

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

of the private company **FROS INTERNATIONAL B.V.**  
hereinafter referred to as "Fros".

## Article 1 - Applicability

- 1.1. These General Terms and Conditions of Sale and Delivery apply to all offers, all contracts, all deliveries, all consignments and all acts and agreements of any kind by, with or through Fros, with the exclusion of all other terms and conditions.
- 1.2. Deviations from or additions to these General Terms and Conditions are only binding if and insofar Fros has agreed in writing. Deviations only apply to the offer, delivery, contract or transaction to which they relate.
- 1.3. General and special conditions of any other party are not binding to Fros, except if and to the extent Fros has explicitly accepted the applicability of these conditions in writing.
- 1.4. If the seller has his own general conditions in the case of agreements concluded through Fros, both general terms and conditions apply. In case of conflicting provisions between these General Terms and Conditions and the general terms and conditions of the seller, the provision in the general terms and conditions of the seller takes precedence.
- 1.5. "Buyer" in these General Terms and Conditions shall mean parties both buying from and through Fros. The word "Fros" relates to both Fros and the seller if Fros only mediated the sale.
- 1.6. The invalidity of individual provisions of these General Terms and Conditions do not affect the legal contents of these General Terms and Conditions.

## Article 2 - Offers and confirmations

- 2.1. All oral and written offers of Fros are without obligation, unless a period of validity is indicated in the offer. This also applies to all price lists published by Fros.
- 2.2. If a written offer includes a validity period, this offer can only be accepted (in writing) during this period.
- 2.3. An offer not accepted within the deadline or in case no deadline has been indicated is non-binding in the sense that an agreement is only concluded if an order based on this offer is accepted by Fros or a person authorised by Fros in writing within 30 days, or delivery and invoicing of the concerned products occurs within 30 days.
- 2.4. Verbal commitments by and agreements with subordinates and/or employees of Fros, including representatives, are not binding to Fros until they have been confirmed in writing by Fros.
- 2.5. If a buyer places an order by phone or orally, and later confirms this order in writing, this order confirmation should indicate that the order has already been placed by phone or orally, failing which any double deliveries shall be for the account of the buyer.
- 2.6. Fros reserves the right to refuse an order or to reduce the quantities of an order in the corresponding confirmation/delivery without substantiation.
- 2.7. All designs, drawings, sketches and the like that are part of quotations, offers etc. remain the property of Fros at all times.

## Article 3 - Cancellation or modification

- 3.1. The buyer can only rely on modification or cancellation of an agreement or order if and to the extent that Fros has agreed to this modification or cancellation in writing. In case of full or partial cancellation of an agreement, Fros shall be entitled to charge all incurred costs and possibly a part of the agreed price, if Fros has already accepted obligations related to this agreement.
- 3.2. If an agreement is amended by mutual agreement, Fros is entitled to charge the additional costs caused by this change. The original agreed delivery deadlines shall no longer apply in case of modifications.

## Article 4 - Prices

- 4.1. The prices of Fros are per piece, free delivery, excluding VAT, unless otherwise indicated or agreed in writing. Freight charges shall be borne by the buyer for shipments with an invoice value of less than €375,-.
- 4.2. Fros is always entitled to partial deliveries with corresponding partial invoices.
- 4.3. Unless otherwise agreed in writing, deliveries by Fros shall be made without any post processing and at the prices indicated in the price list as applicable on the day of delivery. Processing takes place at prices indicated on the price list issued by Fros as in force on the day on which payment is made pursuant to these General Terms and Conditions.
- 4.4. If Fros has not issued a price list for certain deliveries and processing, and for which the supplier also has not issued a price list, deliveries and processing are made against the prices indicated in the offer.
- 4.5. All prices are based on circumstances such as those at the time of the conclusion of the agreement. If these circumstances change after concluding the agreement, Fros shall be entitled to increase or decrease the price by the resulting additional or lower costs, without prior notice being required. Circumstances include: freight rates, import and export duties or other levies, and/or taxes in the Netherlands and abroad, costs as a result of the introduction of new rates, duties, levies or taxes, salaries, wages and social charges, exchange rates changes, prices of raw materials and consumables and the other prices charged to Fros by third parties.
- 4.6. If Fros increases or decreases the agreed prices as referred to in paragraph 5 of this article, the buyer shall not be entitled to dissolve the agreement on the basis of this price increase or decrease.

## Article 5 - Delivery and processing times

- 5.1. The indicated delivery and processing times are based on the circumstances at the time of the conclusion of the agreement and, to the extent they depend on performance by third parties, based on the data provided to Fros.

- 5.2. The delivery and processing times are observed "to the best of our ability", but exceeding them does not result in a default of Fros by operation of law. In case of delay in delivery and processing times does not give the buyer right to claim any compensation whatsoever, to refuse the goods, or complete or partial dissolution of the agreement, or the right to carry out work with or without judicial permission to implement the agreement.
- 5.3. If an item is ordered for immediate delivery, Fros may impose a surcharge of 5% of the net invoice value as compensation for loss of interest, stock risk and handling costs.
- 5.4. The buyer is always obliged to receive the ordered goods, whether or not the goods are delivered by Fros before the agreed delivery time.
- 5.5. If exceeding the delivery time is attributable to the seller, the buyer is entitled to summon the seller in writing to enact delivery within a reasonable period of at least four weeks. If the goods are not sent to the buyer within the reasonable fixed delivery period, the buyer may cancel the order in writing within two weeks after the end of the delivery period. The buyer may not claim compensation for damage suffered as a result.
- 5.6. If exceeding the delivery time is not attributable to the seller, particularly in case of force majeure or circumstances which make delivery impossible or substantially more difficult, current delivery times shall be suspended for the duration of the hindrance. Fros expressly reserves the right to cancel the order in whole or in part. The buyer may not claim compensation for damage suffered as a result.
- 5.7. In case of delay in delivery at the request of the buyer or due to circumstances concerning the buyer, Fros can charge a delay interest of 2% per month on the net invoice amount as a result of this delay delivery. Fros can also charge storage/processing fees. Both these storage and processing fees and the delay interest shall be calculated from the last day of the original deadline. In case of delay of the delivery due to conditions related to the buyer, Fros has the choice between the provisions of this paragraph and cancellation of the order.

## Article 6 - Risk and delivery

- 6.1. The risk for the goods always transfers to the buyer at the moment the goods leave the company of the seller.
- 6.2. If the goods, ready for shipment, are not accepted due to causes outside the control of Fros, they shall be at the risk of the buyer and Fros shall be entitled to store them at the costs of the buyer and require payment after delivery.
- 6.3. The provisions mentioned under paragraph 1 of this article also apply to free delivery. Free delivery means that Fros takes care of the transport. Fros only transports to addresses located in the Benelux accessible by ordinary traffic along paved roads.
- 6.4. The first paragraph shall apply without prejudice to consignments and rental of goods. The risk includes all direct or indirect damage caused to the goods, including loss, to the buyer, third parties or Fros.

## Article 7 - Acceptance

- 7.1. If the buyer fails to accept the goods ordered by him, Fros is entitled, without notice of default or legal intervention being required, to dissolve the agreement, without prejudice to its further rights, or to store the goods at the expense and risk of the buyer, without facing any liability for loss, damage or otherwise.
- 7.2. If the buyer provides incorrect, insufficient or late instructions or fails to grant cooperation to the delivery of the goods, the corresponding additional costs shall be borne by the buyer.

## Article 8 - Payment

- 8.1. Notwithstanding written contrary agreement, payment must be made upon delivery of the goods, without any claim on set-off or discount being allowed, unless a counter-claim is expressly recognised by Fros or determined legally irrevocable.
- 8.2. If a payment term has been agreed and full payment of the amount due by the buyer has not been received by Fros on the agreed date, 1% monthly interest shall be charged from that day on the entire amount owed by the buyer or part thereof.
- 8.3. Fros is always entitled, even after fully or partly carrying out an order, to claim full or partial advance payment of the agreed amount and/or to request the buyer to provide securities for his (further) payment obligations within a period and in a manner determined by Fros. As long as the demanded advance payment has not been made or the securities have not been provided, Fros is not required to (continue to) implement the agreement.
- 8.4. If the buyer is overdue with any payment for whatever reason, then all payable amounts become immediately due and payable, regardless of the state of the orders. Fros shall always be entitled to demand immediate payment. Fros can in that case suspend the implementation of any accepted order, until the payments as indicated in the previous paragraph have been made within a period determined by Fros. If payment has not been made within this period, Fros shall be entitled to cancel all orders of the buyer, without prejudice to its rights to compensation.
- 8.5. If the buyer shall be in default with regard to one or more of his payment obligations, he shall also be required to pay the extrajudicial collection costs, set at 15% of the invoice amount with a minimum of € 125,- plus the sales tax payable thereon.
- 8.6. If collection must occur through legal proceedings, the buyer shall also be required to pay the actual costs of these proceedings, with deduction of the liquidated costs.
- 8.7. Any deferment of payment granted by Fros can be revoked at all times. A payment to Fros is deemed to have been received when the amount has been credited to its bank accounts or has been handed over in cash.

- 8.8. Payments made by the buyer shall be applied in the first place to settle all interest and costs, in the second place to settle the invoices that are outstanding for the longest time, even if the buyer states that the payment relates to a later invoice.

## Article 9 - Retention of ownership

- 9.1. Fros reserves the ownership of all goods delivered to the buyer until the buyer has met his obligations from sales agreements concluded with Fros, to the extent these obligations regard:
  - performances regarding the delivered goods or the goods themselves,
  - any claims due to non-compliance by the buyer of (a) sales agreement(s).
- 9.2. As long the ownership of the goods has not been transferred to the buyer, he shall not be entitled to pledge the goods, transfer the ownership of the goods, or grant third parties any right thereto. The buyer shall be entitled to use and sell the goods as part of his normal business operations, however. The buyer is obliged to keep the goods delivered under retention of ownership with care and as recognisable property of Fros.
- 9.3. Without prejudice to the other rights of Fros, Fros is entitled to retrieve the goods delivered to the buyer and still present there if the buyer or any natural of legal person with whom the buyer has a professional relationship is in default with respect to the payment obligations or is experiencing financial difficulties, or in case of attachment/bankruptcy or a request for receivership. Fros is in this case entitled to determine the value of the returned goods, which shall be charged to the buyer.
- 9.4. The buyer is obliged to immediately inform Fros of any attachment or other third party claim on goods owned by Fros.
- 9.5. The buyer is also obliged to inform the attaching party or third parties in writing of the fact that the goods are owned by Fros.

## Article 10 - Pledging receivables by the buyer

- 10.1. The buyer is required to pledge any claims on third parties with regard to the delivered goods to Fros if and when this is requested by Fros.

## Article 11 - Complaints

- 11.1. Complaints relating to external observable defects must be made in writing within eight working days after the delivery of the goods. Any claim after this period shall be void.
- 11.2. Complaints relating to defects not externally observable at the moment of delivery which manifest themselves during the warranty period, must be made in writing within eight working days after they occur. Any claim after this period shall be void.
- 11.3. Differences between the delivered goods and the corresponding invoice must be indicated in writing within eight days after receipt of the invoice. Any claim after this period shall be void.
- 11.4. In the absence of timely written notification as indicated in paragraphs 1, 2 and 3 of this article, any claims on Fros shall be void. Handling complaints by Fros does not mean that Fros considers the complaint timely or accurate.
- 11.5. Without the prior written permission of Fros, no goods may be returned. After this written permission, the goods can be sent to Fros, delivery charges paid, to a location indicated by Fros.
- 11.6. Defects in quality or execution of a single item from a delivery consisting of multiple goods do not entitle the buyer to cancel the remainder of the order or the entire agreement of which the item is part.
- 11.7. Complaints regarding quantity, quality, execution etc. that cannot be verified by Fros because the goods have been fully or partly processed, for whatever reason, shall not be accepted.
- 11.8. If the complaint is found to be grounded, any resulting obligations shall be limited to crediting the buyer a maximum amount of up to the purchase price of the corresponding goods, or replacement of the defect goods. Further liability is hereby excluded.
- 11.9. Slight differences in colour, material or sizes are not accepted as defects within the meaning of this article.

## Article 12 - Warranty

- 12.1. In case of a defect to or in respect of the delivery, no processing may be done without our prior written permission.
- 12.2. Fros does not guarantee colour fastness and durability of its materials in case of processing.
- 12.3. Fros provides no warranty in relation to components which have not or only partly been manufactured by Fros, but Fros shall as far possible make use of the benefits from the warranty granted by the manufacturer.

## Article 13 - Liability

- 13.1. The liability of Fros for defects to the delivered goods or loss, damages, injuries attributable to the defective or non-functioning goods shall always be limited to free replacement or repairs, or refund or credit as indicated in Article 12.
- 13.2. The liability of Fros for defective processing is always limited to the amount for which Fros has accepted this processing.
- 13.3. To the extent Fros is liable pursuant to these conditions or mandatory legal requirements, this liability shall be limited to compensation for suffered damages insofar the corresponding insurers of Fros provides for this.

## Article 14 - Indemnification / Industrial and intellectual property rights

- 14.1. The buyer is required to indemnify Fros and hold Fros harmless for all costs, damages and interests which Fros might suffer as a result of claims by third parties based on violation of rights, including,

- for example, patent and copyrights due to the use of data and models which have been provided to Fros by the buyer for the implementation of contracts.
- 14.2. In the event of a claim for infringement of rights, Fros shall be entitled to immediately stop the processing and/or delivery. Fros shall inform the buyer of this.
- 14.3. Goods bought from or through Fros may only be traded under the brand marketed by Fros.
- 14.4. The buyer is not allowed to use brands indicated in the previous paragraph of this article for advertising or other publicity purposes within express written permission of Fros.
- 14.5. Fros retains all rights to the design, the model and method of manufacturing of the goods purchased by or through Fros and the brand under which they are put into circulation. It is not permitted to copy the goods purchased by or through Fros or to imitate the method of manufacturing or disclose this to third parties.
- 14.6. The buyer is liable for any claim by third parties based on the use of the goods of the Fros and shall, if a third party claims any right, inform Fros as soon as possible in writing. Fros does not guarantee the rights of third parties.

## Article 15 - Resale

- 15.1. If the goods purchased by or through Fros are resold to non-individuals, these General Terms and Conditions shall also apply under the condition that every subsequent non-individual buyer shall also be bound to these General Terms and Conditions.
- 15.2. The buyer may not sell the goods purchased from or through Fros to non-individuals that are likely, or certain, not to comply with the General Terms and Conditions, of which are excluded by Fros from purchase of one or more of its goods.

## Article 16 - Force majeure

- 16.1. If Fros is prevented from fully or partly implementing the agreement due to force majeure, Fros shall be entitled to suspend the implementation of the agreement without judicial intervention being required or to consider the agreement as entirely or partly dissolved, at the discretion of Fros, without being required to pay any compensation or warranty.
- 16.2. If Fros is delayed in the implementation of the agreement due to force majeure or another unforeseen circumstance, Fros shall not be liable for resulting damages of the buyer. Fros shall in that case be deemed to have fulfilled its obligations under the agreement by acting as agreed when the force majeure situation ceases to exist.

## Article 17 - Termination

- 17.1. If the buyer fails to properly or timely fulfil any obligation imposed on him pursuant to an agreement concluded with Fros, as well as in case of bankruptcy, receivership, or liquidation of the company of the buyer, he shall be deemed to be legally in default and Fros shall be entitled, without any notice and without judicial intervention being required, to suspend or to dissolve the implementation of the agreement in whole or in part, at the discretion of Fros, without Fros being required to pay any damages or provide any warranty, without prejudice to any other right Fros might have.
- 17.2. The buyer is particularly required to pay the damages suffered by Fros due to premature termination of the agreement as indicated in the previous paragraph. In these cases, any claim Fros has or shall have on the buyer shall be immediately due and payable.
- 17.3. The circumstances indicated in paragraph 1 of this article require the buyer to make the still unpaid goods in its possession available to Fros, and Fros shall be entitled to retrieve these goods, without any notice of default or judicial intervention being required. Fros shall then be entitled to retrieve the goods, wherever they may be, and to enter the premises and locations of the buyer if necessary.

## Article 18 - Proof

- 18.1. Barring proof to the contrary, the administrative data shall be decisive in relation to the agreements to which these General Terms and Conditions apply and any resulting agreements.

## Article 19 - Penalty

- 19.1. For each full or partial violation, or not strict compliance with the provisions of these General Terms and Conditions, the buyer shall owe a penalty not susceptible for compensation of € 500,- per violation and each day that the violation continues, without prejudice to the right of Fros to claim further damages and the right to declare all further agreements with the buyer, without further notice or judicial intervention being required, to dissolve, cancel or suspend the implementation. Fros is also entitled to exclude a buyer from further sale and delivery.

## Article 20 - Disputes

- 20.1. All disputes arising from agreements entered with Fros shall be settled by the competent Dutch court in Amsterdam, unless Fros prefers the judgement of another competent, not necessarily Dutch, court.
- 20.2. Dutch law is applicable to all agreements concluded with or through Fros, with the exclusion of any other law.