

## GENERAL TERMS AND CONDITIONS

of

**D.P. SUPPLY B.V. of EMMEN**

### 1. Definitions

- 1.1. Contract: a sale contract between DP SUPPLY as the seller, and the Buyer;
- 1.2. DP SUPPLY: D.P. SUPPLY B.V.;
- 1.3. General Conditions: these general terms and conditions;
- 1.4. Buyer: the legal entity or natural person that enters into a Contract with DP SUPPLY;
- 1.5. Products: products and goods in the widest sense, as offered, supplied, and/or delivered by DP SUPPLY to Buyer.

### 2. Scope

- 2.1. These General Conditions govern every offer or quote made by DP SUPPLY and every Contract between DP SUPPLY and Buyer.
- 2.2. Any exceptions to these General Conditions are valid only if they have been approved in writing by DP SUPPLY.
- 2.3. Any general terms and conditions belonging to Buyer are hereby expressly excluded and do not apply to any Contract.

### 3. Offer and Contract formation

- 3.1. Any offer from DP SUPPLY, including but not limited to all prices, details of packaging, statements about size and weight governing the Products offered, as included in offers, quotes or other claims made by DP SUPPLY, are without commitment.
- 3.2. A Contract is effected when there is written confirmation by DP SUPPLY. This written confirmation by DP SUPPLY constitutes conclusive proof of the Contract, unless Buyer submits a written objection to its contents within three working days of receipt thereof.
- 3.3. Undertakings from a representative, agent or other intermediary acting for or on behalf of DP SUPPLY only bind DP SUPPLY once they have been confirmed in writing by DP SUPPLY. In the event of any discrepancy between the content of any confirmation given by any representative, agent or other intermediary, irrespective of whether the confirmation by DP SUPPLY is given before or after the confirmation of the representative, agent or other intermediary, and the content of the confirmation of DP SUPPLY,

the confirmation of DP SUPPLY shall prevail.

### 4. Examination and complaints

- 4.1. Buyer shall examine the Products immediately upon delivery to check that they meet the contract terms. Any visible defects shall be notified to DP SUPPLY immediately in writing, and in any event within three days following delivery. Latent defects shall be notified to DP SUPPLY in writing within 14 days after being discovered or reasonably ought to have been discovered.
- 4.2. If Buyer has not notified DP SUPPLY in writing of the defect within the period specified in article 4.1, all rights and claims against DP SUPPLY of any kind lapse, pertaining to defects that the Buyer could have reported. These rights and claims will in any event expire after three months following delivery of the Products to Buyer.
- 4.3. After the discovery and reporting of any such defect, Buyer must immediately and at its own expense return the Products to DP SUPPLY upon a request to that effect by DP SUPPLY, to enable DP SUPPLY to investigate whether the complaint is justified.
- 4.4. A minor discrepancy concerning the stipulated quantities and other details does not qualify as a defect for the purposes of this provision. The term 'minor discrepancy' shall mean any discrepancy of less than 5% of the quoted quantity.
- 4.5. Notwithstanding the preceding provisions of this article, Buyer loses its right to complain if:
  - The defect is caused by Buyer's lack of care;
  - The Products are packed, transported, stored or used by or on behalf of Buyer incorrectly, inappropriately, or in breach of instructions issued by DP SUPPLY or its representatives;
  - The Products are processed by or on behalf of Buyer.
- 4.6. If DP SUPPLY rules a complaint as referred to in this article to be justified, DP SUPPLY shall choose either to repair the relevant Products free of charge, to replace them or to compensate Buyer.
- 4.7. A complaint does not release Buyer from its obligation to pay the invoice amounts.
- 4.8. DP SUPPLY is not obliged to compensate for the unsolicited return of Products. These Products will be stored at the expense of Buyer, without taking them back. There will be written confirmation as to whether, and under what conditions, these Products will be taken back.

## **5. Delivery**

- 5.1. Products will be delivered in accordance with the Incoterms 2010 (or most recent version thereof). We refer to our sales contract for the agreed Incoterm.
- 5.2. Delivery dates and schedules stated by DP SUPPLY are indicative only and are not to be considered as final deadlines. Buyer cannot derive any rights from any delivery date or other deadline being exceeded. Failure to meet the delivery date, regardless of the cause, shall never entitle Buyer to any damages, to refuse the Products, to (partial) termination of the Contract or suspension of any obligations, under this Contract or any other contracts connected herewith.
- 5.3. If a delivery period is indicated, this period does not start to run until DP SUPPLY has received all information necessary for the performance of the Contract from Buyer.
- 5.4. If Buyer does not purchase the Products within the period specified in the Contract, DP SUPPLY is entitled to charge Buyer for interest, storage costs and all other damage or loss incurred or suffered by DP SUPPLY resulting from the breach by Buyer.

## **6. Price, payment**

- 6.1. Unless expressly agreed otherwise, all prices are indicated in Euros excluding VAT.
- 6.2. If after formation of the Contract circumstances occur that give rise to increase in cost prices, whether or not foreseeable, DP SUPPLY is entitled to increase the agreed price accordingly.
- 6.3. Unless agreed otherwise in writing, payment of the purchase price must be made before delivery of the Products, and credited to the bank account of DP SUPPLY within 14 days from the invoice date.
- 6.4. Buyer shall never be entitled to suspend payment, nor to claim set off or invoke the right of retention.
- 6.5. In the event Buyer fails to pay within the agreed period, it is automatically in default. Buyer will as of that moment have to pay interest over the invoice amount at 1% per month or part of a month, or at the statutory interest rate, whichever is higher. Buyer shall also be liable for all extrajudicial collection costs, fixed at 20% of the principal sum and interest, without prejudice to the right of DP SUPPLY to claim the actual costs insofar as these exceed this amount.

- 6.6. All payments must be made without any deduction or set-off. Payments made by Buyer will first be applied to settle all interest payable and judicial and extrajudicial costs referred to in Article 6.5, and subsequently to reduce the outstanding debts, beginning with the oldest.

## **7. Retention of title**

- 7.1. The risk of the Products transfers to Buyer at the time of the delivery, as defined in Article 5.1.
- 7.2. DP SUPPLY retains title to the Products, until Buyer has complied with all its obligations under, or connected with, the Contract.
- 7.3. If Buyer is in default of any obligation under the Contract, DP SUPPLY shall be entitled to recover the Products belonging to it from the place where they are located, or to engage a third party to recover them. The term 'Products' in this respect includes new goods created from, or with the use of, the Products. Buyer shall cooperate fully to enable DP SUPPLY to exercise the retention of title as described in section 2 of this article.
- 7.4. As long as DP SUPPLY retains title to the Products, Buyer is not entitled to dispose of these Products, or to encumber them with a restricted right in rem.
- 7.5. Buyer is not authorised to assign or pledge any claim it may have against any third party to which it has resold the Products without the prior written consent of DP SUPPLY. As soon as DP SUPPLY indicates it wants to take in pledge the above-mentioned claims, Buyer must pledge these claims to DP SUPPLY to provide security for the claims by DP SUPPLY against Buyer.

## **8. Suspension and termination**

- 8.1. DP SUPPLY is entitled to suspend performance of all or any part of the Contract at any time if Buyer is in breach of any of its obligations under the Contract, without a warning or notice of default is being required.
- 8.2. Notwithstanding the right of DP SUPPLY to payment of its invoices, all loss and other costs, including those incurred by DP SUPPLY, resulting from a suspension as described in section 1 of this article, is payable by Buyer.
- 8.3. If Buyer fails to meet its obligations under the Contract, or if DP SUPPLY has good reason to assume that Buyer will not comply with these obligations and Buyer fails to provide adequate security for compliance with its obligations on

demand of DP SUPPLY, then DP SUPPLY may terminate all or part of the Contract in writing with immediate effect without the need to first serve notice of default or judicial intervention.

8.4. The term 'good reason' as used in section 3 of this article includes, but is not limited to, the event of:

- A provisional or final suspension of payments is granted to Buyer;
- Petition of bankruptcy is filed, or ordered, in respect of Buyer;
- Repeated failure to pay correctly.

8.5. If DP SUPPLY agrees to the termination, without being in default itself, it is always entitled to compensation for all financial loss, including costs, loss of profits and the reasonable costs incurred in determining loss and liability.

8.6. In the event of partial termination, Buyer cannot claim undoing of the part of the Contract already performed by DP SUPPLY and DP SUPPLY remains the full right to payment for her performance.

## **9. Force majeure**

9.1. In the event of force majeure, DP SUPPLY has the right to terminate all or any part of the Contract without judicial intervention, or to postpone the agreed delivery date. In such cases DP SUPPLY is never liable to pay compensation for any damage or loss and can claim payment in full for any Products already delivered.

9.2. The term 'force majeure' in article 9.1, refers to events beyond the control of DP SUPPLY, whereby normal manufacture and/or delivery of the Products is obstructed or impossible, including, but not limited to: (civil) war, riots and civil commotion, mobilisation, import and export barriers, E.U. or national government regulations, strike, lock-out, sit-down strike, fire, frost, floods, late delivery of materials, raw materials, and fuel, or other business disruption, both in respect of the business of DP SUPPLY and the businesses from which DP SUPPLY obtains materials or raw materials, all in the broadest sense.

## **10. Liability**

10.1. DP SUPPLY's liability shall always be limited to direct damage. Direct damage is strictly defined as: damage to the Products. Indirect or consequential damage shall not be reimbursed. DP SUPPLY's liability, for whatever reason, shall

furthermore at any time be limited to the invoice amount for the Products or, if the invoice amount cannot be ascertained, up to a maximum of € 5,000.- (five thousand Euros) per claim, but shall never exceed the amount that its liability insurer pays out in the respective case.

10.2. DP SUPPLY is not liable for defects in the Products that are the result of careless processing or use by Buyer.

10.3. DP SUPPLY is not liable for the consequences of the use of goods from third parties that are involved at the request of Buyer. If such goods are involved other than at the request of Buyer, the liability of DP SUPPLY is limited to the amount that DP SUPPLY effectively recovers from such third party.

10.4. Buyer must indemnify DP SUPPLY against all possible claims by third parties connected with or derived from the Contract.

10.5. If in relation to Products a subsidy is awarded to DP SUPPLY or Buyer and this subsidy is not fixed or is revoked, Buyer must compensate DP SUPPLY for an amount equal to the un-fixed or revoked subsidy, unless the said subsidy would be provided to Buyer. In the latter case, Buyer cannot make any claim for compensation against DP SUPPLY.

## **11. Expiry period**

Notwithstanding the provisions of Article 4.2, all of Buyer's claims or rights of claim, of any nature, against DP SUPPLY under or connected with the Contract, these General Conditions or otherwise, expire six months after the event giving rise to such claim, unless the matter is taken to court within the said period.

## **12. Applicable law / competent court**

12.1. The Contract, these General Conditions, and all other legal relationships between DP SUPPLY and Buyer are governed by Dutch law. Any dispute between DP SUPPLY and Buyer may be exclusively brought before the Court of Overijssel, for the district of Zwolle, The Netherlands. The terms of the Vienna Sales Convention are expressly excluded.

12.2. Notwithstanding the terms of article 12.1, DP SUPPLY is exclusively entitled to bring any dispute before the court at Buyer's domicile.

### **13. Security**

- 13.1. On demand by DP SUPPLY, Buyer must pay in advance for the Products it has ordered or furnish adequate security for the fulfilment of all its obligations in any such form as DP SUPPLY may require.
- 13.2. If Buyer fails to comply with any request by DP SUPPLY as referred to article 13.1, any and all liability of Buyer towards DP SUPPLY, of any nature, becomes immediately due and payable, without prejudice to the other rights that DP SUPPLY may have in such a case.

### **14. Logos and trade names**

Buyer is not permitted to use the logos or trade names of DP SUPPLY, without the prior written consent of DP SUPPLY. All intellectual property rights relating to the Products, and any commercial claims made by DP SUPPLY, are vested in DP SUPPLY, unless specified otherwise.

### **15. Final provisions**

- 15.1. If and insofar as any provision of these General Conditions turns out to be invalid, the other provisions shall continue to exist and the invalid provision will be replaced by a provision that in terms of content and scope resembles as far as possible to the original provision.
- 15.2. If at any time DP SUPPLY does not enforce strict compliance with these General Conditions, this does not imply that these General Conditions do not apply or that DP SUPPLY thereby loses the right to require strict compliance with these Conditions in future similar or other situations.
- 15.3. The Dutch version of these General Conditions shall take precedence over any translation thereof with regard to interpretation hereof.

### **16. Filing**

These general terms and conditions of sale and delivery have been filed with the Chamber of Commerce for Noord-Nederland, The Netherlands, under reference number 14.2.