



# UNIFORM TERMS OF SALE AND DELIVERY

Will & Co. B.V. 2020

## Article 1 Applicability

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- 1.1 Unless explicitly agreed otherwise, these terms and conditions will apply to all offers, quotations, orders, order confirmations, agreements, services and all subsequent contracts of whatever nature which are marketed and/or supplied by the Seller.
- 1.2 The Buyer accepts the applicability of these terms and conditions through the sole fact of enquiring and/or ordering. Any uniform or specific conditions for purchase used by the Buyer will not be accepted by the Seller and will not be applicable to the agreement of sale and purchase and/or to the services, unless these are expressly accepted in writing by the Seller in respect of any specific transaction.
- 1.3 In case for whatever reason one or more of the (sub-)clauses of these terms and conditions are invalid, the other (sub-)clauses shall remain valid. In the place of the null or invalid provisions a suitable regulation shall apply which approximates as closely as possible with the intention of these null and invalid provisions.
- 1.4 The Seller shall be entitled to encumber, burden, pledge, alienate, surrender, sell or transfer any claim towards the Buyer based on any contract.
- 1.5 Neither party shall assign an agreement or any of its rights and/or obligations there under except with the prior written consent of the other party.

## Article 2 Definitions

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- 2.1 Seller: Will & Co. B.V., Dellaertlaan 24, PO Box 46, 1170 AA Badhoevedorp, the Netherlands.
- 2.2 Buyer: any party asking offers or quotations for or ordering products and/or services and any party for whose behalf the said offers, quotations, orders and subsequent agreements or contracts have been made.

## Article 3 Offers, quotations and prices

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- 3.1 All offers and quotations submitted by the Seller are without engagement to the Seller unless explicitly stated otherwise.
- 3.2 Documentation materials accompanying any quotation, or information provided digitally or otherwise is, unless stipulated otherwise, for information purposes only and shall not be binding to the Seller. In quotations, offers, tenders, calculation of prices or other documents mentioned quantities, prices, calculations, specifications, performances, descriptions, illustrations and pictures are exploratory and not binding. The Seller makes a reservation with regard to in the branch usual margins.
- 3.3 An acceptance of an offer becomes effective at the moment the indication of assent reaches the Seller within the time he has fixed or, if no time is fixed by the Seller, within a reasonable time.
- 3.4 All prices offered or quoted by the Seller are net cash, without reduction and exclusive of any taxes, duties, costs and charges owed at the time of delivery. If an order is placed and no definite price has been agreed upon in advance, the order will be executed at the prices which are valid at the time of the execution of the order, irrespective of any offer made before or any price charged before.
- 3.5 All prices and/or tariffs are exclusive V.A.T., in Euro, unless specifically stated otherwise.
- 3.6 For all goods, a margin of 10% with regard to the quantity of the ordered goods is permitted, on the understanding however, that the Buyer will be obliged to receive and pay 10% more or less, such with a minimum of one kilogram or one litre respectively.
- 3.7 Any later or extra tax, assessment, duty or other charge, of whatever nature and however named, or any increase thereof, or any price increase and any increase in additional costs born by the Seller caused by any change in the Seller's contemplated source of supply, coming into existence after the agreement has been concluded, will be added to the agreed purchase price, provided that the Seller will give the Buyer notice to this effect.

## Article 4 Acceptance of an offer, quotation

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- 4.1 A reply to an offer or quotation which purports to be an acceptance, but contains additions, limitations or other modifications, is a rejection of the offer or quotation and constitutes a counter offer.
- 4.2 Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

## Article 5 Specifications / guarantee

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- 5.1 The specifications as given by the Seller are average analyses, unless explicitly stated otherwise.
- 5.2 The Seller will deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.
- 5.3 Except where the parties have explicitly agreed otherwise in writing, the goods are not fit for any particular purpose and do not possess any particular qualities and the Seller will accordingly not be liable for any lack of conformity of the goods.
- 5.4 The warranty does not cover the following causes of damage:
- a. minor deficiencies or deviations, which fall within the levels of tolerance as accepted in good commercial practice;
  - b. the goods have been used for a purpose other than that for which they are normally intended or in the opinion of the Seller have been used, maintained, mixed, blended, stored or transported injudiciously;
  - c. the goods have been repaired or altered by the Buyer or a third party;
  - d. the damage has been caused by negligence of the Buyer (for example by insufficient maintenance) or by the Buyer having acted contrary to the Seller's instructions, indications and advice;
  - e. the defect is caused by normal wear and tear;

- f. the defects ensue from any government regulation with regard to the Products or the manufacturing or use thereof;
- g. the Buyer has not fulfilled his obligations towards the Seller (both financially and otherwise).

5.5 In the event that the Seller deems a complaint justified, he shall at his sole discretion, (i) replace the goods in question free of charge (after which the replaced goods shall become the property of the Seller) or (ii) carry out the work again or (iii) give a price reduction or (iv) send a credit invoice. However, the liability of the Seller does not cover consequential damages and is excluded/limited in accordance with provision 11 hereafter.

- 5.6 Minor deviations, which fall within the levels of tolerance as accepted in good commercial practice, shall not constitute ground for complaints.
- 5.7 The limited warranty provided in paragraph 5 of this article above is the Seller's sole warranty with respect to the goods and is made in lieu of any and all other warranties, express or implied, including warranties of quality, performance, merchantability and fitness for a particular use or purpose, all of which are hereby disclaimed by the Seller. The Seller makes no other representations or warranties of any kind with respect to the goods, except as set forth in paragraph 1 of this article above.

## Article 6 Delivery

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- 6.1 The Seller will deliver goods which are free from any right or claim of a third party, unless the Buyer agreed to take the goods subject to that right or claim, with the exception of a reservation of title in the normal course of business.
- 6.2 The time of delivery as given by the Seller will have been given approximately, unless specifically agreed otherwise in writing and late delivery will not result in any right to compensation or cancellation of the Agreement. In case of late delivery or late completion of the order, the Seller shall only be in default upon notification of default in writing, providing the Seller with the opportunity to perform within a reasonable period.

- 6.3 If it has been explicitly stipulated in writing by the Seller that the delivery of the goods will take place at a date fixed, and the Buyer has notified the Seller in writing that this deadline cannot be exceeded for reasonable grounds explained, then the Buyer will be entitled, after the agreed term has been expired and delivery has not taken place, to cancel the contract of sale without taking the matter to Court and without prejudice to the Buyer's right to compensation except in the event of force majeure on the Seller's part. He will be obliged to notify the Seller thereof immediately and in writing. The time of delivery will only be binding upon the Seller when all information, necessary for the Seller to comply with its obligations, has timely come into the possession of the Seller.
- 6.4 The Seller will be entitled to deliver the goods in part deliveries, in which case each part delivery will be construed as a separate agreement.
- 6.5 If the Seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the Seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents. If the Seller is not bound to deliver the goods at any particular place, his obligation to deliver consists in handing the goods over to the first carrier for transmission to the Buyer, or in placing the goods at the Buyer's disposal at the place of manufacture or production or drawing from a specific stock.
- 6.6 All goods ordered will be delivered including suitable packaging, unless agreed otherwise in writing. Returned packaging will not be accepted by the Seller.
- 6.7 Delivery shall take place on the basis of such ICC INCOTerms 2020 as shall be agreed upon separately. Failing such agreement, the transaction shall be deemed to take place Ex Works (EXW) warehouse of the Seller in the Netherlands. All goods shall be transported for account and risk of the Buyer, even where the dispatch is made carriage paid. Delivery shall be deemed to have taken place at the time when the goods are made available by the Seller to the Buyer. Where the Buyer does not take the goods, they shall be stored for his account and risk or sold by the Seller. The Seller shall be entitled to recover its claim from the proceeds.

- 6.8 The measuring and weighing of the goods by the Seller, emerging from the measure and/or weigh documents drawn up by the Seller, will be decisive for the delivered quantity.
- 6.9 The Buyer guarantees a maximum time of two hours for loading and unloading the goods ordered after arrival of the means of transport. Overrunning this maximum loading and unloading time will be (extra) charged by the carrier and passed on to the Buyer by the Seller, including all additional costs and charges.

## Article 7 Reservation of title

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- 7.1 Title in and to the goods delivered and/or property rights in and to such goods, will remain the exclusive property of the Seller until the moment when all claims – whether from this or from previous supplies or services – from the Seller against the Buyer are fully discharged by the Buyer.
- 7.2 Until full payment of everything due to the Seller, for whatever nature, has been made, the Buyer will not be entitled to use, mix, blend, sell, encumber, burden, pledge, alienate, surrender, sell or deliver the goods to third parties.
- 7.3 The goods can be reclaimed by the Seller immediately if the Buyer has not fulfilled his obligations or if the Seller has reasons to believe that the Buyer will not meet his obligations. The Buyer hereby authorises the Seller where necessary irrevocably to collect and remove the goods from where they are located. The Buyer shall furthermore take all actions as are required to be taken within the scope of the claim back of the goods. The costs of taking back the goods will be charged to the Buyer. When the goods are taken back, a credit note will be made based on the value which the goods will appear to have when they are taken back.

## Article 8 Complaints

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- 8.1 The Buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances, taking into account the following.
- 8.2 Each claim by the Buyer shall be notified in writing to the Seller, specifying (i) the goods concerned, (ii) the date of purchase and (iii) the nature of the defect (“Field Incident Report (“FIR”)”) within the warranty term.
- 8.3 In case of visible deficiencies in the goods and/or failing quantities of the goods, the Buyer must submit a FIR to the Seller by fax, e-mail or electronic transfer and record these deficiencies and/or shortfalls on the relevant transport document immediately upon receipt of the goods.
- 8.4 The Buyer must notify the Seller in writing of any complaints relating to the level of the invoiced amount within 3 days after receipt of the invoice, giving a description of the complaints.
- 8.5 For all other complaints with regard to the goods a term of 5 days after the date on which the shortcomings and/or shortfalls became known to the Buyer or might reasonably have been expected to become known applies for a FIR to be submitted to the Seller by fax, e-mail or electronic transfer.
- 8.6 Any failure by the Buyer to declare default within the time specified in articles 8.3, 8.4 and 8.5 above, shall result in the loss of any claims whatsoever in this respect. The goods must be made available to the Seller for examination upon first request, freight pre-paid by the Buyer.
- 8.7 Complaints of any nature whatsoever will not postpone the Buyer’s obligations to pay and can only be brought to the Seller’s notice in writing within the periods laid down in this article.
- 8.8 In any event, all claims of the Buyer will become time-barred unless legal proceedings will have been instituted before the Court of competent jurisdiction within 9 months after the date of delivery, or the date that delivery should have been made.

## Article 9 Payment terms

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- 9.1 Subject to any other specific written agreement, invoices of the Seller will be due 30 days from the date of the invoice without deduction of any discount or set-off. Payments must be made at the bank account indicated by the Seller on the respective invoice.
- 9.2 The Buyer shall be in default after the expiry of the payment term without any notice of default being required. If the Buyer does not pay the invoice amount due in time, he will owe the Seller an interest of 1% of the invoice amount for every month or part of the month by which the term of payment has been exceeded.
- 9.3 All extra-judicial and judicial costs, internal as well as external, incurred by the Seller where the Seller has become involved in any way in a judicial procedure against the Buyer, both as plaintiff and defendant, will be borne by the Buyer: the extra-judicial collection costs to be determined in accordance with the collection rate of the Dutch Bar Association, the judicial costs are to be determined by the actual amount paid by us relating to the proceedings, even where this exceeds the liquidated legal costs.
- 9.4 In case of late payment any adverse exchange rate difference shall be for account of the Buyer. Reference dates are the due date of the invoice and the date on which it is paid.
- 9.5 Payments made by the Buyer, will, notwithstanding the description, be credited with costs, subsequently with interest and thereafter with invoices in the order of their age, also if not yet mature.
- 9.6 The Seller is at all times entitled to require of the Buyer to give security for the proper performance of all its obligations under the agreement in a manner as will be deemed sufficient by the Seller. Failing immediate provision of such security, the Seller will be entitled to stay further execution of the Agreement(s) until such time as the Buyer will have provided the required security.

## Article 10 Non-Fulfilment/Rescission/Suspension

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- 10.1 The Seller shall be authorised to rescind/terminate the Agreement in full or in part or to suspend the execution, with immediate effect, without judicial intervention, notwithstanding the other rights to which the Seller is entitled (to fulfilment and/or compensation), where:
- a. the Buyer acts in contravention of any provision of the agreement between the parties or these general conditions;
  - b. the Buyer applies for suspension of payment or makes an application for adjudication of bankruptcy;
  - c. bankruptcy of the Buyer has been applied for;
  - d. the business of the Buyer is shut down or liquidated;
  - e. a composition of creditors is offered;
  - f. any asset of the Buyer is attached;
- 10.2 In the cases described in paragraph 10.1 above, any claim against the Buyer shall be immediately payable, without the Seller being held to any compensation or guarantee. The provision of paragraph 1 of this article shall be applicable accordingly where the Buyer, after being invited to do so in writing, has not provided security which is suitable in the view of the Seller within seven days.

## Article 11 Liability/Indemnification

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- 11.1 The Seller shall not be liable for any damage, including, but not limited to costs and expenses, caused as a result of any default in the fulfilment of his obligation(s) towards the Buyer. The fulfilment of the obligations under guarantee/-claim as described in articles 5 and 8 shall above apply as sole and full compensation. Any other claim for compensation, for any reason whatever, shall be excluded unless intent or gross negligence by the Seller's managerial (executive) subordinates is involved. In no event shall the Seller be liable for any special, consequential, indirect or incidental damages, however caused, on any theory of liability whether or not it has been advised of the possibility of such damages, arising in any way out of the agreement between the Seller and the Buyer.

- 11.2 The Buyer shall indemnify the Seller and hold the Seller harmless against claims of third parties with regard to damage resulting from goods and services supplied by the Seller, where and in so far as the damage is caused by negligence of the Buyer, subordinates of the Buyer or of others whom the Buyer has used under the terms of agreement(s) signed with a third party.
- 11.3 No servant or agent of the Seller (including independent sub-contractors from time to time employed by the Seller) will be under any liability to the Buyer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence or immunity of whatever nature applicable of the Seller or to which it is entitled hereunder, will also be available and will extend to protect every such servant or agent of the Seller acting as aforesaid.

## Article 12 Force Majeure

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- 12.1 Force majeure will be considered to exist in all those circumstances which prevent or render impossible or make unreasonably burdensome to the Seller the execution of the Agreement or any part thereof, in and as far as such circumstances occur beyond the reasonable control of the Seller, including, but not limited to fire, flood, strikes, labour troubles, war (declared or undeclared), terrorism, embargoes, blockades, legal restrictions, riots, government measures in the broadest sense with respect to production and distribution of the goods, lack of raw materials, delay in the production and distribution of the goods, etc.
- 12.2 In case of force majeure the execution of the Agreement will be suspended for the duration of the said circumstances. The party which invokes force majeure will immediately notify the other party in writing of the occurrence and cessation of any circumstances purportedly causing force majeure.

## Article 14 Breach / Fine

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- 12.3** In the event that the Seller as a consequence of force majeure does not have sufficient quantities of goods available to supply all its buyers, the Seller will have the right to choose which obligation(s) to meet and in which order, and/or to pro-rate the quantity of goods available between the various buyers, whereby the Seller will not be required to purchase goods to replace its supplies so curtailed or to make use of other than its normal transportation and/or other facilities.
- 12.4** In the event of force majeure lasting for more than 3 consecutive months, the Seller will be entitled to cancel the Agreement(s) without being obliged to pay any compensation to the Buyer.
- 14.1** In the event of a breach of article 7(2), article 7(3) and/or article 13(1), the Buyer shall be liable for a penalty of EUR 25,000 for each infraction and a penalty of EUR 1,000 for each day the infraction shall continue, without prejudice to the right to full compensation. The payment of a penalty does not release the Buyer from the performance of the respective obligation. The penalty is owned in addition to the performance of the obligation. Breach of the stipulations or prohibitions referred to in this article by a third party with whom the Buyer is connected in the widest sense (including but not limited to direct or indirect shareholdings or a position enabling the direct or indirect exercise of influence) or by an employee shall be deemed to be a breach of such a stipulation or prohibition by the Buyer itself.

## Article 13 Confidentiality, Trademarks

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- 13.1** The Buyer undertakes to observe full confidentiality of everything which comes to his knowledge (in any way whatever) with regard to the Seller and the Seller's products in the broadest sense, therefore including, but not limited to, ideas, processes, procedures, work, prices, customers, relations, know-how and intellectual property rights. This confidentiality obligation shall continue after termination of the agreement and the relation between parties.
- 13.2** The Seller reserves the right to provide the goods with his own name and trademark.

## Article 15 Law and jurisdiction

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- 15.1** The laws of the Netherlands will apply.
- 15.2** All disputes between the Seller and the Buyer will have to be referred exclusively to the Court of competent jurisdiction in Amsterdam, the Netherlands, unless the Seller would elect or agree to jurisdiction of another Court.

## Article 16 Place of fulfilment / Filling of these conditions / Changes

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- 16.1** The seat of the Seller shall be the place where the Buyer must fulfil his obligations towards the Seller.
- 16.2** The text of these terms and conditions has been filed at the Trade Register of the Chamber of Commerce, Amsterdam, the Netherlands, file number 34061879.
- 16.3** The Seller explicitly reserves the right to modify these general conditions of sale and delivery.

**will&co**<sup>®</sup>

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