



# CARBOMETAL

## General Terms and Conditions for Sales of CARBOMETAL Rafał Zawadowicz of 01 March 2020.

### § 1. Definitions.

References in the General Sales Conditions of CARBOMETAL Rafał Zawadowicz [CARBOMETAL Rafał Zawadowicz] (hereinafter referred to as GSC) to:

- a) **CARBOMETAL** – denote CARBOMETAL Rafał Zawadowicz the registered in CEIDG under NIP nr [ VAT tax No. ] PL9490454410, the importer and distributor of mineral raw materials for industrial sector;
- b) **the Buyer** – denote each customer placing an Order for goods offered by CARBOMETAL;
- c) **Parties** – denote CARBOMETAL and the Buyer collectively;
- d) **the Order** – denote an order placed by the Buyer for the goods offered by CARBOMETAL either in the written form or via telephone or e-mail. For CARBOMETAL, the order is not binding until it is Confirmed [Confirmation of the Order];
- e) **the Confirmation of the Order** – denote the confirmation by CARBOMETAL of the Order placed by the Buyer, by way of a written acceptance by CARBOMETAL – customarily on the copy of the Order sent back to the Buyer or as a fax or an e-mail;
- f) **the Contract** – denote an individual sales contract concluded between CARBOMETAL and the Buyer, pertaining to the sale of the goods offered by CARBOMETAL, by placing the Order by the Buyer and its acceptance by CARBOMETAL by means of the Confirmation of the Order. These GSC constitute the integral part of the Contract and are available on the website of CARBOMETAL: [www.carbometal.pl](http://www.carbometal.pl) ;
- g) **the Good** – denote products and services determined in the Contract and in the Confirmation of the Order and offered by CARBOMETAL;

### § 2. General provisions.

- 1. General Sales Conditions (GSC) determine the rules regulating the conclusion of sales contracts of goods offered by CARBOMETAL and are applicable with respect to matters not settled by the Contract and/or the Confirmation of the Order;
- 2. These GSC constitute an integral part of all the Contracts which have been concluded between CARBOMETAL and the Buyer since 1 March 2020.
- 3. The provisions of GSC exclude the possibility to apply model contracts, regulations and general purchase conditions utilized by the Buyer;
- 4. The Contract is concluded when the Order is placed by the Buyer and its acceptance is confirmed by CARBOMETAL.
- 5. The Order shall determine:
  - a) the exact name and address of the Buyer's company;
  - b) part number of the Good, if available;
  - c) the quantity of the ordered Good;
  - d) the term and place of delivery;
  - e) unit price;
  - f) payment form and term;
  - g) and shall be placed by a competent person on behalf of the Buyer.



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6. Workers, coworkers and representatives of CARBOMETAL are not entitled to make any important verbal or written additional agreements, verbal or written promises, and verbal amendments to the Contract with the Buyer.

7. Delivery obligation arises no sooner than the Order is accepted by CARBOMETAL in writing in the form of the Confirmation of the Order.

## § 3. Prices.

1. All offers, advertisements, catalogues, brochures, price lists and other announcements concerning the goods offered by CARBOMETAL are only informative and do not constitute an offer within the meaning of the Civil Code. If issued by CARBOMETAL, samples or specimen are to be regarded as illustrative and display materials.
2. Unless determined otherwise, all prices are given in PLN, net of VAT and exclusive of any other statutory fees.
3. Prices stem from the cost of materials, remunerations, taxes, duties and exchange rates effective at the time of placing the Order, as well as from the mutually agreed latest version of INCOTERMS conditions.
4. In case of an increase in any or some of the above factors affecting the cost and price after the Order is confirmed, CARBOMETAL reserves the right to appropriately increase the agreed purchase price of the Good. The Buyer would immediately be informed about the change of the agreed price. The Contract is binding no sooner than the new price is accepted by the Buyer and the Order is confirmed in the manner determined in this GSC.

## § 4. Payment conditions.

1. The payment for the delivered Good is made on the date and in the amount agreed upon by both Parties of the Contract and in the Confirmation of the Order as well as on the VAT invoice issued by CARBOMETAL.
2. Payment is made in the currency in which the amount due is expressed on the invoice by means of a transfer to one of the bank accounts given on the invoice depending on the currency of the invoice.
3. The Buyer becomes the owner of the Good the moment the entire amount due is paid for the ordered Good.
4. If the Buyer fails to make payment for the ordered Good within the agreed term and the length of the delay exceeds two weeks, or if insolvency proceedings are initiated against the Buyer, or if circumstances appear which would decrease the creditworthiness of the Buyer, or if it is revealed that the Buyer is at fault for the inability to repay the debt, then, pursuant to its own choice, CARBOMETAL will be entitled to:

a) with respect to the yet unrealized deliveries of the Goods, to a formal request for a financial collateral in the form of an advance payment or a bank guarantee to be submitted within one week, and in the case of lack of those – to cease the deliveries. When the above deadlines have expired without effect, CARBOMETAL is entitled to withdraw from the Contract due to the non-performance by the Buyer and to demand compensation on that ground;

b) to cease deliveries under each of the Contracts concluded with the Buyer or to change the conditions of the deliveries until the Buyer's payment, inclusive of the interest and other due amounts determined in this GSC;



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and also to:

- c) to consider all the payments resultant from the Contract chargeable within the set date;
  - d) to claim with no additional formal requests, apart from the main liability and the interest for the delay in the amount of the statutory interest, also the reimbursement of the costs of court proceedings, enforcement proceedings as well as of the costs of legal representation and debt collection from the Buyer.
5. The date on which the payment shall be considered to have been made by the Buyer shall be the date on which the transfer is actually entered into the bank account held by CARBOMETAL.
  6. For the sake of securing the delivery of the Good being the subject of the Contract, CARBOMETAL is entitled to demand prepayment for the Good in full or in part.
  7. The Buyer is not entitled to cease any part or the whole of the payment, especially for a deduction or a counterclaim, except for the situation when the Court has hold in the final judgment that the amount is payable to the Buyer by CARBOMETAL.
  8. Cease of any payment by the Buyer on account of a potential complaint for the purchased Good(s) is on no condition acceptable and would be regarded as a delay in payment.
  9. The Buyer cannot deduct from the liabilities of CARBOMETAL his or her liabilities, except for the situation when the Court has hold in the final judgment that the amount is payable to the Buyer by CARBOMETAL.

## **§ 5. Dispatch and delivery of the Good.**

1. The delivery of the Good purchased by the Buyer is realized in accordance with the conditions determined in the placed Order and in the Confirmation of the Order.
2. CARBOMETAL is obliged to inform the Buyer about the date on which the Good will be ready to be collected by the Buyer at the place determined in the Contract or in the Order, and the Buyer is obliged to collect the Good within 7 working days from the day of receiving that information.
3. The date when the Good is loaded on the means of transport, if transportation is ensured by the Buyer, or the moment the Good is delivered to the place of destination, if transportation is ensured by CARBOMETAL, shall be considered the date of dispatch and delivery of the Good.
4. In either case, transportation costs are to be borne by the Buyer, unless otherwise stated in the Contract or in the Confirmation of the Order.
5. The term of delivery is considered to have been complied with also in the case when the Good was delivered to the agreed collection point or the Buyer was informed about the possibility to collect the Good, still, without the fault of CARBOMETAL, the Good was not eventually collected.
6. If the Buyer decides to have the Good collected by a chosen person, the person shall have a written authorization to collect both the Good and the invoice.
7. If the Buyer fails to fulfill the obligation to collect the Good, CARBOMETAL may at its discretion either deliver it on behalf of and at risk of the Buyer, or determine an additional date for the collection of the Good, retaining the right to claim for payment and compensation.
8. Unless otherwise stated in the Contract, CARBOMETAL is – in agreement with the Buyer – entitled to issue the Good (in full or in parts) to the Buyer earlier than it was determined in the Contract as well as to issue invoices for the deliveries dated the day they were actually realized.



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9. The hazard of loss or damage of the Good passes to the Buyer the moment the Good is issued for delivery, if its transportation is ensured by CARBOMETAL, and in other cases – the moment it is loaded on the given means of transport.
10. In case when the Good is not collected by the Buyer within specified time, the hazard of loss or damage passes to the Buyer the moment the Buyer could have been able to dispose of the Good if it had been collected properly.
11. It is the Buyer who is liable for unloading and proper storage of the Good.
12. The Buyer is obliged to carefully examine the completeness of the delivery immediately at its arrival and to determine potential deficiencies or damages of the Good which occurred during transportation. If the transport was not ensured by CARBOMETAL, the Buyer shall demand that the carrier either provide a note concerning the damage on the delivery note or prepare a Rail Protocol specifying the damage; otherwise, the Buyer loses the right to claim for compensation against the carrier or the rail.
13. When the Good is delivered in containers or other kinds of packaging, the Buyer is to be hold responsible for the proper technical condition of the containers and packaging used for the storage of the Good.

## § 6. Quantity.

1. It is assumed that the weight and/or quantity of the delivered Good may occur with 5% allowance in reference to the weight and/or quantity determined in the Contract. The amount due will be calculated on the basis of the units of measurement or weight and the price unit.
2. The weight and/or quantity of the Good indicated on the delivery note issued by CARBOMETAL is ultimate and binding for the Buyer, unless he informs about discrepancies within 24 hours since the Good has been delivered and allows CARBOMETAL to examine the weight and/or quantity of the Good before it is used or disposed of.
3. Discrepancies in the weight and/or quantity of the delivered Good which exceed the allowance limit mentioned in point 1 are not to be regarded as a violation of the Contract, nor do they entitle the Buyer to reject the delivery of the Good. The Buyer is entitled to the appropriate reimbursement of the price or an additional delivery, which is at the discretion of CARBOMETAL.

## § 7. Retention of title.

1. If the Good covered by the retention of title clause, in accordance with the provision of § 3 pt. 4, is sold to a subsequent purchaser, the Buyer is obliged to inform that purchaser about the retention of title for CARBOMETAL and to transfer to CARBOMETAL the claim against the purchaser for the payment of the price equal to the Buyer's liability owed to CARBOMETAL.
2. Processing or combining of Goods belonging to CARBOMETAL with other movable properties results in that CARBOMETAL becomes the joint owner of those properties.
3. The establishment of a pledge on Goods covered by the retention of title clause or the transfer of ownership by way of security is forbidden.
4. The enforcement of the Goods covered by the retention of title clause, the establishment of a statutory lien or any other form of liability imposed on the Goods obliges the Buyer to indicate the retention of title and to immediately inform CARBOMETAL of that fact in writing. The negligence of the aforesaid obligation results in the Buyer's being hold liable for any compensation to be paid to CARBOMETAL.



## § 8. Force majeure.

1. CARBOMETAL is responsible neither for any delay in the delivery nor for the impossibility to accomplish the delivery, both of which would result (directly or indirectly) from reasons for which CARBOMETAL is not to be held responsible, in particular for the following: natural disasters, wars, acts of terrorism, accidents, explosions, nuclear accidents, failures of machinery and facilities, sabotage, strikes, or other disruptions in the availability of the workforce (irrespective of the validity of their claims), official acts or instances of negligence on the part of the state authority, interruption of communication links, deficiencies in deliveries, facilities, fuel or power, significant deficiencies in the means of transport or any other reasons which are not in control of CARBOMETAL and which make the realization of the obligations either impossible or excessively onerous, which determines their unprofitability.
2. In the circumstances described above, the delivery time is extended for the time the obstacles continue to occur.
3. If the delay in the delivery of the Good, caused by one of the above force majeure circumstances, lasts for more than 60 days, by notification of the other Party in writing, both Parties are entitled to terminate the Contract as regards the undelivered Goods, unless the Parties have agreed otherwise.
4. Nevertheless, the Buyer may withdraw from the Contract no sooner than CARBOMETAL provides the decision as to whether it withdraws from the Contract or is willing to deliver the Good at another time; the decision shall be provided within 1 week after having been called.
5. The Buyer is not entitled to any claims for redressing the damage arising from the non-performance or delayed performance of the Contract by CARBOMETAL in consequence of force majeure.
6. If a damage is suffered by the Buyer as a result of a delay in the delivery being the fault of CARBOMETAL and lasting over 30 days, the Buyer is entitled to claim for compensation (excluding any further claims) in the amount corresponding to 0,5% of the net value of the undelivered Good for every full day of the delay beyond 1 month, altogether, however, to not more than 5% of the net value of that undelivered Good.

## § 9. Customer complaints.

1. It is assumed that the Buyer accepts the delivered Good in terms of quality, condition, size, kind and other determined characteristics which may be examined during control and collection of the Good, unless the Buyer has provided observations or comments to the Goods in the above respects at its arrival or collection and has determined those in the delivery note.
2. All complaints shall be submitted in writing.
3. The Buyer's entitlements and claims as to the Goods arising from warranty provisions for material defects established in the Civil Code shall be excluded, and the responsibility of CARBOMETAL for the defects of that kind is determined solely in the provisions of GSC.
4. As regards complaints concerning the quantity as well as damages which occurred in transport, it is the Buyer who is responsible for providing a suitable notification on the delivery note concerning the kind of damage observed in the purchased Good (a deficiency or a damage). The notification on the delivery note has to be signed by the carrier who realized the delivery of the Good.
5. A copy of the delivery note shall be sent to CARBOMETAL not later than the day following the unloading of the Good.



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6. If the Good is collected using the Buyer's own means of transport, complaints concerning quantity, damages in transport or packaging (if applicable) will not be considered after the Good is collected.
7. If a quantitative discrepancy is found in the Good delivered, the Buyer shall report that fact immediately after its discovery on the delivery of the Good to the point of destination or on the collection of the Good from the warehouse of CARBOMETAL; the discrepancy shall be reported not later than within 2 days from the date of delivery or collection of the Good. Complaints concerning the quantity of the Good submitted after that deadline will not be considered.
8. A quantity complaint will be considered by CARBOMETAL within 14 days from the date of its reception. If, however, due to reasons beyond the control of CARBOMETAL, entities partaking in the dispatch and/or shipment do not receive proper information and/or documents, the time for considering the quantity complaint may be extended accordingly.
9. Defects which cannot be discovered during the control and collection of the Good, particularly ones which pertain to quality, properties, or parameters of the Good, shall be reported by the Buyer immediately after their discovery but not later than within 2 days after that, failing which the Buyer will lose the right to claim for compensation, inclusive of the entitlements resultant from warranty provisions established in the Civil Code.
10. The Buyer is obliged to carry out a quality control of the Good immediately after its arrival or collection from the warehouse of CARBOMETAL.
11. In case when material defects are found in the Goods – ones which could not have been discovered the moment they were passed to the Buyer – the Buyer shall report those defects in writing to CARBOMETAL not later than within 1 month from the date of collection or delivery of the Good.
12. Quality complaints shall be considered within 30 days from the date of their receipt.
13. If a complaint is honored, the Buyer is entitled to claim only for a price reduction or for a delivery of Goods free of defects, subject to the provisions of point 14 below.
14. In case when the available quantity of the Goods free of defects is insufficient for the satisfaction of the Buyer's claim for compensation, the Parties decide on a partial withdrawal from the Contract with respect to the defective part of the delivery.
15. It is assumed that customer claims relating to discrepancies in the physicochemical properties of the Good will always be considered in reference to the parameters determined in the technical standards for the Good, unless CARBOMETAL has confirmed in the Order and in the Confirmation of the Order other, i.e. required by the Buyer, properties of the Good.
16. Complaints concerning non-standard properties or parameters of the Good, the examination of which was not the object of the Contract, will not be considered.
17. In each instance when the complaint is filed, the Buyer is obliged to enable CARBOMETAL to perform appropriate examination of the Good, inclusive of making photographic documentation for the sake of verifying the existence of the defects reported by the Buyer, failing which the Buyer will lose the right to claim for compensation.
18. Until a complaint is eventually considered, the Buyer is obliged to store the Good complained of in an appropriate manner, i.e. a manner which prevents any possible damages thereto or shortages therein.
19. CARBOMETAL shall be liable neither for damages to the Good which occurred during unloading nor for damages being the result of improper usage or storage of the Good by the Buyer nor for damages caused by the Buyer. In particular, the Buyer is not entitled to file a complaint when:
  - a) the Buyer or a third party have used the Good not in accordance with its technical parameters about which the Buyer was informed by CARBOMETAL;



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b) the Buyer or a third party have modified the Good on their own.

20. Compensatory liability of CARBOMETAL towards the Buyer resultant from the faultiness of the Good is limited solely to actual losses suffered by the Buyer and to the amount not greater than the price of the defective Goods delivered to the Buyer.

## **§ 10. Severability clause.**

In case when one or more of the provisions or terms of the Contract or a part of the Contract turns out to be null and void or impossible to be performed, the remaining part of the Contract shall still be fully binding. The Parties shall undertake immediate actions to replace the terms or the provisions which are null and void for ones which are consistent with law and the performance of which is possible. These terms and provisions shall be possibly similar to those previously determined and recognized as null and void ones.

## **§ 11. Maintenance of the confidentiality of the trade secret.**

The Parties of the Contract are obliged to maintain the confidentiality of its provisions, of all the information and data which will be available to them in connection with the conclusion of the Contract as well as with its performance, particularly with respect to the established prices, the responsibilities of the Parties, payment terms and the collaterals for the performance of the Contract, granted guarantees, discounts and occurring problems also continuously from the date of termination of the Contract or the Confirmation of the Order.

## **§ 12. Information and consultancy, protection rights.**

1. Information about processing and possibilities for use, maintenance or handling of the Goods delivered by CARBOMETAL, technical consultancy as well as other information are provided to the best knowledge of CARBOMETAL, yet with no obligations and excluding any responsibility, unless CARBOMETAL acts with at least gross negligence.
2. CARBOMETAL reserves the copyright to all technical documentation concerning the Good.
3. In case of standard Goods offered by CARBOMETAL, CARBOMETAL guarantees that these Goods are free from third parties' copyrights. The documentation shall not be made available to third parties.

## **§ 13. Final provisions.**

1. Any dispute which may arise in the course of the Contract or with reference to it shall be resolved by amicable agreement between the contracting Parties.
2. If the dispute has not been resolved by amicable agreement it shall be submitted to the jurisdiction of of the common court.
3. The Contract shall be governed solely by Polish law. The application of the provisions of United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) shall be excluded.
4. Written form is required for the sake of validity of any modifications and additions to the Contract, failing which they shall be deemed null and void.