

SMITH & SINCLAIR



1. Definitions

- 1.1 In these general conditions the following terms are given the following meaning, unless explicitly indicated differently.

The Supplier: the user of the general conditions;

The opposing party: the natural person or the legal body receiving special offers from the supplier, or entering into agreement with the supplier;

Agreement: the agreement between the supplier and the opposing party.

2. Application/conversion

- 2.1 These General Conditions apply to all legal relationships between the enterprises affiliated with COVEG, and to enterprises which have been granted permission to use these Conditions (hereafter to be termed: “the supplier”) and the opposing party. Accepting a special offer or placing an order implies that the opposing party accepts the application of these General Conditions.
- 2.2 These general conditions can only be deviated from in writing.
- 2.3 The application of general and/or specific conditions of the opposing party is excluded, unless the supplier has accepted the application of such conditions in writing.
- 2.4 These General Conditions also apply to all agreements with the supplier, for the execution of which third parties are called in.
- 2.5 Definitions deviating from these General Conditions, whose application has been agreed upon between the supplier and the opposing party in a separate agreement, do not apply to other special offers, orders, quotations and agreements between the supplier and the opposing party.
- 2.6 Should these General Conditions become partially null and void or no longer binding, or can any definition in these General Conditions not be appealed to, then parties

remain bound to the remaining part. Parties will replace the section that is null and void or no longer binding by conditions that are valid and binding and of which the legal consequences correspond to the greatest degree possible with those of the null and void or no longer binding section, taking into account the contents and purpose of these General Conditions.

- 2.7 The supplier reserves the right to change or supplement the conditions from time to time. The latest registered version, as it reads at the time of realization of the agreement, always applies.

3. Special offers/realization of agreement

- 3.1 Each special offer of the supplier is free of obligation and should be considered as one whole, unless this is explicitly deviated from in writing.
- 3.2 If the opposing party places an order, the agreement will only be effected by the supplier accepting it in writing, or by sending a confirmation of order by electronic means, or by starting its execution.
- 3.3 Samples or models, handed out or shown in catalogues or electronically, only count as indications, without the due goods having to meet the specifications.

The supplier is not bound to subsequent delivery of earlier delivered products, if production of these products has stopped, or if these products have been taken from the supplier's sales program.

- 3.4 The supplier cannot be kept to its special offers if the opposing party should have understood, in terms of reasonableness and judiciousness and views prevailing in society, that the special offer or a part thereof contains an apparent error or spelling mistake.

4. Prices

- 4.1 All prices are ex warehouse and exclusive of value added tax (VAT)
- 4.2 Should factors on which the supplier bases his prices change, then the supplier has the right to increase prices after sending the special offer or after realization of the agreement. If the supplier increases prices within a three-month term after realizing the agreement, the opposing party will be entitled to partially or fully cancel the agreement, without the supplier being bound to any damages.

5. Delivery

- 5.1 Delivery takes place at the address of the opposing party, unless explicitly agreed otherwise.
- 5.2 The opposing party is bound to take up the purchases at the moment of delivery, or at the moment they are made available to him. Furthermore the opposing party is obliged to provide sufficient loading and unloading facilities and to ensure the shortest possible waiting time for delivery. Should the opposing party refuse delivery, or be negligent in the provision of information or instructions necessary for delivery, then the opposing party will be due all additional expenses.
- 5.3 At the moment of delivery the risk regarding the delivered goods passes on to the opposing party.

6. Delivery time

- 6.1 The delivery time quoted by the supplier is based on the circumstances applicable at the time of the agreement and, as far as being dependent on the performance of third parties, on the data supplied by those third parties. Delivery time will be observed by the supplier to the greatest extent possible.
- 6.2 Delivery time serves as an indication and not as a fatal term, unless it has explicitly been agreed on. In case of untimely delivery the supplier should be declared in default by the opposing party in writing and he should be allowed a reasonable term during which he can as yet fulfill his obligations.
- 6.3 Should the supplier need data from the opposing party with regard to the execution of the agreement, then delivery time will start after the opposing party has provided the supplier with these data.
- 6.4 If delivery time is exceeded, the opposing party will not be entitled to any damages.

7. Partial delivery

The supplier is entitled to the partial delivery of goods. If goods are delivered in parts, the supplier is entitled to invoice each part separately, unless a partial delivery does not have any independent value.

8. Transport/risk

- 8.1 Dispatch and transport occur at the risk of the supplier.
- 8.2 As soon as the purchased goods have been delivered to the opposing party by the supplier or by a carrier contracted by him, the goods will be at the risk of the opposing party as of the moment of delivery, also if property has not yet passed to the opposing party.

9. Packaging

- 9.1 The multi-use packaging remains the property of the supplier. It is mandatory for the opposing party to return the multi-use packaging material to the supplier. This is done at the expense of the opposing party.
- 9.2 The supplier is entitled to set a term within which the multi-use packaging should be returned.
- 9.3 The supplier is bound to take back the packaging from the opposing party which is returned within the term stated in article 2 against the price invoiced to the opposing party by the supplier, unless, notice about this change in price has been given to the opposing party at least three months before the date on which a different price will apply.
- 9.4 The obligation on the part of the supplier of taking back the packaging and of restitution of the invoiced price only holds good if the multi-use packaging is in a good state of repair, is clean and does not contain refuse.

10. Reservation of property

- 10.1 Goods delivered to the opposing party by the supplier remain the property of the supplier until the amounts due by the opposing party have been paid in full. Property of the goods delivered, notwithstanding their actual delivery, is only transferred to the opposing party after the opposing party has paid in full all which is due with regard to any agreement with the supplier. Among which is also included compensation of interest and expenses, also of orders executed before.
- 10.2 Should the supplier claim the goods on which reservation of property rests as his very property in pursuance of section 1 and thereto retrieve those goods or deliver them to a third party *longa manu*, then the supplier's claim against the opposing party, relevant to these goods to the total sum the opposing party is due to the supplier, will be decreased by the market value of the goods thus retrieved at the moment of retrieval. The market value equals the purchase price that has been, or could have been, realized by the private or public sale of the retrieved goods to third parties.

- 10.3 Barring that which is defined in article 10.4, the opposing party cannot encumber, deliver to others, estrange, rent, give into use, pawn or otherwise encumber the delivered goods before property thereof has been transferred to him. Until the actual transfer of property has taken place, the goods delivered can only be used for the purpose corresponding its use, as it was defined at the conclusion of the agreement, or as it could reasonably be expected.
- 10.4 The opposing party is only entitled to sell or deliver the supplied goods of which the supplier is the owner, insofar as this is necessary in the framework of his normal management. In case of resale the opposing party is bound to insist on a reservation of property from its buyers.
- 10.5 At the first request of the supplier, or the (legal) persons to be appointed by the supplier, the opposing party is bound to put the supplied goods at his disposal and as yet now irrevocably gives authorization to enter the premises where the supplied goods are, in order to retrieve the goods falling under the reservation of property.
- 10.6 In case of seizure, (provisional) suspension of payment or bankruptcy the opposing party should immediately point out the rights (of ownership) of the supplier to the seizing bailiff, the receiver or the curator.

11. Payment

- 11.1 Invoices of the supplier must be paid no later than the due date of the invoice, in a way to be indicated by the supplier. The date of payment is the value date on which payment is received.
- 11.2 Payment should be made in the agreed upon currency without deduction or appeal to compensation.
- 11.3 Should the opposing party not pay within the agreed upon term, he will be in default as of the due date of the invoice, without a prior notice of default being necessary.
- 11.4 The opposing party will owe an interest of 1.5% per month on the amount due as of the due day.
- 11.5 Objections against the height of the invoices do not suspend the obligation to pay.
- 11.6 Payments made by the opposing party firstly serve in reduction of the expenses, then in the reduction of the interest falling vacant, and finally in reduction of the principal sum and the current interest.
- 11.7 In the event of untimely payment extrajudicial charges made with regard to the recovery will be due by the opposing party, these charges amount to 15% of the principal sum to a minimum of 250,-- Euros. Extrajudicial charges are anyhow due when the supplier has called in a third party for the recovery.

- 11.8 In the event of untimely payment, liquidation, bankruptcy, or suspension of payment on the part of the opposing party, all obligations to pay of the opposing party are payable on demand, regardless whether the supplier has already invoiced, or whether prefinancing has already taken place. The supplier is authorized to suspend further execution of the agreement, or cancel the agreement, such without prejudice to the supplier's right to claim for damages from the opposing party.

12. Settlement and security

- 12.1 The supplier is always entitled to settle that which is payable or which is claimable under condition from the opposing party by means of a counterclaim, payable or not, of the opposing party on the supplier.
- 12.2 In the event the supplier's claim is not yet payable, the supplier will not use his power to settlement, unless the counterclaim of the opposing party is seized or redressed in any other way, a limited right in rem is established, or the opposing party transfers its counterclaim under a special title. If possible the supplier will inform the opposing party of the use of his power of settlement in advance.
- 12.3 At the supplier's first request it is mandatory for the opposing party to give security, immediately and satisfactorily, and in the form desired by the supplier. If necessary this must be supplemented for the fulfilment of all his obligations. As long as the opposing party has not met these demands, the supplier is entitled to suspend his obligations.
- 12.4 If, after a reminder to that effect, the opposing party does not comply with a request as indicated in the previous article within a fortnight, all his obligations will fall due immediately.

13. Liability

- 13.1 The liability for damages, caused by the supplier imputably defaulting in the observance of his obligations, is limited to the invoice amount that has been charged by the supplier.
- 13.2 The supplier is never liable for any indirect damages, such as those due to the closing down of a business, damages because of loss of profit, damages because of delay, consequential damages, or any other trading loss for any reason or any kind.
- 13.3 Furthermore the supplier is not liable for damages as a result of information or advice given by the supplier, whose contents do not explicitly form part of a written agreement.

- 13.4 Without prejudice to the above the supplier is not liable if damages are due to evil intent and/or flagrant culpability and/or culpable action, or to injudicious or improper use by the opposing party.
- 13.5 The opposing party indemnifies the supplier against all third party claims to compensate damages (also) caused by, or connected to, goods supplied by the supplier.
- 13.6 The opposing party is bound to report in writing any event causing damage to the supplier within a 14-day term after the event, or, should this not be reasonably possible, as promptly as possible, in default of which any claim to damages expires.
- 13.7 Any title to payment of an agreed penalty, or to compensation of damages expires after the lapse of a year after the event, which made the penalty fell due or which caused the damages, unless legal recovery has been commenced within the term specified.
- 13.8 That which is stipulated in this article does not impede the supplier's legal liability on the basis of legally compelling situations. In that event the supplier's liability is limited to an amount of €500,000.—(five hundred thousand Euros) per event, or per related chain of events.

14. Faults; terms of complaint; return shipments

- 14.1 The opposing party should check whether the goods delivered correspond to the agreement. To that end the opposing party should among others examine the goods delivered on the following points on delivery:
- whether the correct goods have been delivered;
 - whether the goods delivered correspond regarding quantity and number with what has been agreed between parties;
 - whether the goods delivered meet the demands which can be made for normal use and/or commercial purposes.
- 14.2 Should visible faults and deficiencies be established, then the opposing party should state them on the delivery bill, the bill of carriage or any other transportation document. In addition to that the opposing party is bound to report these faults and/or deficiencies to the supplier via e-mail or in writing.
- 14.3 Non-visible faults should be reported to the supplier within 30 days of delivery, at least after they could reasonably be established, in writing and motivated while stating the invoice particulars.
- 14.4 Complaints on invoices should be reported in writing to the supplier by the opposing party within 8 days of the invoice date.

- 14.5 If the opposing party does not report faults or complaints within the terms specified, his complaint will not be attended to and his rights will relapse. The opposing party's right to compensation or replacement of goods delivered lapses if the goods have been processed, treated or have not been stored correctly, or if storage life of the relevant goods has expired at the moment a complaint is lodged.
- 14.6 The goods delivered by the supplier to which the complaints relate must remain available for inspection by the supplier in the state in which these goods were at the time the faults were established.
- 14.7 Return shipments are dispatched after consent of the supplier. Return shipments that are made without the supplier's consent will be kept at his disposal by the supplier at the expense and risk of the opposing party.

15. Intellectual property/copyright

- 15.1 The goods delivered by the supplier do not infringe upon any title to intellectual property or copyright. Should it appear, in a court of law or otherwise, that any goods delivered by the supplier infringe upon the title to intellectual property or copyright by a third party, then the supplier will replace, to his own choice and after consultation with the opposing party, the relevant goods by goods that do not infringe upon aforementioned titles, or acquire a title of use for them or take back the relevant goods against payment of the purchase price decreased with the usual depreciation.
- 15.2 The opposing party is not entitled to replacement of the goods conflicting with any title to intellectual property or copyright of a third party, if he has not informed the supplier in writing within 30 days after this fact has come to the notice.
- 15.3 In the event of delivery of software the opposing party will only acquire the user rights and the opposing party will never become the proprietor of the software. The copyright of the software rests with the manufacturer.

16. Suspension and cancellation of the agreement

- 16.1 If the opposing party does not meet, does not meet in an appropriate manner or does not meet it in time, any obligation arising for him from any agreement or these conditions, the opposing party will be in default without any notice of default and the supplier will be entitled to:
- suspend that agreement and any agreements connected until payment has been secured to a sufficient degree;
 - and/or fully or partially cancel the agreement and any agreements directly connected;

Without the supplier being bound to any damages and without prejudice to the rights due to the supplier.

- 16.2 In the event of (provisional) suspension of payment or bankruptcy of the opposing party, or the opposing party being under legal restraint, all agreements with the supplier will be legally cancelled, unless the supplier informs the opposing party within a reasonable term to desire fulfilment of (part of) the relevant agreement, in which case the supplier is entitled to suspend the execution of the relevant agreement(s) without any notice of default, until payment has been secured to a sufficient degree, without prejudice to the rights due to the supplier.
- 16.3 Furthermore the supplier is authorized to suspend the fulfilment of his obligations or to cancel the agreement, if after the making of the agreement it has come to the supplier's notice that certain circumstances give him good reason to fear that the opposing party shall not fulfil his obligations.

17. Force majeure

- 17.1 If the supplier cannot meet his obligations towards the opposing party because of a non-imputable fault (force majeure), the supplier will be authorized, without legal intervention and to his own choice, to suspend the execution of the agreement or cancel the agreement without legal intervention, without being bound to any damages.
- 17.2 Force majeure of the supplier is understood to be any circumstance independent of the will of the supplier, through which the fulfilment of his obligations towards the opposing party is fully or partially impeded, or through which the fulfilment of his obligations cannot reasonably be required from the supplier, regardless of the fact whether the circumstance could be anticipated at the time of the making of the agreement. Among those circumstances are among others included: strike, lock-out, fire, machinery breakdown, stagnation or supply companies to the supplier not meeting their obligations, transport problems attended to the supplier or third parties and/or measures of any government institutions, and lacking a permit that can be obtained from the authorities, stoppage, loss of the parts to be processed, import or trade bans.
- 17.3 Insofar as the supplier has partially fulfilled his obligations from the agreement, or will be able to fulfil them at the time of the advent of the force majeure and if independent value can be attributed to the fulfilled, respectively to the still to be fulfilled part, the supplier is entitled to invoice the fulfilled, respectively the still to be fulfilled part separately. The opposing party is bound to settle this invoice as if it were a separate agreement.

18. Recall actions

The opposing party is compelled to give his cooperation to recall actions, if it is deemed necessary to the judgment of the supplier to recall the goods delivered from the consumer.

19. Disclaimer

19.1 The opposing party permits the supplier to save the data provided by the opposing party in a database.

19.2 The website of the supplier and all its texts, documents, pictures and sound, everything in its broadest sense, are protected by copyright. Written permission of the supplier is mandatory for further distribution, publication or transfer. Liability for any damage (direct, indirect and resultative damage) resulting from the use of the website and its contents is excluded by the supplier.

20. Limitation

All legal actions by the opposing party against the supplier become prescribed by the expiration of one year after the opposing party protested the case.

21. Applicable law/competent judge

20.1 Dutch law applies to all legal relationships between the supplier and the opposing party.

21.2 Disputes between the supplier and the opposing party are exclusively settled by the competent judge of the place of establishment of the supplier, unless the supplier, as claiming or requesting party, opts for the competent judge of the place of residence or the place of establishment of the opposing party.