

General terms and conditions of sale and delivery

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1. Applicability

- 1.1. These terms and conditions are applicable to all offers, agreements and orders for the supply of goods and services, all in the broadest possible sense, made to customers or purchasers (hereinafter referred to as 'the customer') by VDDN MEMBER (hereinafter referred to as 'the supplier'). For the purpose of these terms and conditions, 'supply' and 'delivery' are understood to mean the supply of goods and services.
- 1.2. By issuing an order, as well as by accepting an offer made by the supplier, the customer accepts the applicability of these terms and conditions to the exclusion of others.
- 1.3. Any deviations from and/or additions to these terms and conditions shall be applicable only if and to the extent that the supplier has expressly agreed to these in writing. Any such acceptance shall relate only to the supply of goods or services pertaining to which acceptance was made and shall not in any circumstances apply to any other transactions between the supplier and the customer.

2. Offer and acceptance

- 2.1. All offers made by or on behalf of the supplier, irrespective of whether these are made orally or in writing, shall be without obligation. The supplier shall be entitled to retract an offer immediately and no later than five working days from receipt of acceptance of the offer by the customer.
- 2.2. In the event that there is any deviation between what is accepted by the customer and what was offered by the supplier, also if only on minor points, the agreement shall not be effected.
- 2.3. Offers (including orders and commissions) from the customer only become binding for the supplier once the supplier has confirmed the offer in writing. In the event that the customer's offer is not confirmed in writing by the supplier, the simple fact that execution has taken place shall provide sufficient proof for the agreement and the provisions having been concluded.
- 2.4. If the customer does not react within five days of receipt of any written confirmation from the supplier that deviates from an offer made by the supplier, then the agreement shall be deemed to have been concluded in accordance with the supplier's confirmation.
- 2.5. Errors or lack of clarity in offers or order confirmations may not lead to deviation from what the supplier actually intended, neither shall they render the supplier liable for any loss or damage resulting from such errors or lack of clarity.

3. Supply and risk

- 3.1. Unless expressly otherwise agreed in writing, delivery shall be made carriage paid to the location agreed by the customer with the supplier. The method of delivery and the delivery route shall be decided upon by the supplier.
- 3.2. The customer shall be under obligation to take delivery of the goods. If the customer does not or cannot take delivery of the goods presented by the supplier for reasons which cannot be attributed to the supplier, then the supplier shall be entitled to decide either to store the goods and/or sell the goods or, if storage and/or sale cannot reasonably be demanded of the supplier, to destroy the goods or have them destroyed. All costs, as well as any losses made, shall be for the account of the customer. This shall not prejudice any other rights asserted by the supplier with respect to the customer.

- 3.3. Unless expressly otherwise agreed in writing, the risk of damage, loss, theft and perishing of the goods becomes and remains the customer's from the point of time of delivery. If the supplier presents goods for delivery, but the customer does not or cannot take delivery of the goods for reasons which cannot be attributed to the supplier, the risk becomes and remains the customer's from the point of time of presentation of the goods. The foregoing shall apply mutatis mutandis in the case of partial deliveries.
- 3.4. If transport of the goods is carried out by or through the agency of the supplier, the point of time of delivery shall be understood to mean the point of time at which the goods are unloaded. If transport is carried out by or on behalf of the customer, the point of time of delivery shall be taken to mean the moment of time at which loading commences.
- 3.5. If transport of the goods is carried out by or through the agency of the supplier, then the customer shall ensure and guarantee sound and thoroughly clean receptacles of sufficient capacity and the customer shall guarantee that storage depots, into which or where the goods are to be unloaded, are unobstructed and accessible without hazard. If the goods are collected by or on behalf of the customer at the supplier's premises, then the customer shall ensure and guarantee sound receptacles and sound means of transport of sufficient capacity.
- 3.6. The supplier may at all times make partial delivery of the goods and invoice these partial deliveries. In this case, each partial delivery may be deemed to be an independent agreement.
- 3.7. In principle, goods supplied shall under no circumstances be taken back by the supplier. In the event that, for whatever reasons, the supplier expressly permits a customer to return goods, the goods shall always be transported at the risk of the customer and the customer shall pay for loading, transport and storage costs and any other costs resulting from the return, unless expressly otherwise agreed in writing. In the event of a complaint submitted by the customer being legitimate, any costs for returning the goods shall be for the account of the supplier.

4. Delivery times

- 4.1.1. Unless expressly otherwise agreed in writing, quoted or agreed delivery times shall under no circumstances be treated as a strict deadlines. The exceeding of a delivery date quoted by VDDN member shall not give the buyer any right to compensation or the right to judicial or extrajudicial termination of the agreement, or any right to postponement of his obligation to pay for or to take delivery of the goods. In the event of delivery not being on time, the supplier shall only be in default after having first been served notice of default in writing with that notice being delivered by registered post, by which a further and reasonable deadline for delivery shall be stated, and whereby the customer's obligation to take delivery of the goods remains. The foregoing shall apply mutatis mutandis in the event of any other attributable failure to perform on the part of the supplier with respect to the supplier's obligations towards the customer. The provisions of this paragraph shall not be applicable in cases when performance by the supplier is persistently impossible.
- 4.2. In the event of delay as referred to in the previous paragraph, the customer shall not be entitled to compensation, but only to choose whether to continue to demand performance within a reasonable time limit to be set by the supplier or to terminate the agreement. Partial delivery shall give the customer the right to partial termination of the agreement only.
- 4.3. In the event of a preferred delivery date stated by the customer on placing an order being inconvenient for the supplier, the customer shall meet any reasonable requests for postponement.
- 4.4. In the event of no delivery date being given or agreed, delivery shall take place within a deadline which is reasonable under the circumstances of the case and which is determined by the supplier.

5. Prices

- 5.1. The supplier shall be entitled to amend price lists and other quotations at any time.
- 5.2. Unless expressly agreed otherwise, goods delivered to the customer shall be charged at the prices as shown on the most recent applicable price list or other quotations from the supplier, or at the supplier's generally current prices, applicable on the day of delivery.
- 5.3. All prices are exclusive of discount or surcharge and exclude any tax or duties due as applicable at the time of delivery, unless expressly agreed otherwise in writing.
- 5.4. In the event of a price having already been agreed on conclusion of the agreement, then this price shall be based on the material costs, raw material costs, salaries, social security costs, transport costs, fuel costs etc. current at that time and shall be exclusive of any taxes or other duties. In the event of one or more price factors undergoing an increase after the agreement has been concluded, the supplier shall be entitled to increase the agreed price accordingly and to invoice the price in full to the customer.
- 5.5. In the event of a price increase as referred to in the previous paragraph, as opposed to government measures which oblige the supplier or authorise the supplier to increase a price, the customer shall be entitled to terminate the agreement, on condition that this is done in writing within five working days of the date on which the supplier informed the customer of the price increase, however without the supplier being liable to payment of any compensation, all subject to the extent to which the agreement has already been (partially) performed. In the event of partial performance, it shall only be possible for the customer to terminate the agreement partially. The customer shall not have this right to termination if more than three months have elapsed between the date on which the agreement was entered into and the date on which the price was increased.

6. Payment

- 6.1. Unless expressly agreed otherwise in writing, payment shall be made within eight days of date of invoice and exclusively by deposit on or transfer to one of the bank accounts stated on the invoice, without the deduction of any discount. The customer shall be permitted to offset the amount he owes to the supplier against a payable debt from the supplier to him, only if this debt has been expressly acknowledged by the supplier in writing or has been irrevocably determined by legal process.
- 6.2. A payment shall always be allocated to the supplier's oldest outstanding debt against the customer. Irrespective of any other indications on the part of the customer, the payment shall primarily be deducted from any collection charges or other charges, then from interest already accrued and finally from the sum total and current interest.
- 6.3. Without prejudice to any other rights of the supplier, in the event of payment of the full amount owed to the supplier by the customer not being on time or in the event of any other attributable failure on the part of the customer in the performance of his obligations in respect of the supplier, the customer shall be in default in respect of the supplier by operation of law, without there being any demand for a summons or serving of notice of default. All sums owed to the supplier by the customer at that moment in time shall then become immediately payable in full.

- 6.4. If the customer petitions for or obtains suspension of payment, is declared bankrupt or loses or is in danger of losing the control or command of all or a part of his capital in any other way, the customer starts out-of-court debt rescheduling or (if the customer is a natural person) the customer is subject to the Dutch *Wet schuldsanering natuurlijke personen* (Debt Management [Natural Persons] Act), the customer transfers, discontinues or ends its company activities, as well as in all other cases whereby full performance of its obligations is no longer possible or can no longer reasonably be expected, all sums owed to the supplier by the customer at that moment in time shall then become immediately payable in full and the supplier shall be entitled to terminate the agreement with the customer, without prejudice to any other rights of the supplier. The foregoing shall apply mutatis mutandis in the event of a change to the legal form of the customer's company and/or (to the extent that the customer is a legal entity) there is a change in the management and/or the (dominant) control of the customer.
- 6.5. Without prejudice to any other rights of the supplier and unless expressly otherwise agreed in writing, the customer shall owe the supplier, by operation of law, the statutory commercial interest rate ex Section 6:119a of the Dutch Civil Code from the point of time at which payment should have been made to the point of time at which the customer actually pays.
- 6.6. Without prejudice to any other rights of the supplier, all judicial and extrajudicial costs resulting from or connected to the assertion of the rights of the supplier in respect of the customer are for the account of the customer. Unless the supplier makes a reasonable case for these being determined at a higher amount, the extrajudicial costs (under which are included the costs for legal aid) shall be calculated in accordance with the *Besluit Buitengerechtelijke Incassokosten* (Decree on Extrajudicial Collection Costs).
- 6.7. The supplier shall at all times be entitled to require the customer to pay in advance, to pay immediately or to provide security, under suspension of its obligation to supply goods, for the performance of the customer's obligations to pay the supplier. If the customer, after having been invited to do so (in writing), has not provided security within five working days, all to the satisfaction of the supplier, the customer shall be in default in respect of the supplier by operation of law, without there being any demand for a summons or serving of notice of default.
- 6.8. In the matter of that which is owed to the supplier by the customer, the supplier's bookkeeping and accounting shall count as full proof, barring evidence to the contrary from the customer. If the customer is of the opinion that the invoice amount he owes is incorrect, he shall be obliged to lodge a written objection to it with the supplier within five working days of date of the invoice in question, making a detailed statement of the incorrect amount asserted by the customer, failing which the customer shall be deemed to have accepted the invoice.
- 6.9. In the event of a complaint submitted by the customer being found to be legitimate before the due date for payment:
- the customer shall receive a credit note from the supplier for the amount involved if a reduction in price is decided upon;
 - a credit note for the goods received by the supplier as returned shall be issued and the goods delivered as replacements shall be invoiced, if replacement is decided upon and the goods for replacement are returned before the due date for payment.
- 6.10. The supplier shall at all times be entitled to offset amounts due from the customer at any time with amounts which the supplier owes to the customer at any time.

7. Complaints

- 7.1. The customer shall be required to inspect the goods or have the goods inspected immediately on receipt for correct quantity, weight, type, condition, quality, composition, soundness and other traits. Costs for inspection are for the account of the customer.

- 7.2. The risk of the goods by their nature not being suitable for the application(s) intended by the customer shall be a risk borne by the customer.
- 7.3. Complaints of any kind at all shall not postpone the customer's obligation to pay in whole or in part and can only be brought to the supplier's attention in writing within the period of notice stated in this section.
- 7.4. Any right to complaint shall expire if the customer does not or does not fully meet the provisions of this section, in which case the customer shall be deemed to have accepted the goods as sound in every respect.
- 7.5. The burden of proof that the goods that are the subject of complaint are the same as those delivered by the supplier shall be borne by the customer.
- 7.6. Any complaints connected to visual deficiencies or faults or those which are easy to inspect shall be required to be specified by the customer on the transportation document to be signed on receipt of the goods, failing which the supplier shall be deemed to have delivered the goods correctly. Any other complaints shall be required to have reached the supplier in writing with a detailed description of the complaint(s) no later than two working days from the customer having become aware of or from when the customer could have reasonably become aware of any deficiencies or faults, and no later than two weeks from delivery of the goods, failing which the supplier shall be deemed to have performed the agreement correctly and fully.
- 7.7. In any case, assessment as to whether the goods meet the requirements as agreed concerning them shall take place in accordance with the condition they are in at the point of delivery. Goods about which the customer has complained must be stored with care and in an unused condition, unadulterated and unprocessed, in a place suitable for this purpose and be made available for closer inspection by the supplier or by a third party appointed by the supplier, at the supplier's first request. The supplier shall be granted immediate access to the place(s) where the goods are located if necessary. The customer shall also ensure that any loss or damage is as limited as possible and remains limited.
- 7.8. No complaint shall be possible if the customer has proceeded to use, mix, process or sell on the goods, while the customer could have ascertained deficiencies or faults by simple inspection.
- 7.9. In the event of any sampling, this shall be carried out by a licensed sample officer or by an expert qualified in this field, chosen by the supplier. The sealed samples on behalf of both parties shall provide irrefutable proof of the composition, quality and condition of the goods at the time of sampling.
- 7.10. Initial examination of the goods or of samples of the goods shall be carried out by the supplier. In the event of the customer disputing this, examination shall be passed on to the *TNO* (Netherlands Organization for Applied Scientific Research) in Zeist, the Netherlands, or to another appropriate institute to be appointed by the supplier. The costs for sampling and examination shall be for the account of the unsuccessful party.
- 7.11. If the customer, with due regard for the provisions of this section, makes a complaint and his complaint is found to be related to a failure attributable to the supplier, then the supplier can choose to replace the goods concerned, after which the replaced goods become the property of the supplier, unless a pro rata reduction in the price is granted if the deficiency or fault is only minor or is only related to a small part of the delivery. The customer must allow the supplier reasonable time for replacement.
- 7.12. No rights can be derived by the customer from the provisions for this in paragraph 11 if and to the extent that he has failed to perform in his obligations with respect to the supplier.

8. Liability

- 8.1. The liability of the supplier in respect of the customer for loss and damage which, directly or indirectly, are the consequence of non-performance, delay in performance, incomplete performance or improper performance of the agreement or of the breach of any other contractual or non-contractual obligation with respect to the customer or to third parties shall be expressly limited to that to which the supplier is liable according to the provisions of section 7, paragraphs 11 and 12.
- 8.2. VDDN member guarantees its product in line with the warranty from its suppliers in accordance with the specification and the certificate of analysis for the delivery concerned to the extent that it applies and expressly limits its liability to that for which it is liable in accordance with the warranty. Any further liability, either for direct or for indirect loss or damage - understood to include consequential loss -, costs and interest, shall be excluded, unless intent or serious misconduct on the part of the supplier is involved.
- 8.3. If a subordinate and/or helper called in by the supplier is called to account concerning the loss and damage inflicted by him in the performance of services agreed with the customer for the supplier, he may appeal to the limitation of liability or exclusion of liability agreed upon by the supplier in respect of the customer.
- 8.4. Under no circumstances shall the supplier be liable for the compensation of a sum, for which the supplier is held liable in respect of the loss and damage, higher than that which it can recover from its insurers. If the insurers do not proceed with payment or if the loss and damage are not covered by the insurance, then liability shall be limited to three times the net invoice value of the delivery concerned but to a sum of maximum €15,000.
- 8.5. The customer shall indemnify against all claims from third parties, irrespective of their nature and scope, and waives his right of recourse against the supplier.

9. Force majeure

- 9.1. Within the meaning of these terms and conditions, force majeure shall be understood to include any circumstances beyond the supplier's control, whether or not foreseeable when the agreement was concluded, which hinder or render more difficult normal performance of the agreement to such an extent that performance cannot reasonably be expected of the supplier, including among other things (though not exclusively) shortage of raw materials; interruptions to the supply of raw materials or semi-finished goods or the transport of finished products as a result of weather conditions, transport obstructions and infection or danger of infection, stoppage of operations, shortage of or damage to means of production; strikes or similar actions; walkouts, riots, war, natural disasters, failures (whether attributable or not) on the part of third parties brought in by the supplier; and also measures taken by the authorities.
- 9.2. Without prejudice to any additional rights of the parties, force majeure shall entitle both parties to terminate the agreement in respect of the parts of it which have not yet been performed, once the force majeure situation has lasted for a period of two months, all this without the parties from both sides being held liable for any compensation.
- 9.3. If the supplier has entered into an agreement with more than one customer with respect to the same or similar goods and the supplier is not able to fully fulfil all agreements through circumstances not attributable to the supplier, then the supplier shall be entitled to determine at its own discretion which agreement it will fulfil and to what extent.
- 9.4. In the event of force majeure, the supplier shall be entitled to adjust prices and/or terms of delivery to the circumstances current at that time.

10. Reservation of title

- 10.1. All goods supplied by the supplier shall remain the property of the supplier until the customer has fully met all of its obligations in respect of the supplier concerning all goods supplied or to be supplied to the customer pursuant to any agreement. The foregoing applies mutatis mutandis to all claims due to any breach on the part of the customer in fulfilling its obligations with respect to the supplier in consideration of similar agreements.
- 10.2. The customer shall not be permitted to pledge goods supplied under reservation of title nor to establish any other right on them for the benefit of third parties. This provision is to ensure operation under property law: a breach of the prohibition laid down in the first sentence shall therefore result in no right of pledge being established or no right to the goods being established.
- 10.3. If and to the extent that it is necessary, the customer shall be entitled to sell on the goods supplied under reservation of title exclusively within the scope of its normal business activities. Likewise, the customer shall be obliged to supply these goods only subject to extended reservation of title, in accordance with the provisions of this section. If full performance of the obligations of the customer is no longer possible or no longer expected within reason, then the customer shall be obliged to inform the supplier of any impending sale immediately and in writing.

11. Transfer

Subject to the prior express written permission of the supplier, the customer shall not be entitled to transfer its rights derived from agreements with the supplier or its obligations resulting from such agreements to third parties, neither shall such rights and obligations be transferable by operation of law.

12. Partial invalidity and Waiver

- 12.1. If any one or more provisions of these terms and conditions or part thereof should prove not to be legally valid, then this shall not affect the validity and enforceability of the other provisions. If the original provision is waived due to its invalidity, then a provision stipulated by the supplier shall then become valid and shall replace any invalid provision.
- 12.2. If strict compliance with these terms and conditions is not always demanded by the supplier, then this shall not imply that the supplier waives the right to demand strict compliance in any case.

13. Governing law and disputes

- 13.1. All agreements and relationships between the supplier and the customer shall be exclusively subject to the laws of the Netherlands. The Vienna Sales Convention shall not apply in the event of international transactions.
- 13.2. Any disputes arising between the parties, including those which are considered as such by only one of the parties, shall in the first instance be subject to the judgement of the court of competent jurisdiction in the place of the registered office of the supplier.
- 13.3. Where these terms and conditions have been translated into a language other than Dutch, in the event of disagreement or lack of clarity about the meaning or interpretation of one or more of these provisions, the Dutch version shall prevail.