

## GENERAL TERMS AND CONDITIONS OF SALE

OF: ESD-SIC bv

### Article 1 Definitions

User	:	ESD-SIC bv, the user of these General Terms and Conditions, the Seller, the Service Provider;
Other Party	:	the User's counterparty, the buyer, the customer, the principal;
Agreement	:	the agreement between the User and the Other Party.

### Article 2 General

- 2.1 These General Terms and Conditions will apply to all orders, offers and Agreements between the User and the Other Party to which the User has declared these Terms and Conditions applicable, to the extent that these Terms and Conditions have not been expressly deviated from by the parties in writing.
- 2.2 Any deviations from these General Terms and Conditions will only be valid if they have been expressly agreed in writing.
- 2.3 If one or more provisions of these General Terms and Conditions prove null and void or are nullified, the remaining provisions of these General Terms and Conditions will continue to apply.

### Article 3 Offers/quotations/prices

- 3.1 All offers, whatever their form, will be free of obligation, unless a term for acceptance is stated in the offer.
- 3.2 Agreements to which the User is a party will only be presumed to have been concluded:
- after an Agreement drafted for that purpose has been signed by both parties; or
  - following written confirmation from the User of an order placed by the Other Party; or
  - in the absence thereof, pursuant to the actual delivery ex warehouse of the products sold.
- 3.3 In the event of an oral Agreement, the invoice will be presumed to contain a correct and complete representation of the Agreement, unless a complaint is lodged within 14 days of the invoice date.
- 3.4 If the Other Party concludes an Agreement on behalf or for the account of another natural person, he/she will be deemed to declare - by signing the Agreement - that he/she is authorised to do so. The Other Party, in addition to the other natural person, will be jointly and severally liable for all obligations ensuing from the Agreement.
- 3.5 If the notice of acceptance deviates from the offer laid down in the quotation, the User will not be bound by same. In that case, the Agreement will not be concluded in accordance with that deviating acceptance, unless the User states otherwise.
- 3.6 A composite quotation will not oblige the User to supply part of the goods included in the offer or quotation for a corresponding part of the stated price.
- 3.7 The prices stated in the Agreements will apply to delivery ex warehouse, in euros, exclusive of Dutch VAT, government levies, export duties, shipping costs, freight charges, handling expenses and packaging costs, unless provisions to the contrary have been explicitly agreed.
- 3.8 The prices are based on the rates, wages, taxes, fuel prices, levies, prices, etc. as such apply on the date of the offer or the conclusion of the Agreement, as the case may be, under normal circumstances.
- 3.9 Because the goods are subject to price fluctuations, the User may pass on price rises exceeding 5% if, between the time of acceptance and the time of the delivery, price changes have occurred with respect to, for instance, exchange rates, wages, raw materials or packaging materials.
- 3.10 The User will be entitled to adjust its prices each year, by at least the cost-of-living adjustment.
- 3.11 The User may refuse an order or part of an order or attach conditions to an order without stating its reasons.
- 3.12 Offers or quotations will not apply to follow-up orders.

### Article 4 Samples/illustrations

- 4.1 Any samples, illustrations, figures, sizes, weights or descriptions specified or shown in or on catalogues/offers/advertisements/price lists or the website are provided as an illustration only.
- 4.2 If the Other Party has been shown a sample, same should be presumed to have been shown as an indication only, unless it has been explicitly agreed that the good to be delivered will be completely identical.
- 4.3 If the Agreement provides for any measurements or specifications, these should also be presumed to be indicative only, unless they are necessary for the activities to be performed.

### Article 5 Performance of the Agreement

- 5.1 The User will perform the Agreement to the best of its knowledge and ability.
- 5.2 The User will not be liable for damage, of whatever nature, resulting from the fact that the User has operated on the basis of incorrect and/or incomplete data provided by the Other Party, unless the User should have been aware of this incorrectness or incompleteness.
- 5.3 If the supply is delayed due to factors for which the Other Party is responsible, the User will be compensated by the Other Party for any damage and costs ensuing from the delay.
- 5.4 The Other Party shall indemnify the User against any claims of third parties that may incur damage relating to the performance of the Agreement and which is attributable to the Other Party.

### Article 6 Delivery

- 6.1 Delivery will be made ex User's address, unless the parties agree otherwise.
- 6.2 The Other Party will be obliged to take delivery of the goods at the time that the User delivers same to it or has same delivered to it by third parties, or at the time at which the goods are made available to it pursuant to the Agreement.
- 6.3 If the Other Party refuses to take delivery of the goods or has neglected to provide information or instructions that are necessary for the delivery, the User will be entitled to store the goods at the Other Party's expense and risk. If the Other Party does not take delivery of the goods within five days, the User will be entitled to sell the goods to another party. If it is unable to do so, the User will be entitled to destroy the goods. The damage incurred

by the User due to such resale or destruction of the goods will be borne by the Other Party.

- 6.4 If the User has stated a delivery period, such delivery period must be considered indicative. A stated delivery date may therefore never be considered a firm deadline, unless the parties have agreed on a firm deadline in writing. If a term is exceeded, the Other Party must give the User written notice of default and grant it a reasonable period of time to comply as yet.
- 6.5 If the User requires information from the Other Party within the context of the Agreement's performance, the delivery period will commence after the Other Party has made such information available to the User.
- 6.6 On-call orders must be taken delivery of within the agreed periods of time, in default of which the User will be entitled to deliver the undelivered part of the order in one go and charge the Other Party any price increases.
- 6.7 The User will be entitled to deliver the goods in parts. The User will be entitled to invoice partial deliveries separately.

### Article 7 Inspections, complaints

- 7.1 The Other Party will be obliged to inspect the delivered Goods, or have others do so, at the time of delivery or transfer. In doing so, the Other Party should inspect whether the quality and quantity of the goods delivered are in accordance with the agreements made. Any visible defects and deviations must be stated on the consignment note/packing list and reported by telephone within one working day, in default of which the goods delivered will be presumed to be sound.
- 7.2 Any shortfalls must be reported to the User in writing within two days of delivery.
- 7.3 Any complaints regarding the invoice must be submitted in writing within 14 days of the invoice date.
- 7.4 After the end of the term during which a complaint may be lodged, the Other Party will be deemed to have approved the goods delivered or the invoice, as appropriate.
- 7.5 If a timely complaint is submitted, the Other Party will remain obliged to take delivery of and pay for the purchased goods. If the Other Party wishes to return defective goods, this may only be effected following written permission from the User. Return shipments will be for the Other Party's expense and risk.
- 7.6 The following situations will under no circumstances justify the lodging of a complaint:
- deviations in colour, weight, measurements and quality of less than 10%, or deviations common in normal commercial practice;
  - any typesetting, printer's or typographical errors in the catalogue, offer or price list.
- 7.7 If a complaint is well-founded, the User will replace the delivered good, unless this has become demonstrably pointless to the Other Party by that time. If this is the case, the Other Party should communicate this to the User by means of a written notification. The User's liability will, however, always be subject to the limits laid down in the Article 'Liability'.

### Article 8 Payment

- 8.1 Payment must be made within 30 days of the invoice date in the manner indicated by the User and in euros, unless the parties have agreed otherwise. Objections to the amounts stated in invoices will not suspend the relevant payment obligation.
- 8.2 If the Other Party fails to effect payment within the agreed term, the Other Party will be in default by operation of law. In that event, the Other Party will owe 1.5% in interest per month or part of a month, unless the statutory interest rate or the statutory commercial interest rate is higher, in which case the highest interest rate will apply. The interest on the payable amount will be calculated from the time that the Other Party is in default until the time of full payment.
- 8.3 If the Other Party is wound up, is declared bankrupt or files for bankruptcy, is admitted to statutory composition pursuant to the Dutch Natural Persons Composition Act [*Wet schuldsanering natuurlijke personen*], is placed under guardianship, attachment is levied against it or is granted a suspension of payments, provisionally or otherwise, the User's claims vis-à-vis the Other Party will become due and payable forthwith.
- 8.4 Payments will first be used to cover the costs, then to cover any interest due and finally to cover the principal sum and the accrued interest.
- 8.5 Unless it has obtained the User's written permission, the Other Party may never set off any amounts payable by it to the User.

### Article 9 Collection costs

- 9.1 If the Other Party is in breach of contract or in default of performing its obligations or performing same in time, all reasonable costs incurred in obtaining extra-judicial payment will be borne by the Other Party. The collection costs will be calculated in accordance with the collection rate recommended by the Dutch Bar Association [*Nederlandse Orde van Advocaten*] in collection cases, subject to a EUR 350 minimum.
- 9.2 If the User has incurred higher costs which were reasonably necessary, those costs will also qualify for compensation. Any reasonable judicial and enforcement costs will also be charged to the Other Party.

### Article 10 Retention of title

- 10.1 All goods supplied by the User will remain the User's property until the Other Party has fulfilled all its obligations ensuing from the Agreements concluded with the User.
- 10.2 The Other Party will not be entitled to pledge the goods covered by the retention of title or to sell them on to customers, or to encumber same in any other way, unless the parties have agreed otherwise.
- 10.3 If third parties levy an attachment on the delivered goods subject to the retention of title or wish to create or enforce rights to same, the Other Party will be obliged to inform the User thereof as soon as possible.
- 10.4 The Other Party should insure the goods covered by the retention of title at market value. Any damages paid by the insurer will replace the aforementioned goods and will accrue to the User.
- 10.5 In case the User wishes to exercise its proprietary rights as referred to in this Article, the Other Party hereby grants the User or any third parties to be designated by the User its unconditional and irrevocable permission to enter those places where the User's property is located and to recover those goods.

### Article 11 Suspension and dissolution

- 11.1 The User will be entitled to suspend performance of its obligations or to dissolve the Agreement in the following events:

- if the Other Party fails to perform the obligations arising from the Agreement or fails to perform them in time or in full;
  - if circumstances of which the User has learned following the Agreement's conclusion provide good reason for fearing that the Other Party will not perform its obligations, or will not perform same in good time or in full; if there is good reason to fear that the Other Party will only perform its obligations in part or will not perform such properly, suspension will be permitted only to the extent that such is justified by the relevant failure; or
  - if the Other Party was requested upon the Agreement's conclusion to provide security for the performance of its obligations ensuing from same Agreement and such security has not been provided or is insufficient. As soon as security has been provided, the right to suspend performance will lapse, unless the performance has been unreasonably delayed as a result.
- 11.2 In addition, the User will be entitled to dissolve the Agreement or have it dissolved if circumstances arise of such a nature that performance of the Agreement is impossible or can no longer be required pursuant to standards of fairness and reasonableness, or if any other circumstances arise of such a nature that continued unamended maintenance of the Agreement can no longer reasonably be expected.
- 11.3 If the parties have agreed on the supply of a certain quantity of goods and/or have concluded an Agreement for a fixed period of time, the Agreement will end after the supply of the agreed quantity and/or after the expiry of the agreed period. Any previously agreed prices, quantities, delivery terms and similar specifications will not apply to follow-up orders or Agreements.
- 11.4 If the Agreement is dissolved, the User's claims vis-à-vis the Other Party will become immediately due and payable. If the User suspends performance of its obligations, it will retain its rights pursuant to the law and the Agreement.
- 11.5 The User will at all times retain the right to claim damages.
- Article 12 Warranty**
- 12.1 The goods supplied by the User will be in accordance with the requirements and specifications set by Dutch law.
- 12.2 This warranty will be limited to:
- manufacturing defects, and will therefore not include any damage resulting from improper, negligent or inexperienced use or faulty or improper processing, handling, maintenance or storage;
  - deliveries to the Other Parties within the EU;
  - replacement of the good; and
  - 365 days after delivery, unless provisions to the contrary have been agreed.
- 12.3 This warranty will lapse:
- in the event of adaptations of, alterations to or changes to the delivered good by the Other Party or a third party; or
  - in the event of use for a purpose other than that indicated.
- 12.4 As long as the Other Party fails to perform its obligations ensuing from the Agreements concluded between the parties, it cannot invoke this warranty.
- Article 13 Cancellation**
- 13.1 If the Other Party wishes to cancel an Agreement after its conclusion with the User, it will be charged 10% of the agreed order price, including Dutch VAT, in cancellation costs, without prejudice to the User's right to full damages, including lost profits, unless the parties have agreed otherwise. If, following cancellation, the Other Party refuses to take delivery of the goods purchased by the User especially for the Other Party, the Other Party will be obliged to pay the User all ensuing costs.
- 13.3 Cancellation must be effected in writing (by post, fax or by email).
- Article 14 Liability and indemnification**
- 14.1 If goods supplied by the User are defective, the User's liability vis-à-vis the Other Party will be limited to the provisions laid down in these Terms and Conditions.
- 14.2 Under no circumstances will the User be liable for any damage incurred by consumers as referred to in Section 6:185 in conjunction with Section 6:190 of the Dutch Civil Code [*Burgerlijk Wetboek*] related to the composition of the goods supplied or any presence in or on same of substances or bacteria prohibited by law or any other defect in the goods of which the User is unaware. After the damage has been reported to it, the User will provide the Other Party with the name and address of the manufacturer, importer or supplier of the relevant goods.
- 14.3 Effective from two days following delivery, the User will not be liable for any reduced quality of the goods supplied resulting from improper storage, transport or processing, in view of the fact that the User will no longer be able to influence the quality and condition of the goods supplied.
- 14.4 If the User is liable for any direct damage, this liability will be limited to the amount paid out by its insurer, or in any event to the market value of the goods.
- 14.5 The User will under no circumstances be liable for any indirect damage, including consequential damage, loss of turnover and profit, loss of savings and any damage due to an interruption in business operations.
- 14.6 If the User is held liable by a third party for damage for which it is not liable pursuant to the Agreement with the Other Party or pursuant to these Terms and Conditions, the Other Party shall fully indemnify it in that respect.
- 14.7 Under no circumstances will the User be liable for:
- deviations, damage, faults and defects that have gone unnoticed in goods approved by the Other Party;
  - damage as a consequence of use that is not in accordance with the directions or product information.
- 14.8 The User will under no circumstances be liable for damage ensuing from any advice given. Advice will always be given on the basis of the facts and circumstances known to the User and of mutual consultations, in which respect the User will always use the Other Party's intention as a guideline and starting point.
- 14.9 The Other Party should inform its customers in accordance with the directions and the product information.
- 14.10 The Other Party should ascertain in advance whether the purchased goods are suitable for the purpose for which it intends to use same. Should it emerge in retrospect that the purchased goods are not suitable

- for their intended use, the User cannot be held liable for any ensuing damage.
- 14.11 The liability limitations for direct damage included in these General Terms and Conditions will not apply if the damage has resulted from an intentional act or omission or gross negligence on the part of the User or its staff.

**Article 15 Passing of risk/transport**

- 15.1 The risk relating to any loss of or damage to the goods that are the subject of the Agreement will pass to the Other Party at the point in time at which those goods are legally and/or actually delivered to the Other Party and thus come under the Other Party's control or under the control of a third party – including the carrier – designated by the Other Party.
- 15.2 If the User is to provide for the transport or storage of the goods that are the subject of the Agreement, this will be fully at the Other Party's expense and risk.
- 15.3 If and insofar as the User undertakes to provide for the transport, storage, dispatch, packaging or similar services, the User will determine the manner in which this is effected if no further instructions have been issued by the Other Party to the User. Unless the parties have agreed otherwise, the Other Party will accept all risks in this respect, including any negligence or omission on the carrier's part.
- 15.4 Any specific wishes of the Other Party regarding transport, dispatch or storage will be complied with only if the Other Party has declared that it will bear the corresponding additional costs.

**Article 16 Force majeure**

- 16.1 Neither party will be obliged to fulfil any obligation if it is prevented from doing so due to a circumstance which cannot be attributed to gross negligence or an intentional act or omission on its part, and which is also not for its account pursuant to the law, a juristic act or generally prevailing opinion.
- 16.2 In these General Terms and Conditions, the term 'force majeure' should be understood to mean, in addition to its meaning according to the law and in case law, all external causes, foreseen or unforeseen, which the User cannot influence, such as wars, acts of God, tailbacks, computer failures, power failures, export impediments, accidents, theft, fire, illness among staff and delays in supplies by suppliers, as a result of which the User is unable to perform its obligations, or to perform same on time. This will also include strikes at the User's business.
- 16.3 The User will also have the right to invoke *force majeure* if the circumstance preventing performance or further performance arises after the User should have performed the relevant obligation.
- 16.4 The parties may suspend the obligations ensuing from the Agreement while the situation of *force majeure* lasts. If this period lasts more than one month, either party may dissolve the Agreement without being obliged to pay the other party any damages.
- 16.5 Insofar as the User has partly performed or is able to partly perform its obligations under the Agreement at the time that the situation of *force majeure* arises, and that part performed or to be performed is of independent value, the User will be entitled to invoice the part performed or to be performed separately. The Other Party will be obliged to pay that invoice as if it pertained to a separate Agreement.

**Article 17 Intellectual property and copyrights**

- 17.1 Without prejudice to the provisions in these General Terms and Conditions, the User reserves the rights and powers vested in it pursuant to intellectual property law and the Dutch Copyright Act [*Auteurswet*].
- 17.2 All goods supplied by the User, as well as any samples, calculations and brochures provided by the User, are exclusively intended for use by the Other Party, and may not be multiplied, resold, adapted, changed, copied, reproduced, made public, passed to or brought to the attention of third parties by the Other Party without the User's prior permission, unless the contrary ensues from the nature of the goods sold or the documents provided.
- 17.3 The Other Party may not remove the producer's name or brand from the packaging of the goods supplied or the information leaflet.

**Article 18 Disputes**

The competent court in the city or town where the User has its registered office will be competent to take cognisance of any disputes, to the exclusion of all other courts. Nevertheless, the User will be entitled to submit the dispute to the court competent according to the law.

**Article 19 Applicable law**

All Agreements between the User and the Other Party will be governed by Dutch law. Applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.