

## **GENERAL TERMS AND CONDITIONS OF SALE FOR COMPANIES AFFILIATED WITH THE DPRA**

DUTCH PLASTIC AND RUBBER ASSOCIATION, based in The Hague

### **Article 1 - Definitions**

Unless otherwise self-evident from the context, the following definitions in these General Terms and Conditions of Sale are understood to mean:

- a. DPRA: Dutch Plastic and Rubber Association, as well as all companies based in the Netherlands which are members of the DPRA;
- b. Supplier: the client of DPRA;
- c. The other party: the other party of DPRA for the supply of services, work and goods;
- d. Contract: the written agreements between the supplier (DPRA) and the other party with respect to the order or the services or work to be supplied;
- e. General terms and conditions of sale: these general terms and conditions of sale of DPRA.

### **Article 2 – Scope**

- 2.1 Unless otherwise agreed, these general terms and conditions apply to all offers, orders and contracts entered into between the supplier and the other party, as well as all offers made by the supplier, to the exclusion of any general terms of conditions, of whatever nature, of the other party.
- 2.2 Additions, changes, more specific arrangements or regulations, conditions which differ from the contract or these general terms and conditions, whereby the supplier enters into obligations or agrees to a lower sales price, are not considered as an agreement between parties, unless this has

been confirmed in writing by the supplier. At all times, the supplier retains the right not to make use of the appropriate clauses in these general terms and conditions.

### **Article 3 - Offers and contract**

- 3.1 All offers, stock lists and price lists are without obligation at all times. All offers are valid for the period specified in these offers. If no period is specified, the offer is valid for twenty days. An offer can be renewed by the supplier by written notification to the other party, likewise stating the length of the renewal period. Deviations from a written confirmation of an order are binding on the supplier only when these have likewise been confirmed.
- 3.2 A contract or order/assignment is first said to be accepted – even when use is made of a representative or reseller – when this has been confirmed in writing or if this has already been carried out by the supplier after effectuation of the contract or after receipt of the order/assignment. For deliveries, because of whose nature or volume no offer or confirmation of order is sent, the delivery note and/or the invoice is likewise considered to be confirmation of the order, which is also deemed to reflect the substance of the contract correctly and in full. For sales of stock (from the warehouse), the invoice can serve as a written confirmation instead.
- 3.3 Any additions and/or changes made at a later date, as well as (verbal) assurances by representatives, agents or other intermediaries, are only binding if these are confirmed in writing by a person authorised to do so.
- 3.4 The authority of a representative or reseller does not go beyond what is normally acceptable. The representative or reseller may not deviate from these terms and conditions other than explicitly by virtue of authority in writing for each contract individually.
- 3.5 If an offer is accepted by the other party, the supplier has the right to revoke the offer within two days of acceptance

- 3.6 All images, drawings and other data are as accurate as possible, but they are only binding on the supplier if this is set down in the offer and/or the conformation of order.
- 3.7 The supplier retains the right to charge the other party for any expenses incurred in drawing up a complex offer, at the moment when no contract, as a result of the offer, is effectuated between the parties.

#### **Article 4 - Prices**

- 4.1 For deliveries within the Netherlands, these shall be expressed without VAT, sales tax, transportation costs, packaging and any possible insurance.
- 4.2 In all cases, prices are quoted ex works / warehouse, unless otherwise agreed in writing.
- 4.3 In all cases, prices are expressed in euros, excluding any payable freight, import and export duties, station, surveillance, clearance and insurance charges, and taxes and other duties which relate to the contract.
- 4.4 The price for installation in an operational condition is reported separately in writing.
- 4.5 All deliveries take place at the agreed prices, on the understanding that if factors which may determine the price after the contract has been entered into undergo a change – such as with respect to materials, packaging, raw materials, semi-finished goods, purchase prices, wages, labour costs, social insurance and government taxes, freight, insurance premiums, currency rates, etc. – the supplier is entitled to adjust its prices accordingly. Such a price adjustment does not give the other party the right to have the contract dissolved, unless the price adjustment relates to an increase of more than 15%.
- 4.6 The prices offered apply only to the amounts offered.
- 4.7 If a price has not (yet) been agreed, the prices and rates used by the supplier at the time of the delivery are charged to the other party.

- 4.8 All prices will be indexed / adjusted annually on 1 January according to the prevailing price index figure of the *Centraal Bureau voor de Statistiek*. If publication of this annual index figure is discontinued, in its place a figure will be set in mutual consultation between parties and in the absence of which this will be determined by means of a binding opinion by the *Centraal Bureau voor de Statistiek* or its legal successor.

## **Article 5 – Delivery**

- 5.1 The delivery times specified apply only by way of information and approximation. If the supplier is reliant on more specific information being provided by the other party, the delivery time commences only after this information has been received in full by the supplier.
- 5.2 Exceeding the delivery date specified does not give the other party the right to dissolve the contract, to refuse payment or otherwise fail to fulfil its obligations. Neither does exceeding the delivery date oblige the supplier to pay any damages of whatever name and for whatever reason.
- 5.3 If the sale is not carriage paid, the risk for the goods during transport is borne by the other party from the moment the goods have left the company/warehouse of the supplier. The risk for the goods is therefore at the expense of the other party during transport. The supplier is at liberty to choose the type of load, means of transport and forwarder, unless otherwise agreed.
- 5.4 For goods sold carriage paid, the risk for the goods is at the expense of the other party from the moment the delivery is made. Delivery is understood to mean: placing the goods in the control of the other party. The goods are likewise at the expense and risk of the other party from the moment when the other party defaults on taking actions with which he is obliged to cooperate in respect of the delivery. The other party is in default if he does not take receipt of the goods at the place of delivery immediately following expiry of the delivery date. The other party is required to deploy sufficient resources and personnel for a smooth and uninterrupted unloading of goods. Additional costs arise through the negligence of the other party,

whereby storage of goods not received is at the expense and risk of the other party. The date of delivery is the date specified on the consignment note on which the consignment is made, either by the supplier or by third parties as referred to above – or in the absence of which the time at which the consignment commences – except for goods collected, for which the date on the delivery note is valid.

- 5.5 The supplier retains the right to deliver the quantity ordered for 10% more or less. If the other party has prescribed a specific shore-hardness, it is necessary to take into account a tolerance of + 5 or -5°. For admissible dimensional deviations, reference is made to the standards which apply internationally for the items in question, insofar as the offer does not explicitly deviate from these and insofar as no special specifications have been agreed.
- 5.6 The delivery of goods, which are installed in an operational condition, is considered to have taken place on the day that the supplier notifies the other party of this.
- 5.7 For colour deviations no greater than colour shades, the supplier can accept no liability. The other party cannot derive any rights from this to refuse delivery.
- 5.8 The other party is obliged to check the delivered goods on delivery in terms of quantity, quality, specifications and other differences to what was agreed.
- 5.9 The supplier is entitled to deliver an order in full, or consecutively in batches. In the latter case, the supplier is entitled to invoice the other party for each batch delivery separately and to demand payment for this. If and as long as a batch delivery has not been paid for by the other party, the supplier is not obliged to make delivery of the subsequent batch, but the supplier is entitled, at his own discretion, to suspend or dissolve the contract insofar as this has not yet been carried out without judicial intervention and without any notice of default on the part of the other party being required, without prejudice to the other rights of the supplier, including his right to damages.

## **Article 6 – Transport and handling costs**

- 6.1 The transportation of all goods relating to the order is at the expense and risk of the other party, even if the consignment note specifies otherwise. If required, insurance is arranged at the request of the other party.
- 6.2 Return shipments are only accepted by the supplier, if he has given prior permission to do so and this is carriage paid.
- 6.3 The supplier is entitled to charge a surcharge for handling costs for orders with a low invoice amount.

## **Article 7 – Execution**

- 7.1 The other party is required to ensure that all work carried out by third parties relating to the order is carried out in the correct manner and in good time, and that all equipment and materials will be ready and made available in time, so that the supplier is able to execute the order without delay. If the other party fails to meet these obligations and thus causes a delay, the period of delivery will be extended in proportion and any costs arising from this for the supplier will be borne by the other party. Furthermore, the terms of payment for the other party remain unchanged, even if the goods have not yet been delivered or not been delivered in full.
- 7.2 The supplier is in charge of the execution of the order and is only carried out on the supplier's instructions. The supplier is authorised to call in other parties for proper effectuation of the contract. If possible, consultation will take place in respect of the matter.

## **Article - 8 Reservation of title**

- 8.1 All goods delivered and still to be delivered remain the exclusive property of the supplier, until all outstanding claims that the supplier has vis-à-vis the other party, including the claims specified in article 3:92 paragraph 2 of the Dutch Civil Code relating to interest and judicial and extrajudicial costs, have been paid in full.
- 8.2 If the other party forms a new item from the goods delivered by the supplier to which reservation of title applies, he/she shall act on the instructions of the supplier in this formation and hold the item for the supplier. He/she will only become owner at the moment when the reservation of title elapses as a result of all claims of the supplier being settled.
- 8.3 As long as ownership of the goods is not transferred to the other party, these goods may not be pledged or rights granted to third parties by him/her with respect to these, except in the normal course of his/her business. On the first demand of the supplier, the other party is obliged to cooperate in establishing a right of pledge with respect to the claims which the other party acquires or shall acquire by virtue of the reselling of goods to his/her other party. Insofar as the supplier has claims vis-à-vis the other party other than those referred to in article 6.1 and the supplier has delivered goods to the other party to which no reservation of title applies, the other party establishes a non-possessary pledge on these goods in favour of the supplier as security for fulfilment of his/her obligations, at the same time as the supplier accepts this non-possessary pledge. In all cases mentioned, on the first demand of the supplier, the other party shall sign a deed which establishes the right of pledge. He/she shall guarantee that he/she is authorised for the pledging of the goods and that no right of pledge or restricted rights apply to the goods, apart from the rights of the supplier.
- 8.4 The other party is obliged to keep the goods which have been delivered with reservation of title with due care and as identifiable property of the supplier. The other party shall treat the goods referred to in this article with proper care. He/she shall insure the goods against all contingencies on the basis of the invoice value. On the first demand of the supplier, the other party shall provide the name and address of the insurers and copies of the

insurance policies. In addition, on the first demand of the supplier, the other party shall establish a an undisclosed pledge on his/her claims relating to this on the insurer, insofar as this has not yet arisen *ipso jure* in favour of the supplier.

8.5 The supplier is entitled to take back goods which have been delivered with reservation of title and which are still with other party if the other party is in default with respect to fulfilment of his/her payment obligation or has or is likely to have difficulties in payment. At all times, the other party will grant free access to his/her premises and/or buildings for the inspection of goods and/or execution of our rights.

8.6 The aforementioned provisions leave the other future rights accruing to the supplier unimpaired.

### **Article 9 – Property**

9.1 The drawings, models, dies, forms and all other items relating to the effectuation of the order and which are made by or on the instructions of the supplier, remain the property of the supplier, even if costs for these have been charged to the other party.

9.2 The other party is obliged to ensure that these drawings, models and other documents are not reproduced, or displayed or made available to third parties. If the other party fails to fulfil this obligation, he shall have to pay any damages that ensue from this for the supplier. At all times, the supplier is entitled to demand a refund.

### **Article 10 – Complaints**

10.1 Complaints of whatever name or nature do not suspend the obligation to payment on the part of the other party. Complaints are only accepted by the supplier on the condition that these are submitted to the supplier by registered mail within fourteen days after delivery of the goods. On expiry of the aforementioned period, the goods delivered are deemed to have been irrevocably and unconditionally accepted by the other party. Any legal actions are required to be submitted under penalty of cancellation one year



after timely notification of the complaint. Proof of timely complaint rests with the other party. The other party will only be able to prove the accuracy of his/her claim on the basis of the goods, whilst the other party is likewise responsible for proving that these are the same goods as were delivered by the supplier and that the goods are in the same condition as when they left the supplier's warehouse.

10.2 Deviations in quality, dimensions, colours, finish and suchlike which cannot be technically prevented or which are ordinarily permissible by general use, cannot cause any grounds for complaint. Complaints shall only be honoured by the supplier if he is able to inspect the goods in the original condition and the original packaging. All goods which are returned on the instructions of the supplier and in respect of which the supplier has agreed to the complaint, are accepted by the supplier. The return shipment is for the expense and risk of the other party. In the event of a complaint which has been proven by the other party and which has been considered as well-founded by the supplier, the supplier – at his own discretion - can replace the components or the articles to which the complaint relates, or provide credit to the other party, to the exclusion of any other right of the other party to damages. In respect of complaints, every partial delivery is considered to be a separate delivery.

## **Article 11 - Liability**

- 11.1 At no time (including in the event of force majeure, a shortcoming in the fulfilment of any obligation, a wrongful act, incorrect advice) is the supplier obliged to pay any damages and/or penalty of whatever name or nature and on whatever account. Insofar as the law dictates that the aforementioned full exclusion of liability cannot be upheld, the amount to be paid by the supplier in damages and fines shall never be more than the amount for which the product/liability insurance entered into by the supplier actually gives claim to payment. Furthermore, the amount to be paid by the supplier in damages and fines shall never be higher than the amount specified on the invoice for the goods in question. In all cases however, the supplier will never be liable for indirect damage and/or consequential damage, including, for example, a standstill in the normal business operations of the other party.
- 11.2 In the event of shortcomings to these, the liability of the supplier is limited to the obligations described in article 11.1.
- 11.3 The supplier is not liable for damage which is inflicted by or during the execution of work to goods owned by the other party or belonging to third parties or to persons, except in the event where this damage can be blamed on an intentional act or the gross negligence on the part of the supplier.
- 11.4 The supplier is not liable for damage which is the consequence of the goods delivered by the supplier having to satisfy statutory or other legal requirements in respect of (the use of) the goods.
- 11.5 The supplier is not liable for damage which is the consequence of the errors and omissions of third parties, who have been charged by the supplier on the approval of the other party to supply materials or to perform work.

## **Article 12 - Force Majeure**

- 12.1 In the event of force majeure, the supplier is, at his discretion, entitled either to suspend effectuation of a contract, in part or in full, for the duration of circumstances giving rise to the force majeure, or to cancel the purchase, insofar as this has been affected by the circumstances giving rise

to the force majeure, without the other party being able to make a claim to any damages.

- 12.2 Circumstances considered to be a cause of force majeure include: strikes, lockouts, fire, water damage, natural disasters or other contingencies from outside, mobilisation, war, traffic stoppages, blockades, import and export restrictions or other government measures, standstills or delays in the supply of raw materials or machine components, lack of tonnage, lack of manpower, fire, disruptions in the operations of suppliers as well as non-performance by suppliers, inadequate supply of raw materials / components, as well as any circumstances which normal business operations might impede, as a result of which the performance of the contract by the vendor cannot reasonably be expected.
- 12.3 If, on account of force majeure, the supplier is unable to effectuate the order normally, he has the right to effectuate the order at a later date, or to declare it dissolved, in part or in full, without judicial intervention being required.
- 12.4 In the event of dissolution as referred to in a., the other party is obliged to take whatever has been made available in the framework of the contract, and to pay a pro rata purchase price.
- 12.5 In such cases, the supplier is not obliged to pay any damages of whatever nature.
- 12.6 If the supplier has to incur additional costs as a result of force majeure for effectuation of the order, he has the right to charge these additional costs to the other party.

### **Article 13 – Warranty/service**

- 13.1 If the goods show any defects which have materialised exclusively as a result of inferior fabrication, construction or installation within six months after the delivery or handover, these goods will be replaced at the discretion of the supplier or delivered again as a single delivery. In this

case, the supplier is not liable for additional costs of whatever nature incurred by the other party.

- 13.2 If the other party has made changes to the delivered or installed goods, has carried out repairs or has not used these goods in the normal manner or normal purpose, the supplier is not obliged to provide any warranty.
- 13.3 If the other party wishes to invoke this warranty condition, this must be made by written notification to the supplier within fourteen days after the defects have been discovered or could reasonably be expected to have been discovered. The goods must then be left in an unaltered condition until the supplier has investigated the complaints.
- 13.4 The other party indemnifies the supplier for all claims made by third parties in respect of the goods delivered by the supplier or work carried out by the supplier unless it is established by law that these claims are a direct result of the gross negligence on the part of the supplier and the other party can demonstrate that no blame can be attached to him with respect to the matter.
- 13.5 With respect to liability for goods delivered to third parties by the other party, which the supplier has manufactured, in part or in full, or for which the supplier has supplied materials, the other party undertakes to take out an adequate company liability insurance.

#### **Article 14- Brand and Quality**

- 14.1 If goods are delivered and invoiced to the other party by the supplier under a special quality mark and/or brand specified on the invoice and/or on the goods, the other party is obliged to offer these goods to third parties with the designation established by the supplier, under penalty of an immediately payable fine, which is not open to judicial mitigation, of at least € 100,000 per violation or occurrence, as well as to impose this obligation including the aforementioned sanction on third parties in the case of resellers and/or legal successors, of whatever name, in the same way as the other party will likewise oblige third parties to impose this obligation on their resellers and/or legal successors, of whatever name. The same penalty is forfeited by the other party per violation or

occurrence if the other party and/or its resellers and/or legal successors, of whatever name, offer goods sold by the supplier with a special quality mark and/or brand in violation of the real situation. The specification on the invoice line is the determining factor in this, not the invoice heading.

## **Article 15 – Payment**

- 15.1 Amounts which must be paid to the supplier by the other party on the basis of any legal relationship (for example, a contract), are immediately payable in full when the legal relationship is established, unless otherwise agreed. If and insofar as the amounts are not payable in conformity with the above, the amounts are immediately payable in full on partial or complete delivery of the goods. Insofar as the amounts which the other party owes to the supplier are not yet payable in conformity with the above, in whatever event, payment of the invoices is required to be made to the supplier within 30 days following the date of the invoice. Complaints regarding invoices must be received by the supplier within eight days. On expiry of the aforementioned period, the invoice is deemed to have been irrevocably and unconditionally accepted by the other party. Any legal actions are required to be submitted under penalty of cancellation six months after timely notification of the complaint.
- 15.2 In the event of no-payment, overdue payment and/or incomplete fulfilment in conformity with the aforementioned paragraphs, the other party is in default, without notice of default being required to this effect. In the event of default, interest is charged which is equal to half a percentage point above the legal interest rate in respect of the invoice amount, calculated from thirty days after the date of the invoice. In the event of suspension of payment or bankruptcy or the winding-up of the other party's business, the other party owes interest of 1% per month with respect to the amounts payable to the supplier, or if this is more, the other party is charged the legal interest rate with respect to these amounts. In this case, the supplier is entitled to dissolve all current contracts with the other party, in part or in full, without any legal intervention being required. The other party is obliged to recompense the supplier for any costs and damages incurred by the supplier arising from this. Furthermore, all credit which has been granted and all amounts

owed on the basis of the other legal relationships (for example, a contract) are immediately payable.

- 15.3 In the event of default, as well as in the event of other circumstances specified in this article, the extrajudicial and judicial costs incurred to establish the damages and the liability, and to procure settlement, as well as to prevent limitation of damages as a result of events to which the liability applies, the interest on the principal sum and the other costs – over and above the principal sum - will become immediately payable. Extrajudicial costs amount to 15% of the principal with a minimum of € 500, plus advance sums incurred and outstanding taxes.
- 15.4 The size and the obligation of payment for the extrajudicial costs will be apparent from the mere fact that the supplier has insured itself with the aid of a third party.
- 15.5 The payments to be settled by the other party are required to be made without deduction, discount or suspension, adjustment, compensation, offsetting of debts, repayment of debts of whatever name or on whatever account. The other party must explicitly relinquish these rights.
- 15.6 If the supplier has accepted an assignment, in full in or in part, the other party is under an obligation – which forms an integral part of the contract - to provide the supplier, if required, with proof of his/her creditworthiness, either prior to delivery, or afterwards as surety for the fulfilment of all his/her obligations and to the satisfaction of the supplier, for example, by payment of cash, the provision of a bank guarantee, an assignment, the provision of a right or pledge or mortgage, etc. No maximum is attached to the size, scope and the way in which the said security/securities are provided and are determined by the supplier. The obligation referred to in this paragraph for providing security/securities also applies for the obligation to pay damages in the event of the supplier claiming compensation for damages from the other party which have resulted from partial or complete dissolution of the contract and which are attributable to the other party.

15.7 If the other party remains in default with respect to the provision of security/securities, the supplier is not obliged to fulfil or to continue to fulfil its obligations vis-à-vis the other party, without prejudice to the right of the supplier to demand in law fulfilment of the contract or payment of sums owing on the basis of the contract, as well as compensation and/or this/these security/securities.

#### **Article 16- Non-performance and dissolution**

16.1 If the other party does not fulfil his obligations, in the event of bankruptcy, suspension of payment, administration, seizure of his goods, suspension of operations, transfer or the winding-up of his business or any major changes in his financial situation, the supplier is entitled to dissolve the contract without the need for judicial intervention, and without prejudice to any other rights to compensation on the part of the supplier.

16.2 In addition, the supplier, in the circumstances referred to in the first paragraph, has the right to suspend execution of all other current contracts between parties, whilst in these same circumstances, all outstanding demands on the part of the supplier are immediately due and payable, unless the other party can provide the necessary securities.

#### **Article 17. Applicable law and competent courts**

17.1 All disputes are settled in an amicable fashion or, if this does not appear possible, by the competent subject-matter courts in Haarlem. The supplier is likewise entitled to submit any disputes to another competent court.

17.2 Netherlands law applies to all contracts, general terms and conditions and all specific agreements, as well as to all disputes arising from these. The Vienna Convention relating to international sales agreements for movable properties of 11 April 1980, Bulletin of Treaties 1981, 184, does not apply at any time.

#### **Article 18 – Copyright**

18.1 The copyright for these general terms and conditions lies with the Dutch Plastic and Rubber Association (DPRA) in The Hague. These general terms and conditions may not be reproduced or made public in any way, in part or in full, without the prior written permission of this association, except for one's own use.

### **Article 19 – Implementation**

19.1 These general terms and conditions of 29 July 1982 were amended on 8 April 1998 and came into effect in this amended form on 20 March 1998 and were amended on 30 September 2001 and came into effect in this amended form on 5 October 2003, and were amended on 13 January 2006 and came into effect, these general terms and conditions were amended on 1 December 2010 and came into effect in this amended form and were filed with the court registry in Alkmaar on April 22, 2011 under number 11/75.