

# General Terms and Conditions of Sale

## 1. General Points and Scope of Application

- 1.1 The General Terms and Conditions apply to all contractual agreements under which Seller shall perform commercial deliveries of goods or services. Deviating terms and conditions explicitly require written approval.
- 1.2 The General Terms and Conditions of the Buyer do not apply even if Buyer does not express explicit objection.
- 1.3 The General Terms and Conditions (hereafter **GT&C**) shall also apply for all future commercial relations and legal transactions of similar nature between the Parties without the necessity for either of the Parties to refer to these General Terms and Conditions repeatedly. This also applies if the Buyer only acknowledges Seller's GT&C after the first Agreement between the parties has been concluded.
- 1.4 The Buyer is not entitled, without Seller's explicit agreement to assign, any rights and duties resulting from the contractual relationship, especially in regards to claims against the Seller.
- 1.5 For any deliveries and services carried out outside Belgium, the following provisions shall additionally apply: **1.6, 3.2, 12.3, 13.**
- 1.6 The INCOTERMS 2010 are applicable as far as they are not inconsistent with these conditions or written agreements. In case of contradiction, these GT&C prevail.

## 2. Conditional Offers

- 2.1 Seller's offers are subject to change. Buyer's purchasing orders only become binding after Seller's written confirmation (invoice or waybill constitutes such written confirmation). Samples of our products are to be considered, unless otherwise agreed in writing, as an approximate indication of the typical characteristics of the goods concerned. Any changes of purchasing orders by Buyer after Seller's written confirmation entitle Seller to charge a handling fee.
- 2.2 Information and advice is provided at Seller's best knowledge, excluding Seller from any liability.
- 2.3 Suitability test for Buyer's specific application of the delivered goods as well as the compliance with processing instructions shall not become redundant by such information or advice provided by Seller (ref. 2.2).
- 2.4 Seller reserves the right of ownership and copyright to all plans, records, diagrams, estimates and/or other documents attached to quotations; such documents shall not be disclosed to any third party without Seller's written approval.

## 3. Place of Performance

- 3.1 The place of performance for deliveries or services – notwithstanding Seller's securing titles and rights according to sec. 9 and independent from contractual pricing – shall be the place of delivery and for payments Seller's registered seat.
- 3.2 Performance in compliance with INCOTERMS 2010 shall have no impact on the provisions according to the regulation in item 3.1.

## 4. Delivery of Goods

- 4.1 Seller reserves the right to select the place of delivery. Deliveries are executed in accordance with Seller's delivery capabilities.
- 4.2 The terms of delivery agreed to or suggested by Seller are only indicative and not binding. Seller commits itself to endeavor to its best efforts to comply with the suggested time of delivery. Terms of delivery are only binding, when they have been explicitly denoted to be binding by Seller.
- 4.3 If, in deviation to 4.2, a fixed delivery date is agreed, the Buyer has the obligation to grant Seller a reasonable time window to supply the goods.
- 4.4 The day of delivery is deemed to be the day on which the goods leave Seller's premises, and, if this day cannot be determined, the day on which they are made available to the Buyer. Partial deliveries are allowed to a reasonable extent.
- 4.5 Force majeure events, strikes, closeouts, sovereign provisions, disruptions to operations or distribution or supply in Seller's or the Buyer's business which lie beyond the parties' responsibility and which have a considerable impact on the fulfilment of Seller's contractual obligations shall entitle Seller to extend the performance or delivery periods by a fair and reasonable period or to rescind the Contract in whole or in part with respect to any obligations of the Seller which have not been performed before the event. This shall not give the Buyer the right to any compensation/ indemnity/damages.
- 4.6 Seller shall notify Buyer of the start and end of such events (ref. 4.5) as soon as possible. The Buyer is entitled to demand a declaration whether Seller wishes to withdraw from the contract or deliver within an appropriate period.
- 4.7 Seller reserves the right to, before delivering the goods of the present order confirmation, demand that the Buyer pays all debt-claims resulting directly or indirectly out of previously delivered orders or resulting out of the order.
- 4.7 If Seller does not timely receive the demanded payments, Seller has the right to suspend the delivery, without any further notice to the Buyer.

- 4.8 If Seller does not timely receive the demanded payments, Seller has the right to cancel the delivery of the remaining goods by simply notifying the Buyer of its decision.

## **5 Dispatch and Transfer of Risk**

- 5.1 All consignments, tank cars, IBCs and other containers and packages shall be transported from the point of dispatch by the Seller at the risk of the Buyer even in the event that carriage and other transportation expenses are paid or borne by Seller and in particular when the Buyer collects the goods. If contractual provisions deviate from INCOTERMS 2010, the formershall prevail.
- 5.2 Seller shall select the mode of transportation of transport and the carrier, however, without guaranteeing cheapest possible shipment, full use of carriers loading capacity and desired size of car and container. Buyer's wishes shall be taken into consideration if possible and at buyer's expense, in particular in regards to transportation insurance.
- 5.3 Acceptance of goods by the railway, shipping company or by any other carrier shall exclude any liability of the Seller for inappropriate packaging or loading, as well as any loss of weight or damage which may have occurred during shipment.
- 5.4 Increases in transfer price, any additional costs arising from detour, storing etc., which were introduced after the contract has been signed, shall be carried by the Buyer unless otherwise agreed.
- 5.5 In any event, from the day of delivery forth, the Buyer shall assume all risks with respect to the goods, including force-majeure and destruction of the goods.

## **6 Packaging, Means of Transport and Facilities Aimed to Protect the Load and Palettes**

- 6.1 Buyer's transportation vehicles and containers must arrive at the designated Seller's premises and with prior notification, clean, in operational condition, timely and free of charge. Seller has no obligation to perform inspection, cleaning or repair but is entitled to provide such services at the expense of the contractual partner in order to enable the respective shipment.
- 6.2 Containers or any other accessories provided by Seller on loan or on hire must be returned to the original place of delivery free of charge, completely empty, clean, damage-free, and depicting the original codes and inventory numbers. Possible cleaning costs incurred by the Seller shall be carried by the Buyer. Seller's loan or hire containers may not be used by Buyer for other than the designated purpose within Buyer's enterprise. It is also not allowed to lend or lease the containers to a third party. The Buyer is irrevocably liable for damage irrespective of fault, including the force majeure events, and loss of such items. Should damage occur, Seller is entitled to claim compensation for repair costs or, in case the damaged goods are lost and/or not returned, compensation of the replacement value.
- 6.3 In case the items have been rented from Seller, the Buyer shall continue regular lease payments.

## **7 Warranty and Liability**

- 7.1 In order to secure warranty rights, the Buyer must duly fulfil the legally binding examination and procedural obligations. Immediately upon delivery, the Buyer shall examine the quality and quantity of the goods. The Seller must be notified by registered mail of any externally visible non-conformity concerning quality or quantity within 8 days of receipt of goods; whereas the date of order, invoice and dispatch number must be clearly indicated. Notifications of a defect can only be raised if Seller's goods are unchanged, unused and remain in the original containers. Justified complaints raised will result in return and exchange of goods or a reduction of the purchase price. After this eight day period, the Buyer loses his right to appeal to the non-conformity of the goods.
- 7.2 Seller's liability for any hidden defects is limited to those defects which are revealed during a twelve-month period upon the successful delivery to and acceptance of goods by the Buyer. Any hidden defects must, under penalty of forfeiture, immediately and at the latest within eight days after discovery be notified to the Seller by registered mail. Such notification has to provide a detailed description of the defect.  
The above provisions shall not apply, in so far longer periods are foreseen by the law. Seller's consent must be obtained prior to any return of goods.
- 7.3 Complaints never give the Buyer the right to suspend the payment of the purchase price or any supplementary cost. Furthermore, any appeal to settlement of debts is expressly forbidden.
- 7.4 Should the delivered goods reveal a defect that existed, despite all precautions, before delivery, Seller shall have the right to and will make improvements to or will replace the defective goods within reasonable deadlines.
- 7.5 Should Seller fail to make improvements or resupply, the Buyer – irrespective of any claims – may withdraw from the contract or reduce the payment under the following conditions:
- 7.5.1 The defective material exhibits a significant deviation from the agreed specification and the unsuitability for use is not a result of natural wear and tear which may have occurred after the transfer of risk, caused by inappropriate or negligent handling, excessive workload, unsuitable equipment or extraordinary, unforeseen external influences.
- 7.5.2 The Selleris not liable for defects resulting out of actions or negligence of the Buyer or a third person, including: unfit or illegal use, improper assembly or operation, natural wear and tear, improper treatment and maintenance, use of the product in combination with improper gear, etc.
- 7.5.3 In any case the Buyer's claim for compensation / indemnity / damages cannot exceed the initial purchase price, not even if there is a substantial non-conformity or defect.
- 7.5.4 Claims of either Party for costs for any resulting expenses, in particular for transportation, travel, work and materials shall be deducted from additional Seller's expenses that are related to replacement goods being shipped to a location, different from the original destination, unless such transfer is required for such object's intended use.

- 7.6 Seller carries full liability in terms of the statutory provisions for the loss of life, physical injury and damage to health when it is proven that such damage was caused by a default of Seller, Seller's legal representative or agent and on the condition that there is a causal link between the injury and the default. Seller only accepts legal liability in accordance with statutory provisions for direct material damages which are not mentioned in sentence 1 of this clause 7.6 and which may arise from serious misconduct, fraud or willful misconduct. Seller is not liable for serious misconduct or willful misconduct of Seller's employees, agents in connection with the execution of their professional activities.
- 7.7 In any event, Seller is not liable for the Client's or a third person's operational loss, loss of time, loss of profit or any other direct or indirect loss caused by a defect in the goods.

## **8 Prices**

- 8.1 Unless agreed otherwise, all purchase prices shall be for delivery ex works.
- 8.2 For the accurate calculation of prices, dispatch weight and quantity of goods is determined at Seller's facility.
- 8.3 Changes to ex works list prices, freight rates, taxes, custom fees, duties or any other costs which have an impact on Seller's cost calculation and originate between the submission of an offer and the delivery entitle Seller to a reasonable price adjustment.
- 8.4 Seller's prices, lease and other fees do not contain value added tax, which shall be calculated and listed separately.

## **9 Reservation of Proprietary Rights**

- 9.1 The delivered goods shall remain Seller's property until all duties of the Buyer relating to the Agreement have been fulfilled. Seller's property rights also apply to all future deliveries, even if Seller does not repeatedly and expressly refer to this fact. In the case of checks, credit notes or similar payment vehicles, the proprietary right shall be transferred to the Purchaser only after the balance has been completely settled and the payment deemed concluded as designated by the Seller.
- 9.2 Should Seller's right of ownership elapse due to processing, further treatment, reconstruction, multiplication or blending, the Buyer shall transfer to Seller partial proprietary rights for the new goods and shall hold them in custody on Seller's behalf free of charge.
- 9.3 In case of a resale of goods or as a result of processing or blending, the Buyer assigns partial warranty claims against the re-purchaser in advance; the same applies to any rights of reclamation and preferential payment in case of insolvency proceedings of a re-purchaser, until the outstanding balance has been settled. Seller hereby accepts this assignment.
- 9.4 Seller is entitled to have and collect the assigned claims. Upon request, the Buyer undertakes to provide any information, make statements and take actions necessary for the collection of debts.
- 9.5 The Buyer may not assign our reserved goods or pledge them as security. Buyer shall immediately inform Seller of any planned cases of pledges and seizure of the goods subject to retention by a third party, as well as reasonably insure the goods against fire and burglary and provide proof thereof upon request. As long as the Buyer fulfils his obligations towards us, Buyer may resell the goods in orderly business and keep the claims arising from such resale, insofar as Buyer shall receive direct compensation.
- 9.6 Such right of disposal can be cancelled by Seller at any time; it automatically expires when Buyer discontinues payments, initiates legal or out-of-court conciliation procedures or if the insolvency proceedings or bankruptcy proceedings have been initiated for Buyer's property.

## **10 Payment**

- 10.1 Holding back of payments due to or as an offset during legally unrecognised counterclaims by Buyer is prohibited.
- 10.2 Without prejudice to any other claims, in case of accounts unsettled by the Buyer, Buyer shall be additionally charged interest of 8% above the respective base rate of the European Central Bankp.a.  
In the event of non-payment or late payment of an invoice, Seller has the right to raise the amount of the invoice with 15% as compensation / indemnity / damages, and this without serving notice, and without prejudice to Seller's right to demand a higher amount of compensation / indemnity / damages if Seller's proofs that the effective loss of damages suffered is actually higher than 15% of the invoice.
- 10.3 The presentation of bills of exchange or similar payment vehicles require Seller's prior approval.
- 10.4 Further banking taxes and fees, as well as the usual expenses and a standard practice bank surcharges shall be carried by the Buyer from the moment Seller's claim becomes due.
- 10.5 In the event of non-payment or late payment, Seller has the right to suspend all further deliveries without any notice. In addition, Seller has the right to immediately and unilaterally terminate the agreement with the Client, without serving notice and without judicial intervention.
- 10.6 In the event of non-payment or late payment of an invoice, Seller has the right to set off the invoice amount due by the Buyer against Seller's debt to the Buyer.
- 10.7 In the event of non-payment or late payment of, all non-matured claims shall become immediately due and payable.
- 10.8 Received payments shall be used as payment for the oldest outstanding claims.
- 10.9 In the event that the solvency of the Buyer appears to be compromised, e.g. in the event of non-payment or late payment of an invoice, Seller is entitled to ask Buyer for a retainer with respect to any stocks held for Buyer and with respect to any further deliveries.  
In the event that Buyer does not agree with any such retainer asked by Seller, the latter has the right to immediately and unilaterally terminate the agreement with Buyer, without serving notice and without judicial intervention.

**11 Payment Due**

- 11.1 Payment shall be made, unless agreed otherwise, with no discounts, no later than on the 15th day of the month following the date of dispatch. All invoices are payable at the registered address of Seller or at the financial institutions mentioned on the invoices.
- 11.2 After this date the payment shall be considered overdue even without an explicit reminder sent by Seller. In case of delays in payment, Seller is entitled to claim v all judicial procedural and execution costs, as well as the administrative expenses and extrajudicial collection costs from the Buyer.

**12 Governing Law and Jurisdiction.**

- 12.1 This Agreement is exclusively subject to Belgian law.
- 12.2 Seller maintains the right to claim the application of foreign law relevant to the Seller as well as to appeal to the court which has jurisdiction over the Buyer.
- 12.3 Applicability of the Uniform Law covering the International Sale of Movable Property dated July 17th, 1973, as well as the UN Sales Convention of April 11, 1980 is herewith explicitly excluded.
- 12.4 Customary trade terms are to be interpreted according to the respective applicable INCOTERMS.
- 12.5 All disputes between the Seller and Buyer, shall be submitted to the courts and tribunals of Ghent, Belgium, which have sole jurisdiction.

**13 Effectiveness Clause**

Should any singular provisions of the above GT&C be invalid or impracticable, or contain any unintended omission, the validity of the remaining provisions hereof shall not be affected. In such case, the parties shall agree on a provision that replaces an invalid or impracticable one and corresponds as closely as possible to the economic purpose of the original provision. An unintended omission is to be supplemented by the Parties with a provision, which is as close as possible to fulfilling the commercial purpose of the GT&C.