

## **GENERAL TERMS AND CONDITIONS OF SALE OF B.V. NEDERLANDSE PLASTIC INDUSTRIE TZUMMARUM**

These general terms and conditions have been written in Dutch and translated into English. The Dutch text will be binding in the event of disputes arising concerning their content, tenor or interpretation.

These general terms and conditions are applicable to all offers of and all contracts entered into with B.V. Nederlandse Plastic Industrie Tzummarum, referred to below as "the Seller".

The general purchasing conditions of the buyer, referred to below as "the Buyer", and deviations from these general conditions are applicable exclusively if and to the extent that they have been expressly accepted by the Seller in writing. Verbal agreements will be binding to the Seller exclusively if and to the extent that the Seller has confirmed them in writing.

### **1. Offers and orders**

- 1.1 In the absence of explicit statement to the contrary, offers made in any form by the Seller are subject to contract. The Seller has the right to withdraw the offer for a period of eight (8) working days of the offer being accepted.
- 1.2 Orders placed by the Buyer that have not been preceded by an offer from the Seller will be binding to the Seller exclusively provided that the Seller confirms them within eight (8) days or commences implementation of the order within eight (8) days.
- 1.3 The Seller reserves the right at all times to modify the goods, specifications and instructions for their use in order to improve them or to comply with applicable standards and governmental regulations.
- 1.4 Unless otherwise agreed in writing the prices are based on delivery ex-works (Incoterms 2000) and do not include turnover tax (VAT), packaging costs and the (transport) roll.
- 1.5 Quoted prices are applicable exclusively to the stated quantities.
- 1.6 In the event of cost-increasing factors coming about prior to the delivery of the goods, the Seller will have the right to increase the prices of the goods accordingly. These cost-increasing factors include but are not limited to: a rise in the price of raw materials or any (additional) governmental taxes or levies. If the price rise exceeds ten percent (10%) of the original invoice value, the Buyer will have the right to dissolve the contract within three (3) working days of being informed of the price rise, but in all cases prior to the delivery, in the absence of which the price rise will be deemed to have been accepted. Dissolution by the Buyer in accordance with this provision will not result in any liability on the part of the Seller.

### **2. Delivery**

- 2.1 Unless otherwise agreed in writing deliveries will be made ex-works (Incoterms 2000) Seller. The risk of loss or damage will transfer to the Buyer upon delivery, even if the ownership of the goods has not yet been transferred.
- 2.2 Delivery times or other implementation dates do not constitute firm deadlines. In the event of late delivery the Seller must therefore be held formally in default and given a reasonable period of at least ten (10) working days to meet its obligations. If the extended period is exceeded the Buyer will have the right to dissolve the contract if delivery has not yet taken place. The Seller cannot be held liable for any losses caused by late delivery. Working days are Monday to Friday with the exception of the generally recognised Dutch public holidays and days designated by the Seller's management or terms of employment as holidays.
- 2.3 The Seller is authorised to deliver goods in batches. If the goods are delivered in batches, the Seller has the right to invoice the buyer separately for these batch deliveries and the Buyer will be obliged to pay such invoices as though they related to separate agreements. The Buyer is obliged to accept delivery of the goods.
- 2.4 Unless otherwise agreed in writing, the Buyer will collect the goods or arrange their collection immediately upon being informed by the Seller that they are ready for collection. If the Buyer refuses to immediately accept delivery and fails to provide the details and instructions needed for delivery, the goods will be stored at the Buyer's risk. The Buyer will be obliged to compensate the Seller for all additional costs of delivery, storage and insurance and any other costs or losses incurred in connection with such failure or refusal.

### **3. Packaging**

- 3.1 All returnable packaging materials for the goods will remain the property of the Seller and must be returned to the Seller at the Buyer's expense unless the Seller gives instructions to the contrary.
- 3.2 The Seller will charge the prices of packaging materials such as (transport) rolls not returned in good condition within three (3) months of delivery at the prices applicable when the goods were delivered.

### **4. Payment**

- 4.1 Unless otherwise agreed by the parties, the goods must be paid for in the agreed currency within 30 days of the invoice date by transferring the payable amount to the bank account specified in the invoice. The date on which the payable amount was transferred to the bank account will be regarded as the date of payment. The Buyer does not

have the right to claim any right of set-off or suspension or deduction unless this has been expressly agreed concerning the payment in question.

- 4.2 Following expiry of the payment term the Buyer will be held in default without any further notice of default being required and will be liable for the payment of interest corresponding to Dutch statutory interest plus 3%.
- 4.3 If the Buyer fails to meet one or more of his obligations, the actual extrajudicial costs reasonably incurred to obtain payment will be charged to the Buyer. These costs include in all cases the costs of debt collection agencies, bailiffs and lawyers. These costs will amount to at least 15% of the payable amount.
- 4.4 In the event of a court of law ruling in full or in part against the Buyer in a final and conclusive judgement, the Buyer will be obliged to reimburse the Seller with all costs of proceedings and appeals, including amounts not awarded by the court.

## **5. Retention of title**

- 5.1 The Seller retains the ownership of goods delivered or to be delivered to the Buyer until the Seller has received full payment of the purchase price for the goods, the payment for work carried out in relation to contracts of sale entered into with the Buyer and the costs and/or losses incurred owing to the Buyer's non-compliance with his obligations under such a contract of sale. All costs incurred by the Seller in repossessing the goods will be charged to the Buyer.
- 5.2 During the period in which the ownership of the goods remains with the Seller, the Buyer with the goods in his possession will have the right to trade the goods and actually deliver them in the context of his normal business activities.

## **6. Force majeure**

- 6.1 The Seller cannot be held liable for any losses suffered by the Buyer in the event of a breach that can be attributed to a situation for which the Seller cannot be held responsible through the fault of the Seller or by law, legal act or generally accepted standards ("Force Majeure").
- 6.2 If the period in which the Seller is unable to meet his obligations exceeds or will exceed two months, either party will have the right to dissolve the contract without legal intervention and without being obliged to pay any compensation to the other party.
- 6.3 If the Seller has met some of his obligations or is only able to meet some of his obligations when the force majeure situation occurs, the Seller will have the right to invoice the Buyer separately for partial implementation and the Buyer will be obliged to pay such invoices as though they related to a separate contract.
- 6.4 Force majeure as provided for in this article includes but is not limited to strikes, disruptions or interruptions in or discontinuation of the delivery of raw materials, semi-manufactures or end-products, machinery breakdowns, inability to obtain the required permits, licences and/or authorisations, delays in delivery by suppliers and transport difficulties. These situations will constitute Force Majeure on the part of both the Seller and its suppliers.

## **7. Complaints**

- 7.1 The Buyer is obliged to check the goods upon receipt for visible defects. More specifically, the Buyer must check whether the correct goods have been delivered and whether the delivered quantity is in keeping with the agreed quantity.
- 7.2 The Buyer must report visible defects to the Seller in writing within five (5) working days of delivery. Defects that are not visible on receipt must be reported to the Seller within two (2) working days of being discovered or within five (5) working days of when the Buyer could reasonably have been expected to discover them.
- 7.3 If the complaint is justified, the Seller must either replace or repair the defective goods. If the Seller takes the view that he cannot be expected to replace or repair the goods or that doing so is impossible, the Seller will reimburse the Buyer with the purchase price related to the defective goods. The Seller can require the Buyer to return the defective goods at the Seller's expense.
- 7.4 Even if the Buyer makes a complaint within the set time periods, the Buyer remains obliged to pay for and accept delivery of all placed orders. The Buyer is not permitted to suspend his obligations to the Seller.
- 7.5 The Seller must make every reasonable effort to ensure that the delivered goods are precisely in keeping with the quality requirements laid down in the documents issued to the Buyer. However deviations in strength, shear resistance and thickness that are regarded in the sector as being acceptable or technically unavoidable will not be regarded as defects. Disputes concerning whether the goods are defective within the meaning of article 7.5 will be settled on the basis of a binding recommendation made by an expert appointed by the parties. If the parties have not reached agreement on the appointment of an expert within four (4) weeks of one of the parties making a request to that effect, either party can make a request to the chairman of the Chamber of Commerce in Leeuwarden to appoint an expert. The expert will make a written decision after hearing the parties. The costs of the expert will be borne by the party ruled against. The appointment by the chairman of the Chamber of Commerce in Leeuwarden and the decision of the expert will constitute a binding agreement between the parties.

## **8. Services**

- 8.1 If the Seller is obliged to do more than deliver the goods, the Seller will make every reasonable effort to provide such accompanying services as well as possible without under any circumstances being obliged to guarantee a certain result with the services.
- 8.2 If the parties agree that the Seller will treat or process semi-manufactured articles at the Buyer's location, the goods and the work will be regarded as being delivered separately. Unless otherwise agreed in writing goods will be delivered ex-works (Incoterms 2000). The risk of loss or damage will transfer to the Buyer from the time at which the goods are made available to the Buyer on the site of the Seller, even if the ownership of the goods has not yet been transferred. From that time onwards the Seller will have a right to the product price. If the work cannot be carried out (in full) owing to the destruction of the goods, the Seller will be entitled to payment for the work already completed.
- 8.3 If the Seller has agreed to carry out work for a fixed price, the Seller will have the right to charge for additional work if he carries out more than the agreed work. If the Seller has made an offer for the time to be spent on the work, that offer will be regarded as no more than an estimate. If the Seller has spent more than the time indicated in the offer, the Seller will have the right to charge for the extra time. All prices are exclusive of turnover tax (VAT).
- 8.4 The Buyer is obliged to check the performed services for shortcomings and deficiencies as soon as they are received and to ensure that the result of the services is in keeping with the purpose of the agreement in question. If the Buyer installs the goods in any way before such a check is carried out, this will be done at the Buyer's risk. Visible defects must be reported in writing to the Seller within five (5) working days of the date of the completion of the services.  
Defects that are not apparent upon completion of the service, including defects that are revealed or could reasonably be expected to be revealed by checks carried out prior to the installation of the goods, must be reported within five (5) working days of being discovered or within five (5) working days of when the Buyer could reasonably be expected to have discovered them.
- 8.5 If a complaint is justified the Seller will be obliged to perform the service again. If the Seller takes the view that he cannot reasonably be expected to perform the services again or that doing so is impossible, the Seller will reimburse the Buyer with the payment made for these services.  
The Seller will not under any circumstances be required to perform the services again if the damage has been caused by wear and tear resulting from normal usage or circumstances that can be attributed to the Buyer.

## **9. Liability**

- 9.1 The Seller cannot be held liable for damage caused by incorrect and/or incomplete information provided by or on behalf of the Buyer.
- 9.2 The Seller cannot be held liable for damage caused by the Buyer's incorrect or unauthorised use of the goods.
- 9.3 In the event of an attributable breach in the meeting of any contractual obligation or an unlawful act the Seller's liability will be limited to the repair or replacement of the delivered goods or the re-performance of the service and in all cases to the direct loss up to a maximum of the invoice value for the fault goods or services in question.
- 9.4 Direct losses are defined exclusively as the reasonable costs incurred to ensure that the faulty goods or services are in keeping with the agreement.
- 9.5 The Seller cannot be held liable for any form of indirect loss, including but not limited to consequential losses, such as the costs involved in removing or re-installing or assembling the goods, or caused by the discharge or leakage of any liquid or substance resulting from a fracture and/or tear in the foil and/or storage tank, loss of profit, lost savings or business stagnation.
- 9.6 In the event of the Seller's liability being insured in a given case, the Seller's liability will be limited to the amount paid out by the insurer.
- 9.7 The limitations of liability in these general terms and conditions are not applicable to losses caused by intentional act or omission or gross negligence on the part of the Seller or his managerial subordinates.
- 9.8 Claims made on any grounds in respect of losses or for the repair or replacement of goods and/or the delivery of missing parts and the right to dissolve the contract will be null and void if the defect or the loss is reported late and will in all cases expire one (1) year after delivery unless the parties have agreed on another period.
- 9.9 The Seller will act with due care when providing advice on the goods (or their usage), but cannot under any circumstances be held liable for any losses arising from such advice.

## **10. Default**

- 10.1 The Seller has the right to suspend (further) performance of the contract or to dissolve it, without prejudice to his right to claim other or additional damages, if the Buyer is granted suspension of payment, the Buyer is declared bankrupt or fails to meet one or more of his obligations to the Seller or if the Seller has reason to believe that the Buyer is or will be unable to meet his contractual obligations and the Buyer fails to furnish sufficient security for compliance with his obligations.
- 10.2 If one of the situations provided for in this article arises, all claims of the Seller against the Buyer on whatever grounds will become immediately due and payable.

## **11. Applicable law and disputes**

11.1 All offers and agreements between the Seller and the Buyer will be governed by the laws of the Netherlands. The applicability of the Vienna Sales Convention is expressly excluded.

11.2 All disputes arising from or related to an existing agreement between the Seller and the Buyer and future agreements relating from such an agreement will be settled exclusively as follows:

(I) in all cases in which the Buyer is established in a state that is a signatory to the Council Regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters of 27 September 1968 and/or a state that is a signatory to the Lugano Convention on jurisdiction and the enforcement of judgements in civil and commercial matters of 16 September 1988, by the court with competent jurisdiction in Leeuwarden; and

(II) in all other cases in accordance with the arbitration rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*). The arbitral tribunal will be composed of three arbitrators. The place of arbitration will be Breda. The arbitration proceedings will be conducted in the English language. The arbitral tribunal will make its decisions in accordance with the rules of law.

The arbitration proceedings cannot be consolidated with other arbitration proceedings.

11.3 The entirety of article 11.2 does not affect the Seller's right to institute legal proceedings against the Buyer at the court with competent jurisdiction in the Buyer's place of establishment.