



# **VAN CAEM KLERKS GROUP**

**THE WORLD IS OUR MARKET**

## **General Terms and Conditions of Sale, Delivery and Payment**

June 2015

## **Article 1 - Definitions**

- 1.1 These General Terms and Conditions shall apply to all offers by and agreements with any part of Van Caem Klerks Group ([www.caemklerks.com](http://www.caemklerks.com)) or by/with any other user of these General Terms and Conditions (hereinafter also called: the Company), relating to the delivery of goods by the Company to the party the offer is addressed to or the other party concerned (hereinafter also called: the Customer).
- 1.2 The applicability of the Customer's general terms and conditions is explicitly rejected.
- 1.3 Any stipulations deviating from these General Terms and Conditions shall only apply in the event that and insofar as they have been accepted by the Company in writing.

## **Article 2 - Offer**

- 2.1 Any offer made by the Company shall be without prejudice and subject to contract; this shall also apply in the event that said offer includes a period for acceptance, unless explicitly provided for to the contrary in writing.

## **Article 3 - Agreement**

- 3.1 An agreement, in this article also including any changes and/or additions thereto, shall not be binding unless agreed upon in writing, except in the event that the Company has started the execution of the contract beforehand.
- 3.2 An agreement is concluded in writing (upon the Company's discretion) at the moment when the contract is duly signed by the board of directors of the Company and by the Customer, or on the date of dispatch (by post and/or by fax and/or e-mail) by the Company of the written order confirmation, duly signed by its board of directors, or on the date of dispatch of the Company's invoice. Promises made by and arrangements with subordinates of the Company shall not bind the Company, unless these have been confirmed in writing by the board of directors of the Company.
- 3.3 The contract represents the contents of the agreement completely and correctly. The order confirmation by the Company or the Company's invoice shall be considered to represent the contents of the agreement correctly, unless the Customer protests against its contents forthwith in writing and motivated.
- 3.4 Slight deviations with customary tolerances shall be permitted at the execution of the agreement.
- 3.5 Unilateral cancellation from the side of the Customer shall be null and void, unless and only insofar as the Company agrees to such cancellation in writing.

## **Article 4 - Notices, information, statements and samples**

- 4.1 Notices, information, statements and samples made or supplied by the Company, in whatever form or nature, shall only be indicative and shall never bind the Company, unless the agreement explicitly provides for the contrary.

## **Article 5 - Confidentiality**

- 5.1 The Customer shall treat all (business) information in the broadest sense of the word, in connection with the Company, which has been brought or come to his knowledge by the Company and/or within the context of the offer and/or the agreement confidential and shall not disclose the same to any third party in any way.

## **Article 6 - Prices**

- 6.1 The prices stated and/or agreed upon by the Company shall be exclusive of taxes - including Value Added Tax (“B.T.W.” or “VAT”) - and all other levies, and shall be based on the Terms and Conditions (of delivery) as mentioned in the following articles.
- 6.2 In the event no VAT or other taxes or levies are due because the goods are destined for delivery within the European market, those taxes shall nevertheless be charged, but shall be credited if the Customer proves that a delivery as referred to in this paragraph has indeed taken place.
- 6.3 Insofar as the stated and/or agreed prices are based on the weight of the goods, this weight shall be determined by the weighing carried out by the Company before the delivery, using calibrated weighing apparatus. The Customer shall have the right to be present at said weighing, provided the delivery shall not be delayed because of this. The Customer shall take the initiative thereto himself in good time.
- 6.4 The Company shall have the right to increase the stated and/or agreed prices in the event of an increase in prices of goods, raw materials or parts to be obtained from third parties, wages, national insurance contributions, freight, insurance premiums or other cost price factors (including changes in foreign exchange) and charges (including import and transit duties).  
In the event that a price increase takes place within three months after the conclusion of the agreement, the Customer who is also a consumer shall be entitled to dissolve the agreement.
- 6.5 In the event that the stated and/or agreed prices are (also) based on restitutions of levies and/or on subsidies, whereas these are not obtained for whatever reason, the Company is entitled to adjust the prices accordingly.

## **Article 7 - Delivery – delivery period – delivery time**

- 7.1 Unless explicitly agreed upon otherwise, the delivery shall be made “Ex Works” (EXW) from the premises of the Company. The interpretation of the terms and conditions of delivery shall be determined by the ICC Incoterms (the most recently issued edition at the time of conclusion of the agreement). In case of conflict between the ICC Incoterms and these General Conditions of Sale, Delivery and Payment, the latter shall prevail.
- 7.2 The delivery period shall commence at the latest on:
- the date of conclusion of the agreement;
  - the date at which the Company has at its disposal all the documents, information, permits, exemptions, approvals, allocations, etc, needed for the delivery of the goods;
  - the date of receipt of a prepayment by the Company and/or the date of provision of a security the Company is entitled to in accordance with the agreement.
- 7.3 The delivery period shall be based on the circumstances applicable at the time of conclusion of the agreement and on the timely delivery of the materials and goods ordered by the Company for the execution of the agreement. In the event that any delay arises as a result of changes in these circumstances or because the materials and/or goods timely ordered for the execution of the agreement have not been delivered in time, the delivery period shall be extended to such a degree as is reasonable, taking all circumstances into consideration.
- 7.4 The delivery date of the goods shall be the moment in time when the goods, with the exception of unimportant parts, are ready for shipment, and the Company has informed the Customer thereof, or the time when the goods have left the premises of the Company to be forwarded to the Customer.
- 7.5 The Company shall be entitled at all times to make partial deliveries, unless explicitly agreed upon otherwise.
- 7.6 The delivery date shall not be considered to be a firm date, unless explicitly agreed upon otherwise. In the event of attributable exceeding of the delivery date, a notice of default shall always be required. The Customer cannot derive any rights from attributable exceeding of the delivery date insofar as a term of three (3) months is not exceeded.
- 7.7 In the event that the Company is in default with regard to the delivery date, the Customer shall only have the right to dissolve the agreement. In that case prepaid amounts shall be refunded, without any compensation for interest, however.

## **Article 8 - Transportation**

- 8.1 In all cases and irrespective of the agreed terms and conditions of delivery, the Company shall be entitled to have the goods transported, unloading inclusive, at the expense and risk of the Customer, in a manner to be determined by the Company and using means of transportation at the Company's option.
- 8.2 The Company shall not be responsible for (the use by the Customer of) any documents (provided by the Company) for the transportation of the goods to the place of destination.
- 8.3 At the first request of the Company, the Customer shall provide all necessary securities for the documents needed to transport the goods to the place of destination.
- 8.4 In the event that circumstances beyond the control of the Company prevent the goods from being transported to or onto respectively delivered at the agreed place, or in the event that the Customer fails to take delivery of the goods, the Company shall have the right - at its option - either to take the products back or to store the goods (or have them stored) at the expense and risk of the Customer. Any costs of return shipment and storage shall be payable by the Customer, while the Customer shall furthermore be obliged to fulfil his obligations to the Company as if delivery had taken place. The costs referred to here shall be determined in advance by the Company and the Customer jointly at 15 per cent at least of the agreed price, without prejudice to the right of the Company to compensation of the actual costs should these be higher.

## **Article 9 - Packaging**

- 9.1 Packaging for single use shall not be taken back by the Company.  
The Company shall have the right - at its option - to take back or not take back packaging for repeated use.
- 9.2 The Company shall have the right to charge the Customer for packaging for repeated use as a separate item on the invoice, together with the delivered goods.
- 9.3 In cases referred to under paragraph 2 of this article, the Company shall send a credit invoice crediting the invoiced amount to the Customer for packaging returned to the Company at the Customer's expense upon receiving said packaging, unless the returned packaging is in a condition inferior to the one at the time of acceptance by the Customer, in which case the amount credited shall be reduced accordingly.
- 9.4 Only upon receipt of the credit invoice shall the Customer be entitled to deduct the value of the returned packaging, to the amount credited to him, from the amount he owes the Company.
- 9.5 Damage to goods caused by destruction/damage of the packaging shall at all times be at the Customer's risk.

## **Article 10 - Risk and transfer of property**

- 10.1 The Customer shall bear the risk of any and all direct and indirect damage that may be caused to the goods, immediately after the goods are considered as delivered.
- 10.2 The Company shall retain ownership of all delivered goods until any debts payable by the Customer with regard to goods delivered or to be delivered by the Company to the Customer under any agreement, as well as with regard to any failure in the performance of such agreements by the Customer, shall be fully satisfied.
- 10.3 The Customer is obliged to store the goods delivered under retention of title with the necessary care, and to store them as identifiable property of the Company. The Customer shall furthermore be obliged to insure the goods against damage or loss, by whatever reason, during the period of retention of title. Said insurance shall designate the Company as (co-)insured with an independent right of claim towards insurer(s), and the Customer shall make the policies of these insurances available for inspection to the Company upon request. Upon request of the Company, all claims of the Customer on the insurers pursuant to the insurances referred to above shall be assigned to the Company, or a right of pledge shall be granted to the Company.
- 10.4 The Company shall be entitled to repossess any goods delivered under retention of title that are still present at the Customer's forthwith and without prior notice of default, in the event that the Customer fails in the performance of his obligations. The Customer irrevocably authorises the Company to exercise this right to repossess and will grant the Customer access to its premises insofar as is necessary for this purpose.
- 10.5 In the event that and insofar as the Company has exercised its right to repossess as referred in the preceding paragraph, the agreement shall be dissolved wholly or for a proportionate part without any judicial intervention, without prejudice to the right of the Company to compensation of damage and costs. The Customer shall then be credited with the market value (which on no account can be higher than the original purchase price), reduced by the damage suffered and costs incurred by the Company.
- 10.6 The Customer, exercising his profession or business, shall be entitled, within the framework of his business operations, to sell and deliver the goods delivered to him under retention of title to third parties. In the event of such sales, the debt payable by the Customer to the Company regarding the goods resold by the Customer shall become forthwith and fully due and payable, insofar as said claim was not already due and payable.
- 10.7 The Customer shall always be obliged to inform third parties of the Company's retention of title. Furthermore, the Customer shall be obliged to inform the Company of the whereabouts of the goods and of the person or company said goods have possibly been sold to, if so required by the Company.

## **Article 11 - Payment**

- 11.1 Unless explicitly agreed upon otherwise in writing, payment of the agreed price shall be made at the time of conclusion of the agreement.
- 11.2 Any and all payments shall be made effectively in the currency as stated on the invoice, without deduction or settlement. The Customer shall not transfer or encumber any of its rights deriving from the agreement.  
In the event that the Customer alleges to have a claim on the Company with regard to the performance of the agreement, he will not be discharged from his obligation to pay in the manner agreed and shall have no right of suspension or postponement.
- 11.3 In the event that the Company has a well-founded fear that the Customer will not fulfil his obligations, the Company shall at its discretion be entitled to require sufficient security from the Customer with regard to the fulfilment of the obligations to pay, before performing or continuing to do so.  
The Company shall be entitled to suspend the fulfilment of its obligations until the Customer has given said security.
- 11.4 In the event that the Customer has not paid at the time or within the period of time referred to in paragraph 1 of this article, he shall be in default by operation of law and without any prior notice of default being required, and he shall owe the statutory commercial interest on the amount due and payable from the date at which the payment should ultimately have been made, without prejudice to any other rights of the Company (explicitly including the right to compensation of loss on exchange).
- 11.5 Any costs, both in and out of court, made by the Company with regard to non-fulfilment, overdue or non-sufficient fulfilment of his obligations by the Customer, including extrajudicial collection costs and costs of legal assistance, shall be compensated by the Customer to the Company. The Company and the Customer jointly shall determine the extrajudicial collection costs in advance at 15 per cent of the principal sum due, without prejudice to the right of the Company to compensation of the actual costs should these be higher.

## **Article 12 - Return shipments**

- 12.1 It shall not be permitted to return any goods delivered by the Company without the Company's prior written consent. Should any return shipments take place, then this shall at all times be done at the expense and risk of the sender.

## **Article 13 - Samples**

- 13.1 The Customer shall be entitled to ask the Company to put (a) sample(s) of the goods at his disposal before delivery. If the Customer refrains from doing so, he shall be considered to agree to the quality and condition of the goods beforehand.

## **Article 14 - Complaints and guarantees**

- 14.1 Complaints can only refer to quantity, weight or specification, as well as to non-conformity of the delivered goods with the sample(s) made available by the Company.
- 14.2 The Customer shall check the goods forthwith, ultimately on arrival.
- 14.3 Any complaints with regard to relevant defects observable at inspection of the goods, as well as complaints in connection with quantity, weight or specification shall be made in writing within 24 hours after the delivery, and include a complete description of the alleged defects, on default of which any claim in this respect shall become void.
- 14.4 Any complaints with regard to other relevant defects shall be made in writing within 24 hours after their disclosure, and include a complete description of the alleged defects, however ultimately within three (3) months after the delivery, on default of which any claim in this respect shall become void.
- 14.5 Any claim of the Customer with regard to delivered goods shall also become void in the event that:
- a. the agreement refers to the delivery of used or damaged goods;
  - b. the goods have been processed or the goods are otherwise not (or no longer) identifiable as originating from the Company;
  - c. the defects are (also) caused by normal wear and tear, inexpert and/or incorrect treatment, use and/or storage or maintenance of the goods;
  - d. the Customer has not forthwith given the Company the opportunity to investigate the complaints and to fulfil its obligations;
  - e. the Customer has resold the goods;
  - f. the Customer has not, not in time or not sufficiently, fulfilled any obligation resting with him.
- 14.6 In connection with any parts and/or goods obtained from third parties which have not been treated by the Company, the Customer can only assert his claims against the Company insofar as the Company, in its turn, can assert any claims against its supplier. Should this be the case, the Company shall at any rate be discharged with respect to the Customer by transferring its rights with respect to its supplier to the Customer.
- 14.7 The Customer is not entitled to assert any rights against the Company in the event that he can also directly assert the rights with regard to the defects concerned against the manufacturer.



- 14.8 Without prejudice to the provisions in the previous paragraphs of this article, in the event of timely and justifiable complaints, the Company shall only be obliged - at its option - to either repair the goods, proceed to redelivery or to credit the Customer for the defective goods. These General Terms and Conditions shall apply unimpaired to redelivery.

## **Article 15 - Liability**

- 15.1 The Company's liability under the agreement shall be limited to fulfilment of the obligations described in the agreement, in particular the obligations described in the previous article.
- 15.2 The Company's liability shall never cover business damage or any other indirect damage.
- 15.3 With the exception of gross negligence or intent, the Company shall never be liable for direct or indirect damage, including business damage, resulting from the infringement of any intellectual or industrial property rights, licences or any other rights of third parties.
- 15.4 Should the Company be held liable by any third party/parties for any damage for which the Company is not liable pursuant to these General Terms and Conditions or otherwise, then the Customer shall be obliged to hold harmless and indemnify the Company against such damage and liability and to compensate it for any possibly ensuing costs, damage and interest.
- 15.5 The limitations and exclusions of liability, as well as indemnity stipulated for the Company itself in the above paragraphs are also stipulated for and on behalf of its employees, any other person employed by it within the framework of the agreement, as well as for the persons from whom the Company obtains delivered goods and/or parts.

## **Article 16 - Force majeure**

- 16.1 The term force majeure in these terms and conditions shall mean any circumstance beyond the Company's control, whether or not foreseeable at the time of conclusion of the agreement, which permanently or temporarily prevents fulfilment of the contract, and, insofar as these are not yet included, war, danger of war, civil war, terrorism revolt, strike, employees' lock-out, freight problems, fire, weather conditions preventing work and other interruptions of the Company's operations or of the operations of the Company's suppliers, as well as default of the Company's suppliers.
- 16.2 In the event of impediment to the performance of the agreement as a result of force majeure, the Company shall have the right without any judicial intervention, either to suspend the execution of the agreement for a maximum of three (3) months or to wholly or partially dissolve the execution of the agreement, without the Company being obliged to pay any compensation.

## **Article 17 - (Threatening) failure**

- 17.1 In the cases provided for by the Law, as well as in the event that the Customer does not, not in time or not sufficiently, fulfil one or more obligations arising for him from the agreement, including the provisions in these General Terms and Conditions, or in the event that there is serious doubt as to the Customer being able to fulfil his contractual obligations towards the Company, as well as in the event of bankruptcy, suspension of payments or appointment of a pre-bankruptcy receiver (pre-pack), complete or partial stoppage of work, liquidation, transfer or encumbrance of the Customer's business, including the transfer or pledging of an important part of his accounts receivable and furthermore in the event that any goods of the Customer are attached before judgement or in execution, the Company shall have the right, without notice of default or judicial intervention, either to suspend the execution of the agreement for a maximum of three (3) months, or to partially or wholly dissolve the agreement by means of a written (including by fax or e-mail) notice sent to the Customer, and all this without the Company being liable to any compensation or guarantee, and without prejudice to any of its other rights.

## **Article 18 - Suspension & dissolution - consequences**

- 18.1 In the event of the Company's suspension of its obligations, it shall be authorised - and obliged at the end of the suspension period - to opt for execution or complete or partial dissolution of the agreement.
- 18.2 In the event of suspension or partial dissolution by virtue of the provision of the previous article, the agreed price shall be forthwith due and payable, after deduction of any costs not incurred by the Company as a result of the suspension or the partial dissolution.
- In the event of partial dissolution the Customer shall furthermore be obliged, after the payment of the amount due pursuant to the previous sentence, to take possession of the goods covered by that payment, failing which the Company shall have the right to have these goods stored at the risk and expense of the Customer, or to have them sold at his expense.
- 18.3 In the event that the Customer returns the goods received by him from the Company after dissolution of the agreement, said returning of the goods shall at all times be at the risk and expense of the Customer, until said goods have been taken possession of by the Company.

## **Article 19 - General**

- 19.1 In the event that one or more stipulations of the agreement, including stipulations of these General Terms and Conditions, are null and void or become legally invalid, the remaining provisions of the agreement shall remain in force. Parties shall consult on the stipulations which are null and void or have become legally invalid, in order to make an alternative arrangement.
- 19.2 Should one or more stipulations of the agreement, including the stipulations of these General Terms and Conditions, be in conflict with mandatory provisions, stipulated by or to be stipulated by a thereto competent authority, these latter provisions shall be considered to have replaced the relevant stipulations of the agreement.
- 19.3 The Customer shall not attach any assets with respect to rights deriving from the agreement or further agreements arising or resulting from or in connection with said agreement, nor shall it transfer or encumber any of its rights deriving from such agreement. The Customer shall not set off, suspend or postpone payment or any other obligation.

## **Article 20 - Disputes and applicable law**

- 20.1 With regard to any and all disputes in connection with the agreement, or with regard to further agreements arising or resulting from or in connection with said agreement, the Customer chooses domicile at the Clerk's office of District Court Amsterdam, the Netherlands, and District Court Amsterdam shall have exclusive jurisdiction in the first instance, unless the Company explicitly opts for the competence of the court of the seat or of a place of business of the Customer.
- 20.2 The agreement, as well as any and all further agreements arising or resulting from or in connection with said agreement, shall be governed by and construed in accordance with the laws of the Netherlands, with the exception of the stipulations of the Vienna Sales Convention or any other future international regulation on the purchase of movable goods of which the applicability may be excluded by parties.

*Amsterdam, June 2015*