



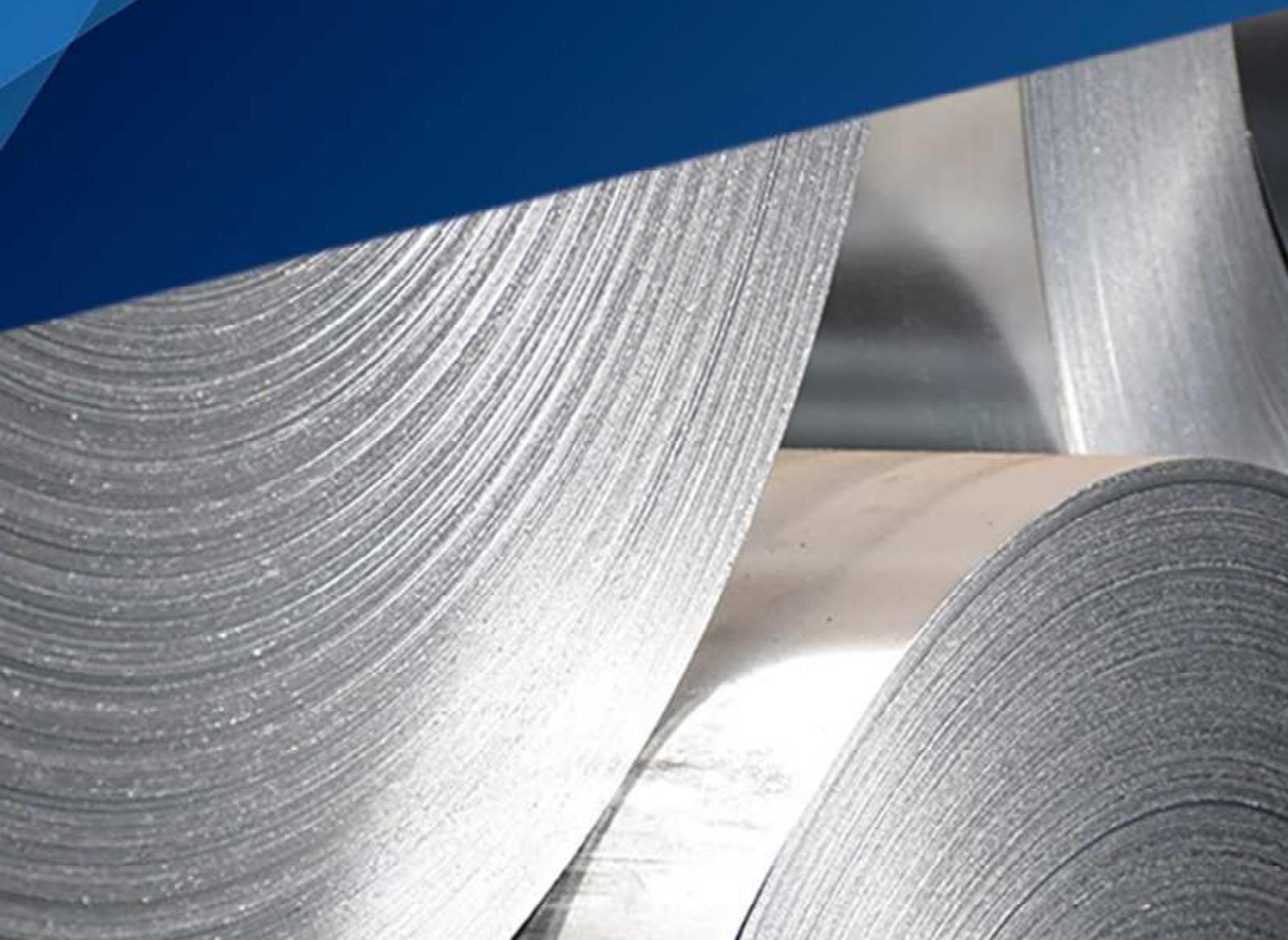
**LIBERTY**



# GENERAL PURCHASING CONDITIONS

DOC GPC LM 2019-07 - EN

**LIBERTY MAGONA Srl**  
[libertymagona.it](http://libertymagona.it)



## 1. SCOPE OF APPLICATION

1.1 These General Purchasing Conditions ("GPC") apply to the purchase of any materials, items, products, components, software and any related services ("Goods") from a supplier ("Seller") by Liberty Magona Srl ("Buyer"). These GPC form an integral part of any order, request, accepted quotation or offer ("Order") transmitted by the Buyer to the Seller. Only these GPC, the provisions of the Order and any documents incorporated by reference in the Order are binding on the Buyer.

1.2 If any term of these GPC is unenforceable for any reason, the other terms and conditions will not be affected.

1.3 If there is a discrepancy or ambiguity between the conditions in an Order and these GPC, the conditions in the Order will prevail.

## 2. PRICES – QUOTATION – CONDITIONS OF PAYMENT – INVOICING

2.1 All prices in the Order are fixed and not subject to revision. They are inclusive of all taxes (except VAT or equivalent), contributions, insurances and all other costs incurred by the Seller in performing the Order up to and including Delivery (as defined in these GPC), all packing, protecting, lashing and anchoring materials and all documents, accessories, devices and/or tools necessary to ensure complete and functional use and maintenance of the Goods and are inclusive of all payments

for the use of any intellectual property rights, including those of third parties.

2.2 Upon each Delivery, the Seller must issue a commercial invoice to the Buyer. No invoice may relate to more than one Order.

2.3 Amounts due under a Seller's invoice must be paid by the deadline stated in the Order. The Buyer may set-off costs it incurs from the Seller's default against outstanding invoices or may withhold payment if the Seller fails to fully perform its obligations under the Order.

2.4 The absence of a rejection of an invoice does not imply that the Buyer accepts the invoice. Payment of an invoice does not, of itself, mean that the Buyer agrees that the Goods comply with the Order.

## 3. SAFETY

The Seller warrants that the Goods do not constitute a hazard to health, safety or the environment, provided that they are handled, used and stored in accordance with normally accepted working practices applicable to the Goods. The Seller must provide safety data sheets, relevant codes of practice and notes or reports from the Seller's factory inspectors, specifying the required hygiene, safety and environmental standards for handling, processing and storing the Goods, their by-products and waste of any sort. The Seller warrants that it and its contractors, employees and agents will comply with the

rules and policies for the safe, orderly and efficient conduct of operations on the Buyer's premises, including any rules governing truck deliveries.

## 4. DELIVERY – TRANSFER OF TITLE – PACKAGING – TRANSPORTATION

4.1 The Goods must be delivered DDP Incoterms 2010 to the delivery point specified by the Buyer in the Order ("Delivery").

4.2 Transfer of risk and title in each shipment of Goods pass from the Seller to the Buyer when the Goods are delivered in accordance with article 4.1. The Seller warrants that at the time of Delivery it will have good title to the Goods and will deliver them free and clear of all liens, claims and encumbrances.

4.3 Before Delivery:

(a) The Seller must inspect the Goods for compliance with the specifications, quality, weight, and physical dimensions stated in the Order, as well as for any damage to the Goods or their packaging.

(b) The Goods must be packed so that they will not be damaged during transportation or handling. All items must be properly marked:

- (i) according to applicable rules, especially in the case of hazardous goods;
- (ii) according to the Buyer's reasonable instructions;
- (iii) setting out the Buyer's Order number, the Seller's identification, item number,

place of Delivery, item description, weight and quantity; and (iv) with all markings required for proper Delivery and assembly.

(c) Sling and handling accessories must be provided with the Goods.

#### 4.4 Transportation:

(a) The Seller must deliver the Goods by all appropriate means and using appropriate equipment and accessories with the assistance of competent and solvent agents or subcontractors, where necessary.

(b) If the Order is not performed within the time stated in the Order, or other document incorporated by reference into the Order, the Buyer may, after notifying the Seller of the delay, either terminate the Order within 28 days from the agreed delivery date and claim damages from the Seller, or accept Delivery. The Buyer may refuse partial or early Deliveries, and in such cases may: (i) return the Goods; or (ii) store them, at the Seller's expense and risk. (c) If the Buyer so requests, the Seller must remove all packaging material from the Buyer's premises after Delivery.

4.5 The Seller must notify the Buyer in writing, without delay, of all details of any potential or actual delay to Delivery and the Seller's recovery plan.

### 5. ACCEPTANCE – INSPECTION

5.1 Without prejudice to the provisions of article 4.3, the

Buyer may verify the progress and proper performance of the Order and inspect the Goods at the Seller's or its subcontractors' premises or elsewhere during normal working hours and upon reasonable notice. The Seller must provide, and cause its subcontractors to provide, the Buyer and its representatives with such reasonable access to its premises as required for these inspections.

5.2 The Seller must have an established and implemented quality system in accordance with ISO 9001:2015 and IATF 16949:2016, or their equivalent, depending on the nature of the Goods.

5.3 The Buyer must notify the Seller of any patent defects in the Goods without delay and it may reject defective Goods within 28 days of Delivery and request the Seller to collect them at its expense and risk.

### 6. TECHNICAL DOCUMENTATION

No later than the date of Delivery, the Seller must deliver to the Buyer all technical documentation relating to the Goods and any other supporting documentation customarily supplied with the Goods or reasonably requested by the Buyer. Such technical documentation is the Buyer's property and is considered an integral part of the Goods.

### 7. WARRANTY – LIABILITY

7.1 The Seller warrants that the Goods: (a) conform with agreed specifications and requirements;

(b) are fit for the purpose(s) made known to the Seller;

(c) are free from defects in design, materials and workmanship, and any security interest, lien or encumbrance; and

(d) comply with all applicable statutory requirements and standards.

7.2 The Seller warrants due performance of the Goods for a period of 2 years after they are put into service.

7.3 If Goods are not as warranted, the Buyer may: (a) reject them and require the Seller to repair them or deliver replacement Goods, at the Seller's expense; (b) terminate the Order according to the provisions of article 11 (Termination), if the Seller fails to deliver replacement or repaired Goods within a reasonable time; (c) accept the Goods with an equitable reduction in price. The Seller must remove rejected Goods from the Buyer's premises no later than 30 days after their rejection, at the Seller's risk and expense.

7.4 If the Seller fails to deliver replacement or repaired Goods within a reasonable time, the Buyer may replace or repair the Goods at the Seller's expense.

7.5 Any Goods repaired or replaced are subject to the provisions of this article 7 and the warranty period applies to them from the date of Delivery or repair.

7.6 The Seller is responsible

for defects or other failures to meet the requirements of the Order, regardless of any inspection, approval or acceptance of Goods.

### **8. THIRD PARTY RIGHTS**

8.1 The Seller warrants that neither the Goods nor their sale infringes or violates any third party rights. The Seller indemnifies and holds harmless the Buyer against all claims, damages, loss or expense arising out of any infringement of third party rights. The Seller must, at its own expense if so requested by the Buyer, defend the Buyer against all such claims.

8.2 If the Goods become the subject of claims of infringement of third party rights, the Seller must, after consultation with the Buyer, either obtain the right for the Buyer to use the Goods or modify or replace the Goods to remove the infringement, without prejudice to the Goods' compliance with the Order.

### **9. NON-DISCLOSURE – PROPRIETARY RIGHTS**

9.1 All written information concerning the Goods supplied by either party to the other, the disclosing party's business, forecasts, know how, specifications, procedures and all technical and commercial information, documents and data disclosed in connection with an Order must be treated as confidential and must not be disclosed to third parties without the disclosing party's prior written consent. Such information must be used exclusively for the performance

of the Order, or for the purpose of preparing offers or quotations for the Buyer. The obligations in this article 9 will remain in force for 3 years from the date of Delivery.

9.2 The rights of ownership and the intellectual property rights in any designs, drawings, samples and documents delivered by the Buyer to the Seller remain with the Buyer.

### **10. FORCE MAJEURE**

10.1 Neither Party is liable for delay or failure in performing all or part of the Order, to the extent that its performance has been prevented, delayed or hindered due an event beyond it's reasonable control, which could not have been reasonably foreseen on the date of the Order, nor can reasonably be avoided; including but not limited to general strikes, epidemics, floods, earthquakes, war, embargo and civil unrest (each certified by the relevant authority / Chamber of Commerce as "Force Majeure", where applicable). Force Majeure does not include any strike, lockout or other labour dispute initiated by, or involving only, workers or employees within either Party's organisation.

10.2 A Party claiming Force Majeure must provide evidence to the other Party and a notice that its performance has been or may be prevented or delayed within 5 days of its occurrence and use all commercially reasonable efforts to mitigate the effects of Force Majeure.

10.3 If the effects of Force

Majeure last 3 months or less, the Goods affected must be delivered at a time agreed between the parties, being no later than 6 months after the effects of Force Majeure have ceased to exist.

10.4 If the effects of Force Majeure last longer than 3 months, either Party may terminate the Order involved on 28 days' notice. In the absence of termination the Goods involved must be delivered at a time agreed between the parties, being no later than 12 months after the effects of Force Majeure have ceased to exist.

10.5 The Party claiming Force Majeure must notify the other Party within 5 days after Force Majeure has ceased to exist.

10.6 If the Seller claims Force Majeure, the Buyer may purchase similar goods from alternative sources, in which case it is released from its obligations to purchase the Goods from the Seller.

### **11. TERMINATION**

11.1 The Buyer may suspend performance of the Order for a period determined by the Buyer, or terminate it wholly or partly, without cause, by giving the Seller 14 days' prior written notice. In such cases, the Buyer must pay all reasonable direct costs properly incurred by the Seller up to the time of suspension or cancellation.

11.2 If a party breaches a material provision of the Order, the other party may terminate the Order without any further liability or obligation with

immediate effect and recover from the breaching party all direct costs relating to the termination including recovery of any amounts paid under the Order.

## **12. INSURANCE**

The Seller must take out and maintain in force all insurance policies necessary to cover its liability under the Order. The Seller must provide the Buyer with evidence of such insurance.

## **13. SUBCONTRACTING**

The Seller must not sub-contract any part of its obligations to third parties without the prior written consent of the Buyer. Such consent may not be unreasonably withheld or delayed. Any sub-contracting is at the Seller's sole expense and risk. The Seller is liable for the acts and omission of its sub-contractors and must indemnify the Buyer against any loss or damage suffered by the Buyer arising from any act or omission of its sub-contractors.

## **14. ASSIGNMENT**

Neither party may assign or transfer its rights and/or obligations under the Order (including the right to receive payment) without the other party's prior written consent. Such consent may not be unreasonably withheld or delayed.

## **15. JURISDICTION – APPLICABLE LAW**

15.1 The Order is governed by and construed exclusively in accordance with the

substantive laws of the Buyer's place of incorporation. The UN Convention on Contracts for the International Sale of Goods of 1980 does not apply to the Order.

15.2 Any disputes arising out of or in connection with the Order must be settled by the competent Courts of the Buyer's place of incorporation, but the Buyer reserves the right to bring any dispute before Courts having jurisdiction over the Goods, the Seller or its assets.

## **16. COMPLIANCE WITH LAW & LIBERTY MAGONA POLICIES**

### **16.1 Compliance with Law**

Each Party must comply, and must ensure that its directors, officers, employees, contractors, sub-contractors, suppliers and agents ("Personnel") comply, with all

applicable Laws, including those concerning corruption, money-laundering, the payment of bribes, tax evasion, economic sanctions, the registration, evaluation, authorisation and restriction of chemicals, health and safety and must not undertake or cause to be undertaken any activity that is illegal or unlawful.

### **16.2 Corruption**

Each Party warrants that it (i) has not paid, (ii) has not agreed to pay, and (iii) will not pay directly or through its Personnel or any entities acting on its behalf, any commission, facilitation payments or inducement in

connection with the Order.

### **16.3 Fraud**

The Parties must take all necessary steps in accordance with good industry practice, to

prevent any fraudulent activity, in relation to the Order, by either of them or their

Personnel or the directors, officers, employees, contractors, sub-contractors, suppliers or agents of their Personnel.

16.4 Compliance with Liberty Magona's Policies The Seller has reviewed Liberty Magona's (i) Health & Safety Policy; (ii) Code of Business Conduct, (iii) Anti-corruption Procedure; (iv) Human Rights Policy; (v) Responsible Sourcing Code ("Policies"), as set out on Liberty Magona's website; <http://libertymagona.it>. In the performance of its obligations under the Order and business arising from it, the Seller must comply with the principles contained in the Policies and must ensure that its Personnel comply with those principles.

16.5 Internal controls, record keeping and audit rights

16.5.1 The Seller must maintain, and ensure that its Personnel maintain, adequate internal controls and procedures to assure compliance with this clause 16, including procedures to accurately record and report all relevant transactions in its books and records.

16.5.2 The Seller must retain, and ensure that its Personnel retain, all records,

invoices and information related to the Order (“Records”) for ten (10) years after its completion or termination. The Seller must provide the Buyer with originals of any Records, on request. The Buyer may reproduce and retain copies of any Records.

16.5.3 The Buyer may monitor or audit the Seller’s compliance with this clause 16 at any time while the Order is in force and within ten (10) years of its completion or termination. In the course of such monitoring or auditing, the Seller must (i) provide the Buyer (or its authorised representative) with access to its premises and Records (and those of its Personnel) and (ii) permit the Buyer (or its authorised representative) to interview the Seller’s Personnel, upon the Buyer’s request. The Seller must implement recommendations arising from such monitoring or auditing within the deadline(s) prescribed by the Buyer.

#### 16.6 Seller’s indemnity and risk

16.6.1 The Seller indemnifies, defends, and holds harmless the Buyer, and its affiliates and associated companies, and its and their Personnel from and against all liabilities, losses, damages, injuries, costs, expenses, actions, proceedings, claims, demands, fines and penalties arising out of the Seller’s breach of its obligations, warranties or undertakings in this clause 16.

16.6.2 To the extent that the Seller or its Personnel must

enter the Buyer’s property, they do so at their own risk.

#### 16.7 Seller’s liability

Nothing in this clause 16 limits or excludes any obligation or liability imposed by Law on the Seller or its Personnel and/or the directors, officers, employees, contractors, sub-contractors, suppliers or agents of its Personnel.

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