

# GENERAL TERMS OF DELIVERY AND PAYMENT

General terms of delivery and payment of the public limited company Koninklijke Ten Cate nv, registered in Almelo (the Netherlands), and all the companies affiliated to Koninklijke Ten Cate nv, filed at the office of the court in Almelo on 20-3-2008 under number 22/2008

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# GENERAL TERMS OF DELIVERY AND PAYMENT

## ARTICLE 1 SCOPE

- 1.1 These terms shall apply to any offer and any agreement between Koninklijke Ten Cate nv or companies affiliated to it (hereinafter: the vendor) on the one hand and another party on the other, relating in particular to supplies of goods by the vendor to the other party, to the extent that the parties have not varied these terms in writing.
- 1.2 The term other party shall mean: the person on whose behalf and/or for whose account goods are supplied.
- 1.3 General conditions of the other party shall not apply. The vendor shall not agree to these conditions, except if and to the extent that their applicability has been expressly accepted by the vendor in writing.
- 1.4 Where there is mention of "supply (of goods)" in these general terms, this shall also include the rendering of services and the performance of work of whatever nature.

## ARTICLE 2 QUOTATIONS; ORDERS; CONCLUSION OF AGREEMENTS

- 2.1 The quotations issued by the vendor shall be without obligation; they shall be valid for 30 days, unless otherwise indicated.
- 2.2 An order given to the vendor shall count as an offer by the other party that can only be regarded as having been accepted by the vendor following written confirmation by the vendor (by means of a confirmation of order).
- 2.3 Quotations issued by the vendor shall include: designs, drawings, models, samples, descriptions, illustrations, indications of dimensions, etc. and any enclosures and documents relating to the quotations of the vendor. All this shall remain, just like tools made and used by the vendor in this connection, the property of the vendor and must be returned to the vendor on demand and may not be reproduced and/or brought to the notice of third parties or made available to third parties without the prior written consent of the vendor.
- 2.4 Promises by and agreements with employees of the vendor, to the extent that they have no power of representation, shall not be binding on the vendor until and to the extent that they have been confirmed in writing by an authorised representative of the vendor.
- 2.5 A confirmation of order sent by the vendor to the other party shall be regarded as fully and accurately representing the contents of the agreement concluded. The agreement shall, in the case of a confirmation of order sent by the vendor,

be regarded as having been concluded at the moment at which the confirmation of order has been sent by the vendor.

The other party shall be regarded as consenting to the contents of the confirmation of order, unless within seven days of signature of the confirmation of order it notifies the vendor in writing that it cannot agree with the contents.

- 2.6 The contents of price lists, folders, printed matter, etc. of the vendor shall not be binding on the vendor, unless express reference to those contents are made in the agreement. Every new price listing of the vendor shall render the previous one inoperative.

## ARTICLE 3 PRICES

- 3.1 All prices quoted by the vendor shall, unless otherwise expressly agreed in writing, be exclusive of VAT.
- 3.2 The prices quoted by the vendor shall be based on the cost factors applying at the time of conclusion of the agreement, such as exchange rates, manufacturer's prices, (raw) material prices, wage and transport costs, insurance premiums, taxes, import duties and other government levies.
- 3.3 The vendor shall reserve the right to alter prices, unless otherwise agreed in writing. In the event of price alterations the other party shall have the right to dissolve the agreement concluded by means of a written notice if there is a price increase of more than 10%. The dissolution must take place immediately after the other party has taken note of the price increase. If a price increase is a consequence of a statutory or other government measure, the vendor shall have the right to pass the price increase on to the other party, even if it has been agreed that the price is fixed, without this leading to a right of dissolution for the other party.

## ARTICLE 4 DELIVERY; DELIVERY TIME; PARTIAL DELIVERIES

- 4.1 Unless otherwise agreed in writing, the delivery of goods shall be free domicile and the goods shall be transported at the risk of the other party.
- 4.2 Unless it has been agreed that the other party shall itself be responsible for transport of the goods, the goods shall be transported by the vendor in the manner to be decided by the vendor and with a carrier to be chosen by the vendor. If the other party wishes the goods to be transported in a manner other than that referred to in the previous sentence, the additional costs associated with this shall also be for the

- account of the other party.
- 4.3 The vendor shall have the right to deliver 10% more or less than the agreed quantity.
- 4.4 The other party shall be obliged to take delivery of the purchased goods at the moment at which in accordance with the agreement they are placed at its disposal or are delivered. If the other party refuses to take delivery or is in default with the provision of information or instructions necessary for the delivery, the goods shall be stored at the risk of the other party. All the additional costs, including in any event storage costs, shall in that case be payable by the other party. The vendor shall in that case also be entitled to demand that the competent court releases the vendor from its obligation to supply the agreed goods or to demand payment of the purchase price of the part of which delivery is not taken without prior notice of default.
- 4.5 Contrary to the provisions of the previous subsection of this article, in the case of block orders (agreements in which the quality of the goods by colour and/or design has not yet been specified and/or in which the delivery per unit time has not yet been decided) the following shall apply: if an agreement contains a block order, the specification by colour and/or design and/or the specification of the delivery per unit time must be made by the other party in good time. Where the other party is in default in this regard, but does provide the vendor with the specification within not later than ten days after the latest date on which it should have taken place, the vendor shall have the right to extend the agreed delivery period by a period of 30 days. If the aforementioned period of ten days after the latest date has expired without the said specification having been provided to the vendor by the other party, compensation of the resulting damage shall be payable by the other party to the vendor, notwithstanding the rights otherwise belonging to the vendor, including the right of the vendor to dissolve the agreement as a whole or in part.
- 4.6 The delivery times quoted by the vendor shall, unless otherwise agreed in writing, start on the day on which the agreement is concluded, provided that all the details that the vendor needs for the performance of the agreement are in its possession. The delivery time quoted by the vendor shall indicate the date on which the goods will become available for shipping. If the delivery time quoted by the vendor has been laid down in the form of a year and week number, this

shall count as the Friday of the week in question according to international week numbering.

- 4.7 An agreed delivery time shall not be a deadline, unless otherwise expressly agreed. In the event of overdue delivery the other party must therefore give the vendor written notice of default.
- 4.8 If changes in the order on the vendor mean that the time required for the performance of the agreement is longer, the delivery time shall be extended by that additional time required.
- 4.9 The delivery time shall be based on the expectation that the vendor can do the work associated with delivery as had been anticipated at the time of the conclusion of the agreement and that the materials required for the performance of the agreement will be delivered promptly to the vendor.
- 4.10 The vendor shall be permitted to deliver sold goods in parts. If the goods are delivered in parts, the vendor shall be entitled to invoice each part separately.

#### **ARTICLE 5 TERMINATION OF THE AGREEMENT**

- 5.1 The claims of the vendor on the other party shall be immediately due and payable in for instance the following cases:
- if following the conclusion of the agreement circumstances become known to the vendor that give the vendor good reason to fear that the other party will not discharge its obligations;
  - in the event of the liquidation, bankruptcy or court protection from creditors of the other party;
  - if the vendor has asked the other party to provide security for fulfilment and this security is not forthcoming or is insufficient;
  - if the other party is otherwise in default and fails to discharge its obligations under the agreement.
- In the said cases the vendor shall be entitled to suspend the further performance of the agreement and/or to dissolve the agreement, all subject to the obligation of the other party to compensate the damage suffered by the vendor as a result and notwithstanding the rights otherwise belonging to the vendor.
- 5.2 If circumstances arise with regard to persons and/or material that the vendor uses or tends to use in the performance of the agreement that are of such nature that the performance of the

agreement becomes impossible or so problematic and/or disproportionately expensive that fulfilment of the agreement can no longer reasonably be required, the vendor shall be entitled to dissolve the agreement.

#### **ARTICLE 6 DEFECTS; COMPLAINT DEADLINES**

- 6.1 The other party shall guarantee the accuracy and completeness of the details that it has provided to the vendor. The other party must, where the details provided by the vendor concerning sizes, quantity, colour fastness, etc. are concerned, take account of customary clearances and changes of minor importance in the goods supplied by the vendor. The other party cannot derive any claims in respect of the vendor from this.
- The goods supplied by the vendor may therefore differ from the description in the agreement if and to the extent that it is a matter of dimensional variations, quantity variations and/or changes of minor importance, including minor variations of quality, colour, width, weight, finish, design, etc. customary in the sector or technically unpreventable.
- 6.2 The other party must inspect/arrange for the inspection of the purchased goods on delivery. In so doing the other party must check that the goods supplied conform to the agreement, that is: that the correct goods have been supplied; that the goods supplied conform to that which has been agreed in terms of quantity (for example the number and the amount); that the goods supplied conform to the agreed quality requirements or – in their absence – the requirements that may be set of normal use and/or commercial purposes.
- 6.3 The other party must notify the vendor in writing of visible defects or shortages within 10 days of delivery.
- 6.4 The other party must notify the vendor in writing of invisible defects within 10 days of having discovered them, or when it should reasonably have discovered them, but not later than within one year of delivery.
- 6.5 Any complaint must be made by registered letter or by fax, including a clear and accurate description of the complaint and quoting the date and the number of the invoice relating to the goods in question.
- 6.6 Even if the other party complains in good time, its obligation to pay and take delivery of purchased goods shall continue to exist.

- 6.7 Goods can only be returned to the vendor with prior written consent.

#### **ARTICLE 7 LIABILITY**

- 7.1 Unless otherwise agreed in writing the vendor shall not issue a warranty on goods supplied.
- 7.2 If the vendor is liable, the liability shall be limited to the invoice value of the goods concerned.
- 7.3 The vendor shall not be liable for consequential damage, such as damage in the form of loss of profits and other indirect damage.
- 7.4 The vendor shall not – also having regard to the fact that goods supplied consist in particular of products that are going to be processed (by the other party) in order to produce an end product – be liable for damage that is the consequence of incorrect handling of goods supplied. Incorrect handling shall for instance mean: handling the goods for another purpose than that for which the goods are intended and treatment or processing or use of the goods contrary to the instructions for use.
- 7.5 Any right of action of the other party in respect of the vendor shall expire at the end of one year after the goods have been delivered to the other party or have been placed at the disposal of the other party in accordance with the agreement, unless the other party has initiated legal proceedings against the vendor within this period of time.
- 7.6 The other party shall indemnify the vendor against claims for compensation of third parties in connection with goods supplied to the other party or services rendered for the other party by the vendor to the extent that this damage is not for the account and risk of the vendor under the agreement and these general terms in the relationship to the other party.
- 7.7 The limitations of liability contained in these terms shall not apply if the damage is attributable to intent or deliberate recklessness of the vendor or its management employees.

#### **ARTICLE 8 RETENTION OF TITLE**

- 8.1 The vendor shall retain title to all goods supplied or to be supplied by it to the other party under any agreement until the other party has paid the consideration(s) in relation to all these goods in full. If the vendor has rendered or has to render services under these agreement(s), the goods referred to in the previous sentence shall remain the property of the

vendor until the other party has also satisfied the claims of the vendor regarding the consideration(s) in this respect in full. The retained title shall also apply to claims that the vendor acquires on the other party on account of non-fulfilment of such agreement(s) by the other party.

- 8.2 If the law of the country of destination of the purchased goods provides for more far-reaching options for the retention of title than laid down in subsection 1 above, the parties shall agree that these more far-reaching options shall be regarded as having been agreed for the benefit of the vendor, on the understanding that when it cannot be objectively decided to which more far-reaching rules this provision refers, the provisions in subsection 1 above shall continue to apply.
- 8.3 Goods supplied by the vendor that are covered by the retention of title may only be sold on in the context of normal business activities. In the event of bankruptcy or court protection from creditors of the other party even selling on in the context of normal business activities shall not be permitted. Otherwise the other party shall not be entitled to pledge the goods or to establish any other right on them.
- 8.4 The other party shall undertake to mark the goods supplied subject to retention of title as the property of the vendor and to insure them and keep them insured against fire, explosion and water damage and against theft and to make the policy and the proof of premium payment of this insurance available to the vendor for inspection on demand.

#### **ARTICLE 9 PAYMENT**

- 9.1 Payment must be made within 14 days of invoice date in legal tender at the office of the vendor or by transfer of the amount owing to the bank account of the vendor. On the expiry of 14 days after the invoice date, without payment in full having been made, the other party shall be in default; interest equal to the statutory interest applying in the mutual relationship between the vendor and the other party shall be payable by the other party on the amount due and payable from the moment default commences.
- 9.2 In the case of payment into the bank account of the vendor the day of crediting of that account shall count as the day of payment.
- 9.3 The vendor shall at all times have the right for supplies to be made to demand cash payment for delivery of the goods or adequate security by the other party.

- 9.4 Payment must be made without discount or offsetting.
- 9.5 Payments made by the other party shall in each case be used for the settlement in the first place of all interest and costs payable and in the second place of invoices due and payable that are the longest outstanding, even if the other party states that the payment relates to a later invoice.

#### **ARTICLE 10 COLLECTION COSTS**

- 10.1 If the vendor takes collection measures against the other party that is in default, the costs of this collection, with a minimum of 10% of the outstanding amount, shall be at the expense of the other party. Extrajudicial collection costs shall also be payable if just a single warning has been sent.
- 10.2 The other party shall be liable to pay the vendor the judicial costs incurred by the vendor in all instances, unless they are unreasonably high. This shall only apply if the vendor and the other party are conducting legal proceedings with regard to an agreement to which these general terms apply and a court decision becomes final and conclusive by which the other party is fully or predominantly ruled against.

#### **ARTICLE 11 FORCE MAJEURE**

- 11.1 The term force majeure shall mean: circumstances preventing discharge of the obligation that are not attributable to the vendor. This (if and to the extent that these circumstances render discharge impossible or unreasonably impede it) shall include: strike action; a general shortage of necessary raw materials and other goods or services required for the realisation of the agreed performance; unforeseeable delay at suppliers or other third parties on which the vendor is reliant; the circumstance that the vendor does not receive a performance that is important in connection with the performance to be delivered by itself, does not receive it on time or does not receive it properly; government measures that prevent the vendor from discharging its obligations on time and/or properly; excessive sick leave; terrorist attacks; restriction or cessation of the supply by public utility companies; fire; the non-availability or insufficient availability of (raw) materials needed for the production of the goods to be supplied; delay because of time lost through frost or other weather influences and general transport problems.
- 11.2 The vendor shall also have the right to invoke force majeure if the circumstance preventing (further) discharge commences

- after the vendor should have discharged its obligation.
- 11.3 During force majeure the supply and other obligations of the vendor shall be suspended. Where the period of time in which discharge of the obligations by the vendor is not possible because force majeure lasts more than three months, either party shall be entitled to dissolve the agreement, without any obligation to pay compensation existing in that case.
- 11.4 If on the commencement of the force majeure the vendor has already partially discharged its obligations or can only partially discharge its obligations, it shall be entitled to invoice the part already supplied or the supplyable part separately and the other party shall pay this invoice as if it concerned a separate contract.

#### **ARTICLE 12 CONFIDENTIALITY**

Both parties shall, except for statutory obligations applying to them, be obliged to maintain the confidentiality of all confidential information that they have acquired from each other in the context of the agreement or from any other source. Information shall count as confidential if it has been communicated by the party providing information or if it arises from the nature of the information.

#### **ARTICLE 13 INTELLECTUAL AND INDUSTRIAL PROPERTY; COPYRIGHT**

- 13.1 The vendor shall reserve all rights of intellectual and industrial property, including, but not limited to, copyright, trademark rights, patent rights, database rights, model rights, trade name rights and the rights to know-how.
- 13.2 All documents and information provided by the vendor, such as reports, advice, designs, sketches, drawings, software, etc. shall remain the property of the vendor and shall only be intended for use by the other party and may not be reproduced, disclosed, exploited or be brought to the notice of third parties without the prior written consent of the vendor.
- 13.3 The vendor shall also reserve the right to use the knowledge enhanced by the performance of the work for other purposes, to the extent that no confidential information is brought to the notice of third parties in the process.
- 13.4 If the goods supplied have been produced by the vendor on the basis of specifications provided by the other party, the other party shall guarantee that no rights of third parties (such as intellectual and industrial property rights) are thereby infringed. The other party shall indemnify the purchaser against all claims of third parties in this regard and shall

compensate the purchaser on demand for damage suffered by the purchaser as a consequence of this and in connection with this.

#### **ARTICLE 14 DISPUTE SETTLEMENT**

Contrary to the statutory rules for the competence of the civil court, any dispute between the other party and the vendor shall in the first instance be settled exclusively by the competent court in Almelo (the Netherlands). The vendor shall at all times however be entitled to submit a dispute to the competent court according to the law or the applicable international treaty.

#### **ARTICLE 15 APPLICABLE LAW**

Any agreement between the vendor and the other party shall be subject to the law of the Netherlands.

#### **ARTICLE 16 TRANSLATIONS**

In the event of differences between translations of these general terms and the Dutch text of the terms, the Dutch text shall prevail.