities in and under the laws of the Buyer's country, or elsewhere, for purpose of collecting debts of the Buyer.

14. Confidentiality

KWE and the Buyer hereby undertake to maintain confidentiality of all instructions, drawings, the specifications and any other oral and written communication between KWE and Buyer.

15. Heading

All heading and numbering in the Contract are for convenience of reference only and shall in no way be used in interpretation of any of the provisions in the Contract.

16. Assignment

This Contract or any part thereof shall not be assigned or transferred to any third party without prior written consent of the other party hereto.

17. Non-Waiver

No failure or delay on the part of KWE and/or the Buyer in exercising any right or power under this Contract shall operate as waiver thereof, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power thereof.

18. Severability

The provisions of the Contract are severable. If and to the extent that any provisions of the Contract proves to be or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the other provisions of the Contract will not be affected or impaired in any way.

19. General Limitation of Liability

Except as otherwise expressly provided in this Contract, the parties expressly agree that in no event shall either party be liable or responsible to the other party for any incidental, indirect, punitive, special or consequential damages whatsoever, including without limited to lost profits and damages resulting from loss of use, irrespective of whether such party has been advised, knew or should have known of the possibility thereof. Both parties expressly waive any claims described in the preceding sentence.