

General Conditions of Sale of Puroc .

1. GENERAL

- 1.1 These General Conditions of Sale shall apply to all legal relations between Buyer and Seller in relation to the (possible) sale or supply of Products and/or Services and shall be applicable to all offers and quotations. The General Conditions of Sale may only be modified or supplemented by means of a written agreement between Seller and Buyer. All other terms and conditions, express or implied, present or historic (including any statements made in any brochure, website or advertising literature of Seller) are excluded. Unless expressly and specifically agreed in writing to the contrary, Seller will only contract with Buyer on these terms and conditions and will not accept any subsequent terms and conditions of Buyer. An agreement shall only be concluded after Seller has given written confirmation of its acceptance of an order or a similar document or if Seller commences the execution of an order, offer or a similar document.
- 1.2 In these General Conditions of Sale, terms defined in the 2000 edition of Incoterms have, unless otherwise specified, the same meaning and:
"Affiliate" means, in relation to any company or unincorporated organisation, a company or unincorporated organisation which controls, is controlled by or is in common control with it;
"Buyer" means the person buying the Products or, if agent for another, that person and the other jointly and severally;
"Products" means the products and any part of them described in Seller's Specification and include their normal standard packaging and any replacement products;
"Seller" means Puroc B.V.;
"Services" means that technical advice (if any) given by or on behalf of Seller in connection with the Products, whether being specific advice given to Buyer or whether in any of Seller's technical literature including any advice given by any technical representative of Seller made available by Seller at Buyer's site or at any third party premises;
"Specification" means that specification (if any) included in Seller's written quotation, Seller's current published product data sheets or any other written specification supplied by Seller.

2. FORMATION OF THE CONTRACT, DELIVERY AND/OR PERFORMANCE

- 2.1 All offers by Seller shall be made without obligation and are valid for 30 calendar days.
- 2.2 Seller may terminate negotiations with Buyer at any time, without having to state the reasons for doing so and without having to pay compensation or damages.
- 2.3 Any brochures, samples, models and/or similar information or materials that are made available to Buyer with regard to the Products are for indicative purposes only, without the Products having to conform them.
- 2.4 Unless otherwise agreed between parties, Buyer shall be obliged to determine whether the Products are suitable for the intended use of the Products or the circumstances under which the Products will be used. Seller is not obliged to question Buyer for the intended use of the Products.
- 2.5 Delivery or dispatch dates quoted are given or accepted by Seller in good faith, but not guaranteed unless otherwise agreed in writing between parties. Seller shall not be in default unless and until it has received a written notice of default upon the expiry of the agreed delivery period.
- 2.6 Unless otherwise agreed in writing between parties, delivery shall be Ex Works (INCOTERMS 2000). Buyer shall take delivery of Products on the date quoted or agreed by Seller. Buyer shall bear all storage and other costs (including insurance) arising from Buyer's failure to comply with the contract.
- 2.7 Packaging is not returnable unless otherwise agreed in writing by Seller. Any special packaging requirements will incur an additional charge.
- 2.8 Without prejudice to clause 8, each delivery and/or performance shall be treated as a separate contract. Unless otherwise agreed in writing between parties and if Parties agreed - contrary to clause 2.6 - that Seller shall deliver the Products to Buyer's premises, Seller may deliver and/or perform in part and any failure to perform or deliver or any related breach of contract by Seller shall not affect any other delivery. Seller shall in such event be entitled to invoice partial deliveries and/or performances separately.
- 2.9 Minor deviations from the agreed amounts, weights, sizes, colours and composition are accepted by the Buyer and shall not entitle Buyer to a price adjustment.
- 2.10 Conclusive evidence of delivery shall be a receipt from a carrier.
- 2.11 If Seller undertakes to obtain any licence required for the export of Products, Buyer shall comply with any such licence and shall obtain and comply with all other necessary licences, permits and consents (including all other export/import licences).
- 2.12 Buyer agrees that, in the event it resells the Products, it will not actively solicit orders of the Products inside the Netherlands and China.

3. PRICE AND PAYMENT

- 3.1 Prices are based on delivery Ex Works (INCOTERMS 2000) and exclusive of duties, fees or taxes. Any delivery charge will be at cost or as otherwise agreed in writing. Buyer shall ensure that any vessel receiving Products as "ship stores in transit" is entitled to receive such stores free of value added taxes and other duties.
- 3.2 Unless otherwise agreed in writing by Seller, payment is due thirty (30) days from date of invoice without the right to set-off or discount. Seller may require security for payment before despatch or performance.
- 3.3 Payment shall be made in Euros unless otherwise agreed upon in written between parties.
- 3.4 In the circumstances described in clause 7.2, all unpaid balances owing to Seller from Buyer shall become a debt immediately due and payable to Seller, whether or not property in Products has passed to Buyer.
- 3.5 Time of payment is of the essence of the contract. Without prejudice to any other remedy Seller may have, Buyer shall be due the Dutch statutory commercial interest rate for any amount which has not been paid on the due date.
- 3.6 Payments by Buyer shall be applied first to the interest due and then to that part of the principal indicated by Seller, irrespective of any instructions by Buyer to the contrary in this regard.
- 3.7 Seller is entitled, without prejudice to any of its other rights, to set-off any amounts due by Buyer against any amounts due by Seller to Buyer or any of its Affiliates.
- 3.8 Buyer shall indemnify Seller against all costs, charges, expenses and legal costs incurred by Seller in recovering amounts due by Buyer.

4. WARRANTIES

- 4.1 Other than for samples or goods sold as obsolete or sub-standard (for which no warranty applies), Seller warrants ("the Warranty") that upon the date of delivery of the Products and for a period of 6 months after delivery the Products are made with sound materials and workmanship, comply with Seller's then current published product data sheets and comply with the Specification.
- 4.2 Unless explicitly otherwise agreed in writing between parties, Products are sold to be used in accordance with the Specification. Seller does not warrant that Products are fit for any specific purpose or an intended use by Buyer and Buyer shall satisfy itself that Products are so fit. If Buyer doubts whether the Products can be used for the intended purpose, it is Buyer's responsibility to ask (technical) advise prior to using the Products.
- 4.3 Buyer cannot invoke the Warranty in case the Products are (i) not used in accordance with Seller's instructions and/or the Specifications, (ii) are manufactured on Buyer's instructions; or (iii) used after Seller notified Buyer that the Products fail to comply with the Warranty.

5. REMEDIES, DUTY TO INSPECT AND LIMITATIONS OF LIABILITY

- 5.1 Buyer shall examine the Products as soon as reasonably practicable after delivery but in any event within 30 days. Buyer shall then immediately notify Seller of any incomplete or failed delivery, loss or damage during carriage, shortage of weight or quantity or if Products fail to comply with the Warranty ("non-conform Products") and shall in the case of non-conform Products be entitled to notify Seller that it rejects all or any part of the non-conform Products in that delivery. If any non-conformity of the Product is not directly visible upon delivery, Buyer is under the obligation to notify Seller thereof in writing and with an explanation, immediately (but in any event within 30 days) after discovery of the non-conformity of the Products. Unless Buyer so notifies Seller within thirty (30) days after the date when Buyer became or ought reasonably to have become aware of any of the above Buyer shall have waived all claims connected with the matter which should have been notified.
- 5.2 No action may be brought against Seller in connection with Products, Services and/or the contract unless proceedings are issued against Seller within two years after Buyer became or ought to have become aware of the circumstances giving rise thereto.
- 5.3 Provided that Buyer complies with clause 5.1, if the Products do not conform, Seller's obligations shall be limited to, at its election, repairing or replacing the non-conform Products or reimbursing the purchase price in exchange for the return of the non-conform Products. The foregoing shall be Seller's sole liability in relation to any non-conform Products.
- 5.4 Products which are alleged to be non-conform shall as far as possible be preserved for Seller's inspection, and shall be returned to Seller (at Seller's cost) if Seller reasonably so requests. If Buyer fails to do so, Buyer shall be deemed to have waived its rights in respect thereof.
- 5.5 Seller shall not be liable in any way whatsoever for:
- (a) the incompatibility of any Products supplied by Seller with the products of other manufacturers or suppliers;
 - (b) inadequate or incorrect surface preparation or coating application work carried out by, or the faulty equipment or product of, Buyer or any third party;
 - (c) the supervision or quality control (or lack thereof) by or on behalf of any third party.
- 5.6 Buyer shall promptly notify Seller of any claim against Buyer under any consumer protection legislation granting rights to consumers which Seller cannot by law exclude or restrict. Seller then shall only be liable to Buyer in the event Products were defective (within the meaning of the applicable legislation) at the time of delivery by Seller and shall not be liable to the extent that any liability arises from any act or omission of Buyer.
- 5.7 Without prejudice to any other limitation of Seller's liability (whether effective or not) and in so far permitted according to applicable mandatory laws or unless otherwise agreed upon in these General Conditions of Sale:
- (a) in no circumstances whatsoever (including any fault or default of Seller) shall Seller be liable for any loss of profits, losses suffered, lost orders or contracts, missed savings, goodwill and anticipated savings; any third party claims; or for any indirect or consequential losses in connection with Products, Specification, Services or the contract;
 - (b) Seller's total aggregate liability under any proceedings or law in connection with Products, Specification, Services or the contract is limited to three times the invoice value of the Products or Services concerned.
- 5.8 The Warranty and Buyer's remedies under clauses 5 and 7.1 are in substitution for any other warranties, obligations, representations, liabilities, terms or conditions (whether they are express or implied, or arise in contract, tort, or otherwise) in connection with Products and/or Services (including, without limitation, any relating to satisfactory quality, fitness for purpose, conformity with description or sample, care and skill or compliance with representations) which are hereby expressly excluded.

6. EVENTS BEYOND SELLER'S REASONABLE CONTROL

Seller shall not be liable for any failure to comply with the contract related to any circumstances whatever (whether or not involving Seller's negligence) which are beyond Seller's reasonable control and which prevent or restrict Seller from complying with the contract. However, Seller may where reasonable and without liability suspend or terminate all or some of its obligations under the contract if Seller's ability to fulfil such obligations is materially impaired.

7. TERMINATION AND SUSPENSION

- 7.1 Except where Buyer has caused or contributed to any delay, Buyer may (as Buyer's sole remedy, without affecting the balance of the contract quantity) terminate the contract by notice to Seller in respect of any instalment of Products which is not despatched by any date stated in writing to be "guaranteed" by Seller or - subject to providing Seller a notice of breach - within sixty (60) days after any date indicated by Seller or quoted on Seller's written quotation.
- 7.2 Seller may (without prejudice to its other rights or remedies) terminate or suspend Seller's performance of the whole or any outstanding part of the contract in the circumstances as set out below without being liable towards Buyer for any damages it might suffer. Seller may also suspend deliveries or supply of Services while investigating any claim relating to prior shipments (under any contract) of Products. The circumstances are:
- (a) Buyer, after having received a notice of breach from Seller, continues to fail to take delivery of or to pay for Products and/or Services (if any), or breaches any other term of the contract; or
 - (b) Buyer is applied for or granted suspension of payment, a petition for Buyer's bankruptcy is filed or Buyer is declared bankrupt or insolvent or if a receiver, administrator or encumbrancer takes possession of any material part of Buyer's assets, Buyer makes an arrangement with its creditors or Buyer suffers any equivalent of the foregoing;

- (c) Seller having reasonable grounds for suspecting that an event in clause 7.2(b) has occurred or will occur, or that Buyer will not pay for Products or Services on the due date, and so notifies Buyer; or
 - (d) there has been a substantial increase (more than 8%) in Seller's costs of manufacture and supply of Products and/or Services between the date of contract and date of despatch/delivery and parties have failed within thirty (30) days of Seller notifying Buyer of such increase, to reach agreement on a reasonable adjustment in the price for remaining deliveries to recognise such increase.
- 7.3 If Buyer provides Seller with security for the contract price, reasonably acceptable to Seller, within three (3) working days after a notice has been given under clause 7.2(c), Seller shall withdraw the notice.

8. RISK AND TITLE

- 8.1 Risk in Products shall pass to Buyer upon delivery. Seller shall retain ownership of Products until:
- (a) Seller has received payment in full for Products and of all other sums which are or become due to Seller from Buyer on any account; or
 - (b) Buyer sells Products at arm's length in good faith to an unrelated third party.
- 8.2 Buyer shall insure Products against all usual risks to full replacement value until ownership passes to Buyer. Buyer shall sell, use or part with possession of them only in the ordinary course of trading and shall, where reasonably possible, keep each delivery separate and clearly identified as Seller's property. Any insurance monies received by Buyer in respect of Products owned by Seller, shall be held on trust for Seller. In the circumstances described in clause 7.2, Buyer's right to sell, use or part with possession of Products shall terminate immediately. Seller may without prejudice to Seller's other remedies enter Buyer's premises, and recover and/or sell such Products.

9. THIRD PARTY CLAIMS AND CONDUCT OF CLAIMS

- 9.1 Buyer shall not use any trademarks or trade names applied to or used by Seller in relation to Products in any manner not approved by Seller.
- 9.2 Buyer shall indemnify Seller against any liability incurred by Seller (i) from incorporating property of Buyer in Products or complying with any specification or other instruction of Buyer relating to Products; and, in so far permitted by law, (ii) arising from the use of or dealings in Products by Buyer or a third party except if arising from Seller's wilful default.
- 9.3 Each party shall promptly notify the other of any relevant claim under the contract, shall comply with the other's reasonable requirements to minimise and/or avoid further liability and shall allow the other conduct of any action and/or settlement negotiations, on reasonable terms.

10. INFORMATION AND COMPLIANCE WITH LAWS

- 10.1 Buyer shall ensure that all Products are safely and lawfully received, stored, maintained, used or applied by Buyer.
- 10.2 Buyer shall ensure that all appropriate safety information (whether supplied by Seller, Buyer or another) is distributed and drawn to the attention of customers and all others (including Buyer's employees and contractors) who require it for the safe handling or use of Product and shall promptly supply to Seller all information and assistance required for Seller to execute Buyer's order.

11. MISCELLANEOUS

- 11.1 The contract may not be assigned by Buyer without Seller's prior written consent.
- 11.2 Notices must be in writing to Seller's or Buyer's address and are deemed delivered on the first working day after delivery by hand or (subject to confirmation of transmission) by facsimile, or, where sent by first class or express post, five clear working days after the date of posting to Buyer's or Seller's address. Qualified acceptances by Buyer on delivery notes shall not constitute notice of any claim or acceptance by Seller of any such qualification.
- 11.3 No failure by Seller to enforce any provision of the contract shall be construed as a release of its rights relating thereto or to sanction any further breach.
- 11.4 If any provision of the contract is found to be invalid or unenforceable it shall have effect to the maximum extent permitted by law, or, if not so permitted, shall be deemed deleted.

12. NO THIRD PARTY RIGHTS

No term or condition of the contract is enforceable by any person who is not a party to the contract and Seller and Buyer may exercise, without the consent of any third party, any rights they may have to amend or rescind the Contract.

13. LAW

All legal relationships between parties in relation to the (possible) sale or supply of Products and/or Services shall be governed by and construed in accordance with Dutch law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the contract or the transactions contemplated by the contract. Any dispute between parties in relation to the (possible) sale or supply of Products and/or Services shall be submitted to the exclusive jurisdiction of the competent [Amsterdam] court.