

## **GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT**

### **Article 1 – General**

- 1.1 These terms and conditions apply to all offers, bids, assignments, orders, confirmations, and agreements for the delivery of goods as well as the provision of services or making goods available, in which a member of NOVE, hereinafter referred to as the “Seller”, is a party. The other party to the agreement is hereinafter referred to as the “Purchaser”.
- 1.2 To the extent possible, the term “goods” in these terms and conditions includes “services”.
- 1.3 An agreement concluded on behalf of the Seller by a representative shall bind the Seller only if and to the extent that the Seller has confirmed the agreement in writing.
- 1.4 The applicability of any terms and conditions used by the Purchaser is explicitly excluded, unless the applicability thereof is agreed between the parties in writing. Any derogation from these terms and conditions is applicable only if this has been agreed by written agreement.
- 1.5 In the event of derogation of one or more provisions of these terms and conditions, the other provisions of these terms and conditions will remain in full force.
- 1.6 The Purchaser, with whom a contact has been established on the basis of these terms and conditions once, agrees to the applicability of these terms and conditions to subsequent agreements between the Seller and the Purchaser.
- 1.7 The term ‘in writing’ means on paper as well as electronically.

### **Article 2 – Offer, Agreement**

- 2.1 Any bids and offers are without obligation.
- 2.2 An agreement is concluded after the Seller has confirmed it in writing or, in the absence of such a confirmation, because the Seller has started to execute the agreement.
- 2.3 Any derogations from or amendments and/or additions to an agreement are valid only if agreed upon in writing with the Seller’s representative authorised to do so.
- 2.4 Any information provided prior to the confirmation of an order, bid, or offer – including but not limited to information about properties of the goods to be delivered – is binding only if confirmed in writing by the Seller’s representative authorised to do so.
- 2.5 Information provided in the Seller’s brochures, advertisements and product or other documentation – including but not limited to volumes, weights, and product specifications – is indicative.

### **Article 3 – Prices**

- 3.1 The Seller's prices are based on the prices for raw materials, wages, taxes, duties, levies, charges, and freight current at the time when the agreement was concluded, as well as all other cost factors in the Netherlands and abroad.
- 3.2 If, after the conclusion of the agreement, changes occur in the pricing factors referred to in the preceding paragraph – even if these changes are caused by circumstances unforeseen upon conclusion of the agreement – the Seller has the right to change the prices agreed accordingly.
- 3.3 All prices and/or rates stated by the Seller are in euros and excluding VAT, unless explicitly stated otherwise. If the goods are supplied to the Purchaser exempt from VAT and/or excise duty at the Purchaser's request, the Purchaser is responsible for holding the required license and fully waives the Seller regarding the supply against the imposition (or supplementary imposition) of VAT and/or excise duty and/or other duties and levies imposed by operation of law.
- 3.4 The Seller has the right to apply a late payment surcharge or a prompt payment discount.

#### **Article 4 – Delivery Period**

- 4.1 The delivery period stated by the Seller is indicative and should not be considered final unless explicitly agreed otherwise. A period does not start until after the Seller has received all the necessary data, documents and payment/advance payment agreed.
- 4.2 In addition, the delivery period applies subject to undisturbed working situation and replenishment of stocks of materials, undisturbed transport, and timely delivery by the Seller's suppliers to enable the Seller to comply with the delivery period.
- 4.3 Exceeding the delivery period does not entitle the Purchaser to terminate the de agreement. To the extent that a right of termination exists, termination must be effected in writing and within five days after expiry of the delivery period and only if the Seller is in default.
- 4.4 Exceeding the delivery period never entitles the Purchaser to claim compensation, nor to fail to fulfil any obligation ensuing from the agreement.
- 4.5 In the articles 4.2, 4.3, and 4.4, the term 'delivery period' means the period agreed, to the extent that it is final, and otherwise the period legally set for the delivery by the Purchaser in its notice of default.
- 4.6 Goods not taken in possession by the Purchaser after expiry of the delivery period remain available to the Purchaser and will be stored by the Seller at the Purchaser's risk and expense. This does not affect the Purchaser's payment obligation.

#### **Article 5 – Delivery, Transport**

- 5.1 Delivery takes place on the basis of the delivery condition Ex Works [Seller's location] (Incoterms, latest version), unless the parties explicitly agree on a

- different location of delivery. If it has been agreed that transport is arranged by the Seller, this is done at the Purchaser's risk and expense.
- 5.2 Delivery is deemed to have taken place if the goods are collected by or on behalf of the Purchaser or transport is arranged by the Seller as referred to in the first paragraph, at the start of loading the means of transport used to collect or carry the goods. If explicitly agreed that the goods will be transported at the Seller's risk and expense, delivery is deemed to have taken place when the goods are presented at the location of delivery agreed with the Purchaser.
  - 5.3 The Seller has the right to deliver goods sold in one batch or a quantity of goods sold in one batch in partial deliveries.
  - 5.4 Upon presentment within the meaning of article 5.2, the Purchaser is obliged to immediately offer the opportunity to unload the goods in an installation suitable for this purpose or in a storage place suitable for the goods. If the Purchaser fails to render its cooperation, all costs ensuing from this and overtime for every hour or part thereof are at the Purchaser's expense.
  - 5.5 The Seller's obligation to carry is confined to the location that is reasonably accessible for the means of transport chosen by the Seller. The Purchaser is obliged to arrange further transport.
  - 5.6 Weights and measures (including temperature) are determined in a binding decision in accordance with the Seller's usual method. In any other case, the weights and measures indicated by the supplying installation are normative. The Purchaser has the right to be represented at this decision and to have the goods measured and/or weighed at its own expense.
  - 5.7 Markings applied by the Purchaser to indicate the maximum capacity of – and liquid level in – its tanks, as well as the nature of the goods contained therein, are considered correct. The consequences of incorrect or vague marking are at the Purchaser's expense. Any damage, including environmental damage and clean-up costs, and the loss of goods supplied, caused by overfilling of the storage tanks and caused by the absence or improper functioning of the dipsticks, flow gauge or overfilling, is at the Purchaser's expense.
  - 5.8 If the pump speed to be used according to the Seller is deviated from upon delivery of the goods at the Purchaser's request, any resulting damage, including damage incurred by third parties and "demurrage" is at the Purchaser's expense.
  - 5.9 If the Seller deems this necessary, the Seller has the right to insure the goods to be delivered, without prior notification to the Purchaser; the insurance costs are charged on to the Purchaser at competitive rates.
  - 5.10 Return shipments are at all times at the Purchaser's risk and expense.
  - 5.11 The Purchaser is obliged to render its cooperation in any recall of the goods supplied and to carry out the measures required by the Seller or by the authorities. The parties will hold consultations prior to taking such measures, unless such measures must be taken immediately for reasons of urgency. The nature and extent of a recall will be determined by the Seller or, as the case may be, by the competent authority. Each party bears the costs for the deployment of staff and machinery and equipment required to carry out the recall measures.

## **Article 6 – Sampling**

6.1 Only the samples taken by the Seller are binding between the parties.

## **Article 7 – Packaging**

- 7.1 Packaging is included in the price, unless agreed otherwise.
- 7.2 Packaging not included in the price is given on loan and remains the Seller's property. The provisions of article 9 are applicable.
- 7.3 Unless agreed otherwise, the Purchaser will return any packaging not included in the price to the Seller at an address designated by the Seller as soon as possible and undamaged on the basis of the delivery condition DDP [Seller's location] (Incoterms, latest version). If the Purchaser fails to do so, the Purchaser is obliged to pay the Seller the cost of new replacement packaging and the Purchaser will be liable for all fines, rental costs and/or charged that may be imposed on the Seller in connection with the failure to return packaging.

## **Article 8 – Brand**

- 8.1 Upon taking delivery of the goods, the Purchaser declares to be familiar with the intellectual property rights used by the Seller.
- 8.2 Upon resale/onward supply, the Purchaser will market the goods exclusively under the intellectual property rights established by the Seller and demand from its purchaser by way of perpetual clause that the goods be resold only under those intellectual property rights.
- 8.3 The Purchaser declares not to infringe any of the intellectual property rights established by the Seller and to inform the Seller immediately of any infringement.

## **Article 9 – Loan for Use, Lease**

- 9.1 Any materials and installations given on loan or lease or purchased under a hire-purchase contract may be used exclusively for the storage and/or processing of the goods supplied by the Seller.
- 9.2 Immediately upon or after delivery, the borrower, lessee or purchaser under a hire-purchase contract must ascertain whether the materials and installations made available are in a good state of repair. Article 11.1 applies by analogy.
- 9.3 Any materials given on loan or lease or purchased under a hire-purchase contract are at the Purchaser's risk under all circumstances. The Purchaser is obliged to have the materials and installations made available properly insured and maintained by an expert authorised to do so. All costs of insurance, use and maintenance of the materials and installations are at the Purchaser's expense.

- 9.4 If the Purchaser acts in violation of its obligation(s) ensuing from article 9.1 and/or 9.3, the Seller has the right to terminate the agreement with immediate effect and will hold the Purchaser liable for all loss and costs.
- 9.5 In the case referred to in the preceding paragraph, and as soon as the period for which the materials and installations were given on loan or lease has expired, the Purchaser is obliged to make the materials and installations immediately available to the Seller at a location to be designated by the Seller clean, empty, and in a good state of repair, DDP [Seller's location] (Incoterms, latest version), in default of which the Purchaser will be liable for all damage and costs.

## **Article 10 –Seller's Liability**

- 10.1 The Purchaser is and remains fully responsible at all times for the reliability and safety of its own installations, mechanisms, and goods.
- 10.2 The Seller is not liable for any damage resulting from errors or unlawful acts by itself, its employees or any other persons engaged by or on behalf of the Seller in the execution of the agreement concluded with the Purchaser, unless it is an error made or unlawful act committed by persons that can be considered to be bodies of its company or executive officers and the Purchaser also proves that it constitutes intent or gross negligence of such persons.
- 10.3 The Seller does not guarantee the suitability of the goods and services supplied or made available by it or of the goods made available for a special purpose.
- 10.4 The Seller is not liable for any damage resulting from or directly or indirectly related to the use of alternative or biological fuels, irrespective of whether it concerns an addition of such fuels or the supply of pure biological fuels.
- 10.5 Seller is not liable for any damage resulting from its recommendations for use, unless the recommendations are provided by persons that can be considered to be bodies of its company or executive officers and the Purchaser also proves that it constitutes intent or gross negligence of such persons.
- 10.6 The Seller is not liable for any damage, resulting directly or indirectly from defects in goods supplied or made available by the Seller or goods used in the execution of the agreement or resulting from a non-standard quality of the goods supplied by the Seller, unless mandatory provisions stipulate otherwise. In that case, the Seller's obligation to pay damages does not exceed the amount to which the Seller is obliged pursuant to the law.
- 10.7 Except to the extent that mandatory provisions as referred to article 10.6 stipulate otherwise, any liability of the Seller is always limited to the lower amount of:
- a. the invoice amount or, in the absence thereof, the value of the performance agreed;
  - b. in the event of partial deliveries – the invoice amount or, in the absence thereof, the value of the performance concerned;
  - c. the amount covered by an insurance policy, if and in so far as the Seller is insured against the liability concerned,

- 10.8 The term “damage” is understood to mean damage or loss of whatever nature, including but not limited to damage to property, environmental damage, indirect loss or damage, loss of profits, costs, fines, consequential damage or loss, and everything whatever named and however caused.

### **Article 11 – Complaints**

- 11.1 Immediately upon or after the delivery, the Purchaser is obliged to inspect the goods delivered. Any complaints from the Purchaser about the quality of the goods delivered must be submitted to the Seller immediately and in writing and any complaints about the quality of the delivery and/or of the goods delivered must in any case be reported to the Seller within 8 calendar days of the delivery or 8 calendar days after the goods have been made available to the Purchaser, respectively. If the Purchaser fails to submit a written complaint to the Seller immediately or within the aforementioned period of 8 calendar days, respectively, the goods delivered by the Seller are considered approved and accepted by the Purchaser.
- 11.2 It is not possible to submit complaints about goods that are no longer in their original state and which can consequently not be inspected by the Seller anymore and/or which have been used carelessly and improperly or which have been used for purposes other than for which the goods were designated. Any slight commercially acceptable or technically unavoidable deviations in quality and quantity do not constitute a ground to exercise means of redress.
- 11.3 If a complaint is considered justified by the Seller, the Seller has the right to credit the Purchaser with the decreased value up to a maximum of the invoice amount, instead of repairing or replacing the good delivered or delivering a supplemental quantity.
- 11.4 Any complaints about an invoice sent by the Seller (whether or not electronically) must be submitted to the Seller in writing within 8 calendar days of the invoice date. After expiry of said period, any and all claims from the Purchaser will have lapsed for this reason alone.
- 11.5 Any claim against the Seller will have lapsed, unless legal proceedings have been initiated against the Seller within 12 months of the delivery.

### **Article 12 –Purchaser’s Liability**

- 12.1 In all cases in which the Purchaser acts in violation of a provision of the agreement and/or these terms and conditions, the Purchaser is liable for all costs and damage, whatever named, incurred or to be incurred by the Seller.

### **Article 13 – Payment**

- 13.1 In derogation of any payment conditions agreed upon, the Seller has the right to demand payment of the goods already delivered and/or require advance payment before it continues to supply the goods

- 13.2 Payment is immediately due and payable and must have been transferred into the Seller's account on the delivery date, unless explicitly agreed otherwise or a different payment term is stated on the Seller's invoice.
- 13.3 Each payment term is final, so that the Purchaser is in default after the expiry of said term without a demand or notice of default being required.
- 13.4 In respect of payment, the Purchaser will not rely on setting off any claim which the Purchaser alleges to have against the Seller. Nor will the Purchaser be permitted to suspend its payment on the basis of any alleged counterclaim or objections regarding the execution of the agreement.
- 13.5 In case of payment by debit card or credit card, the Purchaser is responsible for having sufficient balance. If the balance appears to be insufficient for full payment, the Purchaser is obliged to provide security for the performance of its obligations. The Seller has the right to retain goods of the Purchaser, including a means of transport which has been filled up with fuel, until full payment has been effected or sufficient security has been provided, such at the Seller's discretion.
- 13.6 If the Purchaser has several financial obligations towards the Seller or if it has been agreed that the delivery will be effected in consignments and payment will be effected in instalments and the Purchaser is in default of payment in respect of one of the claims, all other claims from the Seller, including future instalments, will become immediately due and payable, without prejudice to the Seller's rights pursuant to article 13.1.
- 13.7 In the case of the failure to pay or overdue payment by the Purchaser, as well as if the Purchaser's financial situation gives cause to this, such at the Seller's sole discretion, the Seller has the right to suspend further execution of the agreements until the Purchaser has provided security for the proper payment thereof to the satisfaction of the Seller and the Seller has obtained this security.
- 13.8 In the case of the failure to pay or overdue payment, the Seller's claim will be increased by extrajudicial collection costs, including all other extrajudicial costs as well as the costs of legal assistance.
- 13.9 The Purchaser is obliged to pay the statutory commercial interest on the outstanding claim (Book 6, Section 119a of the Dutch Civil Code), from the date on which the claim became due and payable.
- 13.10 In the case of orders on a call-of basis and the order has not been called off fully after six months, the Seller has the following options:
- a. To demand full payment forthwith – in advance – of the goods still to be delivered and to claim compensation for any damage incurred by it;
  - b. To terminate the agreement and to claim compensation for the damage incurred by it.

#### **Article 14 – E-invoicing and E-mandate**

- 14.1 E-invoicing is the electronic presentation of invoices by the Seller to the Purchaser. An e-invoice is an electronic invoice that complies with the applicable regulations.

- 14.2 The Seller may offer e-invoicing to the Purchaser. Participation in e-invoicing is only possible after the Purchaser has accepted the terms and conditions set by the Seller.
- 14.3 By participating in e-invoicing, the Purchaser accepts that it will no longer receive paper invoices from the Seller. This applies to invoices sent to the invoice address as well as those sent to the invoice copy address (if applicable).
- 14.4 The Purchaser will keep any User ID(s) and password(s) secret with the greatest possible care and guarantees careful use and management thereof. If the Purchaser suspects abuse, it will immediately notify the Seller of this.
- 14.5 The Seller will grant the Purchaser access to the e-invoice online for a period to be designated by the Seller. The Purchaser is personally responsible for saving the e-invoice in an electronic format (PDF+certificate) for its records.
- 14.6 The Purchaser may always request to terminate its participation in e-invoicing. After receipt of such a request, the Seller will send paper invoices again as soon as possible. The Seller may charge a fee for sending paper invoices in the future, which the Purchaser hereby explicitly accepts.
- 14.7 An e-mandate is an electronic authorisation for direct debit which complies with the applicable regulations and procedures. The Seller may offer such an electronic mandate to the Purchaser. Participation in an e-mandate is only possible after the Purchaser has accepted the terms and conditions set by the Seller.

#### **Article 15 – Involuntary Liquidation**

- 15.1 In the event of a suspension of payments (provisional or otherwise), involuntary liquidation, cessation, or winding-up of the Purchaser's company, any claims from the Seller against the Purchaser become immediately due and payable and all obligations of the Seller in respect of the Purchaser will be suspended immediately. The Seller has the right to terminate the agreements with the Seller with immediate effect or to require execution of the relevant agreement(s), or a part thereof, in which case the Seller has the right to suspend its obligations under the relevant agreements until performance by the Purchaser has been secured sufficiently, all this without prejudice to all other rights to which the Seller is entitled.

#### **Article 16 – Reservation of Ownership, Pledge**

- 16.1 The Seller reserves the right of ownership (or otherwise) to the goods delivered and to be delivered in the future until all claims from the Seller against the Purchaser on the basis of the delivery of those goods, or on the basis of activities performed or to be performed in relation to that delivery, including interest, charges and/or damage, have been satisfied in full.

- 16.2 The reservation of ownership also applies to all claims from the Seller against the Purchaser due to the Purchaser's failure to perform one or several of its obligations ensuing from the agreement.
- 16.3 The Purchaser is obliged to maintain any goods owned by the Seller with due care. As long as the ownership of the goods delivered has not passed to the Purchaser, the Purchaser is not permitted to dispose of these goods or to grant any right to these goods to any third party unless the Seller has explicitly granted prior permission in writing to this end and unless it concerns the resale/ onward supply in the Purchaser's ordinary business operations. In that case, the Purchaser is obliged to inform the party to whom it transfers the goods of the Seller's rights of ownership.
- 16.4 If the Purchaser fails to perform its payment obligations towards the Seller or if the latter has good reasons to fear that the Purchaser will fail to perform said obligations, the Seller has the right to repossess the goods delivered under reservation of ownership, without prejudice to any further rights in respect to the Purchaser. In that case, the Purchaser irrevocably declares to render the Seller full cooperation in the repossession of the goods, including by granting the Seller access to the location where the goods are held.
- 16.5 As security for all that the Seller can or should be able to claim from the Purchaser at any time, the Purchaser pledges all its rights ensuing from the onward supply with respect to third parties to the Seller in case the goods delivered by the Seller have been supplied on by the Purchaser. By the applicability of these terms and conditions, the Purchaser grants a power of attorney to the Seller, with the right of substitution, to pledge those rights on behalf of the Purchaser to the Seller, if applicable each time repeated, and to do everything necessary in respect of that pledge. The Purchaser guarantees that it has the power to pledge and that the rights are free from rights of third parties. As soon as the Purchaser fails to perform its payment obligations towards the Seller, the Seller is obliged to inform the above-mentioned third parties of this pledge. The Purchaser is obliged to render the required cooperation to this end, in particular by immediately providing a statement on the Seller's demand listing the names and addresses of all third parties to whom the Purchaser has supplied the goods delivered by the Seller, as well as all rights the Purchaser has acquired with respect to those third parties in respect of that onward supply. If the Purchaser fails to render its cooperation on the Seller's demand, the Purchaser incurs an immediately payable penalty of twenty-five percent of the outstanding claim against the Purchaser, as well as an immediately payable penalty of five percent of the outstanding claim for each subsequent day that the Purchaser's failure continues, without prejudice to the Seller's right to claim execution in addition.

#### **Article 17 – Circumstances beyond one's control**

- 17.1 Circumstances independent on the will or through no fault of the Seller of such a nature that execution or continued execution of the agreement cannot be reasonably required are considered circumstances beyond one's control

and give the Seller the right to terminate the agreement or to suspend its execution to a date to be determined by the Seller, without the Seller being obliged to pay compensation.

- 17.2 If the Seller uses its right of suspension referred to in article 17.1, the Purchaser does not have the right to terminate the agreement, unless the Purchaser can prove that earlier execution is essential for running its business. In that case, the termination must be effected in writing within no more than five days after the Seller's reliance on the suspension.
- 17.3 The circumstances referred to under article 17.1 include war; threat of war; full or partial mobilisation; vandalism; riots; uprising or disturbances; terrorist actions or the threat thereof; strikes; protests; blockades; import and export bans; commandeering of stocks at the Seller or the Seller's own suppliers by the civil or military authorities; damage caused by fire or storm, inconvenience caused by weather conditions (for instance but not confined to snow, hail, and freezing rain); floods; earthquakes or other natural disasters or calamities; traffic hold-ups or transport delays; transport ban by the authorities; strikes, boycott, vandalism and other standstills in the Seller's company or in the Seller's own supplying companies; as well as such a shortage – whether or not as a result of price increases – of the goods that the Seller cannot be required to supply, even not at a higher price.

#### **Article 18 – Substitution**

- 18.1 Both in respect of the agreement concluded with the Purchaser and the execution of this agreement, the Seller has the right to appoint another to act in its place, to such an extent that all relevant rights and obligations will apply between the Purchaser and the party substituting for the Seller. If this situation arises, the Purchaser states that it will consent to such substitution and render its cooperation in it. The substitution is established as soon as the Seller, also on behalf of its substitute, has informed the Purchaser of this in writing.

#### **Article 19 – Applicable Law and Choice of Forum**

- 19.1 All agreements between the Purchaser and the Seller are exclusively governed by Dutch law, with the Vienna Sales Convention, however, being entirely disregarded and/or not being applicable.
- 19.2 Any disputes arising in the execution of or in connection with the agreement concluded between the Purchaser and the Seller will be submitted to the competent court in the district where the Seller has its registered office. Only the Seller may opt for submitting the dispute to the competent court in the Purchaser's place of residence or business place or another competent court.

#### **Article 20 – Partial Invalidity, Conversion**

- 20.1 If any provision of these general terms and conditions is wholly or partially invalid, for whatever reason, the agreement and the other provisions of these general terms and conditions remain in full force.

#### **Article 21 – Goodwill Gesture, Forfeiture of Rights**

- 21.1 If the Seller does not rely on any applicable provision of these terms and conditions with respect to the Purchaser as a goodwill gesture or for other reasons of commercial nature, the Seller – in doing so – does not forfeit its right to still rely on the relevant provision and all other applicable provisions of these general terms and conditions at a later stage.

#### **Article 22 – Consumers**

- 22.1 These General Terms and Conditions of Delivery and Payment apply fully to agreements with consumers. However, if it concerns a consumer purchase within the meaning of Book 7 of the Dutch Civil Code (a purchase concluded by a natural person), the mandatory provisions included therein will be given prevalence in so far as these provisions derogate from the provisions included elsewhere in these terms and conditions.

These NOVE General Terms and conditions were filed at the Chamber of Commerce under number KvK01/3179499 on 17 January 2017.