

## **GENERAL TERMS AND CONDITION OF SALE AND DELIVERY**

### **ARTICLE 1**

- 1.1** These general terms and conditions of sale and delivery shall apply to any purchase or sales agreement concluded by us, provided that we are the selling party. Furthermore, these terms and conditions shall apply to any offer or quotation made prior to entering into an agreement.

Terms and conditions differing from the present terms shall not be valid unless we sign a statement or confirmation to that effect. In that case, any term, condition or part there of not differed from, shall apply *mutatis mutandis*.

### **ARTICLE 2: CONCLUSION OF AGREEMENTS**

- 2.1** Our quotations shall be without prejudice and subject to contract and shall no longer apply if not accepted within 8 (eight) days. Acceptance shall imply the conclusion of an agreement.
- 2.2** An agreement shall be concluded if the client places an order with us and we have either confirmed this order in writing or delivered the goods.
- 2.3** Due to our credit insurance, we shall enter into each agreement under the condition precedent that our credit advisor or ourselves, as the case may be, deem the client creditworthy. The condition shall be deemed to have been fulfilled if we have delivered in accordance with article 4, paragraph 1, or if we have not notified the client within 2 (two) months of our order confirmation in writing that our credit advisor deems the client not creditworthy.

### **ARTICLE 3: PRICES**

- 3.1** Unless a binding price has been agreed in the agreement, the price prevailing on the day of delivery shall apply.
- 3.2** Even in the event that the agreement provides for a binding price, we shall be entitled to charge any increase in costs occurring after the agreement has been concluded.
- 3.3** Unless agreed otherwise, our prices shall be ex factory, i.e. excluding shipping, duties and charges.

## ARTICLE 4: DELIVERY AND RISK

- 4.1** Delivery takes place:
- a. If no destination has been agreed by written notification to the client, the goods meant for the client will be available for collection at our warehouses;
  - b. If a destination has been agreed and we engage third parties for shipping, our delivery will be discharged on delivering the goods to the shipping agent.
- 4.2** If a destination has been agreed, however, shipping shall be for the risk and account of the client if we are in charge of making the shipping arrangements. Unless we use our own means of transport for shipping, the risk of shipping shall be for the client. We shall be free in our choice of means of transport.
- 4.3** The delivery term stated to the client shall be an estimate on our part, to the best of our knowledge and ability. Exceeding the delivery term shall not constitute a breach or default. The client, however, shall have the right to cancel the agreement – without any obligation to pay us compensation – if the delivery term stated is exceeded by more than a month. The client or any third party may not exercise any right to compensation of loss sustained as a consequence of late delivery or cancellation by the client on the basis of the above provision. The client shall indemnify us against any third party claims which they allege to have or enforce against us under the present agreement.
- 4.4** If the goods delivered in accordance with article 4, paragraph 1, cannot be shipped to the destination indicated by the client due to circumstances beyond our control, we shall store such goods for the client at the latter's expense. The client shall not have the right to cancel the agreement under such circumstances.
- 4.5** If either party fails to meet its obligations due to *force majeure*, it shall be entitled to cancel the agreement in whole or in part within 30 days of the beginning of the situation causing force majeure, by notifying the other party in writing, without being obliged to pay any indemnification to the other party. This right shall lapse if the situation causing *force majeure*, ceases to exist within this thirty-day period. For the purpose of this article, *force majeure*, shall be taken to mean war, threat of war, riot, fire, industrial unrest, sustained strikes, lock-out, illness of a substantial proportion on the staff, sub-contractors not meeting their obligations relating to the delivery or not meeting those in a timely fashion, government measures etc.

## ARTICLE 5: PAYMENT

- 5.1** Any amount payable to us pursuant to these terms and conditions, shall be made by the client within 30 days of the date of invoice by transferring same to either of our Dutch accounts or our German bank account, unless otherwise agreed in writing.
- 5.2** Payments shall be made without any discount or set-off, unless otherwise agreed in writing.
- 5.3** At any time, we shall be authorised to demand that the client make an advance payment or provide security for the fulfilment of its payment obligations. If the client does not comply with such request made by us, we shall be free to consider the agreement as dissolved, after having sent a warning and a notice of default. If the delivery has been made in accordance with article 4, paragraph 1, the client shall be obliged to return the goods at its expense forthwith, but at latest within one week of the date of our written notification, stating that we exercise this right. The goods shall be for the risk of the client until we have received and approved such goods.
- 5.4** If the client does not meet its payment obligations within the period referred to in article 5, paragraph 1, it shall be in default automatically, without requiring a notice of default.
- 5.5** At such point as the client is in default with regard to its payment obligations, it shall be obliged to pay us 2 % interest per month – part of a month to be counted as a whole month – on the total amount due and payable, without the necessity for us to notify the client explicitly that we are entitled to such interest payment.
- 5.6** All amounts due to us shall be immediately due and payable from the moment that the client is in default with regard to any obligation towards us, the client is declared bankrupt or insolvent or the client files a petition for a (provisional) moratorium of payments.
- 5.7** If we are compelled to take measures to collect any amount due, the client – without prejudice to the provisions in article 5, paragraph 8 – shall be obliged to reimburse the extrajudicial collection charges. We shall be deemed to be compelled to take measures to collect any amount due if the client has been in default with regard to its payment obligation for more than 60 days. These extrajudicial collection charges shall be equal to the collection rate used by the Dutch Bar (*Nederlandse Orde van Advocaten*) with a minimum of € 25.--.
- 5.8** We shall be entitled to cease delivery under any agreement whatsoever to the client, if and for as long as it fails to meet any obligation towards us in a timely fashion. If the client has been in default for more than 60 days, we shall be entitled to dissolve each and every agreement without the client having a right to damages, but without prejudice to our right to claim damages from the client.

## **ARTICLE 6: RETENTION OF TITLE**

- 6.1** All goods delivered by us shall remain our property until the whole purchase price plus all collection costs and interest have been paid to us.
- 6.2** In addition to the provisions in article 6, paragraph 1, all goods delivered by us shall also continue to be our property until all amounts payable by the client for any items delivered or yet to be delivered under any agreement have been paid.
- 6.3** The client shall have the right to resell all goods subject to our retention of title in the normal manner and/ or process same within the normal operations of its business.
- 6.4** In respect of the goods referred to this article, the client shall refrain from the following actions: to transfer title of ownership,, to pledge, to give in use, to give on consignment or to deposit with any third party, or otherwise to hand over or to transfer the legal or actual power to dispose of such goods to any third party under any title whatsoever.
- 6.5** In the event that the client acts contrary to any obligation arising from the present agreement, or violates this article, we shall have the right to claim that the goods delivered are immediately surrendered to us by the party holding the goods or otherwise exercise our rights in respect to these goods, without prejudice to the client's obligation to pay full compensation.

## **ARTICLE 7: QUALITY OF THE GOODS AND COMPLAINTS**

- 7.1** The client shall be obliged to count, measure and weigh the goods immediately upon receipt at the place of destination, to check the goods delivered for visible defects and in the usual manner for any invisible defects before storing or using such goods. Goods that have been used shall be regarded as correctly delivered, except when it turns out that such goods have an invisible defect that cannot be found in the usual manner.
- 7.2** Complaints about numbers, dimensions and weight and about visible or simply detectable defects must be submitted to us in writing within 14 days of receipt of the goods at the place of destination. If we do not receive any written complaint within this period, the goods shall be regarded as correctly delivered – subject to the provisions of article 8.
- 7.3** If it turns out that any goods delivered by us have invisible defects, a complaint must be submitted in writing within 14 days of finding such defect. If this period is exceeded, neither client nor any third party shall have any claim upon us.
- 7.4** Even if a client is the opinion that goods delivered to it are defective, it must meet its obligations arising from the relevant agreement in full. It shall not be entitled to set-off its payment obligations towards us against any alleged counterclaim under a agreement referred to in the terms of delivery.
- 7.5** We guarantee the quality of the goods delivered by us and the materials used, provided that the goods are used normally and carefully for an application considered customary or common.

**7.6** We shall be obliged to the client tot repair or replace goods that do not meet the standard referred to in article 7, paragraph 5, or repay the purchase price. The choice of the above forms of compensation shall in part be based on the relevant costs and the suitability of the intervention contemplated.

#### **ARTICLE 8: LIMITATION OF LIABILITY**

**8.1** We shall not be obliged to pay more damages to our clients or any third party than those arising from article 7. This means in particular that we shall not obliged to compensate direct or indirect loss, consequential loss and business loss included, caused by defective materials used in the goods or by faults or omissions by anyone whatsoever made in the performance of the agreement or caused by non (or untimely) fulfilment of our obligations under the agreement. Nor shall we be liable to the client or any third party for any damage caused by the equipment and means of transport used by us.

**8.2** The client shall indemnify us against third party claims and all costs, damage and interest, arising for us as a direct or indirect consequence of such claims, insofar as they serve as compensation of damage sustained by any third party due to defects of our goods or in the performance of agreements referred to in article 7 and in the preceding paragraph of this article.

#### **ARTICLE 9: INFRINGEMENT OF THIRD PARTY RIGHTS**

**9.1** If we manufacture goods for the client in accordance with instructions provided by the client, in the broadest sense of the words and/or with the help of tools or models made available by or produced in accordance with the instructions of the client, the client shall guarantee us that no trademark, patent, model or any other third party right is infringed by such manufacturing and/or subsequent delivery of the goods accordingly produced.

**9.2** If any third party informs us that a third party right has been infringed by such manufacturing and/or delivery, we shall be entitled to cease the manufacturing and/or delivery of the goods, without further notification being required, and to dissolve the agreement, without being obliged to pay the client damages. The client shall be obliged to reimburse our costs, damage and interest thus arising for us in full.

**9.3** The client shall indemnify us against any claim that a third party may have upon us for infringement of their rights as referred to in this article. Article 8, paragraph 2, shall apply by analogy.

## **ARTICLE 10: SPECIAL GOODS**

**10.1** If we manufacture goods on request of the client, which we did not manufacture beforehand or not in such version, we shall be entitled to manufacture those goods also for third parties. The samples of the special goods must be tested within 14 days of sending those by or on behalf of us.

## **ARTICLE 11: CHOICE OF LAW**

**11.1** All our agreements or any agreement arising from or a consequence of such agreement shall be governed by Dutch law, within the exclusion of the 1964 uniform laws on sale of movable property. The agreements shall be deemed to have been performed in the place of our registered office.

## **ARTICLE 12: PROOF**

**12.1** In respect of the mutual financial obligations arising from any agreement concluded with us, our administrative data shall be decisive, subject to evidence to the contrary by all means available.

**12.2** Subject to evidence to the contrary by all means available, the amounts, sizes and weights stated on the invoice, shipping note and/or packing list shall be considered correct by the client and ourselves.

## **ARTICLE 13: FINAL PROVISION**

These General Terms and Conditions of Sale and Delivery shall be filed with the Chamber of Commerce in Apeldoorn, the Netherlands, under number 08051544. The client may obtain a copy of these terms, free of charge, on request.