

# **GENERAL TERMS AND CONDITIONS OF SALE**

## **FOR**

**ASPINWALL & COMPANY LTD** , Having

Registered Office at 926/A1-A5, Devankulangara, Edappally, Cochin-682024, Kerala, India and Branch Office registered under Nr. 55254098 at the Chamber of Commerce - Rotterdam.

### **1. Definitions**

In these General Terms and Conditions of Sale, the following definitions apply:

**General Terms:** The General Terms and Conditions of Sale that follow this article.

**Supplier:** Aspinwall & Company Ltd as well as its legal successors under a general title.

**Buyer:** Any natural person, company under contract, or legal person that either purchases Products from the Supplier, reaches an Agreement with the Supplier concerning the sale and delivery of Products and/or services, or is negotiating an Agreement with the Supplier.

**Agreement:** Any agreement concerning the sale and delivery of Products by the Supplier, any corresponding addition thereto or modification thereof, as well as all legal transactions to prepare and execute the present Agreement.

**Products:** Any past or future items supplied and/or services rendered by the Supplier pursuant to this Agreement.

### **2. General**

- 2.1 These General Terms and Conditions apply to all purchase and sale agreements reached by the Supplier, provided they involve the Supplier as the seller or provider of services. The General Terms and Conditions also cover all estimates offered by the Supplier for reaching these agreements.
- 2.2 The Supplier explicitly rejects general terms and conditions of purchase or specific terms or provisos on the part of the Buyer. Such terms shall not be part of the Agreement.
- 2.3 These General Terms and Conditions shall apply to all Agreements concluded, unless the Supplier has explicitly agreed in writing that other provisos and/or terms and conditions shall apply.

### **3. Quotations**

- 3.1 Quotations and estimates are not binding upon the Supplier, unless explicitly stated otherwise in writing.
- 3.2 Agreements are reached once the order confirmation sent by the Supplier has been signed and returned by the Buyer (accompanied by any necessary signatures and calculations). If the Buyer fails to return the order confirmation within 5 working days of receipt, the Agreement shall be deemed valid as soon as the Supplier begins execution thereof, in accordance with the stipulations of the order confirmation.
- 3.3 Information contained in illustrations, catalogues, technical drawings, recommendations, or additional information provided by the Supplier in any other manner are not binding upon the Supplier.

### **4. Prices**

- 4.1 The Supplier shall not be bound by any estimates he makes, unless an explicit written agreement states otherwise. Prices quoted in proposals do not include V.A.T., freight

or carriage, packaging, insurance, import and export duties, or any other duties, taxes and/or levies imposed by the Government.

- 4.2 If the costs incurred by the Supplier should, in the broadest sense of the word, increase between the time the agreement is reached and its full execution, these costs may be charged to the Buyer in compliance with any corresponding legal regulations.

### **5. Packaging material**

- 5.1 Reusable packaging material shall be itemized separately by the Supplier on the invoice for the Products delivered.
- 5.2 For any packaging material referred to in the first subsection that is returned at the Buyer's expense, the Supplier shall send the Buyer a credit note as soon as possible following receipt. The Buyer is not entitled to offset the packaging material against other invoices.
- 5.3 The Buyer shall only be authorized to deduct the credit amount from the sum he owes the Supplier after receiving a credit note.
- 5.4 If the amount of the credit note exceeds the amount owed by the Buyer to the Supplier upon receipt of the invoice, the balance shall be paid to the Buyer within 30 days of the invoice date.
- 5.5 Contrary to the stipulations in the preceding paragraphs, no credit note shall be sent for packaging material returned in poor condition or for packaging material that may be used only once as such.

### **6. Term of delivery**

- 6.1 The term of delivery shall be indicated as accurately as possible. Terms of delivery indicated by the Supplier may not, however, be considered deadlines, unless explicitly agreed otherwise in writing.
- 6.2 The term of delivery, which also includes the term of services to be rendered by the Supplier, begins on the day indicated in the written order confirmation. Should execution of the Agreement require certain information, drawings, etc., or the completion of specific formalities, the term of delivery will begin either when the Supplier has received all information and drawings or when the Supplier is convinced that the necessary formalities have been completed. Should the Supplier require an initial payment upon placement of the order, the term of delivery shall begin on the day said payment is received.
- 6.3 If the term of delivery is exceeded, the Buyer shall not be entitled to any compensation. Nor shall the Buyer be entitled to dissolve or cancel the Agreement in this case, unless the nature of the expiration of the term of delivery is such that the Buyer cannot reasonably be expected to preserve the corresponding section of the Agreement. In this case, the Buyer should notify the Supplier of default while allowing the Supplier a period of at least three weeks to eliminate the grounds for partial dissolution.

- 6.4 For deliveries on demand, the Supplier shall be entitled, if all or part of the delivery has not been taken by or on behalf of the Buyer within three months of placement of the order, to serve a writ demanding that the Buyer specify a period within which he shall take delivery of the entire order. The Buyer is obliged to comply with this order within 8 days. Otherwise, the Supplier is not only entitled to store the Products at the Buyer's expense, but also to demand payment in full immediately after serving the writ.
- 6.5 The period to be specified by the Buyer following said notice shall equal at least 48 hours and at most two months, or as much less as the Supplier wishes, with the understanding that the period to be specified by the Buyer shall never be shorter than the agreed period of delivery, even if this period exceeds two months, unless the Supplier agrees in writing to a shorter period. Under no circumstances shall the Supplier be responsible to the Buyer for trading losses or consequential losses or any other damages suffered by the Buyer that result directly or indirectly from storage of the Products as previously indicated.

## **7. Delivery and risk**

- 7.1 Without prejudice to the provisions in Article 12, the Products shall be considered to have been delivered and to have been accepted by the Buyer, and the risk for the delivered Products shall be transferred to the Buyer:
- a. For delivery ex works: as soon as the Products have been loaded into or onto the vehicle intended to transport the Products to the Buyer. If delivery ex works on a ship is requested, then explicit written agreement is necessary.
  - b. For delivery on demand ex works: as soon as the Products have been loaded into or onto the vehicle intended to transport the Products to the Buyer and/or to a storage site for the benefit of the Buyer, specifically in case of storage as implied in Article 6.4, whether or not at his request or with his permission. Following consultation with the Supplier, the Buyer is obliged to specify accurately in writing the time of delivery of the quantities involved in a timely manner and certainly within one month of the engagement letter from the Supplier.
  - c. For delivery of carriage paid work: as soon as the Products have been supplied and/or unloaded at the Buyer's place of work or warehouse, provided they are located along an asphalt road, or as far as the vehicle (with a trailer or semitrailer) can drive safely and with a full load on a road in good condition - according to the driver's judgement - to arrive at or depart from the place of work or warehouse. The freight is to be unloaded immediately upon arrival. In the event of unloading at more than one unloading bay, as indicated by the Buyer, the Supplier may charge the Buyer transport costs of at least Dfl. 100.00 or an amount to be determined by the Supplier for each additional place of unloading.

- 7.2 If the demand indicated in 7.1.b is not forthcoming before or at the agreed time, or if the aforementioned notice of times of delivery does not arrive within the stipulated period, the Supplier is entitled, after issuing a notice of default to the Buyer:
- (i) to dissolve the purchase agreement in its entirety or in part, without prejudice to the Supplier's right to compensation, or
  - (ii) to demand payment for the quantity not demanded or for which delivery has not been taken, without prejudice to the Supplier's right to additional compensation.

After the payment mentioned last, the Products for delivery on demand indicated here become the Buyer's property, without prejudice to the stipulations in Article 12 and without prejudice to the Supplier's right to remove these Products from his grounds for storage elsewhere as long as no demand has been issued by the Buyer, or the demand has been issued but no transport has taken place.

- 7.3 If the Buyer does not take delivery ex works or delivery of carriage paid work on time at the site intended, the Buyer shall be at fault without any prior notice of default. The Supplier is then entitled to have the Products stored at the Buyer's expense and risk or to sell them to a third party. In case of sale to a third party, the Buyer shall owe the price of purchase, plus interest and expenses (as compensation), but minus the net proceeds of the sale to the third party.

## **8. Condition, inspection, acceptance**

- 8.1 In the absence of any explicit agreement concerning the condition of the Products to be supplied, the Buyer can demand no more than that the condition of the Product meets the prevailing market standards.
- 8.2 In the event of presentation and/or delivery according to samples, the sample shall provide the basis for assessing the average quality of composition, appearance, and colour of the Products to be delivered. Slight discrepancies in colour and/or surface composition shall not be grounds for rejection. General quality standards determined by the Nederlandse Normalisatie Instituut (NNI) shall apply only if and insofar as explicitly referred to by the Supplier in the order confirmation. Standards of quality other than those determined by the NNI shall be binding only if specifically indicated by the Buyer in his request for Delivery and accepted in writing by the Supplier.
- 8.3 If and insofar as the Products are supplied at the Buyer's request with a certificate of quality issued by a third party, these Products shall be considered to have been inspected and accepted by the Buyer as corresponding to the certificate of quality from said third party.
- 8.4 If and insofar as the Products are delivered together with a certificate of quality issued by the Supplier, the Buyer is to inspect the Products at a place and time to be determined by the Supplier in consultation with the Buyer. Before production and/or delivery takes place, the Buyer is to express his agreement in writing that the inspected samples correspond to the aforementioned certificate of quality. If the delivery is not accompanied by a certificate of quality, sampling and inspection of the Products purchased or to be purchased by the Buyer may always take place at the Supplier's factory. The Buyer shall be responsible for any inspection costs.

- 8.5 If the Products that have been delivered or are to be delivered are rejected, the Supplier is entitled to request reinspection by an accredited Board of Review to be designated by the Supplier following consultation with the Buyer. The Buyer shall provide full cooperation. The samples to be used for this purpose are to be selected and despatched in the presence of the Supplier or his authorized representative. The costs arising from the reinspection described in this article shall be borne by the party found to be at fault.
- 8.6 Upon delivery ex works, the Buyer shall be given the opportunity to inspect the Products. The products shall be assumed to have been accepted if they are shipped at the request of, with permission from or on behalf of the Buyer, and, in case of shipment for storage as described in Article 7.1.b, by shipment without request or permission from or on behalf of the Buyer.  
For carriage paid delivery to a place of work or a warehouse, acceptance should take place at the vehicle of transportation immediately upon arrival. The recipient is obliged to register acceptance or to have acceptance registered on the consignment note at the delivery address. If acceptance does not take place immediately upon arrival, the simple fact of delivery to the site shall constitute acceptance, except in case of objections as listed in Article 9.3.

## **9. Complaints**

- 9.1 A consignment note, delivery slip, or similar document supplied upon delivery signifies proof of delivery and is deemed an accurate indication of the quantity of the Products, barring any proof of the contrary from the Buyer. The preceding stipulation in no way diminishes the Supplier's right to prove delivery in a manner other than submission of the aforementioned documents.
- 9.2 The Buyer is responsible for verifying the quantity of Products supplied. The Buyer should notify the Supplier of any complaints concerning the quantity within 24 hours. These complaints must also be submitted in writing within 48 hours. If no complaint is made within the aforementioned period, the quantities listed on the consignment note, delivery slip, or similar document accompanying the Products shall be final, and the quantities indicated by the Supplier on these documents shall be regarded as having been accepted by the Buyer.
- 9.3 Regarding complaints concerning defects in the condition of the Products, such as quality or size, the Buyer may impose claims on the Supplier, provided these defects can be noted by the Buyer through inspection immediately upon delivery, only if the Buyer notifies the Supplier of such objections in writing immediately (within eight days of delivery).
- 9.4 Defects that cannot reasonably be expected to have been observed within the aforementioned period should be reported to the Supplier in writing within eight days of observation. No claims are possible for defects discovered more than 1 year after delivery.
- 9.5 Complaints of defects shall not be honoured if the Products have been used, or if these defects have not been reported within the aforementioned periods.
- 9.6 Following the complaint, the Supplier shall receive an opportunity to inspect the Products; the Buyer shall provide full cooperation in this effort. Claims are not admissible for Products that cannot be inspected by the Supplier. Products may not be returned by the Buyer without the Supplier's agreement. No claims shall be permissible for Products returned without the Supplier's agreement.

- 9.7 The Buyer cannot enforce any claims on the Supplier regarding complaints of defects in the Products as long as the Buyer has any outstanding (even if unrelated) obligations toward the Supplier.
- 9.8 If the Supplier acknowledges any claims, the Supplier is entitled to choose between (i) replacing the previously supplied Products, if necessary through one or more factories other than his own, (ii) crediting the Buyer for part or all of the delivery concerned, or (iii) voiding the Agreement following consultation with the Buyer. The Supplier has no obligation to do anything more than or different from the stipulations in the preceding sentence.
- 9.9 If the Supplier wishes to void the Agreement following consultation with the Buyer (see Article 9.8), the Buyer shall owe compensation for cancellation equal to 10% of the purchase price listed in the Agreement plus the costs already incurred by the Supplier.

### **10. Drawings, calculations and weights**

- 10.1 If drawings, calculations, and/or weights concerning the Products to be supplied are produced by the Supplier, the Supplier need not start production of the Products until the Buyer has issued written approval of said drawings, calculations, and/or weights.
- 10.2 If drawings, calculations, and/or weights are provided by a third party, production shall begin only after their receipt and approval by the Buyer and written notification of such from the Buyer to the Supplier. The Supplier is neither responsible to the Buyer for any inaccuracies in or absence of drawings, calculations, and/or weights to be supplied or produced by third parties nor for the consequences thereof.

### **11. Payment and guarantee**

- 11.1 Full payment is due from the Buyer in full within 30 days of the date of invoice.
- 11.2 Any written agreements concerning cash discounts shall be void if payments are not received within the agreed period of payment.
- 11.3 Payments made by the Buyer shall first be applied to any interest and costs that are due and subsequently to any payable invoices and debts on other accounts that have been outstanding for the longest period, even if the Buyer states that the payment is intended for invoices or debts from a later date.
- 11.4 Possible complaints do not defer payment obligations, unless explicitly agreed otherwise.
- 11.5 If the term of payment expires, the Buyer shall owe the legal interest due for delays + 1%, as well as both court and out-of-court collection costs. Out-of-court collection fees are calculated according the rates set by the Nederlandse Orde van Advocaten.
- 11.6 If delivery in segments and on different dates has been agreed, the Supplier may send partial invoices. In such cases, and also if the Supplier has other Agreements to execute, the Supplier is entitled to defer all obligations arising from these Agreements for as long as the Buyer remains in default in any way with respect to the Supplier.
- 11.7 If the Supplier has valid reasons to doubt that the Buyer will duly fulfil his obligations, the Supplier is entitled (even during the execution of an agreement) to demand a guarantee of payment and to suspend delivery and/or cancel the agreement without any court intervention, pending satisfactory provision of said guarantee, without prejudice to the Supplier's right to recover consequential damages from the Buyer. In this case, the purchase price of any items already delivered shall be payable immediately.

### **12. Reservation of title**

- 12.1 Ownership of the Products, notwithstanding the actual delivery, is transferred to the Buyer only after said party has complied with all demands from the Supplier concerning compensation for Products delivered or to be delivered by the Supplier to the Buyer pursuant to the Agreement or any similar agreement or for services rendered or to be rendered to the Buyer pursuant to any such agreement, as well as demands arising from failure to fulfil such agreements.
- 12.2 To guarantee payment of claims arising from agreements other than the ones listed above, an unpropertied right of lien is being set up at this time for the Supplier concerning the Products delivered. The Supplier is authorized to register this right of lien.
- 12.3 The Buyer is not entitled, as long as the Products remain the property of the Supplier or as long as they are subject to an unpropertied right of lien, to sell, to pledge, or to dispose of them in any way, unless the Buyer's business involves retail sales intended for selling items such as the Products. In that case, the claim that arises through subsequent transfer of the Products to a third party-buyer shall be pledged automatically in advance to the Supplier, and Buyer agrees to facilitate any registration of said pledge.

### **13. Liability**

- 13.1 The Supplier guarantees the quality of Products supplied by him only if and insofar as they are used and applied by individuals competent to do so, according to the applicable regulations and instructions, without prejudice to the stipulations of these terms.
- 13.2 In case of failure to fulfil or inadequate fulfilment of his obligations arising from any Agreement, the Supplier is obliged only to add missing or to replace defective Products and/or to fabricate again Products supplied with established inadequacies as soon as he is reasonably able to do so. If, despite the repeated services described, the Buyer has suffered provable damage, and no agreement arises through further deliberations, the Supplier shall be liable for no more than the amount stipulated in the following subsection.
- 13.3 The Supplier's liability to the Buyer for direct damage, for whatever reason, shall be limited for each incident (with a related sequence of occurrences constituting a single incident) to a maximum equal to the amount invoiced to the Buyer. The Buyer has an excess of Dfl. 5,000.00 for each incident.
- 13.4 The Supplier shall never be liable for any indirect damage to the Buyer, including consequential damage, emotional damage, trading losses, or environmental damage.
- 13.5 Except in cases of gross negligence or intent of the Supplier or his managerial staff, the Buyer shall indemnify the Supplier against all claims from third parties, on any account whatsoever, concerning compensation for damages, costs, or interest with respect to the Products arising from or related to use of the Products or the involvement of the Products in transactions.
- 13.6 The Buyer fully indemnifies the Supplier against all claims by third parties that may arise from or relate to the Supplier's compliance or non-compliance with obligations on account of any agreement with the Buyer.
- 13.7 The Supplier shall never be liable for the consequences of deviations from and/or discrepancies between quality demands issued by the Buyer and confirmed in writing by the Supplier or quality demands based on the planning or management of the work.
- 13.8 The Supplier shall never be liable for damage caused by operations concerning the Products that are not part of the Supplier's normal operations and that are performed

by the Supplier to serve the Buyer's explicit request. Such operations proceed at the Buyer's own expense and risk.

- 13.9 If this Agreement concerns goods which the Supplier obtains or has obtained from a third party, the Supplier's responsibility and/or liability is limited to that third party's responsibility and/or liability toward the Supplier. This stipulation applies only if it benefits the Buyer more than application of the preceding provision.

#### **14. Force majeure**

The Supplier is entitled, should any circumstances arise during the execution of the Agreement that lead to foreseeable or unforeseeable circumstances beyond one's control, to terminate the Agreement or to defer the term of delivery. Circumstances that may be considered force majeure include, but are not limited to: break-downs, interruptions of work, import and export prohibitions, traffic disturbances, wars, strikes, as well as deficient or untimely delivery of items by ancillary suppliers of the Supplier.

#### **15. Interim termination**

If the Buyer fails to fulfil one or more of his obligations arising from the Agreement or from a different source, or if the Buyer files for bankruptcy, or if suspension of payment is requested, or if the Buyer's assets are seized entirely or in part, or if the Buyer loses free disposition of his assets in any other way, the Supplier is entitled to defer the Agreement, provided it has not yet been executed, or to terminate it. Products already delivered by the Supplier for which payment remains outstanding may then be reclaimed, without prejudice to the Supplier's right to compensation for damages, costs, and interest.

#### **16. Alternative clauses**

If special terms and conditions are agreed for the sale of specific Products by the Supplier that conflict with the present General Terms and Conditions, these special terms and conditions shall prevail insofar as they concern those specific Products. In all other cases, these General Terms and Conditions shall apply.

#### **17. Applicability**

Applicability to this Agreement of the provisions in the Vienna Convention on the Sale of Goods is explicitly excluded.

#### **18. Applicable law, competent court**

All Agreements declared subject to these General Terms and Conditions are governed by Dutch law. Any disputes arising from or related to the Agreement, provided they do not contravene imperative statutory provisions, are to be settled exclusively through arbitration in accordance with the regulations of the Nederlands Arbitrage Instituut (NAI), as applicable on the date the Agreement was concluded, unless the Supplier prefers to bring the case before a regular competent court. Should the Buyer wish arbitration for a dispute, he shall notify the Supplier in writing, whereupon the latter shall have 14 days to communicate in writing whether he prefers the case to be submitted to a regular court. Failing such notice, the Buyer shall refer the dispute to the aforementioned NAI. If a dispute is to be submitted to a court, the parties shall consider either the District Court of Rotterdam or the Subdistrict Court of Rotterdam competent to hear the case.