

General Terms and Conditions of Sale, Delivery and Payment of Dulimex BV, Vaassen, the Netherlands

Applicability

1. The following terms and conditions apply with respect to all offers, deliveries and agreements between Dulimex B.V. (the seller) and the purchasers. Any deviation from these terms and conditions are only applicable if the seller has expressly agreed to the same in writing.
2. The application of any general terms and conditions of the purchaser is explicitly excluded.
3. To the extent that these general terms and conditions have also been drafted in a language other than the Dutch language, the original Dutch text will prevail at all times.
4. The term 'in writing' as used in these general terms and conditions shall be understood to mean: by letter, fax or by electronic means.

Offers

5. All quotations submitted by the seller shall be without engagement or obligation.
6. An agreement is not deemed to have become effective until the seller has confirmed the order in writing or the seller has commenced execution of the agreement. Any orders taken by representatives of the seller and any later agreements or changes shall not bind the seller until they have been confirmed in writing by the seller.
7. In the case of orders for which, depending on their nature and size, no quotation or order confirmation is sent, the invoice shall be deemed to reflect the contract fully and correctly, subject to a claim within 3 working days.

Prices

8. Unless otherwise stated, prices shall be:
 - based on the level of purchase prices, wages, wage costs, social security and other government charges, freight costs, insurance premiums and other costs applicable at the time of the quotation or order date;
 - based on ex works, Vaassen, the Netherlands (EXW, Incoterms 2000);
 - exclusive of VAT, import duties, other taxes, levies and rights;
 - exclusive of the costs of packaging;
 - quoted in euros.
9. Prices which are quoted shall cease to apply upon the publication of a new price list or price lists. The seller may – also in the event of repeat or subsequent orders – at all times calculate the prices applicable on the day of delivery and may implement any price increases which occur after the conclusion of the agreement.

Delivery

10. If the seller, based on the agreed Incoterm, is responsible for transportation, any specific wishes of the purchaser with regard to the transportation or dispatch will only be carried out if the purchaser has declared its willingness to bear any additional costs associated with this.
11. Unless otherwise agreed in writing, delivery shall be made ex works, Vaassen, the Netherlands (EXW, Incoterms 2000).
12. The seller reserves the right to execute orders in partial deliveries. The purchaser is obliged to pay the amount of the invoice related to each partial delivery in the manner provided in articles 41 to 46 inclusive.
13. Delivery dates that have been notified are approximations only and shall never be deemed an absolute deadline. The seller shall not be in default with respect to a delivery period until it has been given notice of default in writing by the purchaser, with the purchaser having provided ample opportunity to make delivery within a reasonable period but whereby the seller has failed to comply.
14. The delivery period which is notified shall commence upon confirmation of the order in writing by the seller or as soon as the seller has started to execute the agreement.
15. Any failure by the seller to meet a deadline for delivery shall never oblige the same to pay a penalty and/or compensation. The purchaser may only terminate the agreement if and when excessive failure to meet a delivery deadline occurs (where the delivery period is exceeded by more than 12 weeks), save where the delivery period is exceeded due to a force majeure situation.
16. If the purchaser has failed to take delivery of the goods after the expiry of the delivery period, the seller may, at its option (i) terminate the agreement, or (ii) store the goods at the risk and expense of the purchaser. All costs arising from the aforementioned circumstances, including the cost of storage and any reduced revenues, shall be for the purchaser's account.
17. The seller may, if considered necessary or desirable, engage third parties in order to ensure the correct execution of the agreement and pass on any subsequent costs to the purchaser in accordance with the quotations which have been provided. The seller will consult with the purchaser in this respect where possible and/or necessary.
18. If the goods delivered differ in terms of their numbers, quantity and weight by less than 5% from that which has been agreed, the purchaser will nonetheless be obliged to accept the goods delivered. In such case the purchaser shall not be entitled to delivery or return shipment of the differences between the goods delivered and that which has been agreed, nor shall the purchaser then be entitled to demand compensation or the termination of the agreement.

Claims and warranty

19. Upon delivery, the purchaser is obliged to immediately check the goods delivered and/or the packaging for any shortages and/or damage, or to carry out this check after receiving notification from the seller that the goods are available to the purchaser.

20. The purchaser shall make a note, or have a note made on the delivery note, the invoice and/or the transport documents of any shortages with respect to and/or damage to the goods delivered and/or the packaging which are present upon delivery before taking receipt of the goods, and it shall send this to the seller within 3 x 24 hours.

21. Complaints will only be handled if they have been made in writing directly to the seller and have reached the seller within 8 days after delivery.

22. Claims concerning invoices must also be submitted in writing within 8 days after the date of invoice.

23. Goods may only be returned with the prior written consent of the seller. Returned goods travel in all cases at the risk and expense of the purchaser.

24. If a complaint is found to be justified within the stipulated time limit and satisfies the relevant conditions, the seller shall only be obliged, at its option, to repair or replace the item of goods or component part, or to credit the respective invoice amount. The seller shall never be obliged to reimburse or compensate other costs and/or loss or damage. The replaced component parts or the replaced item of goods remains/shall become the property of the seller.

25. The warranty period shall never be more than 12 months after delivery, save where the seller and the purchaser have agreed a longer period in writing. The original warranty period will continue following repair or replacement; no new warranty period will commence unless otherwise agreed in writing.

Retention of title

26. All goods delivered shall remain the exclusive property of the seller until all amounts owed by the purchaser to the seller – in connection with this or previous deliveries – have been paid in full. The seller may reclaim the goods immediately in the event that the purchaser has not fulfilled its obligations or the seller has reason to assume that the purchaser will not fulfil its obligation. The costs connected with the repossession will be charged to the purchaser.

27. The purchaser may use or sell the goods delivered subject to retention of title within its ordinary business operations unless the purchaser has filed for bankruptcy protection or the purchaser has been declared bankrupt.

28. In the event that the goods delivered are subjected to treatment, processing or mixing by or at the other party, the seller shall acquire the joint proprietary rights to the new goods or items of goods that is/are created or the principal item to the value of the goods (originally) supplied by the seller.

29. In the event that the purchaser fails to pay an amount that is due and payable, suspends payments, files for bankruptcy protection, is declared bankrupt, is placed into administrative receivership, dies or has its business wound up, the seller will be entitled to cancel the order or that part of the order that is yet to be delivered, without notice of default being required and without judicial intervention, and to reclaim any goods that may have been delivered, but which have not been paid for or not fully paid for, as its own property, setting off any sums which may already have been paid, nonet- heless without prejudice to the seller's rights to demand compensation for any loss and/or damage. In such cases, all amounts which the purchaser owes to the seller shall become immediately due and payable.

Force majeure

30. The seller shall not be obliged to perform any obligation under the agreement if it is prevented from doing so as a result of force majeure.

31. The following shall constitute force majeure: any circumstance as a result of which the purchaser cannot reasonably demand the normal performance of the agreement, such as war or threat of war, regardless of whether the Netherlands is directly involved or not, full or partial mobilisation, a state of siege, riot, sabotage, flooding, fire or other instances of destruction in factories or warehouses/stores, lockout, sit-down strike, industrial action, default on the part of manufacturers or suppliers, etc.

32. The seller as well as the purchaser may terminate the agreement by dissolution if the force majeure situation has continued for more than ninety days. The purchaser shall not be entitled to any compensation in such case.

Liability

33. Unless in the event of intent or gross negligence committed by the seller and subject to the statutory liability under mandatory provisions, the seller shall never be liable for any loss or damage suffered or incurred by the purchaser. All liability for indirect loss or damage, consequential loss or damage, non-material damage, trading loss or environmental damage or loss or damage resulting from liability vis-à-vis third parties is furthermore expressly excluded.

34. The seller shall in any event not be liable for loss or damage arising from or caused by the negligent or careless use of the goods, or use contrary to the user instructions for the goods delivered, or the unsuitability of the goods delivered for the purpose for which the purchaser has purchased and/or used the goods delivered.

35. To the extent that, in spite of the above, the seller may be held liable in any way and for whatever cause, such liability shall be limited to the amount equal to the net invoice value of the goods concerned, on the understanding that the seller shall be exclusively liable up to a maximum amount of EUR 100,000 per incident of loss or damage. For the purpose of this article, a series of connected loss-causing incidents shall be deemed to constitute a single event/incident of loss or damage.

36. The purchaser shall hold the seller free and harmless against all claims of third parties due to loss or damage which has occurred in connection with goods supplied by the purchaser to such third parties, save where it is established at law that such claims are a direct consequence of gross negligence or intent on the part of the seller and the purchaser shows moreover that no blame whatsoever attaches to it in this respect.

Product liability in particular

37. In order to avoid incorrect and negligent use, or the use of the products supplied for purposes for which these products are not intended, purchasers who in turn sell, rent, lease, etc. these products as part of their commercial activities are obliged to provide their purchasers, hirers, etc. with a proper product description and user manual.

38. To the extent that purchasers do not provide the products directly to the end user, they shall include in the agreements with their customers a similar provision as set out under 38.

39.a. To the extent that the seller may be obliged to pay compensation for loss or damage which has arisen or been caused by a defective product which was manufactured by the seller or imported into the EC by it as referred to in the Council Directive of 25 July 1985 on liability for defective products (OJEU L 210), the seller may recover such loss or damage in full from its purchasers who have failed to comply with the provisions in articles 38 and 39.

b. Where purchasers have complied with the provisions in articles 38 and 39, then purchasers shall only be obliged to pay to the seller 50% of the compensation payable by the seller.

c. In the case of series loss or damage where it is not possible to determine precisely which purchasers supplied the products concerned, the purchaser accepts, with the application of article 40a + b, liability for compensation analogous to the quantities of the product concerned which it has purchased from the seller. The accounting records of the seller shall provide exclusive proof in this regard.

40. In the event that the claim for compensation for loss or damage resulting from a product which has been lodged against the seller is subject to the laws of an EU Member State which has activated the limitation option of article 16.1 of the Council Directive of 25 July 1985 (OJEU L 210), the seller excludes, in the event that a contracting party takes legal action in relation to product liability, any and all liability or obligation to pay compensation for loss or damage resulting from a product which exceeds the respective limit.

Payment

41. Unless otherwise provided, the purchaser shall be obliged to pay all invoices within 30 days after the date of invoice, without suspension and deduction of any discount. Amounts owed by the purchaser may not be offset against any amounts due by the seller.

42. If the purchaser fails to pay the invoice amount due on time, it shall be in default by operation of law from the expiry of the payment term and shall be liable to pay the seller interest from the moment the default commences at the rate of 1.25% of the invoice amount for every month or part of a month by which the payment term is exceeded.

43. Only payments which have been made in the manner indicated by the seller shall be deemed valid payments.

44. In addition to the amount due, the seller shall be entitled to claim from the purchaser all the costs which have been caused by the purchaser's non-payment, including the judicial as well as the extrajudicial collection costs. The extrajudicial collection costs shall amount to 15% of the unpaid amount, with a minimum of EUR 25.

45. Every agreement is entered into subject to the condition precedent that the purchaser – at the sole discretion of the seller – is proven to be sufficiently creditworthy for the financial performance of the agreement.

46. The seller may, upon or after entering into the agreement, and before performing (further), demand that the purchaser provide security that the payment as well as the other obligations will be met, including full or partial payment in advance. Any refusal by the purchaser to provide the security demanded shall entitle the seller to suspend its obligations and shall eventually give the seller the right to terminate all or part of the agreement without notice of default or judicial intervention being required, without prejudice to its right to compensation for any loss or damage suffered or incurred by it.

Cancellation

47. The purchaser may not, in principle, cancel an order. If the purchaser nonetheless cancels all or part of an order, for whatever reason, it shall be obliged to reimburse to the seller all costs that have reasonably been incurred with a view to executing the order (including costs of preparation, storage, etc.), without prejudice to the seller's right to compensation for loss of profit and other loss or damage.

48. The purchaser shall also be liable to pay cancellation charges in the event of cancellation. These shall amount to 20% of the principal amount, plus VAT and EUR 5 administrative charges.

Intellectual property rights

49. The seller reserves all its rights in respect of intellectual property in connection with the goods supplied by it. The seller is and remains the exclusive owner of the copyright, design and model rights or any other intellectual property right with respect to everything that the seller has made (or caused to be made) as part of the order placed with it, until otherwise agreed in writing between the parties.

50. The purchaser may not change products that have been supplied, wholly or in part, or provide them with another brand name, or use the brand concerned in any other manner or register it in its own name.

Disputes

51. The agreement and these general terms and conditions shall be governed by and construed in accordance with Dutch law.

52. Save where the seller elects to submit a dispute to arbitration, any dispute will be settled exclusively by the Dutch civil court within whose jurisdiction the seller's principal place of business is located, without prejudice to the seller's right if it so wishes to refer the dispute to another competent court.