

# **General Terms and Conditions of Sale, Delivery and Payment of Nandansons International, Inc., established in 1979, and of its associated companies.**

## **ARTICLE 1 - DEFINITIONS**

- 1.1 These General Terms and Conditions shall apply to all offers by and agreements with Nandansons International, Inc. and its legal successors, as well as to associated companies or with said successors, together as well as individually hereinafter also referred to as "the Company", relating to the delivery of goods by the Company to the party the offer is addressed to or the other party concerned, hereinafter referred to as "the Customer".
- 1.2 The applicability of the Customer's general terms and conditions is hereby explicitly rejected.
- 1.3 Any stipulations deviating from these General Terms and Conditions shall only apply in the event that and insofar as they have been accepted by the Company in writing.

## **ARTICLE 2 - OFFER**

Any offer made by the Company shall be without prejudice and subject to contract; this shall also apply in the event that said offer includes a period for acceptance, unless explicitly provided for to the contrary in writing.

## **ARTICLE 3 - AGREEMENT**

- 3.1 An agreement, in this article also including any changes and/or additions thereto, shall not be binding until agreed upon in writing, except in the event that the Company has started the execution of the contract beforehand.
- 3.2 An agreement is concluded in writing at the moment the contract is signed by the board of directors of the Company and by the Customer, or on the date of dispatch (by post and/or by facsimile) by the Company of the written order confirmation signed by its board of management, or of the Company's invoice. Promises made by and arrangements with subordinates of the Company shall not bind the Company, unless these have been confirmed by the board of directors of the Company in writing.
- 3.3 The contract represents the contents of the agreement completely and correctly. The order confirmation by the Company or the Company's invoice shall be considered to represent the contents of the agreement correctly, unless the Customer protests against its contents forthwith in writing.
- 3.4 Slight deviations with customary tolerances shall be permitted at the execution of the agreement.
- 3.5 Unilateral cancellation from the side of the Customer shall be null and void, unless the Company agrees to such cancellation in writing.

## **ARTICLE 4 - NOTICES, INFORMATION AND STATEMENTS**

Notices, information, statements and samples made or supplied by the Company, in whatever form or nature, shall only be indicative and shall never bind the Company, unless the agreement explicitly provides for the contrary.

## **ARTICLE 5 - CONFIDENTIALITY**

The Customer shall observe confidentiality towards any third party in the broadest sense of the word regarding any and all business information relating to the Company, which has been brought or come to his knowledge by the Company and/or within the framework of the offer or the agreement.

## **ARTICLE 6 - PRICES**

- 6.1 The prices stated and/or agreed upon by the Company shall be exclusive of taxes - including Value Added Tax ("B.T.W.") - and levies, and shall be based on the Terms and Conditions (of delivery) as mentioned in the following articles.
- 6.2 In the event no Value Added Tax ("B.T.W.") or other taxes or levies are due because the goods are destined for delivery within the European market, those taxes shall nevertheless be charged, but shall be credited if the Customer proves that a delivery as referred to in this paragraph has indeed taken place.

- 6.3 Insofar as the stated and/or agreed prices are based on the weight of the goods, this weight shall be determined by the weighing carried out by the Company before the delivery, using calibrated weighing apparatus. The Customer shall have the right to be present at said weighing, provided the delivery shall not be delayed because of this. The Customer shall take the initiative thereto himself in good time.
- 6.4 The Company shall have the right to increase the stated and/or agreed prices in the event of an increase in prices of goods, raw materials or parts to be obtained from third parties, wages, national insurance contributions, freight, insurance premiums or other cost price factors (including changes in foreign exchange) and charges (including import and transit duties).  
In the event that a price increase takes place within three months after the conclusion of the agreement, the Customer who is also a consumer shall be entitled to dissolve the agreement.
- 6.5 In the event that the stated and/or agreed prices are (also) based on restitutions of levies and/or on subsidies, whereas these are not obtained for whatever reason, the Company is entitled to adjust the prices accordingly.

## ARTICLE 7 - DELIVERY – DELIVERY PERIOD – DELIVERY TIME

- 7.1 Unless explicitly agreed upon otherwise, the delivery shall be made "Ex Works" (EXW) from the premises of the Company. The interpretation of the terms and conditions of delivery shall be determined by the most recent edition at the time of conclusion of the agreement of the Incoterms, as issued by the International Chamber of Commerce.
- 7.2 The delivery period shall commence at the latest on:
- the date of conclusion of the agreement;
  - the date at which the Company has at its disposal all the documents, information, permits, exemptions, approvals, allocations, etc, needed for the delivery of the goods;
  - the date of receipt of a prepayment by the Company and/or the date of provision of a security the Company is entitled to in accordance with the agreement.
- 7.3 The delivery period shall be based on the circumstances applicable at the time of conclusion of the agreement and on the timely delivery of the materials and goods ordered by the Company for the execution of the agreement. In the event that any delay arises as a result of changes in these circumstances or because the materials and/or goods timely ordered for the execution of the agreement have not been delivered in time, the delivery period shall be extended to such a degree as is reasonable, taking all circumstances into consideration.
- 7.4 The delivery date of the goods shall be the moment in time when the goods, with the exception of unimportant parts, are ready for shipment, and the Company has informed the Customer thereof, or the time when the goods have left the premises of the Company to be forwarded to the Customer.
- 7.5 The Company shall be entitled at all times to make partial deliveries, unless explicitly agreed upon otherwise.
- 7.6 The delivery date shall not be considered to be a firm date, unless explicitly agreed upon otherwise. In the event of attributable exceeding of the delivery date, a notice of default shall always be required. The Customer cannot derive any rights from attributable exceeding of the delivery date insofar as a term of three (3) months is not exceeded.
- 7.7 In the event that the Company is in default with regard to the delivery date, the Customer shall only have the right to dissolve the agreement. In that case prepaid amounts shall be refunded, without any compensation for interest, however.

## ARTICLE 8 - TRANSPORTATION

- 8.1 In all cases and irrespective of the agreed terms and conditions of delivery, the Company shall be entitled to have the goods transported, unloading inclusive, at the expense and risk of the Customer, in a manner to be determined by the Company and using means of transportation at the Company's option.
- 8.2 The Company shall not be responsible for (the use by the Customer of) any documents (provided by the Company) for the transportation of the goods to the place of destination.
- 8.3 At the first request of the Company, the Customer shall provide all necessary securities for the documents needed to transport the goods to the place of destination.
- 8.4 In the event that circumstances beyond the control of the Company prevent the goods from being transported to or onto respectively delivered at the agreed place, or in the event that the Customer fails to take delivery of the goods, the Company shall have the right - at its option - either to take the products back or to store the goods (or have them stored) at the expense and risk of the Customer. Any costs of return shipment and storage shall be payable by the Customer, while the Customer shall furthermore be obliged to fulfill his obligations to the Company as if delivery had taken place. The costs referred to here shall be determined in advance by the Company and the Customer jointly at 15 percent at least of the agreed price, without prejudice to the right of the Company to compensation of the actual costs should these be higher.

## ARTICLE 9 - PACKAGING

- 9.1 Packaging for single use shall not be taken back by the Company.  
The Company shall have the right - at its option - to take back or not take back packaging for repeated use.
- 9.2 The Company shall have the right to charge the Customer for packaging for repeated use as a separate item on the invoice, together with the delivered goods.
- 9.3 In cases referred to under paragraph 2 of this article, the Company shall send a credit invoice crediting the invoiced amount to the Customer for packaging returned to the Company at the Customer's expense upon receiving said packaging, unless the returned packaging is in a condition inferior to the one at the time of acceptance by the Customer, in which case the amount credited shall be reduced accordingly.
- 9.4 Only upon receipt of the credit invoice shall the Customer be entitled to deduct the value of the returned packaging, to the amount credited to him, from the amount he owes the Company.
- 9.5 Damage to goods caused by destruction/damage of the packaging shall at all times be at the Customer's risk.

## ARTICLE 10 - RISK AND TRANSFER OF PROPERTY

- 10.1 The Customer shall bear the risk of any and all direct and indirect damage that may be caused to the goods, immediately after the goods are considered as delivered.
- 10.2 The Company shall retain ownership of all delivered goods until any debts payable by the Customer with regard to goods delivered or to be delivered by the Company to the Customer under any agreement, as well as with regard to any failure in the performance of such agreements by the Customer, shall be fully satisfied.
- 10.3 The Customer is obliged to store the goods delivered under retention of title with the necessary care, and to store them as identifiable property of the Company. The Customer shall furthermore be obliged to insure the goods against damage or loss, by whatever reason, during the period of retention of title. Said insurance shall designate the Company as (co-)insured with an independent right of claim towards insurer(s), and the Customer shall make the policies of these insurances available for inspection to the Company upon request. Upon request of the Company, all claims of the Customer on the insurers pursuant to the insurances referred to above shall be assigned to the Company, or a right of pledge shall be granted to the Company.
- 10.4 The Company shall be entitled to repossess any goods delivered under retention of title that are still present at the Customer's forthwith and without prior notice of default, in the event that the Customer fails in the performance of his obligations. The Customer irrevocably authorises the Company to exercise this right to repossess insofar as is necessary.
- 10.5 In the event that and insofar as the Company has exercised its right to repossess as referred in the preceding paragraph, the agreement shall be dissolved wholly or for a proportionate part without any judicial intervention, without prejudice to the right of the Company to compensation of damage and costs. The Customer shall then be credited with the market value (which on no account can be higher than the original purchase price), reduced by the damage suffered and costs incurred by the Company.
- 10.6 The Customer, exercising his profession or business, shall be entitled, within the framework of his business operations, to sell and deliver the goods delivered to him under retention of title to third parties. In the event of such sales, the debt payable by the Customer to the Company regarding the goods resold by the Customer shall become forthwith and fully due and payable, insofar as said claim was not already due and payable.
- 10.7 The Customer shall always be obliged to inform third parties of the Company's retention of title. Furthermore, the Customer shall be obliged to inform the Company of the whereabouts of the goods and of the person or company said goods have possibly been sold to, if so required by the Company.

## ARTICLE 11 - PAYMENT

- 11.1 Unless explicitly agreed upon otherwise in writing, payment of the agreed price shall be made at the time of formation of the agreement.
- 11.2 Any and all payments shall be made without deduction or settlement, effectively in the currency as stated on the invoice.
- 11.3 In the event that the Customer alleges to have a claim on the Company with regard to the performance of the agreement, he will not be discharged from his obligation to pay in the manner agreed.
- 11.4 In the event that the Company has a well-founded fear that the Customer will not fulfill his obligations, the Company shall at its discretion be entitled to require sufficient security from the Customer with regard to the fulfillment of the obligations to pay, before performing or continuing to do so.  
The Company shall be entitled to suspend the fulfillment of its obligations until the Customer has given said security.

- 11.5 In the event that the Customer has not paid at the time or within the period of time referred to in paragraph 1 of this article, he shall be in default by operation of law and without any prior notice of default being required, and he shall owe the statutory interest on the amount due and payable from the date at which the payment should ultimately have been made, without prejudice to any other rights of the Company (explicitly including the right to compensation of loss on exchange).
- 11.6 Any costs, both in and out of court, made by the Company with regard to non-fulfillment, overdue or non-sufficient fulfillment of his obligations by the Customer, including extrajudicial collection costs and costs of legal assistance, shall be compensated by the Customer to the Company. The Company and the Customer jointly shall determine the extrajudicial collection costs in advance at 15 per cent of the principal sum due, without prejudice to the right of the Company to compensation of the actual costs should these be higher.

## ARTICLE 12 - RETURN SHIPMENTS

It shall not be permitted to return any goods delivered by the Company without the Company's prior written consent. Should any return shipments take place, then this shall at all times be done at the expense and risk of the sender.

## ARTICLE 13 - SAMPLES

The Customer shall be entitled to ask the Company to put (a) sample(s) of the goods at his disposal before delivery. If the Customer refrains from doing so, he shall be considered to agree to the quality and condition of the goods beforehand.

## ARTICLE 14 – COMPLAINTS AND GUARANTEES

- 14.1 Complaints can only refer to quantity, weight or specification, as well as to non-conformity of the delivered goods with the sample(s) made available by the Company.
- 14.2 The Customer shall check forthwith the goods ultimately on arrival.
- 14.3 Any complaints with regard to relevant defects observable at inspection of the goods, as well as complaints in connection with quantity, weight or specification shall be made in writing within 24 hours after the delivery, and include a complete description of the alleged defects, on default of which any claim in this respect shall become void.
- 14.4 Any complaints with regard to other relevant defects shall be made in writing within 24 hours after their disclosure, and include a complete description of the alleged defects, however ultimately within three (3) months after the delivery, on default of which any claim in this respect shall become void.
- 14.5 Any claim of the Customer with regard to delivered goods shall also become void in the event that:
- the agreement refers to the delivery of used or damaged goods;
  - the goods have been processed or the goods are otherwise not (or no longer) identifiable as originating from the Company;
  - the defects are (also) caused by normal wear and tear, inexpert and/or incorrect treatment, use and/or storage or maintenance of the goods;
  - the Customer has not forthwith given the Company the opportunity to investigate the complaints and to fulfill its obligations;
  - the Customer has not, not in time or not sufficiently, fulfilled any obligation resting with him.
- 14.6 In connection with any parts and/or goods obtained from third parties which have not been treated by the Company, the Customer can only assert his claims against the Company insofar as the Company, in its turn, can assert any claims against its supplier. Should this be the case, the Company shall at any rate be discharged with respect to the Customer by transferring its rights with respect to its supplier to the Customer.
- 14.7 The Customer is not entitled to assert any rights against the Company in the event that he can also directly assert the rights with regard to the defects concerned against the manufacturer.
- 14.8 Without prejudice to the provisions in the previous paragraphs of this article, in the event of timely and justifiable complaints, the Company shall only be obliged - at its option - to either repair the goods, proceed to redelivery or to credit the Customer for the defective goods. These General Terms and Conditions shall apply unimpaired to redelivery.

## ARTICLE 15 - LIABILITY

- 15.1 The Company's liability under the agreement shall be limited to fulfillment of the obligations described in the agreement, in particular the obligations described in the previous article.
- 15.2 The Company's liability shall never cover business damage or any other indirect damage.
- 15.3 With the exception of gross negligence or intent, the Company shall never be liable for direct or indirect damage, including business damage, resulting from the infringement of any intellectual or industrial property rights, licenses or any other rights of third parties.
- 15.4 Should the Company be held liable by any third party/parties for any damage for which the Company is not liable pursuant to these General Terms and Conditions or otherwise, then the Customer shall be obliged to hold harmless and indemnify the Company against such damage and liability and to compensate it for any possibly ensuing costs, damage and interest.
- 15.5 The limitations and exclusions of liability, as well as indemnity stipulated for the Company itself in the above paragraphs are also stipulated for and on behalf of its employees, any other person employed by it within the framework of the agreement, as well as for the persons from whom the Company obtains delivered goods and/or parts.

## ARTICLE 16 - FORCE MAJEURE

- 16.1 The term force majeure in these terms and conditions shall mean any circumstance beyond the Company's control, whether or not foreseeable at the time of conclusion of the agreement, which permanently or temporarily prevents fulfillment of the contract, and, insofar as these are not yet included, war, danger of war, civil war, revolt, strike, employees' lock-out, freight problems, fire, weather conditions preventing work and other interruptions of the Company's operations or of the operations of the Company's suppliers, as well as default of the Company's suppliers.
- 16.2 In the event of impediment to the performance of the agreement as a result of force majeure, the Company shall have the right without any judicial intervention, either to suspend the execution of the agreement for a maximum of three (3) months or to wholly or partially dissolve the execution of the agreement, without the Company being obliged to pay any compensation.

## ARTICLE 17 - (THREATENING) FAILURE

In the cases provided for by the Law, as well as in the event that the Customer does not, not in time or not sufficiently, fulfill one or more obligations arising for him from the agreement, including the provisions in these General Terms and Conditions, or in the event that there is serious doubt as to the Customer being able to fulfill his contractual obligations towards the Company, as well as in the event of bankruptcy, suspension of payments, complete or partial stoppage of work, liquidation, transfer or encumbrance of the Customer's business, including the transfer or pledging of an important part of his accounts receivable and furthermore in the event that any goods of the Customer are attached before judgment or in execution, the Company shall have the right, without notice of default or judicial intervention, either to suspend the execution of the agreement for a maximum of three (3) months, or to partially or wholly dissolve the agreement, such without being liable to any compensation or guarantee, and without prejudice to any of its other rights.

## ARTICLE 18 – SUSPENSION, DISSOLUTION AND CONSEQUENCES

- 18.1 In the event of the Company's suspension of its obligations, it shall be authorized - and obliged at the end of the suspension period - to opt for execution or complete or partial dissolution of the agreement.
- 18.2 In the event of suspension or partial dissolution by virtue of the provision of the previous article, the agreed price shall be forthwith due and payable, after deduction of any costs not incurred by the Company as a result of the suspension or the partial dissolution.
- 18.3 In the event of partial dissolution the Customer shall furthermore be obliged, after the payment of the amount due pursuant to the previous sentence, to take possession of the goods covered by that payment, failing which the Company shall have the right to have these goods stored at the risk and expense of the Customer, or to have them sold at his expense.
- 18.4 In the event that the Customer returns the goods received by him from the Company after dissolution of the agreement, said returning of the goods shall at all times be at the risk and expense of the Customer, until said goods have been taken possession of by the Company.

## ARTICLE 19 - GENERAL

- 19.1 In the event that one or more stipulations of the agreement, including stipulations of these General Terms and Conditions, are null and void or become legally invalid, the remaining provisions of the agreement shall remain in force. Parties shall consult on the stipulations which are null and void or have become legally invalid, in order to make an alternative arrangement.
- 19.2 Should one or more stipulations of the agreement, including the stipulations of these General Terms and Conditions, be in conflict with mandatory provisions, stipulated by or to be stipulated by a thereto competent authority, these latter provisions shall be considered to have replaced the relevant stipulations of the agreement.

## ARTICLE 20 - DISPUTES AND APPLICABLE LAW

- 20.1 With regard to any and all disputes in connection with the agreement, or with regard to further agreements arising or resulting from or in connection with said agreement, the courts in the state of New Jersey shall have exclusive jurisdiction in the first instance, unless the Company explicitly opts for the competence of the court of the domicile or in the place of business of the Customer.
- 20.2 The agreement, as well as any and all further agreements arising or resulting from or in connection with said agreement, shall be governed by and construed in accordance with the United States federal and State laws, with the exception of any current or future international regulation on the purchase of movable goods of which the applicability may be excluded by parties.

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# **General Terms and Conditions of Purchase of Nandansons International, Inc., established in 1979, and of its associated companies.**

## **ARTICLE 1 - GENERAL**

- 1.1 These General Terms and Conditions apply to all offers to and agreements with Nandansons International, Inc. and its legal successors, as well as associated companies or with said successors together as well as individually hereinafter also referred to as "the Company", relating to the delivery of goods by the offeror or the other party concerned hereinafter referred to as "the Supplier".
- 1.2 The applicability of the Supplier's general terms and conditions is hereby explicitly rejected.
- 1.3 Any stipulations deviating from these General Terms and Conditions shall only apply in the event that and insofar as they have been accepted by the Company in writing.

## **ARTICLE 2 - AGREEMENT**

- 2.1 An agreement, under which in this article also any changes and/or additions are included, shall not be binding unless it has been agreed upon in writing.
- 2.2 An agreement shall be concluded in writing at the moment in time of signing contract by the board of directors of the Company and by the Supplier, or on the date of dispatch (by post and/or by facsimile) by the Company of the written order confirmation, signed by its board of directors. Promises by and arrangements with subordinates of the Company shall not bind the Company, unless these have been confirmed in writing by the board of directors of the Company.
- 2.3 The contract presents the contents of the agreement concluded between the parties completely and correctly. The order confirmation of the Company shall be considered to present the contents of the agreement completely and correctly, unless the Supplier rejects its contents forthwith in writing and motivated. In that case, the Company shall no longer be bound by the order confirmation either.
- 2.4 The Supplier must procure the permissions, permits and/or licenses needed for the execution of the agreement, in time and at his expense, and he must see to it that the conditions made therein or thereby are observed. The Supplier shall be solely liable for any failure to acquire the permissions, permits or licenses, or to acquire them in time, or for the non-observance of the conditions made therein or thereby, whereas the Supplier shall indemnify the Company for any and all damage and costs arising from such failure.
- 2.5 Unilateral cancellation from the side of the Supplier shall be null and void, unless the Company agrees to said cancellation in writing.

## **ARTICLE 3 - CONFIDENTIALITY**

The Supplier shall treat all business information in the broadest sense of the word, in connection with the Company, which has been brought or come to his knowledge by the Company and/or within the framework of the agreement, confidential and shall not disclose the same to any third party.

## **ARTICLE 4 – PROHIBITION TO MAKE OFFERS AND SUCH TO THE CLIENT**

The Supplier shall refrain completely from stating prices and/or making any offers, either directly or by third-party intervention, to a client of the Company in connection with the goods the Company is negotiating with the Supplier about or has concluded an agreement on.

## **ARTICLE 5 – INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS**

- 5.1 The Supplier guarantees that (the use of) the delivered goods does not infringe any and all (logotype) trademark rights, copyrights or any other industrial or intellectual property rights of third parties, hereinafter referred to as "IP right holders," or any other rights of third parties.

- 5.2 The Supplier guarantees that the delivered goods have been brought to market by the IP right holder itself, or with its permission. Also, if the Supplier did not buy the goods from the IP right holder itself, the Supplier guarantees that the delivered goods are fit for sale and that they may be freely traded.
- 5.3 The Supplier indemnifies the Company and its client(s) against all claims related to circumstances of which the Supplier guaranteed the presence or absence in this article, and will compensate the Company, or its client(s) for any loss as well as the costs ensuing from such claims. If requested by the Company, the Supplier will furnish the names and other details of its own suppliers to the Company if the Company in its turn needs to furnish those details to a third party.
- 5.4 The Company has title to all the industrial and intellectual property rights that arise or result from the implementation of the agreement by the Supplier, its personnel or third parties who were involved in the implementation of the agreement by the Supplier.
- 5.5 The Supplier indemnifies the Company against all claims by third parties in respect of industrial and intellectual property rights relating to the delivered goods to which the Company has title, and will compensate the Company for any loss as well as the costs ensuing from such claims.

## ARTICLE 6 - PRICES

All prices shall be fixed and inclusive of turnover tax, import and export duties, excise duties and all further levies and taxes in connection with or in relation to the goods or the delivery. The prices shall furthermore be based on the Terms and Conditions (of delivery) mentioned in the following articles.

There shall be no settlement in the event of increase of wages, prices of materials and the like.

## ARTICLE 7 – DELIVERY- TERMS AND CONDITIONS OF DELIVERY

- 7.1 Unless explicitly agreed upon otherwise, the delivery shall be made "Delivered Duty Paid" (DDP) at the place indicated by the Company. The interpretation of the Terms and Conditions of delivery shall be determined by the edition of the Incoterms which is most recently issued by the International Chamber of Commerce at the time of conclusion of the agreement.
- 7.2 The Supplier shall deliver the goods on the date mentioned in the agreement, or not later than the last day of the term mentioned therein, and failing an agreed date or term, within 30 days. Said date or term shall apply as a strict and final delivery date or term. A term of delivery mentioned in the agreement shall apply as of the date of conclusion of the agreement.
- 7.3 The Supplier shall be obliged to timely inform the Company about the exact time of delivery and about any threat of exceeding the time of delivery.
- 7.4 At the request of the Company, the Supplier shall be obliged to deliver the goods at a later date than the agreed one and the Supplier shall do his utmost to deliver the goods at an earlier date than the agreed date, in the event that the Company considers this desirable, without being entitled to any compensation of damage and costs because of this.
- 7.5 The Supplier shall only be entitled to make partial deliveries after prior written consent by the Company.

## ARTICLE 8 - TRANSPORTATION - UNLOADING

- 8.1 Transportation and unloading of goods shall be at the expense and risk of the Supplier in accordance with the Terms and Conditions of delivery mentioned in the previous article.
- 8.2 The Supplier can on no account claim any compensation of damage and costs as a result of any possible delay arising at the unloading of delivered goods.
- 8.3 The Supplier must present a delivery note immediately at the unloading of the goods, so as to have said note signed for approval by a person authorized on behalf of the Company. The signing of the delivery note shall solely be a confirmation of the receipt of the delivered goods and does not imply any approval of (the quality or the quantity) of the delivered goods and does not discharge the Supplier of any guarantee and/or liability. Nor can the signing of the delivery note result in a change of the agreement in any other way.
- 8.4 In any and all cases and notwithstanding the agreed Terms and Conditions of delivery, the Supplier shall be obliged to provide the documentation which is needed to transport the goods to the place of destination.



## ARTICLE 9 - PACKAGING

- 9.1 The Supplier shall pack the goods with proper care. He shall be liable for damage and costs caused by insufficient packaging of and/or damage to and/or destruction of this packaging.
- 9.2 The Company shall not be obliged to pay the costs of packaging, unless explicitly agreed otherwise.
- 9.3 The Supplier shall take back any possible packaging of the goods at demand by the Company and shall collect said packaging at his expense at the Company's premises, at the same time refunding any costs charged for said packaging by the Supplier to the Company.

## ARTICLE 10 - QUALITY

The Supplier shall guarantee that the delivered goods are:

- a. original and originating from the manufacturer stated on the packaging and labels, as well as in accordance with the quality intended by said manufacturer and without any faults;
- b. suitable for sale to re- sellers and (finally) for sale to and use by consumers;
- c. provided with the original and with regard to design and coloring most recent packaging and labeling of the manufacturer;
- d. in accordance with the demands made in the agreement, the documents belonging to the agreement and/or made available, as well as with the norms and specifications set by the Company and samples approved by it; and
- e. in accordance with national, European and other international rules and regulations, including the requirement of the presence of the original batch or code numbers (identical on the packaging and on the labels) enabling the identification of the goods.

## ARTICLE 11 - INSPECTION

- 11.1 The Company or any third party designated by it shall at all times have the right to inspect or to test the goods, wherever these may be. The results of inspection or test or the omission thereof shall not discharge the Supplier of any guarantee and/or liability.
- 11.2 The Supplier shall provide all information and facilities needed for an inspection or test, including the necessary help regarding employees and materials.
- 11.3 The personnel costs of the Company or the designated third party concerned, made in connection with an inspection or a test, shall be payable by the Company. Any other costs shall be at the Supplier's expense.
- 11.4 The Company shall inform the Supplier forthwith of any rejection of goods. In that case, the Supplier shall be bound to repair or to replace the rejected goods at his expense within a time-limit to be stipulated by the Company, and in such a way that said goods do fulfill the approval requirements, without prejudice to any other rights of the Company. In case of rejection, goods already delivered must be taken back at the Company's request and at the expense of the Supplier. Rejection shall also entitle the Company to suspend payment of the agreed price or installment.
- 11.5 The Supplier shall give the Company the right to use or to put into use the delivered goods even before inspection or test has taken place.

## ARTICLE 12 - PROPERTY AND RISK

- 12.1 The Supplier shall bear the risk for the goods until the moment in time at which said goods have been delivered and approved of by the Company in accordance with the previous articles.
- 12.2 In the event that the Company shall make any payment to the Supplier before the delivery of the goods, the goods said payment refers to or is attributable to, shall be the Company's property as of the time of payment.
- 12.3 In the event that the Company will be or will become the owner of (a part of) the goods already before the delivery and approval, then the Supplier shall be obliged to identify these goods on behalf of the Company and to take proper care of said identified goods, as well as to insure them and keep them insured for the benefit of those concerned.

## ARTICLE 13 - PAYMENT AND SETTLEMENT

- 13.1 Unless another term has been explicitly agreed upon and subject to any (suspension) rights the Company is entitled to, payment shall take place within sixty days after the last of the following moments in time:
- a. the time of delivery of the goods;
  - b. the time of approval of the goods by the Company;
  - c. the time of receipt of an invoice by the Company, fulfilling the requirements stated in the following article.
- 13.2 Payment of the delivered goods shall not discharge the Supplier of any guarantee and/or liability.
- 13.3 In the event that it has been agreed that the Company shall make any payments in advance, the Company shall have the right at all times, before making said payments, to require from the Supplier the provision of a security which is sufficient at the Company's discretion.
- 13.4 In the event that the Company has a well founded fear that the Supplier will not fulfill his obligations, the Company shall be entitled to suspend the fulfillment of the Company's own obligations.
- 13.5 The Company shall be authorized to settle any amounts payable to the Supplier or to companies associated with the Supplier with any claims the Company (or any party associated with the Company) has on the Supplier or on any companies associated with the Supplier, irrespective of the fact the amounts concerned are due or not.

## ARTICLE 14 - INVOICING

- 14.1 The invoices of the Supplier must be accompanied by notes signed for approval by a person authorized by the Company.
- 14.2 Invoices not fulfilling the requirements set out in the previous paragraphs of this article shall not be dealt with nor paid.

## ARTICLE 15 - RETURN SHIPMENTS

- 15.1 The Company shall be entitled to return the goods bought from the Supplier, thereby crediting and requiring refund of the price originally charged by the Supplier to the Company for said goods, if as a result of actions or failure to act by the Supplier, the situation in the market and/or the marketability of these acquired goods is essentially different from what it was at the time of the formation of the agreement.
- 15.2 Furthermore the Company shall be entitled to return the goods bought from the Supplier within twelve months after the delivery without stating the reasons, in the event the goods deviate regarding packaging or labelling from what is usual for the goods concerned (for instance so-called action lots), thereby crediting and requiring refund of the price originally charged by the Supplier to the Company for said goods.

## ARTICLE 16 - GUARANTEE

- 16.1 The Supplier shall repair forthwith any and all defects, shown by the goods after the delivery in consultation with the Company, and in the event that in the Company's opinion repairs are not possible, replace said goods, without prejudice to the Supplier's liability and any further rights of the Company.
- 16.2 Any and all costs of repairing the defect or replacing the goods shall be payable by the Supplier.
- 16.3 In the event that the Supplier does not repair the defect forthwith and/or sufficiently, or if the reparation of the defect cannot be postponed, the Company shall have the right to carry out the necessary actions or have these carried out at the Supplier's expense. In the event that the Company exercises this right, the Company shall inform the Supplier in writing.
- 16.4 Any obligations under the guarantee shall apply unimpaired after the reparation or replacement of the goods.
- 16.5 The Supplier shall hold harmless and indemnify the Company against any and all claims by third parties with regard to defects to the goods, under whatever name.
- 16.6 A report of an independent expert concerning the relevant defects shall be conclusive evidence between parties in the event of a claim by the Company based on the guarantee referred to hereby. Said report need not include any information on the identity of the clients of the Company, nor on the place where the goods are. Moreover, the Company shall not be bound to inform the Supplier of such data.

## ARTICLE 17 - LIABILITY

- 17.1 The Supplier shall be liable for all and any damage and costs, inclusive of business and other indirect damage (whereby loss of profit), arising from defects to the delivered goods or other shortcomings, whether attributable or not, of the Supplier and/or caused by natural persons or legal entities working for the Supplier or by any employed, directly or indirectly, by (one of) said natural persons or legal entities.
- 17.2 The Supplier shall hold harmless and indemnify the Company against any and all claims by third parties he is liable for, of whatever name.
- 17.3 The Supplier shall insure his liability as described in this article to a sufficient amount and shall allow the Company inspection of the documents referring to said insurance, among which the policy and premium receipts.
- 17.4 The provisions of article 16 paragraph 6 also apply.

## ARTICLE 18 - COMPLETE OR PARTIAL DISSOLUTION

- 18.1 In the cases provided for by the Law, as well as in the event that the Supplier does not, not in time or not sufficiently, fulfill one or more obligations arising for him from the agreement, or in the event that there is serious doubt as to the Supplier being able to fulfill his contractual obligation towards the Company, as well as in the event of bankruptcy, suspension of payments, complete or partial stoppage of work, liquidation, transfer or encumbrance of the Supplier's business, including the transfer or pledging of an important part of his debts receivable and furthermore in the event that any goods of the Supplier are attached before judgment or in execution, the Company shall have the right to dissolve the agreement partially or wholly without notice of default or judicial intervention, by means of a written notice sent to the Supplier, and all this without the Company being liable for any compensation and without prejudice to the Company's further rights.
- 18.2 In the event that goods have already been delivered in connection with the execution of the agreement, the Company shall have the right to keep these goods in case of dissolution, subject to the payment of the part of the price referring to said goods, or to return these goods to the Supplier at his risk and expense and to reclaim the payments already made for these goods, all this at the Company's discretion and without prejudice to the Company's further rights.
- 18.3 The claims which the Company may have or get as a result of the dissolution of the agreement, its possible claim for compensation of damage and costs inclusive, shall be immediately and fully payable.

## ARTICLE 19 - SUBCONTRACTING - TRANSFER

- 19.1 Without explicit prior consent of the Company, the Supplier shall not subcontract the agreement or any part thereof to third parties nor transfer his obligations arising from the agreement or a part thereof to third parties, nor use any other employees than his own staff (for instance employees made available (hired out) for the execution of the agreement.
- 19.2 The Company shall have the right to attach conditions to any consent to be given by the Company. Consent given by the Company shall not release the Supplier from any obligation arising from the agreement concluded between the parties.
- 19.3 The Supplier shall compensate any and all damage and costs caused by non-observance of the provisions of the previous paragraph of this article to the Company and shall hold harmless and indemnify the Company against any claims by third parties in this respect.

## ARTICLE 20 - GENERAL

- 20.1 In the event that one or more stipulations of the agreement, thereby including stipulations of these General Terms and Conditions, are null and void or become legally invalid, the agreement shall remain in force for the rest. Parties shall consult on the stipulations which are null and void or have become legally invalid, in order to make an alternative arrangement.
- 20.2 In the event that one or more stipulations of the agreement, thereby including these General Terms and Conditions, might be contrary to mandatory provisions, stipulated by or to be stipulated by a body authorized thereto, these latter provisions shall be considered to come into the place of the relative stipulations of the agreement.

## ARTICLE 21 - DISPUTES AND APPLICABLE LAW

- 21.1 With regard to any and all disputes in connection with the agreement, or with further agreements arising or resulting from or in connection with said agreement, the courts in New Jersey shall have exclusive jurisdiction in the first instance, unless the Company explicitly opts for the competence of the court in the place of establishment of the Supplier.
- 21.2 The agreement, as well as any and all further agreements arising or resulting from or in connection with said agreement, shall be governed by the United States Federal and State laws with the exception of any other current or future international regulation on the purchase of movable goods of which the applicability may not be excluded by the parties.

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