

GENERAL TERMS AND CONDITIONS OF PURCHASE

1 - General provisions

1.1- Application of the general conditions.

These general conditions apply to the whole of the contractual relations between the Supplier company ("the Supplier") and MERCIER, hereinafter called "the Customer".

Any derogation to these general terms and conditions must be expressly accepted by the Customer in writing.

1.2 - Legal classification of contracts.

These general conditions are governed by French sales law, when they apply to a supply of standard products. They are governed by French general contract law and, as the case may be, by French law on subcontracting agreements, when they apply to the manufacture of a product from a set of specifications or to the provision of a service.

1.3 - Cooperation between the parties

The Supplier has the obligation to cooperate with the Customer and to provide him in writing with all information and full, accurate and reliable particulars relating to:

- its supplies, clearly expressed, together with their origin,
- conditions of storage, commissioning, operation and the environment of the supply,
- recommendations and manuals relating to safety,
- composition and particularities of the products it will supply.

These obligations are understood to apply also to any phases in any design studies, production and fine-tuning the equipment.

These obligations also apply:

- to the Customer's agent or representative.
- to the Supplier's subcontractor.

In accepting the contract, the Supplier warrants it is competent to perform the same.

1.4 - Practices

If for any reason whatsoever the Customer decides not to apply or cause the application of any of the clauses in these conditions, this may not be treated by the Supplier as an acquired practice amounting to a waiver or modification of the contract.

2 - Contract Documents

These general conditions, together with any special conditions accepted by both parties, form an integral part of the contract. If one or more clauses in the order or in these conditions are replaced by special conditions or conditions are deprived of effect for any reason whatsoever, the validity and enforceability of the other clauses will not thereby be affected.

The technical specifications and requests made by the Customer form the technical basis of the contracts.

All the types of document listed in any appendixes are also part of the contract.

3 - Orders and content of the contract

3.1 - General provisions

The order is made up of the specifications on the order form issued by the Customer and appendixes attached to or incorporated by reference into the order form (referred to together hereinafter as "special conditions") to the exclusion of any other general conditions of sale originating from the Supplier.

The order cancels and supersedes all previous written or oral proposals, negotiations, drafts and undertakings there may have been between the Supplier and the Customer. An order may only be changed by way of an amendment.

The Supplier is responsible for obtaining all the clearances and prior authorisations required by the competent authorities in good time to carry out the order.

Any documentation, tooling and/or property delivered by the Customer to the Supplier must be checked by the Supplier for the purposes of the order before any execution.

3.2 - Acceptance

The Supplier must return the acknowledgement of order, duly signed, within eight (8) calendar days from dispatch of the order by email only to info@mercier-engrenages.com. Failing return within this period, the order shall be deemed accepted by the Supplier in all its special conditions contained therein and these general conditions.

Any form of acknowledgement of receipt issued by the Supplier is binding on the latter, it being understood that any general or special conditions contained in documents drawn up by the Supplier which are not in agreement with the order shall not be binding on the Customer.

Only requests for change issued in writing by the Supplier within the eight (8) calendar day period mentioned above and formally accepted in writing by the Customer will be approved.

A price offer from the Supplier or an intention to order by the Customer shall not be treated as an undertaking by the Customer. Only a formal document on the Customer's headed paper constitutes a valid order.

Unless stipulated otherwise in the order, the prices submitted by the Supplier are deemed to include all taxes (excluding VAT) and are firm and not subject to revision. Unless the Customer expressly agrees, partial deliveries will not be authorised and quantities must strictly be those ordered.

3.3 - Content of the supplies

The scope of the contract is limited to the supplies, services and warranty expressly set forth by the Customer in its order.

The Supplier may not replace the products in the contract by products of equivalent specification without the Customer's prior agreement.

3.4 - Change

Any change to the contract is conditional on the Customer's written acceptance and formalised by a written agreement.

3.5 - Suspension or cancellation

Any suspension of the contract requested by the Customer is formalised in a written agreement with the Supplier. This agreement will define the duration of and arrangements for the suspension.

In case of non-performance by the Supplier of all or part of its obligations under the order, without prejudice to its other rights, the Customer will be entitled to cancel all or part of the order as a matter of law after written communication to the Supplier has remained without effect for a period of 15 days. Without prejudice to its statutory rights to damages and compensation, the Customer will be entitled to apply for repayment of sums already paid to the Supplier together with repayment of costs incurred by the Customer to make up for the Supplier's shortcomings including, but not limited to, the costs incurred in respect of orders placed on third parties to execute the cancelled or rescinded parts of the order.

The Customer will be entitled to cancel all or part of the order by agreement at any stage in the process of carrying out the order, on simple written notice to the Supplier. Upon receipt of the notice of cancellation, the Supplier must immediately cease executing the cancelled part of the order. The Customer will pay the Supplier the proven direct costs incurred by the Supplier as a result of this cancellation, together with the portion of the price of the order representing the part of the order executed as at the date of cancellation.

The Customer will, moreover, be entitled to cancel the order as a matter of law without notice in case of insolvency, winding-up of property or judicial liquidation of the Supplier.

4 - Features and status of the products ordered

4.1 - Fitness for purpose of the products

The products delivered comply with the legislation, regulations and standards applicable in the Customer's contract or, by default, in the place of delivery where this is clearly specified on the order.

4.2 - Product packing and packaging

Packaging is carried out by the Supplier, under its own liability, in accordance with the customary rules that apply for the protection of the products in line with the contract concerned. Packaging is compliant with environmental regulations applicable according to the destination of the products and meet the Client's SPAB 1170 packaging specifications for all parts delivered.

The equipment must be properly protected, secured and packed in a manner to preserve it in perfect condition throughout the various handling and shipping operations and during the foreseeable period of storage. No packaging will be consigned or returned to the Supplier.

5 - Provisions and Supplies made available by the Customer

5.1 - Tooling

The Customer shall be the full and beneficial owner of all tooling and/or property supplied to or manufactured by the Supplier pursuant to an order and must be clearly marked by the Supplier stating this ownership. They may only be used for the sole performance of the order. Custody and maintenance are provided by the Supplier at its own cost and liability. The Supplier undertakes to return these to the Customer on its first request within no more than 7 days. The Supplier must inform the Customer regularly on the condition and conformity of the tooling deposited with it. The Supplier must be in a position at all times to supply an up-to-date Life Sheet on the tooling at the Customer's request. The Supplier is responsible for commissioning and using the tooling placed at his disposal by the Customer.

5.2 - Supplies

The Supplier is responsible for commissioning and using the supplies entrusted with him by the Customer for carrying out the Customer's order.

6 - Intellectual property and confidentiality

6.1 - Intellectual property and know-how rights pertaining to documents and products

All documentation, specifications, plans, drawings, sketches, know-how or other intellectual property right delivered by the Customer in the context of the order remain the Customer's property and shall be used by the Supplier only for the sole requirements of the order. The Customer shall acquire full and beneficial ownership of the results of the order and primacy for patenting the results arising from the service ordered.

6.2 - Confidentiality clause

The Supplier undertakes a general obligation of confidentiality over all confidential information, verbal or written, whatsoever and whatever the medium (reports on discussions, plans, Electronic Data Interchanges, activities, facilities, projects, know-how, prototypes produced at the Customer's request, products, etc.) exchanged in the context of preparing and executing the contract, except for information that is or will become generally known to the public other than through the fault or action of the Customer.

Accordingly, the Supplier undertakes to:

- keep all confidential information secret and, in particular, never to disclose or communicate by any means whatsoever directly or indirectly, all or part of the confidential information to anyone whomsoever, without the other party's prior written authorisation;
- not use all or part of the confidential information for purposes or an activity other than the performance of the contract;
- not make any copy or imitation of all or part of the confidential information.

The Supplier undertakes to take all necessary measures to ensure this confidentiality obligation is observed throughout the whole period of the contract and even after its expiry, and will be answerable for compliance with this obligation by all its salaried employees and subcontractors or other contracting parties. This obligation is an obligation to achieve a result.

6.3 - Warranty clause in case of infringement

The Supplier pledges that the supply and any component thereof does not infringe any third party substantive or intellectual property rights. In case of claims by third parties, the Customer's liability will not be incurred and it will bear no cost or damage related thereto. The Supplier pledges to hold the Customer harmless against all claims which third parties may be liable to assert over the object acquired.

7 - Delivery, carriage, verification and acceptance of the products

7.1 - Delivery lead-times

The delivery lead-times shown on the order are fixed by agreement with the Supplier. They are absolute and start to run with effect from the date contained in the order. The Supplier acknowledges that it is deemed to be on notice to deliver by the sole fact of this date falling due.

Without prejudice to the Customer's other rights, any delay in delivery of the supply renders the Supplier liable as a matter of law to incur a penalty charge of 0.5% of the value of the command line, per working day late, with effect from three working days late and capped at 10% of the value of the command line. The penalty charges for delay which may be due by the Supplier pursuant to this article would be deducted by the Customer from the forthcoming payment instalments which remain due to the Supplier.

In case of delay in the supply, shipment by a quicker method may, moreover, be required by the Customer at the Supplier's cost. The full and compliant delivery of the supply in the contractual time limits includes delivery to the Customer of all technical and/or administrative documents provided in the order, which form an integral part of the supply.

7.2 - Conditions of delivery

Unless stated otherwise in the order, the supply will be delivered by complete positions, duty paid, in the Customer's premises or any other place of delivery stated in the order. Unless stated otherwise in the order, the Supplier is responsible for shipment and insurance of the equipment up to the place of delivery, transport being carried out at the Supplier's risk and liability. Shipments must be made by an experienced carrier and in accordance with an appropriate secure method of transport.

7.3 - Verification of the products:

On delivery

On delivery of the supply in the Customer's premises or other place stated in the order, the Customer reserves the right, without prejudice to its other rights, to refuse the supply in case of non-compliances with the specifications of the order. Any supply refused is treated as not delivered and subject to penalty charges.

Any supply refused must be removed by the Supplier within 72 hours following notification by the Customer of refusal of delivery. Failing which and without prejudice to its other rights, the Customer may return the refused supply to the Supplier at the Supplier's cost and risk, debiting it for the cost of packing and carriage.

In case of non-compliant supply and without prejudice to its other rights under the order, the Customer reserves the right at its discretion but at the Supplier's cost to:

- cancel the order as a matter of law at the Supplier's exclusive fault, or
- obtain the immediate replacement of the refused supply from the Supplier,
- obtain a refund within 30 days, in case of payment having already been made,
- in case of minor non-compliances, to be refunded by the Supplier or to deduct the costs incurred in sorting and/or rendering the item(s) compliant by the Customer from the invoice.

The fact that the Customer does not give notice of the non-compliance at the time of delivery itself shall not be treated as a novation or a waiver by the Customer of the right to rely on the provisions that above.

On inspection

The Supplier supplies the controls and tests defined in the order, including but not limited to, the services of control and/or acceptance by any qualified body designated by the Customer or required by current legislation. The Customer will have the right to refuse all or part of the supply that is non-compliant or defective and the Supplier will remedy this non-compliance or defectiveness at its cost without thereby impacting on the contractual delivery and/or performance time periods. The Supplier will arrange for its Customer's agents or their representatives to have free access to the premises of the Supplier and of its subcontractors. The Supplier must make the necessary resources and personnel available to carry out the control and verifications provided in the order.

8 - Case of unforeseen event or force majeure

8.2 - Force majeure

None of the parties to this contract may be held liable for being late or in default in performing any of the obligations at its charge under the contract if this delay or default is the direct or indirect effect of a case of force majeure, as understood within the meaning of French precedent and case law.

Each party will inform the other within 5 days of the occurrence of a case of force majeure of which it is aware and which, in its eyes, is of a nature to impact on performance of the contract. The party prevented because of the occurrence of such an event will inform the other party thereof in writing, producing all elements of proof in support, and will take all measures to limit its effects or have the same stopped at its cost. The party affected by an event of force majeure will bear the costs incurred through its occurrence without being entitled to claim their reimbursement from the other party. If the event of force majeure endures beyond sixty (60) days, the Customer may cancel the order as a matter of law without notice by registered letter with return receipt. In this case, the Customer will pay the Supplier the portion of the price of the order representing the part of the order executed as at the date of cancellation, to the exclusion of all other compensation.

9 - Payment

For orders subject to French law, in accordance with the Law on Modernisation of the Economy (LME) N° 2008-776 of 4 August 2008 (article L441-6 of the French Commercial Code), the period agreed between the parties for settlement of sums due may not exceed forty-five days end of month or sixty days from date of issue of the invoice.

In all cases in point, the payment period runs after the order has been fully and compliantly completed, documentation included.

Invoices are required to be sent in duplicate, and must absolutely state the order number, the description and number of items, the date and delivery sheet reference number as well as the detailed price. A separate invoice must be raised per order form, especially in the case of grouped deliveries. Invoices must reach us no later than the 5th of the month following the date of delivery of the equipment. The Customer will not be liable for any delay in payment connected with the Supplier issuing invoices late.

10 - Transfer of title (ownership)

Unless stipulated otherwise on the Order, ownership transfers to the Customer upon receipt of the Supplies at the place designated by the Customer stated in the order.

No reservation of title clause stipulated by the Supplier will be enforceable unless with the Customer's prior written consent.

11 - Warranty

11.1 The Supplier pledges that the supply complies with the specifications of the order and the rules of state of the art and is free from all manufacturing-, design- and material defect.

Unless provided otherwise in the order, the warranty period is eighteen (18) months from delivery of the equipment or from the date of completion of the services in the case of the supply of services. On written notice from the Customer of a non-compliance and/or defect, the Supplier must, at the Customer's choice, repair and/or replace the non-compliant and/or defective supply at its cost and without delay, as well as refund the Customer for the costs incurred by it.

11.2 The period of the warranty above is extended by the period of unavailability and/or immobilisation of the supply and the time spent for the purposes of repair and/or replacement. The supply (or part thereof) replaced or repaired is subject to the same warranty conditions above for a period of twelve (12) months from the effective date of replacement and/or repair or until the initial warranty as above has expired, whichever occurs later. The above contractual warranties are without prejudice to the Customer's other rights.

11.3 If the Customer considers the repair and/or replacement of the non-compliant and/or defective supply is urgent or if the Supplier does not comply with the requirements of this clause, the Customer will be entitled to carry out the repair and/or replacement itself or by a third party at the Supplier's cost. The Supplier may not rely on the intervention of the Customer or a third party to limit or exclude its liability in respect of the contractual warranty.

12 - Insurance and liability

The Supplier is responsible for the proper execution of the order and is liable for all consequences that may ensue in the conditions of ordinary law. The Customer declines all liability for damage that might result directly or indirectly from the failure of products into which the supplies acquired from the Supplier may be incorporated. The Supplier will assume unlimited full liability for the direct and/or indirect consequences arising from the Supplies. The Supplier must indemnify and hold the Customer harmless, be that during or after performance of the contract, for any loss or damage to property and/or consequential losses (including the costs and damages awarded in case of legal proceedings) arising from acts or omissions by the Supplier, its subcontractors, servants and agents.

It is liable for the equipment placed at its disposal by the Customer and/or the structures on which it intervenes and bears the damage or accidents which occur in the course of executing the order. The Supplier is liable for the costs it has incurred as a result of a case of force majeure.

The Supplier must have the necessary adequate and currently valid insurance policies in place to cover the risks and liabilities incumbent on it, both in terms of ordinary law and of the contractual commitments made in respect of the order. Non-compliance with this requirement or any statement of upper limits on insurance certificates cannot in any case exempt from and/or mitigate its liability.

13 - Disputes and governing law

The parties undertake to attempt to settle their differences amicably before referring any matter to the competent Court.

Failing amicable agreement, it is expressly agreed that any dispute relating to the contract will be of the exclusive competence of the court within whose jurisdiction the Customer is domiciled, even in case of appeal and multiple defendants.

French law alone and, as the case may be, the Vienna Convention of the International Sale of Goods, shall apply.