

General Terms and Conditions of Sale, Supply and Payment of Mettre a Table International BV

Article 1. Definitions

In these general terms and conditions the following concepts are taken to mean:

The Supplier: Mettre a Table International Private Limited Company;

Purchaser: a purchaser acting in the exercise of a business or profession;

Incoterms: “ International Commercial Terms”: terms defined by the international Chamber of Commerce in Paris with regard to the apportionment of transport costs and insurance costs and the accompanying risk.

Article 2. Applicability of these terms and conditions

1. These terms and conditions apply to every offer and every agreement between the Supplier and the Purchaser insofar as parties have not expressly derogated in writing therefrom.

2. Any general terms and conditions (of purchase) of the Purchaser are expressly rejected and therefore do not apply.

3. The Purchaser cannot transfer the rights and obligations ensuing from the agreement concluded with the Supplier without permission from the Supplier.

4. If one or more provisions of these general terms and conditions are at any time wholly or partly null and void or declared void, the remaining provisions of these general terms and conditions will continue to apply. In that case the Supplier and the Purchaser will enter into consultation in order to agree to new provisions to replace the nul and void or voided provisions, in the course of which the objective and meaning and effect of the original provisions will be observed as much as possible.

Article 3. Offers and the conclusion of an agreement

1. The offers from the Supplier are without obligation unless stated otherwise. An offer, which contains a period, nevertheless can be withdrawn by the Supplier within 5 days, even after receipt of the assignment.

2. For a combined offer the price applies exclusively for the combination described in this offer. There is no obligation for the Supplier to let a combined price apply proportionally for part of the offer and the price will also not apply automatically for repeat orders.

3. Documentation sent together with the offer is exclusively for information purpose and will not bind the Supplier with the exception of a contrary description.

4. The Supplier expressly retains the claims under copyright law to the documentation provided by the Supplier together with the offer. It is not permitted to provide this material to third parties. It can only be used in the context of the assignment concerned.

5. An agreement will only come into effect after the Supplier has confirmed the assignment in writing (including by email).

Article 4. Delivery

1. The delivery takes place ex works, to the effect that the transport takes place at the Purchaser's expense and risk, unless agreed otherwise. If one of the “Incoterms” is agreed as a delivery condition, the Incoterms applicable at the time of the concluding of the agreement will apply.

2. The Supplier will be entitled to deliver and invoice more than the agreed quantity in the event of goods that are especially produced for the Purchaser and/or goods that are apparent as such. A delivery with a quantity of 10% less of this type of goods will not oblige the Supplier to subsequent delivery.

3. The Purchaser will be obliged to take delivery of the purchased goods at the time at which these are delivered to the Purchaser, or at the time at which these are made available to the Purchaser in accordance with the agreement.

4. If the Purchaser refuses to take delivery or fails to provide information or instructions, which are necessary for the delivery, the goods will be stored at the risk of the Purchaser. All additional costs resulting from this, including in any event the storage costs, will be at the Purchaser's expense.

Article 5. Delivery period

1. The delivery periods stated by the Supplier always apply as an estimate and are never final deadlines.

2. In the event of late delivery, the Purchaser must give the Supplier notice of default in writing and provide the Supplier with a reasonable period to still fulfil the obligations.

3. The delivery period commences as from the day of the confirmation of the assignment in writing from the Supplier to the Purchaser. If specific data is necessary for the processing of the agreement, the delivery period will only commence after all the required data are in the possession of the Supplier.

Article 6. Partial deliveries

The Supplier is permitted to deliver the goods sold in parts. This will not be the case if a partial delivery has no independent value. If the goods are delivered in parts, the Supplier will be entitled to invoice for each part separately.

Article 7. Technical requirements, etc.

1. If the goods to be delivered in the Netherlands must be used outside the Netherlands, the Supplier will not be responsible for the goods to be delivered meeting the technical requirements, standards and/or regulations that are imposed by the laws or provisions of the country where the goods must be used. If the Supplier, upon request from the Purchaser, delivers goods that meet the specifications provided by the Purchaser for use outside the Netherlands, the Supplier will only have an obligation to use best endeavours to meet these specifications. An obligation of result will never arise in this respect.
2. All other technical requirements, set out by the Purchaser for the goods to be delivered, which derogate from the requirements that are usually applicable, must be expressly set out by the Purchaser at the concluding of the sales agreement. The Supplier will always confirm derogating technical requirements expressly in writing, in the absence of which the Purchaser cannot derive any rights from the assignment.

Article 8. Samples, models and examples

If the Supplier has shown a sample, model, or example, this will only serve as an indication. The properties of the goods to be delivered can derogate from the sample, model, or example, unless it has been expressly set out that the delivery will be in conformity with the sample, model, or example. The intellectual property rights with regard to these samples, models, or examples, will not be transferred and no licence will be provided.

Article 9. Termination of the agreement

Inter alia in the following cases the Supplier will be entitled to suspend the further performance of the agreement, or to proceed with the termination of the agreement, all this without prejudice to the right of the Supplier to claim compensation.

1. If, after the conclusion of the agreement, the Supplier acquires knowledge of circumstances, which give the Supplier good grounds to fear that the Purchaser will not fulfil the obligations;
2. If the Supplier has asked the Purchaser at the conclusion of the agreement to provide security for the fulfilment and this security is not forthcoming or is insufficient in spite of a demand;
3. If circumstances occur with regard to persons and/or materials, which the Supplier uses, or tends to use, during the performance of the agreement, which are of such a nature that the performance of the agreement becomes impossible or to such an extent onerous and/or disproportionately costly that further compliance with the agreement can no longer be reasonably required.

Article 10. Guarantee

1. The Supplier guarantees that the goods delivered by the Supplier are free of design, material and manufacturing faults for a period of 3 months after delivery.
2. If the goods demonstrate a design fault, fault in the material, of manufacturing fault, the Purchaser will have the right to repair of the goods. The Supplier can opt to replace the goods if repair would be opposed to this. The Purchaser only has the right to replacement if repair of the goods is impossible.
3. The guarantee will be excluded if it has not been demonstrated to the satisfaction of the Supplier that any noticed defect has arisen as a result of faults in the construction, defective finishing and/or use of inferior material.
4. The Purchaser does not have any right to guarantee if and insofar as the Purchaser does not fulfil the obligations in respect of the Supplier. The Purchaser will not be released from the obligations ensuing from the agreement vis-à-vis the Supplier due to the (alleged) non-fulfilment of the guarantee obligations of the Supplier.
5. If the guarantee concerns a product produced by a third party, the guarantee will be limited to the guarantee that is provided by the producer concerned for that product.

Article 11. Retention of title

1. Delivery takes place subject to retention of title. This proviso applies with regard to claims for payment for all goods delivered or to be delivered by the Supplier to the Purchaser and/or work executed in the context of the agreement, as well as with regard to claims due to the failure on the part of the Purchaser in the performance of the agreements.
2. The goods delivered by the Supplier that, pursuant to subsection 1 are subject to retention of title, can only be sold on in the context of the usual business operations. The Purchaser is not entitled to pledge the goods or to establish any other right thereto.

3. If the Purchaser does not fulfil the obligations, or there is well-founded fear that the Purchaser will not do so, the Supplier will be entitled to remove (have removed) the delivered goods from the Purchaser or from third parties, who keep the goods for the Purchaser.

The Purchaser will be obliged to provide full cooperation thereto, subject to a financial penalty of 10 percent of the amount owed by the Purchaser per day during which the Purchaser refuses to cooperate.

4. The Purchaser will be liable for the decrease in value of the collected goods.

5. If third parties levy attachment on the goods delivered subject to retention of title, or wish to vest or enforce rights thereto, the Purchaser will be obliged to inform the Supplier of this as soon as can be reasonably expected.

Article 12. Defects; time limits for lodging a complaint

1. The Purchaser must (let) inspect the bought goods at delivery or as soon as possible thereafter. The Purchaser must hereby check if the delivery corresponds to the agreement, namely:

- if the correct goods have been delivered;

- if the delivered goods correspond in quantity to that which has been agreed;

- if the delivered goods meet the agreed quality requirements or, if these are absent, the requirements that can be set out for the normal use and/or commercial purposes.

2. If visible defects or shortfalls are noticed, the Purchaser must report these within 3 days after delivery in writing to the Supplier.

3. Non-visible defects must be reported by the Purchaser in writing to the Supplier within 3 days after noticing these, but no later than 3 months after delivery.

4. Also if the Purchaser complains in a timely manner, the Purchaser's obligation of payment and purchase of orders placed continues in existence.

5. Goods can only be returned to the Supplier after prior permission in writing.

Article 13. Price/Price increase

1. Unless expressly stated otherwise, the prices issued by the Supplier are:

- in Euro

- excluding VAT

- on the basis of the minimum quantities applied by the Supplier

- excluding transport costs

- ex factory

2. If the Supplier agreed a specific price with the Purchaser, the Supplier nevertheless will be entitled to increase the price if the Supplier can demonstrate that between the time of the offer and the delivery significant price increases have occurred with regard to the raw materials, currency and/or wages, or circumstances otherwise unforeseen.

3. If the increase amounts to more than 10 percent, the Purchaser will have the right to terminate the agreement, provided that this takes place in writing within seven days after receipt of the notification concerned. A termination as set out above does not give the Purchaser any right to compensation of any damage whatsoever.

Article 14. Packaging

1. The Purchaser will be obliged to return the return packaging within 14 days in an empty and undamaged condition. If the Purchaser does not fulfil the obligations with regard to the packaging, all costs ensuing therefrom will be at the Purchaser's expense. Such costs are inter alia the costs ensuing from the late return consignment and the costs of replacement, repair or cleaning.

2. If the Purchaser does not return the return packaging after a demand within the period referred to therein, the Supplier will be entitled to proceed with replacement and to charge the costs thereof, provided that the Supplier has notified these steps in the demand.

Article 15. Payment

1. Payment must take place at the placement of the order in the manner to be stated by the Supplier.

2. After the expiry of the agreed payment term the Purchaser will be in default by operation of law. The Purchaser will, from the time of the occurrence of default, owe interest of 1 percent per month over the due and payable amount, unless the statutory (commercial) interest is higher, in which case the statutory (commercial) interest will apply.

3. In the event of liquidation, bankruptcy, or moratorium on the part of the Purchaser, the claims of the Supplier and the obligations of the Purchaser in respect of the Supplier will be immediately due and payable.

4. Payment must take place without discount or any offsetting of amounts.

5. The payments made by the Purchaser always serve in the first place to settle all interest and costs owed, in the second place to settle the due and payable invoices that have been outstanding the longest, even if the Purchaser states that the payment relates to a later invoice.
6. In the event of payments received from abroad, all bank charges will be at the client's expense.

Article 16. Penalty clause Collection costs

1. If the Purchaser is in default of fulfilment of one or more of the Purchaser's obligations, all judicial and extrajudicial costs for acquiring payment will be at the Purchaser's expense. In any event, regardless of the work to be executed, the Purchaser will owe on an annual basis:

- over the initial € 3,000 15%
- over the remainder up to € 6,000 10%
- over the remainder up to € 15,000 8%
- over the remainder up to € 60,000 5%
- over the remainder 3%

2. If the Supplier demonstrates to have incurred higher costs, which were reasonably necessary, these will also be reimbursable by the Purchaser.

Article 17. Liability

1. The Supplier will not be liable for damage arisen as a result of any failure in the fulfilment of the Supplier's obligations in respect of the Purchaser. The fulfilment of the obligations of the Supplier ensuing from the guarantee, as described in article 10, applies as the sole compensation in full. Any other claim for compensation, on whatsoever basis, is excluded, unless there is an intentional act or gross negligence on the part of the Supplier.

2. The liability of the Supplier is at all times limited to the amount of the payment to be provided by the underwriter of the Supplier in a particular case.

3. If, and only insofar as, the insurance in any case does not offer cover, or does not proceed with payment, and the Supplier is liable, the liability of the Supplier will be limited to a maximum of the invoice amount of the part of the transaction, which the liability relates to. If the transaction, as referred to in the previous sentence, is not divisible, the liability will be limited to the average annual invoice amount, viewed over the five previous years, including the ongoing year.

Article 18. Force majeure

1. Force majeure is taken to mean, in addition to is the provisions included concerning this in the law and case law, every circumstance beyond the control and fault of the Supplier, whether or not foreseeable at the time of the entering into of the agreement, as a result of which performance cannot be reasonably required from the Supplier. Force majeure is inter alia (but not exclusively) taken to mean: lack of raw materials, manufacturing failures, transport disruption of whatsoever nature, industrial actions, lack of personnel, congestion or closure of transport overland, by sea or air, cold weather-related downtime, failures of third parties engaged by the Supplier for the purpose of the performance of the agreement, as well as all hindrances caused by government measures. The same circumstances concerning the suppliers or experts engaged by the Supplier also fall under these provisions.

2. During force majeure the delivery obligation and other obligations of the Supplier will be suspended. If the period, during which force majeure makes the fulfilment of the obligations by the Supplier impossible, lasts longer than 2 months, both parties will be entitled to terminate the agreement, without an obligation of compensation existing in that case.

3. If, at the occurrence of the force majeure, the Supplier has already partially fulfilled the obligations, or only can fulfil the obligations partially, the Supplier will be entitled to invoice separately for the part already delivered or deliverable part, and the Purchaser will be obliged to pay this invoice as if it concerned a separate contract. However, this will not apply if the part already delivered or deliverable part does not have any independent value.

Article 19. Partial voidness

If one or more provisions ensuing from this agreement with the Purchaser would appear not to be legally valid, or not to be entirely legally valid, the other provisions will remain in full effect. In place of any invalid provisions a suitable arrangement will apply, which approaches the intention of parties and the economic result pursued by them in a legally effective manner as closely as possible.

Article 20. Dispute resolution

The (subdistrict) court in Tilburg has exclusive jurisdiction to hear and issue a ruling on any disputes. Nevertheless, the Supplier has the right to summon the Purchaser before the court with competent jurisdiction in accordance with the law.

Article 21. Applicable law

The law of the Netherlands applies to every agreement between the Supplier and the Purchaser. The Vienna Sales Convention is expressly excluded. If parties use a translation of these general terms and conditions, or other documents, the Dutch version of these documents will at all times prevail and be decisive in the event of any lack of clarity.

Article 22. Amendment and location of the terms and conditions

These terms and conditions are filed at the office of the Chamber of Commerce under number 73306002. The most recently filed version of the general terms and conditions, or the version applicable at the time of the coming into effect of the present agreement, shall at all times apply.

Version 1.0, December 2018