

# TERMS OF SALE AND DELIVERY

## OF COMHAN HOLLAND B.V.

### General

- 1.1. For the purposes of these Terms, the word 'Seller' shall be understood to mean a associate of the above-mentioned organization in its capacity as provider, seller, (sub)contractor, supervisor or in any capacity whatsoever. For the purposes of these Terms, the word 'Buyer' shall be understood to mean the prospective buyer, prospective customer and generally the contracting partner of the Seller.
- 1.2. These Terms shall apply to any agreements concluded by the Seller under which the Seller undertakes to deliver goods and/or to provide services. The Seller and the Buyer agree that once a contract is concluded subject to the applicability of the following Terms, these shall fully apply to subsequent transactions as well. Any Terms, however named or described, stipulated by the Buyer shall not apply and are expressly rejected by the Seller unless the Seller accepts them in writing.
- 1.3. Trade terms used in quotations, order confirmations or otherwise must be interpreted in accordance with the International Rules for the Interpretation of Trade Terms produced by the International Chamber of Commerce (ICC Incoterms) in force at the time when the Agreement is concluded.

### Agreement

- 2.1. Quotations, price lists and other communications from the Seller shall not be binding on the Seller. Commitments and agreements made orally by or with staff members of the Seller shall only be binding on the Seller after and in so far as they have confirmed such explicitly.
- 2.2. Only the Seller's confirmation shall be binding if there is a discrepancy between the Buyer's order and the Seller's confirmation.
- 2.3. If the Seller reasonably believes that the Buyer's financial position so warrants, the Seller shall be entitled to request payment in advance or the provision of security and, in anticipation thereof, to suspend the performance of the Agreement in whole or in part. If such advance payment is not made or if such security is not provided in accordance with the Seller's reasonable request, the Seller shall be entitled to dissolve the Agreement by a simple statement in writing, without judicial intervention, without prejudice to the Seller's right to compensation, if such is warranted, and without the Buyer being able to assert any right to compensation.
- 2.4. If the Seller cannot reasonably be expected to meet its delivery commitment as a result of force majeure, the Seller shall have the right to suspend delivery. The continuation of such circumstances for longer than two months shall entitle both parties to dissolve the Agreement with immediate effect, by means of a simple statement in writing, with respect to the goods affected by force majeure. Force majeure shall in any case include, but not be limited to, the following:
  - a. operational failure or business interruption, irrespective of the nature and cause;
  - b. delayed or late delivery by (any of) the Seller's suppliers or by a third party or third parties;
  - c. transport difficulties or transport impediments of any kind which hamper or impede transport to the Seller's location or from the Seller's location to the Buyer;
  - d. import and export restrictions of any kind.
- 2.5. Any additions and amendments to the Agreement and any agreements ancillary to the Agreement shall be valid only if they have been agreed or made in writing.
- 2.6. The goods shall be sold and delivered subject to the standard tolerances in terms of dimensions, quantity and weight, unless explicitly agreed otherwise.
- 2.7. The Seller shall not be liable for any errors in illustrations, size, weight, quality and/or price (lists).
- 2.8. An agreement that has been concluded may be cancelled by the Buyer only subject to the Seller's prior consent in writing. If the Seller agrees to the cancellation, the Buyer shall be required to pay compensation to the Seller of at least 25% of the amount that the Buyer would have had to pay to the Seller if the Agreement had been carried out, without prejudice to the Seller's right to compensation in full for any expenses and losses incurred.

### Delivery dates and times

- 3.1. The agreed delivery dates and times shall always be approximate and subject to unforeseen circumstances.
- 3.2. If delivery cannot be made at the agreed date and time or, as the case may be, within the agreed period, the Seller shall be entitled to make partial deliveries and to extend the delivery period by three months. Such extended period shall commence on the date of receipt of the Buyer's notice of default in writing, but not before the day after the date on which the agreed delivery date expires.
- 3.3. Failure to meet the delivery period shall not entitle the Buyer to dissolve the Agreement and/or to demand compensation unless the Buyer can prove intent or gross negligence on the part of the Seller.

### Warranty, complaints and liability

- 4.1. Immediately on delivery the Buyer shall be required to inspect the goods delivered for any variances from the agreed requirements. Any complaints must be lodged with the Seller in writing within ten working days of the delivery date. On expiry of the aforesaid period, the Buyer shall be deemed irrevocably and unconditionally to have accepted the goods delivered. The Buyer must keep any defective goods at the Seller's disposal. Lodging a complaint shall not suspend the Buyer's payment obligation in respect of the goods in dispute. The Buyer must report in writing any invisible defects within ten working days of discovery thereof, but no later than one year of the delivery. Any legal action must be brought within one year of the date on which a complaint was lodged punctually, on pain of nullity.
- 4.2. Quality requirements or quality standards with respect to goods to be delivered by the Seller must have been agreed explicitly. Minor variances and differences in quality, colour, size or finish - usual in the sector or technically unavoidable - shall not warrant the lodging of a complaint.
- 4.3. The warranty obligations of the Seller shall not go beyond the quality stipulations explicitly made or the quality standards explicitly agreed.
- 4.4. a. Subject to the provisions hereinafter, neither the Seller nor the Seller's employee(s), nor third parties engaged by the Seller shall ever be liable, for any reason, for any loss sustained by the Buyer or any third party in respect of any delivery commitment, the delivery of goods, the delivered goods themselves or the use thereof or any work or recommendations.  
b. The Seller's liability for any direct costs and losses, in any way relating to or caused by an error or omission in the performance of the Agreement, shall be limited at any time to redelivery or to the invoice amount for the order.  
c. The Seller shall never be liable for any indirect, special, incidental or consequential loss or punitive damages, in any way whatever associated with or caused by an error or omission in the performance of the Agreement, including but not limited to transport costs, travel and accommodation expenses, (dis)assembly and/or (re-)installation costs, profit reduction and interruption of operations, even if the Seller has been advised of the possibility of such types of loss or damages.
- 4.5. Any warranty given by the Seller shall not be valid if:
  - a. and as long as the Buyer is in default vis-à-vis the Seller;
  - b. the goods have been exposed to abnormal conditions or have been handled incompetently or without due care;
  - c. the goods have been stored for longer than usual and if a loss of quality is likely to have been sustained as a consequence thereof;
  - d. the Seller has not been given an opportunity to investigate a defect within ten working days of its discovery;
  - e. one year has elapsed since delivery.

- 4.6. The Seller does not guarantee and shall never be deemed to have guaranteed or to warrant that the goods purchased are suitable for the purpose for which the Buyer wishes to treat or process them or wishes to use them or cause third parties to use them. Samples shall be provided for indication purposes only.
- 4.7. If this Agreement covers goods that the Seller procures or has procured from third parties, the Seller's responsibility and/or liability shall be limited to the responsibility and/or liability to the Seller of the Seller's supplier or of a third party or third parties engaged by the Seller. This provision shall apply only in so far as its application is more advantageous to the Buyer than the application of the provisions set out in clauses 4.4 and 4.6.
- 4.8. The Buyer indemnifies the Seller against any third-party claims for compensation for loss or otherwise which relate directly or indirectly to any delivery commitment, the delivery of goods, the delivered goods themselves or the use thereof or any work or recommendations. The Buyer furthermore indemnifies the Seller against any claims by third parties for compensation for loss or otherwise which relate directly or indirectly to the editing and/or (electronic) transmission of the information furnished by the Seller.

### Transport

- 5.1. If the goods are ready for purchase by the Buyer, regardless of the agreed mode of transport, and if the Seller has informed the Buyer accordingly, the Buyer shall be required to purchase the goods forthwith. If the Buyer fails to meet this requirement, the Seller shall be entitled either (i) to warehouse the goods at the Buyer's expense and risk, or to keep them warehoused, and to invoice the Buyer without the possibility of a refusal of payment thereafter on account of pending collection, or (ii) to dissolve the Agreement without judicial intervention, without prejudice to the Seller's right to compensation for any expenses and losses incurred.
- 5.2. The Buyer shall be required, at the agreed place of delivery, to unload the goods as quickly as possible, at the Buyer's expense and risk. If this requirement is not met, the provisions set out in clause 5.1 shall apply by analogy.
- 5.3. The means of transport shall be at the Seller's option; the choice of transport shall not affect the provisions set out in clause 2.4.
- 5.4. Goods which the Seller is to deliver shall be transported at the Buyer's expense and risk unless explicitly agreed otherwise.

### Price and payment

- 6.1. Irrespective of whether they have been stated orally, in writing, in a specific quotation or otherwise, the prices quoted by the Seller shall be based on any information furnished at the time of the request and are exclusive of VAT and other Government charges payable on sale and delivery, and shall be based on delivery ex works (Incoterms). If one or more cost components are subject to an increase after the date of the Agreement - even if such happens consequent to foreseeable circumstances - the Seller shall be entitled to increase the agreed price accordingly.
- 6.2. Every payment is to be made within thirty days of delivery, net and in cash, without the Buyer being entitled to any discount or set-off that has not been explicitly agreed. Different payment arrangements must be agreed in writing. The Buyer's right to set off any claims it may have on the Seller is explicitly excluded.
- 6.3. The Buyer shall be deemed to default on payment, without any reminder or notice of default being required, on expiry of the period specified in clause 6.2 if payment is not made in full during that period or if an (extra)judicial moratorium, bankruptcy, involuntary liquidation or debt rescheduling arrangement has been applied for, granted or pronounced, as the case may be.
- 6.4. If the Buyer is deemed to be in default by operation of law in accordance with the provisions laid down in the preceding clause, the Buyer shall be required, without any further notice of default or reminder being required, to pay interest on the outstanding amount with effect from such time, at the current rate of Dutch statutory interest. If the Seller has to take (extra)judicial measures in connection with late payment, the Buyer shall bear all the costs arising therefrom, which shall total at least 15% of the outstanding claim, subject to a minimum of EUR 150, without prejudice to the right to compensation in full.
- 6.5. Irrespective of different requirements or payments, the Seller shall be entitled to apply any payments, in a sequence at the Seller's discretion, to the reduction of any sums that the Buyer is required to pay to the Seller on account of deliveries, interest and/or costs.
- 6.6. If and for as long as the Buyer fails to meet any of its obligations to the Seller under the Agreement, or to meet such in full, properly or on time, shall entitle the Seller to suspend the delivery of goods. Failure by the Buyer to remedy its non-compliance with the Agreement immediately, despite a reminder by the Seller to do so, shall entitle the Seller to dissolve the Agreement with immediate effect by a private letter, without being required to pay compensation for any loss sustained by the Buyer.

### Retention of title

- 7.1. Any goods delivered shall remain the Seller's exclusive property until such time as the Buyer meets all obligations arising from or associated with agreements under which the Seller has undertaken to make delivery, including claims relating to penalties, interest and costs. Until such time the Buyer shall be required to keep the goods, which the Seller has delivered, separately from other goods and clearly identified as the Seller's property and to insure the goods properly and keep them properly insured.
- 7.2. If the Buyer fails to meet any of its obligations vis-à-vis the Seller under clause 7.1 or if the Seller has reason to fear that the Buyer will not meet the aforesaid obligations, the Seller shall be entitled, without any notice of default being required, to repossess the delivered goods forthwith, regardless of where they are located. The Buyer shall bear the repossession costs.
- 7.3. Until the above-mentioned claims are met, the Buyer shall not be entitled to dispose of the goods in question or to create a lien or pledge, either possessory or non-possessory, on the goods in question.
- 7.4. At such time as the Buyer meets all its obligations to the Seller as stated in clause 7.1, the Seller shall transfer title to the delivered goods to the Buyer, subject to the Seller's pledge on account of any other claims which the Seller may have on the Buyer. The Buyer shall, on the Seller's first demand, assist with any necessary acts in that respect.

### Disputes

- 8.1. All agreements concluded by the Seller shall be governed by Netherlands law. The provisions of the UN Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) shall not apply, nor shall any existing or future international regulations for the sale of goods the applicability of which can be excluded by the parties.
- 8.2. Any disputes arising between the parties shall be subject to the jurisdiction of the competent court in the Netherlands in whose area of jurisdiction the Seller's domicile is located, unless another court is competent under mandatory statutory rules.
- 8.3. In so far as these Terms of Sale and Delivery are also available in a language other than Dutch, the Dutch version shall prevail at all times in the event of any discrepancy.

Any quotations, offers and agreements relating to goods to be delivered and/or services to be provided by us shall be subject to the Terms of Sale and Delivery of the above mentioned wholesale organization which were filed with the Chamber of Commerce Amsterdam in 2013. A copy of these Terms will be sent to you free of charge upon request. Any other terms and conditions are expressly rejected.