

GENERAL TERMS AND CONDITIONS OF SALE

Filed with the Chamber of Commerce for Enschede on October 2004 as number 08 12 64 97

Article 1 Definitions

- 1.1. We/Us:
Tyro Products B.V. is the user of these general terms and conditions and will hereinafter be referred to as: "we" or "us".
- 1.2. Other party:
The term "other party" shall be understood to mean all mechanical and electronic parts, together forming a good, which are supplied to the other party with the application of these general terms and conditions, as well as all work and services that we carry out for the other party.
- 1.3. Product:
The term "product" shall be understood to mean all products supplied to the other party under these general terms and conditions as well as all work and services that we render to the other party.
- 1.4. Confidential information:
The term "confidential information" shall be understood to mean all data, information, plans, specifications, drawings, documents and knowledge that is made known to the other party within the scope of the concluding of the agreement or its execution. Furthermore, confidential information includes all data and information of third parties that the other party received or heard within the scope of the agreement.

Article 2 Applicability

- 2.1. These general terms and conditions shall apply to all our offers, all offers by the other party that we accepted, agreements, all agreements arising from agreements or connected to that as well as all juristic acts, deliveries and work carried out by us, as well as future legal relationships to be entered into with us.
- 2.2. Deviations from and additions to these general terms and conditions shall only be binding on us if agreed in writing.
- 2.3. We expressly reject any general terms and conditions used by the other party and/or other conditions.
- 2.4. If one or more provisions in these general terms and conditions should be void or should be nullified, the other provisions of these general terms and conditions or the agreements concluded between the other party and us to which these conditions apply will remain unimpaired.
- 2.5. The definitions regarding transport and delivery as used in an agreement and in these general terms and conditions are those as described in the most recent version of the Incoterms.

Article 3 Offer

- 3.1. All our offers and quotations are free of obligation, unless they contain a term for acceptance, in which case the offer shall lapse after expiration of such term.
- 3.2. Any changes and/or undertakings whether made by us in writing or verbally, shall entail a new offer, and the previous offer shall lapse.
- 3.3. All our offers are based on our executing the agreement under normal circumstances, based on the data known to us and during ordinary working hours, unless expressly stated otherwise in writing.

Article 4 Reaching agreement

- 4.1. If our offer is free of obligation, an agreement shall come into being upon our receipt of a written acceptance of this offer or upon our commencing the execution of the instructions.
- 4.2. If our offer is limited by a term, an agreement shall come into being upon our receipt of the other party's acceptance of this offer within the term set by us.
- 4.3. If the other party's acceptance deviates from our offer, it shall be considered a new offer by the other party and a rejection of our entire offer, even if only minor deviations are concerned.
- 4.4. Any orders accepted, additional arrangements, changes and/or undertakings made after the agreement, whether verbally or in writing, by our staff, representatives, sales staff or other intermediaries shall not be binding, unless confirmed by us in writing to the other party.
- 4.5. For a correct execution of the agreement we are authorised to call in third parties, the costs of which will be charged to the other party in accordance with the submitted quotation. When possible, we will inform the other party about this in advance.

Article 5 Changes

- 5.1. In the event that during the execution of the agreement circumstances occur, which (threaten to) impede a proper execution of this agreement, the necessary measures will be taken by mutual consultation in order to effect an undisturbed continuation.
- 5.2. In the event that a change to the agreement, including the delivery of a new/changed version of the product, implies the expansion of the work to be carried out by us, the additional costs arising from that up to a maximum of 20% of the time already spent up to that moment will only be for our account if the expansion can be attributed to the circumstances of which we were informed or should have been informed at the time that the agreement was concluded.

Article 6 Alternative goods

- 6.1. In the event that serious circumstances force us to supply goods that deviate from the agreed goods, we are authorised to do so, provided that the changes concerned do not mean a deterioration.
- 6.2. The supplying of alternative but at least equal goods does not entitle the other party to claim compensation and/or dissolution or to suspend its obligations towards us.

Article 7 Price

- 7.1. The prices quoted are net prices and do not include turnover tax, delivery costs, service costs and other government charges relating to the sale and/or delivery and/or execution of the agreement and/or third party charges; they are based on delivery ex warehouse/works, unless otherwise agreed in writing.
- 7.2. The prices quoted are in Euro or in another currency agreed with us in writing; the other party shall bear any exchange rate risk, unless otherwise agreed in writing.
- 7.3. The prices we quote are based on the exchange rates, purchase prices, wages, wage costs, national insurance contributions and government charges, freights, insurance premiums and other costs valid during the offer or upon entering into the agreement and on execution of the agreement under normal circumstances.
- 7.4. We reserve the right to charge a proportionate price increase to the other party if, after concluding the agreement, one or more price-determining factors, including wages, social security contributions, materials and changes in the rate of exchange, are increased.
- 7.5. The provisions of article 7.4 shall also apply if the changes in the price-determining factors referred to are the result of circumstances, which could have been anticipated when the agreement was concluded.
- 7.6. If circumstances occur that can be attributed to the other party as a result of which costs have arisen for us, the other party is obliged to compensate us for these costs.
- 7.7. In the event that this has not been expressly agreed otherwise in writing, delivery costs, service charges, costs for the instruction and training of users, as well as costs for loading and unloading, shipment/transport or storage of the materials made available by the other party as well as costs for material that does not belong to our normal equipment are never included in our prices.

Article 8 Delivery

- 8.1. Unless otherwise agreed in writing, delivery times or delivery dates stated shall never be considered a deadline.
- 8.2. If we are not to blame for the exceeding of the delivery time, the other party can never lay claim to damages or dissolution of the agreement.
- 8.3. The delivery times and/or completion dates stated are based on the working conditions valid on concluding the agreement, the data known to us, and on the timely delivery of the materials and/or parts we ordered to carry out the agreement.
- 8.4. Unless otherwise agreed in writing, delivery shall be made ex warehouse/works and at the times we set in consultation, if possible, which we shall notify to the other party in time. The other party is enjoined to accept delivery of the goods delivered at the delivery time set, failing which all costs arising thereof (including storage charges and freight charges) shall be charged to the other party in conformity with our rates or the local rates.
- 8.5. We are entitled to make partial deliveries. In that case we shall state the delivery times for each separate partial delivery. The provisions of this article 8 shall apply mutatis mutandis to partial deliveries.
- 8.6. The risk of the goods shall pass to the other party at the moment of delivery ex warehouse, even if we have not yet transferred the ownership of the goods.

Article 9 Transport

- 9.1. Unless otherwise agreed in writing transport/shipment shall be carried out at the other party's expense and risk.
- 9.2. We shall determine the manner of transport/shipment as well as the manner of packing of the products.

Article 10 Payment

- 10.1. Unless otherwise agreed in writing, payment by the other party shall have to take place within thirty days of receipt of the invoice. This term is a deadline, on the expiry of which the other party shall be in default. The other party may not set off any alleged claims on us.
- 10.2. Where payment is not made within the terms set forth in article 10.1, contractual interest shall be owed at a rate of 1.5% a month, or the statutory interest should this be higher, with effect from the first day following expiration of the payment terms referred to in article 10.1; part of a month shall be considered a full month.
- 10.3. Where payment is not made within the terms set forth in article 10.1, the other party shall owe collection costs. The extrajudicial collection costs are hereby set at 15% of the amount due with a minimum of EUR 250.
- 10.4. Payments made by the other party shall always be used first to meet all the interest and costs owed and subsequently for the settlement of claims under the agreement which have remained outstanding for the longest period of time, even when the other party specifies that the payment relates to another claim.
- 10.5. The other party shall not be entitled to refuse to discharge or to suspend the discharge of its payment obligations on account of alleged defects in the goods or on any other account whatsoever.
- 10.6. In the event of the other party's liquidation, insolvency, petition for liquidation or moratorium on payments, the claims, on any account whatsoever, shall be immediately payable by the other party.
- 10.7. We are at all times entitled to require security, in whatever form, from the other party for the performance of its obligations under the agreement.
If the other party does not meet our request to provide security, we shall be entitled to dissolve the agreement or to suspend our obligations.

Article 11 Suspension and right of retention

- 11.1. Subject to deviating mandatory statutory provisions we are entitled to suspend our performance (including future partial deliveries) if the other party fails to meet any of its obligations or if circumstances which have come to our attention after the agreement was entered into give us good cause to fear that the other party will not discharge its obligations.
- 11.2. If the other party – in spite of a written demand containing a term of payment of at least seven days – does not fully or partially fulfil its obligations, we can exercise the right of retention against all goods and money of the other party to which the execution of the agreement relates. Furthermore, we can sell the above goods and deliver these to a third party and deduct the proceeds from the outstanding invoices. The other party can then no longer exercise its right to delivery.

Article 12 Guarantee

- 12.1. We guarantee that the product complies with the agreement during a period of 12 months.
- 12.2. In the event that defects occur in the product, the guarantee under 12.1 does not apply if these are the result of normal wear and tear, wrong use or improper operation, misuse, use in violation of our instructions, negligence, accident, not observing the maintenance instructions and/or normal maintenance care or when the product has been repaired or modified without our prior written approval, or if there is a use for other than normal purposes.
- 12.3. Our obligations pursuant to the guarantee issued under 12.1 do not go further than the repairing or replacing free of charge of a product or part thereof; such at our discretion and within a reasonable term that we set.
- 12.4. Transport costs incurred within the scope of the invoking of the guarantee shall be for the other party.
- 12.5. At our request, the other party is obliged to give us the opportunity, with reference to its invoking of the guarantee, to have an investigation carried out by an expert that we appoint, in default of which the right to guarantee shall lapse. The decision of this expert shall be binding on both parties. The costs of the above expertise are for the other party if its invoking of the guarantee turns out to be unfounded. In the event that the invoking of the guarantee turns out to be rightful, the costs of the expertise will be for us.

Article 13 Retention of title

- 13.1. Products delivered and/or to be delivered by us shall continue to be our property until the other party has paid our claims arising from the agreement, as well as the claims on account of failure in the performance of such agreement.
- 13.2. The other party is not allowed to dispose of the goods delivered subject to retention of title, to pledge these or to give any third party a right to those goods, except within the scope of the ordinary business activities.
- 13.3. The other party is obliged to keep goods delivered subject to retention of title with due care and as our identifiable property.
- 13.4. If the other party fails in the performance of its payment obligations towards us or if we have good reason to fear that it shall fail in the performance of its obligations, we shall be entitled to take back the goods delivered subject to retention of title. The other party is obliged to render all assistance in this, in default of which the other party owes us an immediately payable penalty of 10% of the amount due by it.
- 13.5. The other party is obliged to insure and keep insured the goods delivered subject to retention of title against fire, explosion damage and water damage, as well as against theft, and to submit the policy of these insurances to us for inspection.
- 13.6. The retention of title is lost upon payment by a third party.
- 13.7. Furthermore, the other party is obliged at our first request:
 - a. to pledge to us all claims made by the other party to insurers regarding goods delivered subject to retention of title, in the manner prescribed in section 3:239 Netherlands Civil Code.
 - b. to render assistance in other manners to reasonable measures that we want to take to protect our property rights regarding goods and which do not unreasonably impede the other party from carrying out its normal business activities.
- 13.8. We are not obliged to any indemnification of the other party for liability as holder of the good.
- 13.9. The other party indemnifies us against third party claims on us that could be connected with the invoked retention of title.

Article 14 Force majeure

- 14.1. In the event that force majeure delays or prevents the execution of the agreement, both we and the other party shall be authorised to terminate the agreement in writing, without this giving the other party any claim to compensation, except where we should obtain a benefit from the termination which we would not have obtained if the agreement had been properly executed.
- 14.2. Force majeure on our part shall include any circumstance beyond our control, which prevents the normal execution of the agreement. Circumstances beyond our control that cause such force majeure shall in any case include: loss, damage and/or delay during and as the result of transport, extreme illness and wildcat strikes of our staff, demonstrations/measures by customs, including the (temporary) blockade of certain geographical areas, fire and other serious disruptions at our plant or that of our suppliers, and national disasters.

Article 15 Liability

- 15.1. Without prejudice to article 12 of these general terms and conditions, we shall never be liable for direct and indirect damage, unless such damage is due to intent or gross negligence by one or more executives belonging to the management board.
- 15.2. If, contrary to article 15.1, we should be liable for damage, our liability shall always be restricted to direct damage to goods or people and our liability shall never extend to any trading loss or other consequential damage, including loss of income.

The above direct damage exclusively includes:

 - a. the reasonable costs that the other party would have to incur to have our performance meet the agreement. However, this damage shall not be compensated if the other party has dissolved the agreement;
 - b. the costs that the other party incurred for the necessity to keep the old system or systems and related facilities operational for a longer period of time, because we did not deliver on a delivery date that was binding on it, less any possible savings that are the result of the delayed delivery;
 - c. reasonable costs incurred to determine the cause and the extent of the damage, to the extent that the determination relates to direct damage within the meaning of these conditions;
 - d. reasonable costs incurred to prevent or restrict damage, to the extent that the other party proves that these costs have led to the restriction of direct damage within the meaning of the present general terms and conditions.
- 15.3. Where, contrary to the provisions of article 15.1, we should be liable for damage, our liability shall furthermore be restricted to the price at which the other party bought the goods that caused the damage, or the amount paid by the other party in respect of the order.
- 15.4. In the event that the court rules in a final and binding judgement that the provisions of article 15.3 are unreasonably onerous, the liability shall be restricted to the damage and to the maximum amounts for which we are insured or should reasonably be insured in view of the customs in the branch of industry.
- 15.5. The provisions of articles 15.2, 15.3 and 15.4 shall only apply as far as our liability is not restricted under the law or agreement (including the provisions of these general terms and conditions) any further than would ensue from the mere application of these articles.

Article 16 Indemnification

- 16.1. The other party indemnifies us against any damage suffered by a third party as a result of the use of products that we delivered to the other party.

Article 17 Complaints

- 17.1. The other party shall examine the product upon receipt and determine whether the product is in order or if the work has been performed in accordance with the agreement.
- 17.2. Any complaints both with respect to the goods delivered, the work performed and invoice amounts must be submitted to us in writing, with an accurate statement of the facts the complaint relates to, within fourteen working days of receipt of the goods, performance of the work or receipt of the invoice respectively.
- 17.3. If in all reasonableness it is not possible to discover the defect within the above period of time, the other party has to submit a written complaint to us immediately (after it discovered or should have discovered the defect), but within one year after receipt of the goods, performance of the work or receipt of the invoice respectively.
- 17.4. Slight deviations or deviations which are customary in the branch of industry as well as differences in quality, quantity, size or finish as well as in the performance of work cannot be a cause for complaints.
- 17.5. Complaints with respect to specific goods or specific work shall not have any effect on the other party's obligations with respect to other products or parts of the agreement.
- 17.6. Where we replace parts of a good or fully replace a good, we will acquire title to the part or good to be replaced.
- 17.7. The products the complaint relates to can only be returned to us after obtaining our approval in writing.

Article 18 Dissolution

- 18.1. In the event that the other party, despite reminders stating a reasonable term, does not discharge any (payment) obligation arising from any agreement entered into with us or does not discharge such obligations in time or properly, and in the event of (an application for) a moratorium on payments, involuntary liquidation, placement under tutelage or liquidation of the other party's business, we shall be entitled to dissolve the agreement or part thereof by means of a written statement, without any notice of default or judicial intervention being required.
- 18.2. As a result of the dissolution, any mutual claims shall become immediately payable. The other party shall be liable for any losses we suffered, inter alia consisting of interest, loss of profits and transport charges.
- 18.3. In the event that the provisions of article 18.1 occur and the other party enjoys a benefit it would not have enjoyed had the agreement been properly executed, we shall be entitled to compensation of our losses totalling the amount of such advantage.

Article 19 Intellectual property rights

- 19.1. All rights of intellectual property or industrial property on all software, equipment or other materials such as analyses, designs, documentation, reports, offers, as well as preparatory material of it, developed or made available pursuant to the agreement, are exclusively vested in us or our licensors. The other party exclusively obtains the rights of use and authorities that are expressly granted with these conditions or otherwise and furthermore, it shall not reproduce or make copies of the software or other materials, show this to third parties and/or make this available or use it in another manner.
- 19.4. This article also continues to be in effect after termination or dissolution of the agreement.

Article 20 Non-disclosure

- 20.1. Both the other party and we undertake to treat confidential all confidential information and confidential information shall not be disclosed to third parties without the prior written approval of the other party.
- 20.2. Confidential information may only be disclosed by one of the parties to its employees for whom in all reasonableness it is necessary to take cognisance of the confidential information. The disclosing party shall bind these employees by the same obligations of confidentiality as the obligations arising from the present article 20.
- 20.3. The other party and we shall not use the confidential information for any purpose other than the purpose for which it was made available by the other party and shall not apply it in any way other than as indicated by the other party.
- 20.4. This article does not apply in the event that the confidential information:
- was already in the possession of the receiving party before it received the confidential information from the disclosing party;
 - on the date of the disclosure or after that comes to the attention of the public, other than by provision by the receiving party of this confidential information;
 - was obtained by the disclosing party of a third party, the disclosing party not having any influence on this;
 - has to be disclosed pursuant to a judicial decision.
- 20.5. This article continues to be in effect after the termination of the agreement.
- 20.6. In the event that the other party breaches one or more obligations of this article, it shall forfeit an immediately payable penalty of €10,000 for each breach and each day the breach continues. This penalty does not affect the right to full compensation in accordance with statutory provisions.

Article 21 Disputes and applicable law

- 21.1. All agreements to which these general terms and conditions entirely or partly apply shall be governed by Dutch law.
- 21.2. The provisions of the Vienna Convention do not apply, nor will any future international regulation concerning the purchase of movable property, the operation of which can be excluded by the parties.
- 21.3. All disputes arising from offers and agreements, however named, shall be exclusively brought before the competent court of Almelo the Netherlands.¹
- or:
- All disputes arising from offer and agreements, by whichever name, will be settled by means of arbitration, by three arbitrators conform the regulations of the ICC (International Chamber of Commerce)². The arbitration award will be binding both on us and on the other party. The arbitration proceedings will be conducted in the English language. The place of arbitration will be Almelo.*
- 21.4. In the event of a (threatening) dispute we are entitled to instruct one or several experts to carry out an assessment at the other party.

1 forum clause for the Dutch court with a Dutch opposing party and an opposing party with its registered office in a EU country.

2 in the event of an opposing party with its registered office outside the EU, an arbitration clause has to be opted for in order to avoid problems with acknowledgement and enforcement of judgments.