

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF MAASGRIT B.V.**

General terms and conditions of sale and delivery of Maasgrit B.V., having its registered office and principal place of business in Maastricht, The Netherlands.

Registered with the Chamber of Commerce in Maastricht under number 70484112.

Version January 2019

**Article 1 - Applicability**

- 1.1 These General Terms and Conditions of Sale and Delivery of Maasgrit B.V. (hereinafter: the "Terms and Conditions") apply to all offers (hereinafter: the "Offer") of Maasgrit B.V. (hereinafter: "Maasgrit") and all agreements concluded between Maasgrit and the buyer (hereinafter: the "Buyer") with regard to the sale and delivery of goods and the performance of services.
- 1.2 By accepting an Offer of Maasgrit, the Buyer also accepts the applicability of these Terms and Conditions. The applicability of the general terms and conditions of the Buyer is expressly rejected by Maasgrit. The general terms and conditions of the Buyer are not binding on Maasgrit in any way.
- 1.3 Deviations from and/or additions to these Terms and Conditions are only possible if these are explicitly agreed with Maasgrit in writing.
- 1.4 Any deviations from and/or adjustments to these Terms and Conditions agreed in accordance with Article 1.3 of these Terms and Conditions shall only apply to the agreement for which the deviation/adjustment has been agreed.
- 1.5 As soon as these Terms and Conditions apply to an agreement between Maasgrit and the Buyer, the Buyer shall be deemed to have tacitly agreed to the applicability of these Terms and Conditions to all agreements concluded and to be concluded between Maasgrit and the Buyer.

**Article 2 – Offers**

- 2.1 All Offers are without obligation unless otherwise stated in writing.
- 2.2 Non-binding Offers can also be withdrawn by Maasgrit after acceptance, without Maasgrit being obliged to pay any compensation and/or reimbursement. The Buyer is bound by its acceptance of an Offer.
- 2.3 An agreement is only formed after Maasgrit has provided the Buyer with a written confirmation or when Maasgrit commences the execution of a delivery and/or service.
- 2.4 Statements provided by Maasgrit with regard to the colour, size, shape, chemical and sieve analysis, physical composition and other technical information of its products, as well as samples of materials provided by Maasgrit, are approximate only. Deviations in the delivered products that fall within the usual standard tolerances of Maasgrit do not entitle the Buyer to refuse receipt or payment.

**Article 3 – Prices**

- 3.1. Unless stated otherwise by Maasgrit in writing, the prices indicated by Maasgrit are exclusive of packaging and transport costs, costs of transshipment, sorting, calibration, analysis, inspection, etc., and exclusive of VAT (turnover tax) and all other levies, duties and taxes that may be due in connection with the performance of an agreement.
- 3.2. If, after the Offer date, one or more cost factors are subject to a price increase (including but not limited to the costs of labour, energy and raw materials), even if this is due to circumstances foreseen at the time of the Offer, Maasgrit is entitled to increase the agreed price(s) accordingly without this increase giving the Buyer the right to terminate the agreement.

**Article 4 – Delivery time**

- 4.1 Delivery times stated by Maasgrit are always approximate and are not strict deadlines. If Maasgrit exceeds the delivery times, this does not give the Buyer any right to compensation, reimbursement, termination of the agreement, suspension of the agreement or otherwise the non-fulfilment of any obligation of the Buyer arising from the agreement.
- 4.2 If the delivery time is exceeded, the Buyer is entitled to set Maasgrit a reasonable period of at least 14 days in writing within which the delivery must take place. Only if Maasgrit fails to meet

[www.sibelco.com](http://www.sibelco.com)

Maasgrit B.V., Op de Bos 300, NL-6223 EP Maastricht | P.O. Box 260, NL-6200 AG Maastricht  
Chamber of Commerce 70484112 | VAT NL858337824B01



the delivery time again is the Buyer entitled to terminate the agreement. The Buyer must make this known in writing. Maasgrit is never liable for any damage that is the result of exceeding the delivery time.

- 4.3 If a delivery is delayed due to force majeure, as referred to in Article 12.2 of these Terms and Conditions, or due to an act or omission of the Buyer or its contractors, the delivery time shall be extended by the length of the delay.

## Article 5 – Quantity and inspection

- 5.1 Unpacked bulk goods are weighed by Maasgrit and then delivered by (goods) vehicle. The weighed quantities are stated on the freight documents and are binding on the parties. In the case of the delivery of unpacked bulk goods by ship, the delivered weight is determined via the weighing system or, if agreed, by calibrating the ship before and after loading.
- 5.2 In the case of the delivery of packaged goods, quantity and amounts are determined by counting during loading. If packaged goods are accepted by or on behalf of the Buyer, the packaging is deemed to have been in good condition at the time of delivery.
- 5.3 Maasgrit may deliver up to 10% more or less unpacked bulk goods than ordered or requested, and invoice accordingly.
- 5.4 Maasgrit is entitled to purchase materials or to outsource orders wholly or partly to third parties, provided that the agreed specifications are met.
- 5.5 In principle, inspection takes place at Maasgrit or at a location to be designated by Maasgrit. If it has been expressly agreed that if the inspection takes place by the Buyer, this must be done within 3 days after Maasgrit has informed the Buyer that the goods are ready for inspection, failing which the goods are deemed to have been approved.

## Article 6 - Delivery

- 6.1 Unless otherwise agreed in writing, delivery takes place at the time that the goods are ready for inspection or dispatch and after Maasgrit has notified the Buyer thereof. From that moment, the Buyer bears the risk for these goods (FCA in accordance with Incoterms 2010).
- 6.2 If, upon delivery, the Buyer does not immediately take possession of the goods, all costs of exceeding the time limit, storage, moving and return freight shall be payable by the Buyer.
- 6.3 If it has been agreed that transport will be provided by Maasgrit, Maasgrit is free in the choice of carrier and means of transport and entitled to dispatch the goods in partial deliveries. If any means of transport is not suitable or less suitable for transport or delivery, the Buyer must inform Maasgrit about this in good time and in advance.
- 6.4 The Buyer guarantees that the means of transport used by Maasgrit can always and under all circumstances reach the place of unloading designated by it via safe and paved roads or, depending on the transport used, via safe and suitable waterways. If this does not appear to be the case, the Buyer is liable for all costs and damage related to this.
- 6.5 Deliveries provided by Maasgrit always take place on working days during office hours, unless expressly agreed otherwise. Any additional costs for deliveries outside of office hours are at the expense of the Buyer.
- 6.6 In the event of delivery carriage paid at the work location, the Buyer must provide sufficient equipment and assistance by personnel to quickly and safely unload the goods to be delivered at its own expense and risk. If unloading cannot take place within the usual period of time through no fault of Maasgrit, any associated additional costs for waiting time and/or otherwise are at the expense of the Buyer.
- 6.7 If delivery on a call-off basis has been stipulated and no time limits have been set for the call-off, if within 3 months after acceptance of the order by Maasgrit the delivery has not been called-off or not completely called-off then Maasgrit is entitled to demand in writing that the Buyer inform Maasgrit within 8 days of a date within a maximum of 3 months on which the total quantity will be called-off. Failing this, Maasgrit can demand immediate collection and can invoice the Buyer for the ordered quantity.
- 6.8 The transport of materials does not fall under the responsibility of Maasgrit and takes place at the expense and risk of the Buyer, irrespective of whether this transport is carried out using own

transport or by third parties. The Buyer shall arrange for goods in transit insurance cover, which is payable by the Buyer unless expressly agreed otherwise.

#### **Article 7 – Silo lease**

Separate "General Operating Conditions of Silo Lease" apply with regard to the lease of storage and exchange silos, as well as the lease of exchange containers. These are deemed to form an integral part of these Terms and Conditions.

#### **Article 8 - Reservation of ownership**

- 8.1 All goods delivered by Maasgrit remain the property of Maasgrit until the Buyer has paid the entire amount that is due and payable to Maasgrit, including interest and (collection) costs. If multiple deliveries are carried out between Maasgrit and the Buyer, all delivered goods will remain the property of Maasgrit until all the obligations arising from the legal relationship have been fulfilled by the Buyer in full.
- 8.2 Before payment is made in full, the Buyer is not entitled to sell or deliver the goods, to encumber them with a right of pledge or otherwise, in any way other than in accordance with its normal business operations.
- 8.3 In the event of non-payment or late payment, breach of contract or default by the Buyer or otherwise, Maasgrit is entitled to take back the goods delivered under reservation of ownership. All resulting costs can be charged to the Buyer by Maasgrit in full. The Buyer shall cooperate with Maasgrit in the exercise of its reservation of ownership and will grant Maasgrit free access to the site where the goods are located.

#### **Article 9 - Payment**

- 9.1 Payment must take place within 30 days of the invoice date, without any deduction, in the manner indicated by Maasgrit, and in the currency indicated on the invoice, unless otherwise agreed in writing.
- 9.2 The payment term applied by Maasgrit is also applicable if the delivery is delayed and/or if the Buyer has not had the opportunity to inspect the goods.
- 9.3 The payment term applied by Maasgrit should be considered as a strict deadline. If payment of the amount due does not take place at the latest on the due date, the Buyer shall be in default and have failed to fulfil its obligations by operation of law, without a demand or notice of default being required hereto. Upon the commencement of the default of the Buyer, all claims of Maasgrit via-à-vis the Buyer, including those relating to invoices that have not yet fallen due, are immediately due and payable without a notice of default being required.
- 9.4 With effect from the day on which the default of the Buyer takes effect, the Buyer will owe interest of 2% per month on the total amount due to Maasgrit. The amount owed shall include the collection costs and the interest due for previous months (interest on interest) until the day of payment in full.
- 9.5 All collection costs (both judicial and extrajudicial) are payable by the Buyer. The extrajudicial costs amount to at least 15% of the amount due, with a minimum of EUR 300.
- 9.6 Any payment made by the Buyer shall firstly be deducted from all amounts, costs and interest due, and first from due and payable invoices that have been outstanding for the longest time, even if the Buyer states that the payment relates to subsequent invoices. An invoice is considered to be accepted if no letter of protest has been submitted 10 days after dispatch.
- 9.7 At the first request of Maasgrit the Buyer shall - if Maasgrit considers that there are reasons therefor - immediately provide (additional) security for the fulfilment of all its obligations in the form desired by Maasgrit. If the Buyer does not comply with a request from Maasgrit to provide security, Maasgrit can suspend its obligations under the agreement or dissolve the agreement, without a written declaration to the Buyer being required.
- 9.8 Deliveries in parts will be regarded as a separate delivery for the purposes of payment, for which a pro rata invoice can be issued.
- 9.9 All invoices are immediately due and payable without any notice of default being required in the event of the seizure of goods by third parties, as well as in the case of an application for suspension

of payments, bankruptcy, receivership, the death of the Buyer or the dissolution of the company or legal entity in the event that this is the client, in the case of the appointment of an administrator for the Buyer by virtue of any legal provision and in the event of non-performance or violation of one or more provisions of the agreement and/or of these Terms and Conditions.

## **Article 10 – Conformity and protest**

- 10.1 Protests regarding the quantity and weight of delivered goods, as well as with respect to externally visible defects, can only take place at the moment of delivery. The Buyer must notify Maasgrit of its protest in writing within 48 hours of receipt of the goods and before resale or processing, and provide a specification of the alleged defects.
- 10.2 Protests regarding all other defects that are not outwardly apparent must be made within 48 hours of discovery at the latest, but no later than 30 days after delivery.
- 10.3 Protests regarding invoices must be made by the Buyer immediately and in any case within 4 weeks of the invoice date. If this period is exceeded, the accuracy of the invoices - including the amounts stated therein - will be an established fact between the parties.
- 10.4 If protests are not made in time, in accordance with the time limits stipulated in these Terms and Conditions, the goods shall be delivered in accordance with the agreed conformity. All claims of the Buyer are deemed to have expired and protests will not be taken into consideration. The Buyer shall be deemed to have forfeited its rights in this regard.
- 10.5 Protests regarding certain deliveries do not suspend the payment obligations of the Buyer with regard to those or other deliveries, nor does this entitle the Buyer to set off.
- 10.6 Under penalty of the forfeiture of rights, the Buyer must, upon request, immediately provide Maasgrit with all substantiating information regarding its protest, provide insight into the damage sustained by it and allow the delivered goods to be inspected by or on behalf of Maasgrit.
- 10.7 In the event of a justified protest, the obligations of Maasgrit will be limited to the replacement or repair of the faulty goods, the total or partial termination of the agreement or the pro rata credit of the corresponding invoice, at the option of Maasgrit, without any other obligation on the part of Maasgrit to pay compensation.
- 10.8 Protest and/or any liability of Maasgrit is excluded for goods already used or if the defects are fully or partially attributable to negligence, inexpert or careless use or processing by the Buyer, its personnel or third parties, or if the goods were stored indoors or outdoors for longer than normal and it is likely that this caused a loss of quality of the materials and/or the packaging. Protests by non-direct users, to whom the goods were resold, are not accepted.

## **Article 11 – Liability**

- 11.1 A notice of default is always required for the occurrence of the default by Maasgrit.
- 11.2 In the event of defective goods delivered by Maasgrit, the liability of Maasgrit is limited to compliance with its obligations as described in Article 10.7 of these Terms and Conditions.
- 11.3 In all other cases, the liability of Maasgrit is limited to compensation for damage resulting from intent or gross negligence. Any other liability for any damage sustained by the Buyer whatsoever is excluded.
- 11.4 Under no circumstances is Maasgrit obliged to compensate damage above an amount equivalent to the invoice value of the defective goods that caused the damage.
- 11.5 The Buyer indemnifies Maasgrit against all third-party claims for compensation for any damage sustained by or related to goods delivered by Maasgrit under an agreement with the Buyer. The Buyer shall indemnify Maasgrit in this respect.
- 11.6 Maasgrit is never liable for indirect damage, including consequential damage, loss of profits and/or damage resulting from the temporary discontinuation and/or stagnation of business operations.

## **Article 12 - Force majeure**

- 12.1 If Maasgrit is prevented from fulfilling its obligations due to force majeure, Maasgrit is entitled to suspend performance of the agreement or to terminate it in whole or in part without judicial intervention and without being obliged to pay any compensation, all this without prejudice to the further rights to which Maasgrit is entitled.
- 12.2 Force majeure means any circumstance independent of the will of Maasgrit, of whatever nature - even if this circumstance was already foreseeable at the time of the conclusion of the agreement - as a result of which Maasgrit is unable to fulfil its obligations, unable to do so in good time or without performing an extra effort and/or incurring extra costs that it considers to be disproportionately onerous. Force majeure includes but is not limited to war, danger of war, civil war and revolt, strike, lock-out of employees, factory occupation, transport difficulties, extreme weather conditions or water levels, fire and other (technical) failures of the business of Maasgrit or that of its suppliers, and the delayed delivery for whatever reason of goods, raw materials or auxiliary materials or parts ordered in good time by Maasgrit. In these cases, any claim that Maasgrit has or acquires against the Buyer shall become immediately due and payable.

## **Article 13 - Termination**

- 13.1 In the event of bankruptcy, suspension of payments and/or closure or liquidation of the business of the Buyer, both Maasgrit and the Buyer shall be entitled to terminate the agreement in whole or in part with immediate effect, without any of the parties being liable for any compensation as a result of this termination, but without prejudice to further rights accruing to Maasgrit in respect of damage sustained by Maasgrit.
- 13.2 In the event of termination pursuant to the previous paragraph, all claims of Maasgrit against the Buyer will become immediately due and payable in full.

## **Article 14 - Interpretation**

- 14.1 The nullity, voidability or cancellation of any provision of these Terms and Conditions does not affect the validity of the other provisions.
- 14.2 If discrepancies exist between the Terms and Conditions (which have been drawn up in Dutch) and a translation thereof, the Dutch version that is determinative between the parties shall always prevail.
- 14.3 If Maasgrit does not always demand strict compliance with a provision of these Terms and Conditions, this does not mean that Maasgrit waives the right to require strict compliance with that provision and/or the Terms and Conditions in full at any time.

## **Article 15 - Jurisdiction and applicable law**

- 15.1 Dutch law applies to all legal relationships between Maasgrit and the Buyer.
- 15.2 The applicability of the Vienna Sales Convention (CISG) is excluded.
- 15.3 All disputes arising from or in connection with agreements between Maasgrit and the Buyer shall be submitted to the competent Court of Rotterdam, Dordrecht location.