

The General Terms and Conditions of Sale
Edition: 2019.08

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 other party than KWE on the legal acts and agreements referred to below in Article 2 with regard to the sale or delivery of goods or services by KWE.
 - 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. Applicability

- 1) These general terms and conditions apply to and form an integral part of all offers and quotations made by KWE, all order confirmations, acceptances and acknowledgements by KWE and any agreements and Contracts regarding the sale by KWE and purchase by the Buyer of Goods, unless and to the extent KWE explicitly agrees otherwise in writing. They apply to the exclusion of any other terms or conditions of the Buyer and shall also apply to all further or additional agreements between KWE and Buyer.
- 2) KWE hereby explicitly rejects and disregards any other and/or contrary terms and conditions of the Buyer, issued either before or after issuance of any document by KWE setting forth or referring to these terms and conditions.
- 3) Buyer's acceptance of the offer of KWE, Buyer's signature, KWE's commencement of performance or buyer's failure to provide written notice of objection shall constitute buyer's acceptance of these general terms and conditions, regardless of any contrary statements or representations not contained herein.

3. Offer

- 1) All offers are 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 withdraw or revoke the Offer at any time prior to receiving Buyer's acceptance thereof.
- 2) The Contract shall become binding between and be deemed to have been entered into by KWE and the Buyer when the Buyer accepts the Offer in writing.
- 3) Unless explicitly expressed otherwise in writing by KWE, the Contract constitutes the entire agreement between KWE and the Buyer and shall supersede any and all previous and contemporaneous negotiations, commitments and understandings, whether in writing or oral, with respect to the Contract or the subject matter thereof. No change to or amendment or modification of the Contract or these general terms and conditions shall be binding upon KWE unless accepted by KWE in writing.

3. Price and Payment

- 1) Price
 - a) Price for the Goods specified in the Contract are firm and final shall not be subject to any adjustment for any reason whatsoever.
 - b) Prices in any offer, order confirmation or Contract of KWE are in Euros and based on delivery 'Ex Works' (EXW) from the facility of KWE or from another facility designated by KWE and 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 explicitly agreed in writing. 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.
 - c) KWE shall have the right to increase the price for the Goods accordingly in the event of statutory changes in prices, such as taxes and duties levied by the government, and due to increase in prices of (raw) materials, equipment, electricity, national insurance contributions, wages, freight and other cost price factors or charges, including charges in foreign exchange and an increase of prices KWE is charged by its own suppliers, in the

period between the offer date and the delivery date.

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 and to the designated address of KWE.
- b) Payment shall be made in Euro without any discount, deduction, set-off or counterclaim of any kind whatsoever, unless otherwise indicated on the invoice.
- c) If KWE determines, in its sole discretion, that Buyer's financial condition is not sufficient to meet Buyer's obligations under the Contract, KWE may demand security for payment, impose other payment terms or terminate the Contract.

3) Delay in Payment

- a) Prompt payment is of the essence of the 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 due by the Buyer.
 - i) In this regard, KWE may charge at least fifty (50) 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) fifteen percent (15% per annum; or (ii) the maximum rate of interest permitted by law from the due date until payment in full.
 - c) Furthermore KWE will hand over the outstanding debt to Atradius or any other collector for collecting the money.

4. Cancellation

- 1) Unilateral cancellation of an order by Buyer which has been accepted by KWE or cancellation of the Contract by Buyer shall be null and void, unless KWE explicitly agrees otherwise in writing. Buyer will indemnify KWE for all costs and expenses already incurred and commitments made by KWE in relation to the cancelled order or Contract plus a charge with a minimum of 25% of the total amount of the order or Contract for overheads and loss of profit.

5. Delivery

- 1) KWE shall perform the delivery of the Goods as described in the Contract. KWE, at its sole discretion, is entitled to make partial deliveries in full pallets.
- 2) Unless otherwise explicitly agreed in writing, delivery shall be made according to KWE's capacity planning. Delivery times are always an estimate and on the condition Buyer provides all the necessary information, documents, etc. for the delivery of the Goods
- 3) Delivery of the Goods shall be made Ex Works (latest version Incoterms at the date of the Contract) as designated by KWE unless otherwise explicitly agreed in writing. 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) 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 ten percent (+/-)(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.
- 6) In no event shall KWE be liable for any direct or indirect damage or consequences attributed to a delayed delivery nor shall the Buyer be entitled to termination of the Contract or to suspension of its own obligations under the Contract or under any other Contract between KWE and Buyer, except in the event of KWE's gross negligence.
- 7) In the event the Buyer is in default with regard to taking the delivery of the Goods, KWE may deliver the Goods in consignment at Buyer's costs and will also be entitled to terminate the Contract and to claim full compensation.

6. Repurchase

- 1) On the terms provided herein, KWE accepts repurchase of any of the delivered Goods from

the ordinary range during ninety (90) days from the date of invoice:

- a) prior to any repurchase or return, a repurchase errand must be requested by the Buyer and a return must be approved by KWE;
 - b) the Buyer shall return the Goods to KWE together with a copy of the order sheet and information about the errand number
 - b) the Goods shall be unused and in an unbroken original packing, free from dirt, marking and damages and shall be returned well packed in an acceptable outer packaging;
 - c) the Buyer shall pay the freight cost for returning the Goods and any other upcoming costs related to the return shipment;
 - d) the Goods shall be returned and delivered to KWE's designated facility no later than fourteen (14) days after the day the Buyer received the errand number.
- 2) Approval of returns for repurchase are subject to Buyer's fulfillment of the above-mentioned obligations. Furthermore the returned Goods must meet KWE's specifications in the quality checks performed upon arrival to KWE. Receiving an errand number or a return form does not mean that KWE has approved the repurchase.
 - 3) The Buyer is liable for loss or damage to the Goods during transport.
 - 4) Returned goods which are accepted by KWE for repurchase will be credited to the Buyer for 75% of the original invoiced amount. Returns not accepted for repurchase are returned to the Buyer on Buyer's expense.

7. 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 the Contract, in accordance with the provisions of the Incoterms (latest version at the date of the Contract).
- 2) Title to the Goods delivered under this Contract shall pass to the Buyer upon payment of the price in full, including any costs or interest in respect thereof, and of payment in full of any other claim in connection with the Contract or in connection with KWE, the latter notwithstanding applicable mandatory law.
- 3) Until the title of the Goods passes to the Buyer, the Buyer is obliged to keep the Goods in good care and separate from other goods, to keep these Goods identifiable as Goods obtained from KWE, to insure the goods against damage or loss and to refrain from processing, transferring or pledging any of these Goods or granting any right or title to the Goods to any third party, other than in connection with its normal business operation. At all times and without prior notice or default KWE has the right, at Buyer's cost, 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 by Buyer to enter any land or building where these Goods are stored to retrieve the Goods in the event the Buyer fails in the performance of its payment obligations or gives KWE reason to believe that it will not fulfil its payment obligations.
- 4) If the Goods are destined for a country whose laws recognize more far-reaching opportunities of retaining the right of ownership/retention of title than stated above, KWE and Buyer then these further opportunities are expected to have been stipulated on behalf of KWE, with the understanding that if it cannot be objectively determined which further regulations this provision relates to, the provisions above continue to apply.

8. 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. Such inspection, however, does not relieve Buyer from any obligations hereunder. If Buyer does not give notice in writing with an itemized report of well-founded complaints to KWE of any defects, shortages, damages or discrepancies within this period the Goods shall be deemed accepted and it is explicitly agreed that Buyer shall have waived all claims bases on any defects that were or would have been discovered on reasonable inspection during this period.
- 2) The Goods shall meet the Specifications. If no specifications are agreed, the Goods shall meet the general specifications of KWE at the time of

delivery. Statements presented in product information, handbooks, websites, price lists or other information regarding the goods will only be binding on KWE if expressly referred to in the Contract.

9. Warranties

- 1) KWE, as manufacturer, warrants that the Goods shall be free from any liens or encumbrances in title, and that the Goods for a period of six (6) months from the date of delivery (unless explicitly agreed otherwise in writing) shall be substantially 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 and not exceeding the Buyer.
- 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. KWE shall furthermore have no obligations under the above warranty in the event the non-conformity is (not limited) a result of misuse, neglect, improper handling, alteration, storage, transportation.
- 3) If the Goods fail to meet the above warranty, KWE's sole and exclusive obligation shall be limited, at KWE's discretion, to repair or replace the non-conforming (part of the) Goods in a timely manner. Subject to the limitations set forth in section 13 of these terms and conditions, the foregoing states the entire liability of KWE in connection with non-conforming Goods.

10. Force Majeure

- 1) KWE shall not 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 – whether or not foreseeable at the time of the Contract – as a result of which KWE cannot reasonably be required to execute its obligations, 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, force majeure and/or default by one of KWE's suppliers, etc.
- 2) Delay or failure due to such impediment shall not constitute a breach of contract, with the effect that KWE 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.
- 3) In the event as stated in this provision KWE shall have the right to allocate, in a manner that KWE considers to be fair and equitable, its supply of available Goods among itself and all of its buyers.
- 4) If such a delay or failure persists for more than three (3) months, the Buyer shall be entitled to terminate the Contract in respect of the Goods not yet delivered. In the event of such a termination, Buyer will not 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 reverted.

11. Export Control

- 1) The Buyer guarantees that during the trading of the delivered goods in whatsoever form he/it will comply with the legislation and regulations applicable thereto.
- 2) Buyer guarantees that he/it will comply in all respects with all of the export, re-export and transfer restrictions set forth in export control laws and regulations of the European Union and the United Nations and in export licenses for the Goods supplied to Buyer. Buyer warrants that the Goods cannot be directly or indirectly destined or probably destined for any country for which a sanction is in effect for the goods concerned in confirmation with EU or UN regulations, unless the Buyer has acquired an exemption for this from a competent authority designated by the EU or the UN. Buyer guarantees to impose all export control restrictions as set out above to any third-party(-buyer) if the Goods are transferred or re-exported. Buyer shall take all necessary actions to ensure no customer/buyer or end-user contravenes these export restrictions and shall

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indemnify KWE against all direct, indirect and punitive damages, loss, costs and other liability arising from claims resulting from Buyer's or its customers' non compliance with this article.

12. Suspension and termination

1) In the following events, KWE, without prejudice to its other rights and remedies under the Contract or at law, shall be entitled to suspend the Contract for a maximum period of six (6) months or to terminate the Contract or any part thereof with immediate effect, without judicial intervention and without any liability for any damage whatsoever:

- a) if Buyer breaches the Contract;
- b) if KWE is in serious doubt if Buyer can meet its obligations from the Contract;
- b) if Buyer 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;
- c) if the whole or any important part of the business of the Buyer is transferred to a third party by agreement, order of court or otherwise or otherwise and/or the control of Buyer changes.

2) Upon occurrence of any of the events referred to above, all payments to be made by Buyer under the Contract shall become immediately due and payable.

3) Rescission of the Contract by Buyer based on Section 6:265 of the Dutch Civil Code is excluded.

13. Limitation of Liability

1) Notwithstanding the permissible extent of applicable mandatory law, KWE, its affiliates or officers shall in no event be liable for any incidental, indirect, punitive, special or consequential damages whatsoever in connection with or arising from the Contract or the Goods and/or the use thereof, or from the services provided hereunder, including (without limitation) lost profits or revenues, interruption or delays of business or manufacture, production, delivery, loss of reputation or goodwill, and damages resulting from use or loss of use, whether such damages arise in Contract, tort (including negligence), warranty or any other legal theory and irrespective of whether KWE has been advised, knew or should have known of the possibility thereof.

2) Notwithstanding the permissible extent of applicable mandatory law, in no event, whether such liability arises in Contract, tort (including negligence), warranty or otherwise, shall KWE's liability under or in connection with the Contract exceed the price of the specific Goods in the Contract of which the claim is made or the amount paid out by the liability insurance of KWE for the incurred damages.

14. Non-Waiver

No failure or delay on the part of KWE to insist upon strict compliance by Buyer with these terms and conditions and/or the Contract or to exercising any right or power under the 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.

15. Limitation of Action

Any Buyer's claim for any alleged breach of these terms and conditions must be brought by Buyer within three (3) months from the accrual of such cause claim and any legal action (as in a lawsuit) must be filed within one (1) year of the date of Buyer's claim.

16. Entire Agreement

17. Governing Law

All offers, order confirmations and Contracts shall be governed by the laws of Netherlands with exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

18. Resolution of Disputes

1) Any dispute, controversy or claim arising of or in connection with the Contract and these general terms and conditions, or the breach, termination or invalidity thereof, shall be exclusively adjudicated by the court with the competent jurisdiction of Amsterdam, the Netherlands, provided that KWE shall always be

entitled to submit any dispute or bring any action against the Buyer in any other court of competent jurisdiction.

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 injunctive or equitable relief or to take any action for purpose of collecting debts of the Buyer or to safeguard its possibility to have recourse on the other party.

19. Confidentiality

KWE and the Buyer hereby undertake to maintain confidentiality of all technical and commercial instructions, drawings, specifications and any other oral and written information exchanged between KWE and Buyer and shall use this solely for the purpose for which it has been communicated and shall not disclose it to third parties.

20. 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.

21. 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. Notwithstanding the foregoing, KWE may assign all of its rights and delegate all of its obligations hereunder to any parent, subsidiary or affiliated entity of KWE without the consent of the Buyer.

22. Severability

The provisions of the Contract and these terms and conditions shall be deemed severable. If and to the extent that any provision of the Contract or any, term or condition proves to be or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remainder will not be affected or impaired in any way.