

General terms and conditions of sale of the private limited liability company under Dutch law NedZink B.V., established at Hoofdstraat 1, 6024 AA Budel-Dorplein, municipality of Budel.

Article 1. General

1. These terms and conditions shall be applicable to all quotations submitted by NedZink B.V., hereinafter to be called: NedZink, and to all agreements entered into by NedZink with buyers or principals, hereinafter to be called: the other party, concerning the sale or the making available of goods on some other basis. Divergent stipulations shall only be binding on NedZink following written approval from NedZink and solely for the agreement to which the said approval is applicable.
2. NedZink representatives may not agree to stipulations departing from these terms and conditions other than by virtue of written authorization, which is to be granted separately for each agreement.
3. If the general terms and conditions of the other party, such as purchasing conditions and other conditions, in any way come into conflict with these general terms and conditions, then these general terms and conditions will prevail, unless the general terms and conditions of the other party have expressly been accepted in writing by NedZink.
4. The other party must always keep itself informed of the Processing Regulations of NedZink products in the form the other party buys these products. NedZink will make these Processing Regulations available on request in writing or electronically.
5. NedZink produces titanium zinc according to EN 988, an alloy based on electrolytically pure zinc with a purity of min. 99,995% Zn (Z1 according to EN1179) with small additions of the alloy elements copper, titanium and aluminium. Other standards do not apply unless agreed in advance and in writing by the other party and NedZink.

Article 2. Quotations

1. All quotations shall be without obligation, unless such quotations include an acceptance period.
2. Illustrations, drawings, weight specifications, technical specifications and other data, whether or not included in prospectuses, catalogues, circulars, advertisements or price lists, which shall be brought to the other party's notice by NedZink and to NedZink's notice by the other party before, at the time of or after the quotation or order confirmation, shall be considered as approximate indications. Data derived from these shall only be binding if agreed upon in writing.
3. All rights of intellectual property pertaining to offers, calculations, models, artistic or technical designs, descriptions, technical and other drawings, outlines, diagrams and the like brought about by or via NedZink shall remain vested with NedZink or the designer.
4. Offers, illustrations, drawings, calculations, diagrams and designs provided by NedZink and other documents produced or published by or via NedZink shall remain the inalienable property of NedZink or the designer and may not, in any shape or form whatsoever, be provided for inspection, made available to or used in any other manner by third parties without permission from NedZink or the designer. The other party shall be bound to keep secret all data derived from the documents mentioned above which have come to its notice in connection with the agreement.

Article 3. Prices

1. Prices quoted by NedZink are based on the metal quotations, foreign currency exchange rates, import and export duties and equivalent levies, insurance rates, taxes, wage costs, freight and forwarding charges and other such factors valid at the time of the quotation. No rights can be derived from the prices quoted.
2. If import or export duties, taxes or levies, whether equivalent or not, which are fixed by the government shall undergo changes after the date of the offer or the realization of the agreement, NedZink shall be entitled to change the price quoted or agreed upon accordingly.
3. Unless explicitly otherwise stated, prices quoted do not include VAT.

All the prices are freight free to delivery address and include costs of freight, insurance and packaging.

Article 4. Payment

1. Each agreement shall be entered into under the contingent condition that the other party's creditworthiness shall be apparent from the information to be obtained. NedZink shall at all times be entitled to demand satisfactory security from the other party for timely and total settlement of his obligations to pay and other obligations.
2. NedZink shall at all times be entitled to deliver exclusively for cash payment or cash on delivery. If, due to circumstances having come to NedZink's notice after the conclusion of the agreement, it shall have every reason to fear that the other party shall not be able to fulfil his obligations to pay and other obligations, NedZink shall be entitled to delay delivery and shipment until the other party has provided sufficient security for the fulfilment of his obligations. The other party shall be liable for any damages sustained by NedZink due to delayed delivery and shipment.
3. Unless NedZink has exercised its rights as referred to in subsection 2, the other party shall be obliged to pay the amount payable at the offices of NedZink or into one of its bank or giro accounts within either thirty (30) days after the date of invoice, or a different number of days to be agreed upon in writing.
4. Negligence on the part of the other party with regard to purchase and/or acceptance of goods shall not defer the other party's obligation to pay.
5. If partial deliveries are made by NedZink, NedZink shall be entitled to invoice per partial delivery and NedZink shall not be obliged to make subsequent deliveries until the invoices relating to the partial deliveries already made have been paid, without prejudice to the provisions stated in the other subsections of this article.
6. If goods are sold to two or more other parties jointly, each other party shall be jointly and severally liable for the fulfilment of the obligations ensuing from the agreement.
7. If the other party has not fulfilled his obligations to pay on the due date, he shall be immediately in default without notice of default being required. In that case, the other party shall be liable for all damage sustained and to be sustained by NedZink.
8. In default of timely payment, the other party shall, with no final reminder or notice of default being necessary, owe interest equal to the statutory interest rate under Article 6:119a of the Dutch Civil Code, increased by 3% points, over the part of the principal which remains unpaid.
9. Collection costs, both judicial and extrajudicial, shall be charged to the account of the other party. Extrajudicial collection costs shall be calculated in accordance with Rapport Voorwerk II, with a minimum of EUR 150.

Article 5. Delivery time

1. Agreed delivery times are never to be considered as deadlines unless otherwise agreed in writing. In case of deliveries not made on time, NedZink should therefore be given notice of default in writing and NedZink should be given a reasonable time limit to comply with the agreement.
2. The agreed delivery time shall be effective on the latest of the following dates:
 - a) the day of the establishment of the agreement;
 - b) the day of receipt by NedZink of the goods, including documents, data and the like, needed for implementation of the delivery, to be provided by or on behalf of the other party;
 - c) the day on which, at the request of NedZink, the other party shall have provided sufficient security for the timely and total settlement of his obligations to pay and other obligations as referred to in subsection 1 of article 4 of these terms and conditions.

3. When part of the order is ready, NedZink may elect either to deliver this part or not deliver until the complete order is ready, without prejudice to the provisions stated in subsection 1 of this article.

4. If, after being summoned, the other party shall still fail to accept delivery, NedZink may elect either to deliver at an address and time to be determined by NedZink, or to cancel the agreement or the part of the agreement still not executed, without judicial intervention or notice of default being required and without prejudice to NedZink's right to damages.

5. If the other party shall have filed a petition of bankruptcy or if a request in that respect shall have been submitted to the other party by one or more of his creditors, NedZink shall be entitled to suspend delivery and shipment until a final decision with regard to that petition or that request shall have been made.

Article 6. Non-imputable fault (force majeure)

1. If, after the conclusion of the agreement, circumstances temporarily hindering NedZink from fulfilling its obligations shall occur through no fault on the part of NedZink and beyond NedZink's scope of risk, NedZink shall be entitled to suspend the performance of the agreement for the time during which it is so hindered.
2. If circumstances as referred to in subsection 1 above occur which permanently hinder NedZink in the fulfilment of its obligations, either party shall be entitled to cancel the agreement in whole or in part.
3. The circumstances referred to above shall in any case include: war, threat of war, civil unrest, fire, water damage, flood, strike, sit-in, workplace exclusion, import and export barriers, government measures, machine breakdown, failures in the supply of energy, operational failure and cases in which NedZink's own suppliers, for whatever reason, do not enable NedZink to deliver.

Article 7. Delivery, transfer of risk and transport

1. Deliveries from NedZink will be delivered in compliance with the selected Incoterm 2010. Any additional agreements must be explicitly agreed in writing by the parties.
2. The goods shall be deemed to have been delivered to the other party at the moment that NedZink has fulfilled its obligations as described in the selected Incoterm 2010. Any additional goods can be agreed in combination with the selected Incoterm 2010. These agreements will be explicitly recorded by the parties and constitute an addition to any obligations of the parties as referred to in this subsection.
3. NedZink determines the method of transport unless the nature of the Incoterm 2010 determines otherwise, such as delivery according to Ex Works.
4. If NedZink shall transport (part of) the goods itself or shall have them transported by one of its group companies as referred to in subsection 1 of article 13 of these terms and conditions, the provisions of Titles 1 and 2, Book 8 of the Dutch Civil Code shall apply to this agreement.
5. NedZink, or the external carrier called in by NedZink, will take out insurance to cover the risk of breakage, loss, or theft of the goods during transport, except when this concerns a delivery for which the terms and conditions of delivery, Incoterms 2010, do not require the taking out of an insurance policy by NedZink, such as an Ex Works delivery. The other party shall be obliged to examine the delivered items on arrival; if an insured event as referred to above in the first sentence shall have occurred, the other party shall be obliged to have the carrier make a note of it without delay on the waybill or packing slip, which must also be sent to NedZink without delay, and contact NedZink at once to inform NedZink of this.
6. In case the goods are not deemed to have been delivered, NedZink is obliged to pay any insurance payment to the other party, or to redeliver to the other party as soon as possible. NedZink is not obliged to provide any other service.

Article 8. Complaints

1. Complaints, whether pertaining to deliveries made or not made by NedZink or to NedZink's invoices, must accurately specify the nature and the cause of the complaint and be submitted to NedZink in writing within fourteen (14) days after the goods have been delivered to the other party or the invoice has been sent. After expiry of the period stipulated above for this purpose, it will no longer be possible to submit complaints.
2. The other party shall be obliged to render his full assistance with regard to everything which NedZink considers necessary to investigate the soundness of the complaint, including inspection of deliveries by or on behalf of NedZink.
3. Goods may not be returned by the other party without prior written consent of NedZink. The granting of said consent shall not imply recognition that the complaint is justified. After obtaining consent, the goods, unless they were received in a damaged state, must be returned in an intact state in the original packing to NedZink at the expense and risk of the other party. NedZink will retain returned goods at the expense and risk of the other party.

Article 9. Cancellation

1. Without prejudice to the provisions stated in article 4, the agreement shall be cancelled by operation of law, without prior notice or judicial intervention being required for that purpose, at the moment at which the other party, having not or not completely fulfilled the obligations ensuing from the agreement, shall be declared bankrupt, file a petition for temporary suspension of payment or lose, due to seizure, appointment of a guardian or otherwise, the power to dispose of his capital in whole or in part, unless the official receiver or trustee recognizes the obligations ensuing from this agreement as an ordinary debt and provides security for the settlement thereof.
2. Cancellation will cause existing debts on both sides to become payable on demand. The other party shall be liable for all damage sustained and to be sustained by NedZink.
3. If the other party fails to duly fulfil in a timely manner his obligations ensuing from any agreement entered into with NedZink under these terms and conditions, or in the event of suspension of payments, shutdown or liquidation of the business of the other party or his death, NedZink shall be entitled to cancel the agreement in whole or in part, and to reclaim any as yet unpaid amounts for deliveries made by NedZink, without prior notice or judicial intervention being required for that purpose, and/or to claim payment for the executed part of the agreement and/or to demand payment in advance for further delivery. In these cases, existing debts on both sides will become payable on demand. The other party shall be liable for all damage sustained and to be sustained by NedZink.

Article 10. Reservation of title

1. As long as the other party has not paid the full amount of the debt, combined with any additional charges and any claim for damages made by NedZink due to imputable fault of the other party in this respect, or has not provided sufficient security for that purpose, NedZink will reserve title to the goods.
2. Unless otherwise provided for, NedZink shall also reserve title to goods with regard to anything which the other party owes or shall owe to NedZink on account of previous or subsequent agreements by virtue of which NedZink has delivered or will deliver goods and/or, in addition to the delivery, has performed or will perform work, or due to the failure of the other party to fulfil an agreement as previously referred to, unless the other party shall have provided sufficient security with regard to his obligations as previously referred to.
3. Title shall pass to the other party as soon as the other party has fulfilled all his obligations towards NedZink as referred to in subsections 1 and 2.
4. With regard to the application of the provisions stated in the first two subsections of this article, each payment which could be attributed to two or more obligations of the other party towards NedZink will, unless otherwise agreed in writing, in the first place be attributed to the obligation(s) to be indicated by NedZink, to which the reservation of title mentioned in subsections 1 and 2 of this article does not apply. Statements of payment, final reminders and the like provided by or on behalf of NedZink to the other party cannot be considered indications as referred to in the previous sentence unless NedZink stipulates otherwise in writing.
5. As long as the title to goods delivered by NedZink has still not passed to the other party, the other party shall be obliged to duly insure the goods, which are the property of NedZink, against fire and theft. The other party shall be obliged to submit the policy and evidence of payment of the insurance premium to NedZink for inspection, if requested.

6. The other party shall be obliged to immediately report by telephone any third-party claims on goods falling under the reservation of title as well as any third-party attempts to take control of or to seize goods falling under the reservation of title. Furthermore, the other party shall be obliged to immediately confirm any report as referred to above to NedZink in writing.

Article 11. Resale, penalty clause and audit

1. As long as the delivered goods have not yet been paid for in full, the other party shall not be entitled to resell, deliver or pledge the said goods nor to transfer or make them available to another party in any manner whatsoever, under whatever title, whether or not in return for payment and whether or not for use. However, the other party is, contrary to the provisions stated in the previous sentence, entitled to resell the goods (or have them resold) and/or to deliver them (or have them delivered) in the course of his normal business activities, unless NedZink shall have informed him otherwise in writing.
2. If the other party shall contravene the provisions stated in the first subsection, he shall be obliged to pay NedZink a penalty for every act which falls under one of the prohibitions stated therein. The penalty shall be equal to the invoice amount. In no respect shall the right of NedZink to compensation for damage sustained or to be sustained by it be prejudiced.
3. NedZink shall be entitled to have an independent certified accountant audit the books of the other party in order to ensure the observance of the provisions stated in the first subsection.

Article 12. Liability

1. Barring cases of intent or gross negligence, NedZink shall not be liable for any damage, however designated or on whatever grounds, unless and in so far as NedZink's liability in this regard has been insured.
2. NedZink shall never be obliged to provide compensation for consequential loss, due to any reason whatsoever, sustained by the other party and/or third parties.
3. The other party shall be obliged to ensure that the goods delivered by NedZink are stored by the carrier on delivery in an orderly and safe manner in appropriate areas; the other party shall also be obliged to keep the goods delivered by NedZink stored (or have them kept stored) in an orderly and safe manner in appropriate areas and to ensure that the said goods are handled in an orderly and safe manner. The other party shall be obliged to indemnify NedZink against any third-party claims based on damage which occurred due to the fact that the obligations stated in the previous sentence were not fulfilled.
4. If the other party shall hold NedZink liable for any damage, however designated or on whatever grounds, he shall be obliged to prove to NedZink on his own initiative that he has handled the delivered goods in a responsible manner and in accordance with the processing regulations of NedZink in relation to the nature of the product. Any advice given by or through NedZink with regard to storage, transport, usage or application of the goods delivered by NedZink shall be entirely without commitment. NedZink shall in no case be liable for any damage, however designated or on any grounds whatsoever, which is either directly or indirectly the result of following such advice.
5. The other party shall be obliged to indemnify NedZink and hold it harmless with regard to any claims made against NedZink, including those for damages, which any third party may make against NedZink, if the said third-party claims are based on (alleged) infringement of intellectual or industrial property rights through the use, in whatever manner, of drawings, data, materials, samples, models or parts, or application of methods or instructions, in the broadest sense of these terms, which were provided or prescribed to NedZink by or on behalf of the other party for the delivery of the goods.
6. In all cases in which NedZink shall have the right to appeal to the provisions stated above, any employees or auxiliary personnel of NedZink who may be held liable may also so appeal, in the same manner as if this were stipulated by the employees and auxiliary personnel concerned.
7. Zinc is a natural product and therefore colour nuances can occur in the final products of NedZink. In cases that colour nuances occur, these can never lead to liability of NedZink.

Article 13. Assignment of rights and obligations and settlement

1. Where a group company is referred to in this article, it shall be a group company in the sense of article 2: 24b of the Dutch Civil Code.
2. NedZink shall at all times be entitled to transfer its legal relationship toward the other party to a group company associated with NedZink;

the other party already grants permission to NedZink in this respect, in case such an occasion should arise.

3. Without the prior written consent of NedZink, the other party shall not be allowed to transfer or pledge his claims ensuing from the agreement against NedZink or against a group company associated with NedZink, nor in any other way, under whatever title, whether or not in return for payment, to transfer or make available the said claims to another party.
4. NedZink shall at all times be entitled to set off any claims against the other party, on whatever grounds and regardless of whether or not the said claims are payable, against claims which the other party holds against NedZink or a group company associated with NedZink, on whatever grounds and regardless of whether or not the said claims are payable. As far as the joint amount of the claims thus set off is concerned, the other party shall have been discharged in relation to NedZink, or, respectively, the group companies concerned shall have been discharged in relation to the other party.
5. With respect to any amounts owed by NedZink to the other party on whatever grounds, whether or not the said amounts shall be payable, NedZink shall at all times be entitled to clear its debt to the other party by payment not to the other party but instead to a group company associated with NedZink, if and insofar as the group company concerned has any claim, whether or not payable, against the other party; by the said payment the claim of that group company against the other party shall be discharged insofar as the joint amount of the claims is concerned.

Article 14. Disputes

1. All agreements entered into with NedZink, as well as any further agreements entered into to implement them, shall be subject exclusively to Dutch law.
2. All disputes ensuing from the agreements referred to previously, except those with regard to which the court of law, section cantonal court has absolute jurisdiction, shall be adjudicated exclusively by the competent court in 's-Hertogenbosch, without prejudice to the competence of any other court with respect to provisional measures, measures of conservation or compulsory measures.
3. The nullity and/or voidability of (a part of) a provision of these general terms and conditions does not lead to the nullity and/or voidability of the general terms and conditions as a whole. In this case a provision, which resembles the nullified or void provision as closely as possible, will apply.
4. In the event of inconsistencies between the various translations of these general terms and conditions, the Dutch version will prevail.

Article 15. Deposition

These terms and conditions have been filed with the registry of the district court in 's-Hertogenbosch and will take effect as of 14 January 2015. From that date onward, they will replace all previous terms and conditions.