

### **Article 1 Definitions**

In these General Terms and Conditions (“Terms and Conditions”) the following terms have the following meanings:

<i>Supplier:</i>	Molendijk Schilt BV, De Diamant 12 in Schoonhoven;
<i>Customer:</i>	each natural person or legal entity with which the Supplier negotiates the conclusion of an agreement;
<i>Agreement:</i>	each agreement concluded between the Supplier and the Customer, any amendment or addition thereto and any (legal) acts for the preparation or execution of this agreement;
<i>Products:</i>	all goods that are the subject of an agreement;
<i>Order:</i>	each order issued by Customer to Supplier;
<i>Workdays:</i>	all calendar days, not being Saturdays, Sundays or public holidays recognised in the Netherlands.

### **Article 2 Applicability**

- 2.1 These Terms and Conditions form part of all agreements and apply to all (legal) acts performed in connection with these agreements of Supplier and Customer. Unless the nature or the specific substance of a provision in these Terms and Conditions prevents such, the provisions in these Terms and Conditions shall also apply to agreements in relation to which Supplier does not act in its capacity as seller.
- 2.2 The applicability of any general or specific terms and conditions or stipulations applied by the Customer is explicitly excluded by Supplier.

### **Article 3 Offers, concluding agreements and statements and specifications of products**

- 3.1 All offers made by Supplier are without engagement. Orders and acceptances of offers by the Buyer are irrevocable.
- 3.2 An agreement is only concluded if and insofar as the Supplier accepts an order either in writing or orally or when Supplier executes an order.
- 3.3 All statements by Supplier regarding numbers, sizes, weights and/or other indications are made with care. However, Supplier cannot guarantee that there will be no deviations in relation to these. Samples, drawings or models that are shown or provided are only indications of the products concerned.
- 3.4 If delivered products deviate to such an extent from the Supplier’s statements or from samples, drawings or models that Customer can no longer be reasonably obliged to purchase such, Customer is entitled to dissolve the agreement, but only insofar as such dissolution is reasonably necessary.

#### **Article 4 Prices**

- 4.1 All Supplier's prices are exclusive turnover tax.
- 4.2 The prices are based on the circumstances applying for Supplier when the agreement is concluded, for example, import and export duties, excise duties, levies and taxes directly or indirectly payable by Supplier or which third parties require Supplier to bear. If these circumstances change after the conclusion of the agreement but before the delivery, Supplier is entitled to charge the resulting costs to Customer.
- 4.3 Shipping fees will be payable for the delivery of products totalling less than EUR 600. Delivery charges are always payable for the delivery of tie wire.

#### **Article 5 Payment**

- 5.1 Unless agreed otherwise in writing Supplier's invoices should be paid within 14 days of the date on the invoice.
- 5.2 If at any time Supplier has reasonable doubts about the credit worthiness of Customer, before performing (any further), Supplier is entitled to require advance payment from Customer of the sales price or to require that Customer furnishes sufficient security equivalent to the amount, whether or not due, which Supplier can or will be able to claim under the agreement, such at the discretion of the Supplier.
- 5.3 Customer is in default through the mere expiry of the payment term. In this case all Supplier's claims, on whatsoever grounds, become immediately payable.
- 5.4 Without notice of default being required, default interest equal to the current statutory interest applicable in the Netherlands is payable by Customer on any amounts not paid on the last day of the payment term, from that date, plus a surcharge of 1% per month.
- 5.5 If Customer is in default towards Supplier, Customer is obliged to reimburse the extra judicial and judicial costs to Supplier in full. The extra judicial costs to be reimbursed by Customer shall at least be 15% of the amount still unpaid, plus the turnover tax payable on this amount.
- 5.6 If, once Customer is in default, Supplier addresses payment reminders or other requests for payment to Customer, this shall not affect that provided in 5.3, 5.4 and 5.5.

#### **Article 6 Ownership, retention of title**

- 6.1 The ownership of the products shall, regardless of the factual delivery, not transfer to Customer until Customer has paid in full all that which is payable by Customer to Supplier under any agreement. "In full" shall be understood to include the sales price, any additional charges, interest, taxes and costs payable under these Terms and Conditions or the agreement, as well as any work performed or to be performed under the agreement.
- 6.2 Until the ownership of a product has been transferred to Customer, Customer is not entitled to lease the products or to loan, pledge or otherwise encumber them. Customer is only entitled to sell or deliver the products owned by Supplier to third parties insofar as this is necessary within the context of Customer's regular business operations.
- 6.3 If and as long as Supplier owns the products, Customer shall notify Supplier forthwith if the products are seized or threatened with seizure or there is some other claim to (any part of) the products and/or if an application for bankruptcy is filed in relation to Customer or (provisional) suspension of payments is requested. In addition, on the first

- request of Supplier, Customer shall notify Supplier of the location of the products owned by Supplier.
- 6.4 In the event of seizure, (provisional) suspension of payments or bankruptcy, Customer shall immediately inform the bailiff, the receiver or the administrator about the (property) rights of Supplier. Customer guarantees that a seizure of the products will be lifted immediately/forthwith/expeditiously.
  - 6.5 Quotations issued by Supplier and drawings, calculations, models, samples etc. provided within the context of such remain the property of Supplier, even if fees have been charged for these.

#### **Article 7 Delivery term**

- 7.1 A delivery term given by Supplier is based on the circumstances that apply for Supplier when the agreement is concluded and, insofar as third party performances are relied on, on the data provided by these third parties. This delivery term will be observed by Supplier wherever possible.
- 7.2 If Supplier needs data or tools to execute the agreement that are to be provided by Customer, the delivery term can never commence until all the necessary data or tools are in the possession of Supplier.
- 7.3 If the delivery term is exceeded, Customer has no right to damages in relation to this. Customer is also not entitled to dissolve the agreement, unless the delivery term is exceeded such that the Customer cannot reasonably be expected to keep that part of the agreement intact. In that case Customer is entitled to dissolve the agreement insofar as such is strictly necessary.
- 7.4 Supplier is always entitled to make partial deliveries.

#### **Article 8 Delivery and risk**

- 8.1 Stated delivery terms are approximate and should not be regarded as deadlines. Expiry of the delivery term does not give rise to an obligation to pay damages nor does such entitle Customer to suspend or withdraw compliance with its obligations under the agreement. The Customer is however entitled to dissolve the agreement if and insofar as the order is not still executed within a reasonable term stated by Supplier. In that case damages are not payable by Supplier.
- 8.2 The delivery term is based on the work situation at the time the agreement is concluded and on the prompt delivery of the equipment needed to comply with the agreement. If a delay is caused by a change in the work situation and/or the late delivery of the necessary equipment, the delivery term shall be extended as needed.
- 8.3 Supplier establishes how and by whom the products will be packed, unless agreed otherwise in writing. Supplier does not accept packing material back. The Buyer should arrange for the removal or destruction of the packing material.
- 8.4 Supplier establishes how and by whom the products will be shipped, unless agreed otherwise in writing. The transport is for the Buyer's risk. The Buyer is obliged to receive the products immediately on their arrival at the destination. The Buyer shall arrange for sufficient loading and unloading opportunities and speedy unloading.
- 8.5 Supplier is not obliged to honour a request by Buyer to deliver again or later. If Supplier should decide to do so, the accompanying costs shall be borne by Buyer.
- 8.6 Supplier is entitled to execute an agreement in parts and to claim payment for that part of the agreement that has been executed.

- 8.7 If Customer does not take delivery of the products or does not do so on time, Customer shall be in default without a notice of default being required. In that case Supplier is entitled to put the products into storage at the risk and the expense of Customer or to sell the products to third parties. The sales price continues to be payable by Customer plus interest and costs (by way of damages), however, where appropriate, less the net yield of the sale to the third party.

#### **Article 9 Force majeure**

- 9.1 If due to a non-culpable failure (force majeure) Supplier cannot fulfil its obligations towards Customer, compliance with these obligations shall be suspended for the duration of the force majeure.
- 9.2 If the force majeure continues for more than three months, both parties are entitled to dissolve the agreement in writing fully or in part, insofar as the force majeure justifies such.
- 9.3 Force majeure shall be understood to mean any circumstance outside the control of Supplier, as a result of which compliance with its obligations towards Customer is hindered fully or in part or as a result of which compliance with its obligations towards Customer cannot reasonably be expected, regardless of whether or not these circumstances could have been foreseen when the agreement was concluded. Such circumstances shall also include: strikes and lockouts, stagnation or other problems relating to the production of Supplier or its suppliers and/or relating to its own transport or the transport of third parties and or measures taken by any government agency and the absence of any licence issued by a government agency.

### **Article 10 Inspection and complaints**

- 10.1 Customer is obliged to carefully examine the products immediately on arrival at the place of destination, or, if this is earlier, after delivery, or to arrange for such an examination to be made by a third party. Complaints should be reported in writing to Supplier no later than five workdays after the arrival of the products.  
Any defects in part of the delivered products shall not entitle the Customer to reject or refuse the entire consignment of delivered products.
- 10.2 Defects that could not reasonably have been detected within the term stated in paragraph 1 must be reported to Supplier in writing immediately after these are observed and always within thirty days after the arrival of the products.
- 10.3 If the complaint is not reported within the terms stated in article 10.1 and 10.2, the complaint will not be processed and Customer has no rights in relation to this matter.
- 10.4 The complaint report must wherever possible contain samples, labels or numbers.
- 10.5 On detecting any defect the Customer is obliged to cease using the product concerned immediately and subsequently to do or refrain from doing anything that is reasonably possible to prevent (further) damage.
- 10.6 Customer shall give any assistance required for the investigation of the complaint, including allowing Supplier to investigate the circumstances of the use or to arrange for such an investigation to take place.
- 10.7 If Customer fails to assist or an investigation is otherwise not or no longer possible, the complaint shall not be processed and Customer has no rights in relation to this matter.
- 10.8 Customer is not at liberty to return the products until Supplier has given its approval for such. Customer can only return the products in the condition in which these were delivered if a complaint has been reported promptly, correctly and justifiably. However, if Customer wishes to return goods that Customer ordered mistakenly or that Customer marks as unsaleable, these can be returned after consultation at the expense of Customer upon which Customer will receive a credit note for 85% of the net amount of the goods.
- 10.9 If Customer receives goods that are mistakenly delivered by Supplier, these shall be collected by Supplier after consultation and the receipt of a return number, upon which a credit note shall follow for the full net amount or these goods shall be exchanged free of charge for the correct goods.

### **Article 11 Guarantee**

- 11.1 Supplier guarantees to the Customer that on delivery the products meet the requirements that have been agreed in relation to these products.
- 11.2 Supplier is not bound to its guarantee in relation to defects that are the result of usual wear and tear, the failure of (staff of) Customer to observe directions or instructions, use other than the usual intended use or improper or careless storage or use by the Customer, or the use of products in a state other than the original state.
- 11.3 If Supplier delivers products to Customer that Supplier has received from its suppliers, Supplier shall never be obliged to give Customer a more extensive guarantee than that which Supplier is given by its suppliers.
- 11.4 Subject to the condition that a complaint has been lodged promptly, correctly and in accordance with the provisions in article 10 and it has been sufficiently proven that the products
  - do not meet the agreement, or
  - demonstrate material and/or structural faults, or
  - do not work properly,

Supplier can opt either to deliver the products that proved to be defective again free of charge against the returning of the products that proved to be defective, or to satisfactorily repair the products, or to refund the defective product upon surrender of the defective product. By completing one of the above actions the Supplier is fully discharged of its obligations in respect of this matter.

#### **Article 12 Liability and indemnity**

- 12.1 Unless the damage is caused due to intent or gross negligence on the part of Supplier or its staff, the contractual and statutory liability of Supplier towards Customer is limited to the amount of the sales price of a product in respect of which the contractual and statutory liability of Supplier has arisen.
- 12.2 Unless the damage is caused due to intent or gross negligence on the part of Supplier or its staff, Supplier shall never be liable, on whatsoever grounds, for consequential damage, including operational damage, environmental damage and non-material damage, that may be incurred by Customer or a third party in relation to (the use of) the products.
- 12.3 Unless the damage is caused due to intent or gross negligence on the part of Supplier or its staff, Customer shall indemnify Supplier against all third party claims directly or indirectly connected with (the use of) the products and Customer shall reimburse Supplier for any damage incurred by Supplier as the result of such claims.

#### **Article 13 Intellectual property**

- 13.1 Customer derives no intellectual property right in relation to the products.
- 13.2 Customer is not permitted to alter or to remove any brand or distinguishing marks fixed to the products or the packing thereof, or to alter or copy the products or any part thereof. Quotations made by Supplier and drawings, calculations, descriptions, models, samples etc. provided in the context thereof and the data regarding manufacturing and/or construction methods used by Supplier may not be copied, disclosed to third parties, published or used unless the Supplier gives it explicit consent for such.
- 13.3 Supplier declares that to its best knowledge the products do not infringe any intellectual property rights of third parties applying in the Netherlands. In the event of third party claims in respect of an infringement of such rights, Supplier can, if needed, replace or alter the product concerned or dissolve the agreement in part or in full. Customer only has the right to dissolve the agreement insofar as he cannot reasonably be required to keep the agreement intact.
- 13.4 Customer shall notify Supplier immediately regarding any third party claim with respect to an infringement of intellectual property rights relating to the products. In the event of such a claim, only Supplier is authorised to put forward a defence, also on behalf of Customer, or to take legal measures against this third party, or to reach an amicable settlement with this third party.  
Customer shall refrain from taking any of these measures insofar as this can be reasonably required of it. In all cases Customer will lend Supplier its full cooperation.

#### **Article 14 Other obligations of the Customer**

- 14.1 Customer shall each time provide all the data needed for the performance of Supplier's work to Supplier promptly and guarantees the correctness and completeness thereof.
- 14.2 Customer shall ensure that on its part nothing stands in the way of achieving specifically agreed terms, including delivery and collection dates.

14.3 Customer is exclusively responsible for the choice, the use and the application of the products delivered by Supplier.

#### **Article 15 Dissolution**

15.1 If Customer fails to fulfil any obligation it has under the agreement properly or fails to do so on time or if one of the circumstances stated in article 15.2 occur, all claims of Supplier against Customer, on whatsoever grounds, shall be immediately and fully payable and Supplier is authorised to suspend the execution of each agreement and/or to dissolve or partially dissolve any agreement. The foregoing shall not affect the other rights of Supplier under the law or the agreement.

15.2 In the event of (provisional) suspension of payments, bankruptcy, cessation or liquidation of (the business of) Customer, all agreements shall be dissolved by operation of the law, unless within a reasonable time Supplier announces it requires compliance with (part of) the agreement.

#### **Article 16 Applicable law, competent court**

16.1 These Terms and Conditions and the agreement are governed by the law of the Netherlands.

16.2 Any disputes that arise further to the agreement or these Terms and Conditions, insofar as not provided for otherwise by law, shall be heard by the competent court in Rotterdam, subject to the proviso that Supplier has the right to have claims against Customer heard, whether or not simultaneously, by some other judicial body that is competent to hear such claims.