

## **GENERAL TERMS AND CONDITIONS of**

VIPROTECH SPECIAL PRODUCTS BV

with office at A. Hofmanweg 36 in Haarlem, The Netherlands

which govern the contracts to be entered into within the context of the company's activities, deposited with the Chamber of Commerce and Industry in Amsterdam under nr 39061479.

### **1 GENERAL**

- 1.1 All our offers, contracts and their execution are exclusively governed by these terms and conditions. Deviations must be expressly agreed in writing with us.
- 1.2 The term "the counterparty" in these terms and conditions refers to any corporate entity/natural person who has entered or wishes to enter into a contract with our company and, in addition to these, their representative(s), agent(s), successor(s) and heirs.
- 1.3 The applicability of the General (Purchasing) Terms applied by the counterparty is expressly excluded. The counterparty will be informed of this by us before the contract is effected.

### **2 OFFERS**

- 2.1 All offers made will remain valid for a period to be specified by us. In the absence of such a period, our offers are subject to contract for a maximum period of 3 months.
- 2.2 All price lists, brochures and other information provided with an offer have been prepared with as much accuracy as possible. These are only binding on us if this is expressly confirmed in writing.  
All information provided with an offer will remain our (intellectual) property and must be returned at the first request.
- 2.3 The sending of offers and/or (other) documentation does not obligate us to supply or accept the order, except in the case of an irrevocable offer where the counterparty indicates that it accepts this offer.

### **3 CONTRACT**

- 3.1 Subject to the provisions that follow, a contract with us will only be effected when we have expressly accepted or confirmed a commission in writing. The order confirmation will be deemed to set out the contract correctly and fully.
- 3.2 Any supplementary agreements or changes made later, as well as (oral) agreements and/or promises made by our personnel or on our behalf by our sales staff, agents, representatives or other intermediaries will only be binding on us if they have been confirmed in writing by us.
- 3.3 For work which, because of its nature and scale, no offer or order confirmation is sent, the invoice will also be deemed to serve as order confirmation, which will also be deemed to set out the contract correctly and fully.

With regard to the provisions of articles 3.1, 3.2 and 3.3, our records will be determinant, except where there is written proof to the contrary.

- 3.4 Each contract is entered into by us subject to the condition precedent that the counterparty is found to be adequately creditworthy - at our determination exclusively - for proper compliance with the contract.
- 3.5 Before (further) performance, we are entitled, either at the time of entering into the contract or thereafter, to demand that the counterparty post sureties to ensure that both the payment and other obligations will be met.
- 3.6 We are entitled - if we deem this necessary or desirable - to involve other parties for proper execution of the contract, the costs of which will be charged to the counterparty in accordance with the prices quoted. Where possible and/or necessary, we will discuss this with the counterparty.

#### **4 PRICES**

- 4.1 Unless stated otherwise, all prices are quoted subject to change.
- 4.2 Unless stated otherwise, our prices:
  - are based on the purchase prices, wages, wage costs, social and government charges, freight charges, insurance premiums and other costs in force at the time of the offer or the order date;
  - are based on delivery ex our works, warehouse or other place of storage;
  - are excluding VAT, import duties, other taxes, duties and fees;
  - are excluding the cost of packaging, loading and unloading, shipping and insurance;
  - are quoted in Dutch currency (any exchange rate variations will be charged on).
- 4.3 In the event of a rise in one or more of the cost factors, we are entitled to increase the order price correspondingly within 3 months of the contract being effected. In that case, the counterparty is entitled to dissolve the contract.

#### **5 DELIVERY AND DELIVERY TIME**

- 5.1 Unless agreed otherwise, delivery will be ex our works/warehouse. At the moment that the goods leave our works/warehouse, the risk for the goods will pass to the counterparty. Carriage-paid delivery will only take place if and insofar as this is indicated by us on the invoice or otherwise.
- 5.2 The counterparty is obliged to check the delivered goods or the packaging immediately on delivery for any shortages or visible damage, or to carry out this check after notification from us that the goods are at the counterparty's disposal.
- 5.3 Any shortages or damage relating to the delivered goods and/or the packaging which are present at delivery, should be marked by the counterparty (or on the counterparty's instructions) on the delivery note, the invoice and/or the shipping documents, in the absence of which complaints in this regard need not be considered.
- 5.4 We are entitled to deliver in instalments (partial deliveries) after consultation with the counterparty, which we can invoice separately; the counterparty is then obliged to pay in accordance with the provisions below concerning "Payment".
- 5.5 The specified delivery times are an approximation, and are not binding.

- 5.6 Exceeding the delivery time will not oblige us to pay any compensation. The counterparty can declare us in default in writing after repeated exceeding of the delivery time, stating a latest (reasonable) permissible delivery time. After this the counterparty is entitled to dissolve the contract (in writing), unless the cause of the exceeding of the delivery time is not attributable to us.
- 5.7 If the counterparty refuses to accept goods ordered by it and/or ordered and/or produced in accordance with its specific requirements, the counterparty is obliged to pay recompense to us equal to 25% of the net invoice value of those goods.

## **6 SHIPPING/RISK**

- 6.1 The means of shipping, despatch, packaging etc. will, in the absence of further directions being given to us by the counterparty, be selected by us with due care, without us bearing any liability for this. Any specific requirements on the part of the counterparty concerning the shipping/the despatch will only be fulfilled if the counterparty has declared that it will bear the additional cost of these requirements.
- 6.2 The shipping of the goods will, in principle, always take place at the counterparty's expense and risk, even if the shipper insists that the shipping notes, waybills etc. feature the clause stipulating that all shipping losses are at the expense and risk of the despatching party.
- 6.3 For carriage-paid delivery, the shipping costs will not be charged on separately.

## **7 NON-ATTRIBUTABLE SHORTCOMING (force majeure)**

- 7.1 In this case, "non-attributable shortcoming" is defined as:  
any circumstance which is unforeseeable or independent of the wishes of the parties as a result of which compliance with the contract cannot reasonably be demanded of us by the counterparty.  
"Non-attributable shortcoming" will in any case include strikes, excessive absence due to sickness amongst our staff, transport problems, fire, government measures, including in any case import and export restrictions, contingencies and disruptions of business at our works or at our suppliers, as well as non-performance by our suppliers as a result of which we are unable/no longer able to fulfil our obligations to the counterparty.
- 7.2 If a force majeure situation occurs, we are entitled to suspend execution of the contract for a period to be specified, or to permanently dissolve the contract. This will be discussed with the counterparty.
- 7.3 We are entitled to demand payment for the performance given in the execution of the contract in question before the circumstance causing force majeure was discovered.
- 7.4 We are also entitled to invoke force majeure if the circumstance which causes the force majeure occurs after our performance should have taken place.

## **8 LIABILITY**

- 8.1 Except where stipulated by mandatory legal provisions relating to (product) liability, and taking account of the legal rules of public order and good faith, we are not obliged to any reimbursement of loss of any kind, direct or indirect, including loss of profits, to moveable or immovable property, or to persons, either at the counterparty or at third parties.  
Taking account of the provisions stipulated elsewhere in this article, we are definitely not liable for loss resulting from improper use of the supplied goods or their use for a purpose other than that for which they can objectively be considered suitable.  
Nor are we liable for loss resulting from a flaw in our product if:

- a) we have not marketed the product;
- b) it can be reasonably assumed, in view of the circumstances, that the flaw which caused the loss did not exist at the time when we marketed the product, or that this flaw developed later;
- c) our product was not produced for us for sale or for any other form of distribution for an economic purpose, nor was produced or distributed as part of the activities of our business;
- d) the flaw is the result of the fact that the product complies with mandatory government prescriptions;
- e) it was impossible to detect the flaw at the time when we marketed the product, considering the state of scientific and technical knowledge;
- f) with respect to the manufacturer of a component, if the flaw is due to the design of the product of which the component forms a part, or due to the instructions given by the manufacturer of the product.

8.2 Our liability is (partly) assessed on the basis of our product/loss of profits insurance and the Product Liability Act. Subject to the provisions stipulated elsewhere in this article, loss caused by us to the counterparty (loss of profits) is at all times limited to the sum insured under our liability insurance. If necessary, we will provide information about the sum for which we are insured at the counterparty's request.

8.3 Compliance with the applicable guarantee/complaint obligations and/or payment of the assessed loss by us and/or our insurer(s) will be considered full and final recompense of loss. Our counterparty expressly and fully indemnifies us with respect to the remainder.

## **9 COMPLAINTS**

9.1 Without prejudice to the provisions elsewhere in these terms and conditions, all complaints must be submitted to us in writing within 8 days of delivery, stating in detail the nature of and basis for the complaint. In the case of invoices, the deadline is 8 days after the date of invoicing.

9.2 For complaints concerning hidden flaws (flaws not visible on delivery) a deadline of 6 months after delivery applies, whilst they must be submitted within 8 days of their discovery.

9.3 After the expiry of this/these deadline(s) the counterparty will be deemed to have accepted the delivered goods or the invoice respectively. Complaints will then no longer be considered by us.

9.4 If the complaint is found to be justified, we are solely obliged to accept back and replace faulty goods or to make up any shortfall.

9.5 The submission of a complaint will never relieve the counterparty of its payment obligations to us.

9.6 The delivered goods can only be returned with prior written permission, under the terms to be stipulated by us.

## **10 GUARANTEE**

10.1 Guarantees on goods supplied by us which we have sourced elsewhere are only given if and insofar as our supplier(s) has/have provided these.

## **11 RETENTION OF TITLE**

- 11.1 All goods supplied by us which are still in the counterparty's possession/control will remain our property until the moment of full payment of the sums owed to us by the counterparty, and those relating to claims for shortcomings in compliance with the contract(s), including interest and costs.
- 11.2 With regard to these goods, we will be granted a non-possessory pledge, to which the counterparty gives its irrevocable consent now for then, to the value of the claims (still) outstanding at that time.
- 11.3 The goods can be sold on or used by the counterparty as part of its normal business activities, but may not be pledged or serve as surety for a third party's claim.
- 11.4 We are entitled at all times to remove or commission the removal of the supplied goods from the counterparty or its keepers on the basis of the provisions of this article if the counterparty fails to fulfil its obligations. The counterparty is obliged to co-operate with this.
- 11.5 If the counterparty sells on goods for which full or partial payment has not (yet) been made, the counterparty hereby assigns the claims on the buyer (the second buyer) arising from this sale to us now for then, which transfer will then be deemed (partial) payment. The counterparty is obliged to provide us with the relevant details at the first request, so that we can collect the sum owed directly from the second buyer. The sum paid to us by the second buyer will be deducted from the total sum owed to us by the counterparty. When selling the goods on, the counterparty is also obliged to make a similar retention of title as stipulated in this clause.

## **12 PAYMENT**

- 12.1 Payment must be made net in cash on delivery/completion, or by bank transfer or deposit to a bank or giro account designated by us within 30 days of the date of invoicing. The crediting date shown on our bank/giro statements is determinant, and will therefore be considered the payment day.
- 12.2 Each payment from the counterparty serves firstly to pay the interest owed by it and the collection costs and/or administration costs incurred by us, and will thereafter be set against the oldest outstanding claim.
- 12.3 If the counterparty:
- a) is declared bankrupt, assigns its estate, submits an application for a payment moratorium, or if all or part of its property is seized;
  - b) dies or is placed in receivership;
  - c) fails to comply with an obligation under the law or these terms and conditions;
  - d) fails to pay an invoiced sum or a part thereof within the stipulated period;
- we are entitled, in the event of any one of the listed circumstances, either to dissolve the contract by means of written notification, or to demand immediate payment in full of any sum owed by the counterparty on the grounds of work and/or deliveries carried out by us (following notice of default), and to recover supplied goods for which payment has not (yet) been made, all without prejudice to our right to reimbursement of costs, damages and interest.
- 12.4 From the moment when the payment period expires without the sum owed being paid, we are entitled to dissolve the contract in full or in part, unless the shortcoming does not justify

this dissolution with its consequences, in view of the exceptional or minor nature of that shortcoming.

### **13 INTEREST AND COSTS**

- 13.1 If payment has not been received within the period stipulated in the preceding paragraph, the counterparty is legally in default and liable for interest at 1.5% per (part of a) month on the sum outstanding from the due date.
- 13.2 All legal and extra-legal costs to be incurred will be borne by the counterparty. The extra-legal collection costs will be at least 15% of the sum owed by the counterparty including the aforementioned interest.

### **14 APPLICABLE LAW**

- 14.1 All our offers, contracts and the execution thereof are exclusively subject to Dutch Law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention).
- 14.2 The Dutch text of these terms and conditions is binding. If one or more clauses of these terms and conditions conflict with the law, the remaining clauses of terms and conditions will remain in force without unimpaired.
- 14.3 With regard to the definition of International trade terms, the "Incoterms", as drawn up by the International Chamber of Commerce in Paris (I.C.C.), will apply.

### **15 DISPUTES**

- 15.1. All disputes which cannot be resolved amicably will be submitted to the relevant competent Civil Court in Haarlem, insofar as the law permits this.

### **16 GENERAL**

- 16.1 The terms and conditions supplement the provisions at articles 1 to 15 above, unless the provisions that follow expressly deviate therefrom.

### **17 DELIVERY/COMPLETION**

- 17.1 The written order confirmation is binding with regard to the installation work and the associated delivery/completion period.  
The delivery periods will run from:
- a) the date on which the contract is effected;
  - b) the date on which the counterparty has provided us with all necessary information;
  - c) the date on which the counterparty has paid a stipulated pre-payment;
  - d) the date on which the counterparty has provided us with the drawings, designs etc. approved by an authorised person, and thereby from the last of any of the aforementioned dates.
- 17.2 The provisions of article 5 apply unimpaired with regard to exceeding of the delivery/completion time. The counterparty is not entitled to refuse to accept the installation or cancel the contract in the event of delays to the delivery time resulting from force majeure (article 7). We can suspend final delivery/completion as long as the counterparty fails to fully comply with its obligations.
- 17.3 The work will be considered to be delivered/completed:
- a) if the counterparty has approved the work following an inspection;
  - b) after we have informed the counterparty that the work has been installed, fully fitted and/or is ready to use. The counterparty must provide us with the required testing fa-

cilities. The lack of a component which should have been supplied by a third party supplier does not constitute grounds for considering the work uncompleted;

- c) following a period of 8 days after written notification from us that the work is completed and ready for use during which the counterparty has failed to inspect, test or commission the testing of the work;
- d) when the counterparty has actually started to use the work. If partial use commences, that part will be considered to be completed.

17.4 Small non-essential flaws will be rectified by us as soon as possible and cannot constitute grounds for the counterparty to withhold its approval.

17.5 Advice/information from us concerning the placing and/or use of the installation is provided to the best of our knowledge, without guaranteeing any given result.

## **18 SCOPE OF THE WORK**

18.1 The assembly/installation work or maintenance/repair work to be carried out comprises the activities as described in the order confirmation and, if and insofar as is agreed, the work also comprises the supervision/instruction of the counterparty's designated staff with regard to the use and operation of the installation to be supplied. This will be arranged by agreement, without the supplier guaranteeing any given result with regard to the supervision/instruction.

18.2 The counterparty is obliged to provide all necessary, not expressly agreed, facilities in order to ensure that the work suffers no unnecessary delay.

18.3 The counterparty will also ensure that timely applications are made and/or sums owed are paid with regard to power cables, connections, sufferance duties, the Nuisance Act (licences), (re)building licences etc.

18.4 Unless expressly agreed otherwise in writing, any materials replaced/removed will become our property.

## **19 MAINTENANCE CONTRACT**

19.1 The counterparty can enter into a maintenance contract with us for a period of at least 12 months which will terminate by means of written notice no less than 3 months prior to the end of this period.

In the absence of notice of termination by the counterparty, the contract will be (repeatedly) extended for a corresponding period, but not for more than 5 years. A price adjustment can take place annually.

19.2 The maintenance work comprises both preventative and corrective (repair) maintenance. Maintenance work will only be carried out during office hours on normal working days. If we deem it necessary, the necessary repair work will be carried out at the (materials) rates then in force. The counterparty will be informed about this in advance. The counterparty is obliged to provide all necessary information concerning the equipment, including if there are links to equipment not supplied by us, for the purpose of the maintenance.

- 19.3 The counterparty is obliged to closely follow our usage/maintenance instructions. Any relocation of equipment or changes in/of the space in which the delivered goods are located must be submitted to us for approval in advance.
- 19.4 The use of materials/data carriers and accessories, in the broadest sense, not supplied by us for the purpose of the equipment supplied by us will be at the counterparty's own risk.
- 19.5 The maintenance contract specifies the basic maintenance charge excluding VAT. The maintenance charge is based on the period of usage as indicated in the relevant contract. Payment must be made before the (extended) commencement date.

## **20 VARIATIONS IN THE AMOUNT OF WORK**

- 20.1 We are entitled to carry out and charge for additional work without the prior permission of the counterparty if the additional work does not exceed 10% of the original sum agreed.
- 20.2 Changes in the assignment specified by the counterparty or resulting from a change in circumstances as a result of which the original contract can no longer be (fully) maintained, will be carried out and charged as additional or reduced work, all within the bounds of fairness.
- 20.3 If additional/reduced work deviates more than 10% from the original sum, the parties will discuss the steps to be taken.  
In the event of cancellation by the counterparty, the supplier is entitled to bill for the costs incurred and goods supplied up until then.

## **21 GUARANTEE/LIABILITY**

- 21.1 We guarantee that the goods supplied/installed comply with the agreed specifications and with the demands which may reasonably be made of them in terms of usability and reliability. The guarantee obligation is restricted to repairs and/or replacement with regard to any shortcoming, provided that a timely complaint is made.
- 21.2 We are not liable for:
- the design of the installation and/or components thereof and all other data /information, if not originating from us;
  - effects on the installation of the use of material and/or usage or operating instructions which do not originate from us;
  - if the usage instructions relating to operation and/or power supply are not strictly followed;
  - normal wear and damage/wear caused by overloading or the effect of abnormal circumstances;
  - the application of the legally prescribed regulations.
- In these cases, without prejudice to the provisions of article 9, our guarantee obligation will lapse.

## **22 COMPLAINTS**

- 22.1 The counterparty is obliged to submit complaints concerning capacity directly to us in writing within 1 month of the work being completed.