

# General conditions

## General conditions

### 1. General

1.1 These conditions shall apply to all the contracts concluded by Vergokan (hereinafter "the seller") and to all quotations issued by the seller. Departures from these conditions shall only be valid if expressly agreed and indicated in a specially drafted annex duly signed by the seller.

1.2 Regardless of whether they are mentioned to the seller, any general or other conditions of the client shall only apply if expressly agreed, and indicated in a specially drafted annex duly signed by the seller.

1.3 If any provision in the present conditions is invalid, or is declared void, all the remaining provisions of the contract shall remain in force, and the seller and the client together shall in good faith consult in order to agree a new provision to replace the invalid or voided provision, such that as far as possible the purpose and tenor of the invalid or voided provision shall be taken into account.

### 2. Quotations and orders

2.1 All the seller's quotations are without obligation, unless expressly otherwise stated. Prices stated in the quotation shall remain valid for a maximum period of 3 months as from the quotation date, except general price changes. Printing errors, material errors and errors in calculation shall not be binding on the seller.

2.2 References in a quotation to weight, tax and packaging are purely indicative and not binding on the seller.

2.3 Illustrations from the seller's catalogue are purely indicative and not binding on the seller.

2.4 Unless expressly otherwise stated in the quotation, a contract with the seller shall only come into being after the seller has accepted the order in writing. Only an order confirmation sent by the seller can consequently give rise to the existence of a contract.

2.5 Vergokan will add 25 euro net to the order when the order should be less than 500 euro net (per order/per delivery address/per delivery date)

2.6 Orders once placed may only be cancelled with the prior agreement of the seller. In the event of cancellation, the client shall automatically and without notice be liable to pay standard compensation of 10% of the order price, without prejudice to the seller's right to demonstrate a greater loss and to claim consequent damages.

### 3. Prices

3.1 Only the prices mentioned in an order confirmation issued by the seller shall be binding on him.

3.2 The price lists which may be published by the seller are purely indicative and not binding on him.

3.3 Unless otherwise expressly stated, all prices given in a quotation, order confirmation, contract etc. shall exclude VAT.

3.4 Unless expressly otherwise stated, all prices given in a quotation, order confirmation, contract etc. for deliveries in Benelux are DAP (Incoterms 2010). The client is responsible for prompt unloading (including any necessary equipment such as forklifts or cranes).

3.5 Unless expressly otherwise stated, all prices given in a quotation, order confirmation, contract etc. for deliveries outside Benelux are FCA Oudenaarde (Incoterms 2010).

#### **4. Delivery times**

Vergokan strives to get the articles available the fastest as possible. The delivery times are only provided for information and are not binding, unless expressly agreed in writing by the parties. Delays in the performance of the seller's obligations can however never give rise to any right of compensation from the seller, nor to the termination of the contract.

#### **5. Force majeure**

5.1 Every acceptance of an order by the seller is subject to the circumstances of force majeure. Force majeure shall include total or partial strikes, lock-outs, accidents, transport shutdown, war, mobilisation, sequestration, failure to receive permits, lack of raw materials, total or partial sickness of the seller's work force, flooding etc. This list is not exhaustive. In the event of force majeure affecting the seller, his obligations to the client shall be suspended for the duration of the circumstances of force majeure.

5.2 If the circumstances of force majeure continue for longer than sixty days, the client is entitled to cancel the order, without the prior consent of the seller. The client may demand no compensation from the seller. Goods or services already delivered or provided by the seller under the contract shall be calculated pro rata.

#### **6. Transport and acceptance of the goods**

6.1 Deliveries by the seller within Benelux take place DAP (Incoterms 2010), in accordance with Article 3.4. At the client's request, and after prior written confirmation from the seller, deliveries can be made to another address than that of the client (e.g. an operational site). The delivery time given by the seller is purely indicative and gives only the date of delivery, not the time.

6.2 Deliveries outside Benelux are FCA Oudenaarde (Incoterms 2010), in accordance with Article 3.5. If the goods ordered are not removed by the client on the delivery date, the seller shall be entitled to charge the client for any storage costs incurred as a result.

6.3 If goods are delivered by the seller in stapelacks or europallets, these shall be charged to the client at the rate of €150 per rack and €8 per europallet. If, with approval of the seller, the stapelracks/europallets are returned to the seller in good condition, and per agreed quantity, the sum paid in respect of stapelracks/europallets by the client shall be credited to him. The transport conditions are determined by the seller. The seller shall never be obliged to take back from the client more stacking racks than he himself has supplied.

#### **7. Confidential information**

7.1 The client guarantees that all the technical information which he receives from the seller before and after the conclusion of the contracts shall remain confidential in nature. Information shall be regarded as confidential if it is so indicated by the seller. In addition, information shall be confidential in nature when the confidentiality thereof can be reasonably assumed. Under no circumstances may the client copy, transfer or give sight of any technical information which remains the property of the seller to any third party. The sale of any of the goods produced or sold by the seller shall never imply the transfer of any intellectual property rights.

#### **8. Complaints**

8.1 The client must inspect the goods immediately on delivery. The client must notify the seller in writing of any complaints within eight days of the delivery of the goods. Such complaints shall otherwise be deemed to have lapsed. The letter must contain a detailed account of the faults. The use of a delivery or parts thereof shall irrefutably constitute acceptance of the whole delivery.

8.2 Complaints regarding hidden defects must be notified to the seller in writing within eight days of discovery thereof. Such complaints shall otherwise be deemed to have lapsed. The 'short term' referred to in Article 1648 of the Civil Code shall, between the present parties, be a period of two months following the discovery of the defect.

8.3 In the case of a visible or hidden defect which is mentioned on the CMR and brought to the attention of the seller in time and before installation, in accordance with the present article, the seller may simply exchange the goods in question. The seller may never be compelled to replace or take back supplied goods that the buyer wants to return. In case the seller gives his written approval to the buyer to return stock holding goods, these goods can be returned in their original state and packaging at 70% of the net invoiced sales price. The buyer will organize the transportation of the goods at his own expense. If these conditions are not met, the seller will, after inspection, give no compensation.

8.4 In the case of a visible or hidden defect which is brought to the attention of the seller, before installation, in good time and in accordance with the present article, and where in accordance with Article 8.3 the seller decides to exchange the goods, no compensation shall be due from the seller.

In the case of a visible or hidden defect which is brought to the attention of the seller in good time and in accordance with the present article and where the seller decides not to replace the goods in accordance with Article 8.3, the compensation due from the seller in the event of a demonstrable contractual fault shall be limited to the price of the goods in question, excluding VAT. In no event may any compensation be due from the seller in the event of indirect or immaterial damage (including, but not limited to, forgone profit, missed opportunities, installation or disassemble costs or other consequential loss).

8.5 The seller may never be held responsible for any damage or defect in the goods supplied that may be ascribed to the use of the goods in a specific environment.

8.6 Any liability of the seller with regard to the goods supplied shall be limited to a period of six months after delivery. After the expiry of this period, the seller may no longer be held liable by the client for defects in the goods supplied.

8.7 In accordance with the standard for surface treatment, complaints regarding aesthetical or decorative aspects will not be accepted. When however aesthetical or decorative aspects are important for the buyer, the buyer must agree an achievable finishing of the products with the seller before ordering. In this case the goods will be manufactured on request of the buyer which may lead to a different price, longer term of availability and perhaps a minimum order quantity.

## **9. Reservation of title**

9.1 The goods supplied shall remain the property of the seller until the full payment of the original sum, costs and interest by the client. Until full payment for the goods has been made, they may be repossessed by the seller.

The client undertakes not to make use of the goods, nor to process them nor to grant any commercial rights over them, inter alia using them as security.

9.2 This retention of title shall also apply in the event of bankruptcy of the client, insofar as the goods are in stock on the client's premises, and have not become immovable through incorporation.

## **10. Payment**

10.1 The invoice shall be paid on the due date mentioned on the invoice, unless expressly otherwise stated on the invoice. Disputes or complaints, even if valid, do not suspend the client's duty of payment.

All the seller's invoices are payable to Oudenaarde, even if bills of exchange have been drawn.

10.2 If the invoice has not been paid on the due date, the seller has the right to suspend all his current undertakings vis-à-vis the client in question with immediate effect, until such a time as the invoice is paid.

10.3 If the invoice has not been paid on the due date, the client shall be liable, automatically and without notice, to make interest payments at the rate of 3% above the statutory rate on the due date.

In addition, where the invoice has not been paid on the due date the client shall be liable, automatically and without notice, to pay a fixed amount of compensation in the sum of 10% of the total invoice sum

including VAT, with a minimum of €50 and a maximum of €3 750, without prejudice to the seller's right to demonstrate a greater loss and to claim consequent damages.

10.4 The failure to pay any given invoice on the due date shall automatically cause all sums due to the seller from the same client on the basis of other invoices to become due in full immediately, automatically and without notice.

10.5 In the event of failure to pay the invoice on the due date, the seller may, automatically and without notice, immediately repossess the goods supplied.

10.6 The drawing and/or acceptance of bills of exchange or other negotiable instruments implies no novation and in no way adversely affects the applicability of the present conditions.

10.7 If the client should fail to comply with one of his essential obligations, such as the prompt payment of the seller's invoices, the seller is entitled to terminate the contract without prior judicial authority and without prior notice, with immediate effect.

10.8 Without prejudice to the provisions of Article 8, in the event of dispute an invoice must be protested within 8 days of receipt thereof by the client.

## **11. Guarantees to be provided by the client.**

11.1 The client undertakes to provide the seller's credit insurer with all the information that this credit insurer deems necessary to assess the client's credit standing.

11.2 If the amount due to the seller by a client, meaning the sum of unpaid invoices and the value of orders still to be fulfilled by the seller, exceeds the limit determined for the client in question by the seller's credit insurer, the seller has the right to suspend all his obligations to the client with immediate effect until the amounts due by the client to the seller (including the sums which would have been due had the seller performed the suspended obligations) once again fall below the above-mentioned limit.

11.3 If the seller's confidence in the client's credit standing is undermined by a court decision against the client, and/or other demonstrable events which damage or could damage the seller's confidence in the client's proper performance of his obligations, the seller has the right to demand a suitable guarantee of the client. Should the client refuse to provide a suitable guarantee, the seller is entitled to cancel the order wholly or in part, even if some or all of the goods have already been dispatched. Under such circumstances, the client shall automatically and without notice be liable to pay standard compensation of 10% of the order price, without prejudice to the seller's right to demonstrate a greater loss and to claim consequent damages.

## **12. Disputes**

12.1 Only the courts of the judicial district of Oudenaarde shall be competent in disputes regarding the establishment, performance, non-performance etc, of any contracts concluded or quotations issued by the seller.

12.2 Only Belgian law shall be applicable to the contracts concluded or quotations issued by the seller, with the exception of the rules of international private law (including the CISG and other comparable conventions).