

# GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY

## MCB Group - version 1 January 2017

### 1. General provisions

- 1.1 These General Terms and Conditions of Sale and Supply (further to be referred to as: "the Terms and Conditions") apply to all offers, tenders, agreements and other (legal) acts of the private limited companies MCB Nederland B.V. (with its registered office in Valkenswaard, registered with the Ch. of Comm. under no. 17075728), MCB Direct B.V. (with its registered office in Valkenswaard, registered with the Ch. of Comm. under no. 17096466) and MCB Specials B.V. (with its registered office in Almere, registered with the Ch. of Comm. under no. 39065330), which companies are each individually referred to in these Terms and Conditions as the "supplier". The "purchaser" is taken to mean in these Terms and Conditions the other party than the supplier on the legal acts and agreements referred to above with regard to the sale or delivery of goods or services by the supplier.
- 1.2 Business terms used in these Terms and Conditions, offers, confirmation of orders or otherwise must be interpreted in accordance with the most recent version of the Incoterms issued by the International Chamber of Commerce (ICC), in the version as this is in effect at the entering into of the Agreement.
- 1.3 If a provision in writing in an agreement between the purchaser and the supplier is in conflict with a provision of these Terms and Conditions or with an applicable incoterms, the provision in writing in the agreement will prevail.
- 1.4 If these Terms and Conditions or the law set out the procedural requirement of being in writing, emails will also be included therein.

### 2. Agreements

- 2.1 All offers, tenders and other notifications from the supplier about the goods or services are without obligation and will not bind the supplier as a result thereof. Verbal arrangements, agreements and addendums to or amendments of an agreement in writing between parties will only bind the supplier if these are confirmed in writing by the supplier. In the event of conflicts between the order from the purchaser and the confirmation from the supplier the confirmation from the supplier will be exclusively binding.
- 2.2 If in the reasonable opinion of the supplier the financial situation of the purchaser gives reason for this, the purchaser will be obliged upon the request from the supplier to immediate advance payment of or provision of security for the amount owed to the supplier on the basis of the agreement, whereby the supplier in anticipation thereof will be entitled to suspend the performance of the agreement wholly or in part.
- 2.3 If the supplier cannot provide performance in a timely manner as a result of force majeure the period agreed for delivery will be extended by the duration of the force majeure. "Force majeure" in these Terms and Conditions includes: every shortcoming caused by circumstances that are beyond the reasonable control of the party that fails in the fulfilment of an obligation. This includes in any event shortcomings that are the result of power failure, breakdowns of telecommunication services, cyber crime, fire, sanctions regimes, import and export restrictions, strike actions, failure of machines and business interruptions at the location of, or shortcomings of, the suppliers and other third parties involved in the performance of the agreement.
- 2.4 The purchaser is always obliged to maintain strict confidentiality of all information that comes to the knowledge of the purchaser in the context of the delivery of goods or services and about which the purchaser can reasonably suspect that this is confidential. Confidential information includes in any event - but is not limited to - the prices applied by the supplier and the commercial arrangements made between parties. The purchaser will exclusively use confidential information insofar as this is necessary for the performance of the agreement concerned.
- 2.5 The purchaser guarantees that during the trading of the delivered goods in whatsoever form the purchaser will comply with the legislation and regulations applicable thereto. More in particular the purchaser guarantees that the purchaser will respect all export control and sanctions regimes of the European Union and the United Nations and that the goods cannot be directly or indirectly destined or probably destined for any country for which a sanction is in effect for the goods concerned in conformity with EU or UN regulations, unless the purchaser has acquired an exemption for this from a competent authority designated by the UN or the EU.

### 3. Delivery

- 3.1 Delivery will take place "ex works" (Incoterms), unless expressly agreed otherwise. The agreed delivery periods and delivery dates are always an estimate and are subject to contingencies on the part of the supplier.
- 3.2 If delivery cannot take place at the agreed time or within the agreed period the supplier will have the right to provide partial deliveries and the purchaser will still provide the supplier with a reasonable period for performance. The exceeding of a final delivery period will not give the purchaser any right to compensation.
- 3.3 As soon as the goods are ready for the purchaser for taking delivery of and the supplier has informed the purchaser of this the purchaser will be obliged to immediately take delivery of the goods. The failure to fulfil this obligation will give the right to the supplier to store the goods at the expense and risk of the purchaser, or as the case may be to keep the goods stored and to invoice the purchaser, without prejudice to the other rights of the supplier. In such events the purchaser cannot refuse to make payment due to taking delivery still not having taken place.
- 3.4 Insofar as the purchaser has an obligation to unload the goods the purchaser will be obliged to do this immediately.

tely. The purchaser always will be responsible for ensuring the sound condition of unloading equipment and competent personnel so that the safety of persons and goods is safeguarded. In the event of failure to fulfil this obligation the provisions under subclause 3 of this article will apply mutatis mutandis.

### 4. Prices and Payment

- 4.1 The prices offered by the supplier are excluding turnover tax and other duties and are based in the data provided with the application and are based on delivery "ex works".
- 4.2 Every payment must take place within thirty days after the delivery in net cash or by advance payment. The purchaser does not have any right to reduction or setoff unless this is expressly agreed. Derogating payment arrangements must be agreed in writing. The right of the purchaser to setoff any claims against the supplier or to suspend any obligations is expressly excluded.
- 4.3 The applicable payment term is a final period and in the event of exceeding thereof the purchaser will be in default with immediate effect. In the situation of a petition for bankruptcy or an application for moratorium of the purchaser, or as the case may be this has been granted, the purchaser will be in default with immediate effect and all the claims against the purchaser will be immediately due and payable. If and for as long as the purchaser does not, does not entirely, does not properly, or does not fulfil any obligation ensuing from an agreement towards the supplier in a timely manner the supplier will be entitled to suspend the delivery of goods.
- 4.4 The purchaser will owe the commercial interest in the event of late payment. If the supplier must take (extrajudicial) judicial measures related to late payment, including sending one single demand letter, all costs ensuing therefrom will be at the expense of the purchaser, which will be deemed to amount to at least 15% of the outstanding claim with a minimum of 150 Euro.

### 5. Liability and guarantee

- 5.1 The goods delivered by the supplier must comply with the specifications that have been agreed in writing. Except for quality standards that are agreed in writing and other arrangements the goods must exclusively comply with the requirements of EU product legislation as applies in the Netherlands. The purchaser cannot derive any rights from any images, descriptions and information about prices, dimensions, weight and quality of the goods in price lists, on websites, or in other general publications of the supplier or third parties. The supplier will not be responsible for the suitability of the goods for any purpose for which the purchaser wants to use, process or modify the goods, unless the supplier has expressly confirmed the suitability for that purpose in writing to the purchaser. Minor derogations and differences in the quality, colour, dimensions, weight or finish that are usual in the sector or that are technically unavoidable, will not result in any shortcoming. Samples are only provided for indicative purposes.
- 5.2 The supplier guarantees that the goods will comply with the agreement during a period of 12 months after the delivery unless agreed otherwise. This guarantee will not affect reliance by the supplier on the other provisions of article 5 and on force majeure.
- 5.3 The purchaser must immediately after the delivery inspect the delivered goods for any derogation from that which has been agreed. Any shortfall must be noted on the consignment note or delivery document. These shortfalls as well as any other defects that are visible on delivery must be reported in writing to the supplier within ten working days after the delivery. Invisible defects must be reported in writing by the purchaser to the supplier within ten working days after the purchaser has discovered these or ought to have discovered these.
- 5.4 In the event of defects of the delivered goods or services the obligations of the supplier will be limited to repair, redelivery, or as the case may be - at the discretion of the supplier - crediting of the invoice amount related to the defective goods or service.
- 5.5 The purchaser can no longer rely on a defect if the defect has not been reported to the supplier within the applicable guarantee period or in conformity with the provisions regarding this matter. The purchaser can also no longer rely on a defect of an item if the goods have not been treated in conformity with the instructions for use, or otherwise in a careless or incompetent manner, or have been exposed to abnormal circumstances, or if the goods have been stored for longer than usual as a result of which loss of quality can occur.
- 5.6 The purchaser must keep defective goods available for the supplier and must provide the supplier with the opportunity to inspect these goods. Submitting a complaint will not give the purchaser any right to suspension of the payment obligation of the purchaser. Any cause of actions on the part of the purchaser must be made pending, at the risk of forfeiting, one year after reporting the complaint in a timely manner.
- 5.7 The supplier will not be liable for the inaccuracy or incompleteness of advice provided to the purchaser. In addition the supplier will not be liable for damage suffered by the purchaser as a result of a shortcoming, an unlawful act, or on another legal basis. Under no circumstances will the supplier be liable for consequential damage, also including lost profit and turnover, transport costs, installation and removal costs, loss of goodwill, compensation and financial penalties owed to third parties and loss due to delay. The supplier will also not be liable for shortcomings resulting from force majeure as described in these Terms and Conditions.
- 5.8 In the event that limitation of liability as set out in this article does not accrue to the supplier by law the liability of the supplier will be limited to the amount that the insurer of the supplier pays in the case concerned plus the amount of the deductible which is not borne by the insurer under the policy conditions under the applicable insurance policy and is therefore payable by the supplier.

In the absence of any payment by the insurer the liability of the supplier will be limited to the amount that has been received by the supplier for the item or service relating to the liability.

- 5.9 Any reliance on the limitation of liability of this article also accrues to the employees, directors, representatives, subcontractors and auxiliary persons engaged by the supplier.
  - 5.10 The purchaser indemnifies the supplier against all claims by third parties for compensation of damage, as well as against all costs and damage ensuing therefrom for the supplier, which ensue directly or indirectly from the goods or services sold by the supplier to the purchaser, including any work or advice.
  - 5.11 The supplier does not have the intention to exclude or limit with any provision of these Terms and Conditions liability for damage caused by intention or wilful recklessness on the part of the management of the supplier.
- ### 6. Retention of title
- 6.1 All delivered goods remain the property of the supplier until the time when the purchaser has fulfilled all payment obligations as consideration for the goods on the basis of all agreements concluded with the supplier, as well as all claims due to failure in the performance of such agreements. Until that time the purchaser will be obliged to keep the goods delivered by the supplier separate from other goods and to clearly mark these goods as the property of the supplier and to properly insure and keep insured these goods, as well as to refrain from proceeding with processing or modification of the goods.
  - 6.2 If the purchaser does not fulfil any obligation under this article, or if there is well-founded fear in existence that the purchaser will not fulfil the aforesaid obligations, the supplier will be entitled without the requirement of notice of default, to immediately take possession of the delivered goods wherever these might be situated. The costs thereof will be at the expense of the purchaser.
  - 6.3 The purchaser will not be entitled to dispose of the goods delivered subject to retention of title, or as the case may be to establish a (nonpossessory) right of pledge on the goods concerned, or to otherwise encumber these goods, for as long as the aforesaid claims have not been settled.

### 7. Termination

- 7.1 The supplier will be entitled to terminate every agreement with the purchaser with immediate effect, without judicial intervention, and without the supplier being liable for any damage whatsoever, if the purchaser applies for moratorium, if the purchaser submits a petition for his/her own bankruptcy, or a petition for bankruptcy order for the purchaser is submitted; or as the case may be if the purchaser (as a natural person) dies, or the purchaser (as a legal entity or enterprise) is liquidated or dissolved.
- 7.2 The purchaser as well as the supplier can only terminate the agreement in writing after the force majeure on the part of the supplier, as referred to in article 2 subclause 3, has lasted for more than three months, and indeed exclusively for that part of the obligations that have not yet been fulfilled. In that event parties will not have any right to compensation of damage resulting from the termination.

### 8. Disputes

- 8.1 The law of the Netherlands applies to all agreements and all (legal) acts that these Terms and Conditions apply to. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) is excluded as well as any existing or future international arrangement concerning movable tangible property the effect of which can be excluded by parties.
- 8.2 All disputes related to the agreements and the (legal) acts that these Terms and Conditions apply to, which have arisen between parties, will be exclusively adjudicated by the court with competent jurisdiction in the Netherlands of the Oost-Brabant district. However, the supplier remains always entitled to submit a dispute to the court that would have had jurisdiction in the absence of this provision.
- 8.3 In the event of differences between the translated versions of these Terms and Conditions the Dutch text will always prevail.