

# General Terms and Conditions Tajima Europe BV

## 1 Applicability of these terms and conditions

- 1.1 These terms and conditions apply to all agreements entered into by us and to all (other) acts and legal acts of ourselves and the buyer, therefore also in pre- and extra-contractual situations.
- 1.2 The applicability of either general or specific terms and conditions or stipulations of the buyer or third parties acting on behalf of it or called in by it is expressly rejected by us.
- 1.3 Should any stipulation of these terms and conditions or an agreement be null and void, be cancelled or be unenforceable, then this shall not affect the validity of the other stipulations of these terms and conditions or the agreement.

## 2 Offers / conclusion of an agreement

- 2.1 Our quotations and offers are without any obligation, unless they explicitly state otherwise, which is not already the case if a period of acceptance is mentioned.
- 2.2 Our quotations and offers shall always be an invitation to the buyer to place an order. An agreement shall only be concluded if and insofar as we accept an order from the buyer in writing.

## 3 Prices

- 3.1 Unless a binding price has been agreed, the prices of our price list or other notifications shall be valid on the day of delivery.
- 3.2 Our prices are exclusive of VAT, other taxes and levies.
- 3.3 Insofar as not excluded, the costs of packing are included in our prices.
- 3.4 We are entitled to pass on any reasonable cost increases. We will notify the buyer of these on-charged costs in writing. If the costs are to be passed on within 3 months from entry into the agreement, the buyer is entitled to notify us that it does not agree with this. If we then maintain our position and nevertheless wish to pass on the cost increases, whether wholly or partially, the buyer will be authorised to cancel the agreement (for the future).

## 4 Delivery

- 4.1 Delivery shall take place through the physical transfer of the goods to the buyer, who will then take delivery of the goods.
- 4.2 We are entitled to make partial deliveries.
- 4.3 We are entitled to deliver against cash on delivery.
- 4.4 Unless we have guaranteed a certain date of delivery expressly and in writing, the delivery dates stated are never to be regarded as deadlines. In the event of late delivery, the buyer must send us notice of default in writing, allowing us a reasonable period of time to meet our obligation to deliver as yet, without the buyer and/or third parties being entitled to claim compensation vis-à-vis us.

## 5 Force majeure

- 5.1 Should either of the parties be unable to fulfil its obligations due to non-accountable permanent failure, the parties shall be entitled to cancel the agreement, whether wholly or partially, within a reasonable period of time, without either of the parties being obliged to pay compensation – including compensation for any gains made – vis-à-vis the other party.
- 5.2 Non-accountable failure, such as referred to in paragraph 1, shall include, amongst other things: war, threat of war, riot, fire, production disruption, strike, pickets, lock-out, traffic disruption, interruption in the supply of raw materials/semi-manufactures, sickness of staff, failure of sub-suppliers/contractors to meet obligations or to meet these on time.

## 6 Security

- 6.1 We are entitled at all times to demand that the buyer give security for the fulfilment of its obligations if the buyer's payment performance, solvency or financial situation would reasonably give rise to this. Should the buyer refuse or neglect to give security within the reasonable period of time granted by us, we shall be entitled to cancel the agreement through notice in writing. Insofar as we would already have delivered goods to the buyer, it shall be obliged to return these to us within 5 days from this notice. The buyer shall furthermore be obliged to

compensate us for all damage suffered by us due to its refusal or neglect.

## 7 Payment

- 7.1 Payment must be made free of charge, without any reduction, within 30 days from date of invoice. Contrary to the provisions of article 4.2, orders with an invoice amount of EUR 5,000 or less (excl. VAT) may be subject to an extra charge for prevailing freight costs.
- 7.2 The buyer is not permitted to deduct any claim vis-à-vis us from a payment to us.
- 7.3 In the event that it is agreed that payment will be made and/or if security is given by way of a documentary credit and/or bank guarantee, the buyer shall guarantee that this shall always take place by means of a Dutch bank convenient to us.
- 7.4 Should the buyer be late in paying, it shall be in default without notice of default being required and shall owe us the then prevailing legal interest on the amount of the invoice for each month or part thereof by which the due date referred to in paragraph 7.1 is exceeded.
- 7.5 If one of the buyer's orders is to be delivered at a later date instead of immediately – i.e. delivery on call – we shall be entitled to charge the buyer interest at 1.5% on the amount of the invoice for each month that lies between the original date of delivery and the actual date of delivery.

## 8 Reservation of title / non-possessory lien

- 8.1 All goods delivered by us to the buyer shall remain our property until the buyer has paid all our claims on account of any purchase/building contracts and related activities, plus interest and costs and all our other claims in connection with its failure to fulfil these agreements.
- 8.2 Should the buyer form a new good from goods delivered by us which are subject to reservation of title, this good shall be formed under our authority and held by it in safekeeping for us. The ownership shall only pass to the buyer the moment the reservation of title is cancelled through the payment of all our claims as referred to in article 8.1.
- 8.3 The buyer may agree with a third party that it will pay the purchase price on behalf of it and that the third party will subrogate the buyers rights for this in our claim. In the event of payment by this third party, which will subrogate the buyer's rights in our claim, the reservation of title shall remain in force.

## 9 Quality and complaints

- 9.1 We do not guarantee against any harmful characteristics of the goods delivered should these characteristics be inextricably bound up with these goods. Whether or not a characteristic is inextricably bound up with our goods is decided by this being mentioned in professional journals.
- 9.2 The buyer must decide in advance, on the basis of tests, whether the goods will meet its requirements. The products contain recycled PVC.
- 9.3 As soon as the goods are delivered, the buyer shall count, measure, weigh and inspect the goods for visible and invisible, but easily detectable defects, prior to storing or using the goods. Once they are used, the goods are considered to comply with the agreement, unless the good would prove to have an invisible defect that is not easy to detect.
- 9.4 As soon as any defect is found, the buyer is obliged to immediately discontinue the use, processing, handling or installation of the good involved.
- 9.5 The buyer shall give all assistance required by us to investigate the complaint by enabling us, amongst other things, to investigate the circumstances of the processing, handling, installation and/or use on its premises.
- 9.6 With regard to invisible defects that are not easily detectable, complaints may be filed legally only if the defect is found within 3 months from delivery and we are notified in writing of the defect within 14 days from having been detected or after it ought reasonably to have been found.
- 9.7 We are obliged vis-à-vis the buyer to repair, replace or refund the amount of the invoice for the goods that fail to comply with the standard.
- 9.8 Goods can only be returned to us after we have agreed in writing with their return and the

shipping method. The goods shall remain at the buyer's risk.

- 9.9 Complaints shall never suspend the buyer's obligations to pay.

## 10 Limitation of liability / product liability risk

- 10.1 We shall not be liable for any indirect damage of the buyer or third parties, including consequential damage, emotional damage, loss of profits or environmental damage.
- 10.2 For the processing of our goods – such as the installation, application and use – we are able to give advice. In our opinion, following our advice will lead to the best results. We shall not accept any liability for the accuracy of this advice and, especially, for its being followed.
- 10.3 Without prejudice to the provisions of paragraphs 1 and 2, our liability on any account whatsoever per event (while a related series of events shall be considered a single event) shall be limited to the amounts paid to us by the buyer on account of the agreement concerned the moment the damage-causing event arises (excl. VAT).

## 11 Governing law

- 11.1 These terms and conditions, as well as all agreements and all disputes between the parties, shall be subject to Dutch law. Regarding agreements such as referred to in Section 6:247 paragraph 2 CC, in which the other party is not domiciled in the Netherlands, however, it is expressly stipulated that title 5 chapter 3 of book 6 of the Dutch Civil Code shall not apply in respect of the general terms and conditions.
- 11.2 If these terms and conditions apply to an international relationship with the buyer, it shall always notify us immediately of any stipulations in these terms and conditions that are unenforceable in the buyer's country.

## 12 Transfer of rights and duties

- 12.1 We shall be permitted to transfer the rights and duties described in any agreement with the buyer to third parties. In the event that any of our duties are transferred we must notify the buyer of this in advance and the buyer shall be entitled to cancel the agreement where the future is concerned from the date on which the transfer would take place. We shall not be obliged to pay any relevant compensation (for damage).
- 12.2 The buyer is not entitled to transfer its rights and/or duties under an agreement to any third parties without prior permission in writing.

## 13 Exercise of our powers of suspension, cancellation and annulment.

- 13.1 Should we believe in all reasonableness, on the basis of circumstances of which we are and ought to have been aware at that time, that we are entitled to legally exercise our powers of suspension, cancellation and/or annulment, we shall not be obliged to pay any compensation (for damage) to the buyer, and in any event not to pay legal interest, if it would become evident later that we have not exercised the aforementioned power(s) in a legally valid way.

## 14 Place of performance

- 14.1 The agreements shall be considered to be performed at our place of business.

## 15 Disputes

- 15.1 All disputes arising from agreements signed with us or any resulting commitments shall be settled by the absolutely competent court at our place of business, unless this court would not be competent by virtue of the provisions of Section 108 Legal Proceedings.