

#### **Article 1: Definitions**

Where used in the Agreement (as defined below) and in these standard conditions the following terms will have the meaning defined below:

- 'Seller': Bijlard Bouwchemie B.V., trading under the name Bijlard International, having its registered office in The Hague, the Netherlands;  
'Buyer': the (legal) person entering into the Agreement as well as his/its legal successors and the (legal) persons associated with them;  
'Agreement': the agreement concluded between the Buyer and the Seller.

#### **Article 2: Applicability, Conclusion of the Agreement and Quotes**

- These conditions apply to all quotes, work, services, Agreements with and deliveries by the Seller, unless determined otherwise below.
- Varying provisions and any standard terms and conditions of the Buyer apply only if and to the extent that they have been accepted by the Seller explicitly and in writing and only for the Agreement for which they have been accepted.
- All quotes provided by the Seller and the prices and conditions stated in these quotes are entirely without obligation and are based on Buyer's order. If a quote is accepted by Buyer the Seller has the right to revoke the offer made by the quote within five working days of receipt of acceptance.
- The Seller is not bound by pictures and descriptions in offers, prospectuses, catalogues and promotional materials as well as any other data provided by the Seller; they are only indicative
- In the conclusion and execution of Agreements the Seller is represented lawfully only by its authorized representatives as listed in the Trade Register of the Chamber of Commerce.
- The Seller is bound by placed orders only after confirming the order in writing, unless the Seller has apparently accepted the Agreement through factual delivery.
- The Seller has the right to refuse orders without stating reasons and is not liable for any loss or damage that arises and/or will arise from this refusal either directly or indirectly. In the event that the Buyer and the Seller have not explicitly agreed a price, the price effective on the date of conclusion of the Agreement will apply.

#### **Article 3: Prices**

- The prices stated by the Seller are in Euro's and are exclusive of VAT and other government-imposed levies and solely concern the price of the goods to which the Agreement relates and the costs of packaging unless otherwise agreed.
- The Seller has the right to make interim price adjustments. The Buyer has the right to terminate the Agreement only if such price adjustments are made within three months of conclusion of the Agreement.

#### **Article 4: Delivery Time**

- Delivery time commences on the date of the order confirmation by Seller unless on that day the Buyer has not provided the Seller with all the data required for execution of the order. Delivery times given by the Seller are as accurate as possible but are by approximation. The delivery time given will never be fatal. In the event of excess of the delivery time given the Seller must first be given written notice of default. Upon excess of the delivery time, even following a notice of default, the Buyer will not be entitled to any damages in whatever form, unless such excess is the result of gross negligence or wilful intent on the Seller's part.
- Upon excess of the delivery time not due to gross negligence or wilful intent the Buyer does not have the right to terminate the Agreement and suspend the payment obligation.

#### **Article 5 – Delivery and Transport Risk**

- Goods will be transported without insurance unless the Buyer has requested the Seller in time to insure the goods during transport at the Buyer's expense.
- The goods to which the Agreement relates are provided with the Seller's name and trademark. Without the Seller's written consent the Buyer may not remove the Seller's name and trademark from the goods to which the Agreement relates and to (re) sell the same under a different name or trademark.
- Unless otherwise agreed all goods will be delivered gross for net, which means: net measure of volume or weight, inclusive of packaging.
- Due to temperature and other environmental conditions for all agreed volumes to be supplied a 10% margin is allowed, which margin will be factored into the amount to be paid.

#### **Article 6: Payment**

- Services provided by the Seller must be paid within 30 days of invoice.
- If an invoice is not paid in full after expiry of the term stated in paragraph 1:
  - The Buyer will owe the Seller default interest at the higher rate of 1% per month or the applicable statutory interest, to be calculated cumulatively on the principal sum. For this purpose portions of a month will be regarded as full months;
  - The Seller has the right to charge the Buyer a handling fee of at least EUR 20 for every payment reminder sent to the Buyer.
- Payment must be made in full unless payment in instalments has been agreed, in which case every instalment due will be regarded as a separate payment.
- The Buyer does not have the right to set off a payment obligation against any (alleged) claim against the Seller.
- In the event of non-compliance or late compliance by the Buyer with any obligation arising from the Agreement, or if the Buyer enters into a debt settlement with its creditors, applies for suspension of payments, a debt restructuring scheme or takes part in similar procedures, goes bankrupt, closes or dissolves its business, or if attachment is levied against the Buyer, which is not lifted within fourteen days, more than 50% of the Buyer's share capital is alienated or structural changes are made to the control of the Buyer's business, any claim of the Seller against the Buyer will become payable immediately and in full. In such event the Seller has the right also to terminate the Agreement to the extent that it has not yet been executed (fully) without further notice of default or judicial intervention being required, all without prejudice to the Seller's right to suspend execution of the Agreement.
- The Buyer will be deemed to have recognised the invoice as correct and admitted the debt if no written objection has been filed within ten days of the invoice date.
- All costs arising from or related to the enforcement by the Seller of its rights arising from or related to the Agreement with the Buyer, including all costs arising from or related to the judicial and/or extrajudicial collection of any invoice amount not paid in full or not in time or on any other account, will be paid by the Buyer, without any reminder or notice of default being required. This includes the costs of any reminders, notices or notices of default, with a minimum of 15% of the principal sum due and an absolute minimum of EUR 500 per incident. The amounts entered into the Seller's records for said costs will constitute full evidence of incurrence of said costs, save for any evidence to the contrary by the Buyer.
- Upon payment of the invoice within eight days of invoice the agreed price may be reduced by 2%.
- The Seller may require the Buyer to make a down payment or provide security for performance of the latter's obligation under the Agreement. If the Buyer fails to provide such payment or security, the Seller may terminate the Agreement without stating reasons and without notice of default or judicial intervention being required, without prejudice to the Seller's right to demand payment of any goods already supplied, and compensation, as well as the right to suspend its obligations, or to supply the goods C.O.D., regardless of the size of the order.

#### **Article 7: Retention of Title**

- All goods delivered by the Seller under the Agreement will remain the property of the Seller until the Buyer has duly complied with all its obligations with the Seller.
- As long as the Seller has retained title to the goods sold the Buyer may dispose of those goods only for processing or treatment by the Buyer or for onward delivery as part of its ordinary business operations. The Buyer must always make every reasonable effort to secure the Seller's property rights.
- If third parties wish to create or enforce any rights on goods delivered subject to retention of title the Buyer is required to notify the Seller immediately.
- In the event of late and/or incomplete payment by the Buyer and in the event of (application) for suspension of payment, bankruptcy or liquidation of the Buyer's business, the Seller has the right to take back the goods delivered to the Buyer without any further notice or notice of default being required. The Buyer will enable and hereby authorizes the Seller to take the goods back in such event.

#### **Article 8 – Complaints**

- The Buyer must report visible defects in the goods supplied immediately upon receipt. Defects in the goods supplied that are not immediately visible upon receipt must be notified to the Seller in writing as soon as possible but at any rate within ten days of receipt or after Buyer reasonably could have been aware of the defects. After expiry of the ten-day term the right of complaint on whatever account will lapse.
- In the event of defects in the goods supplied the Buyer has a right of action against the Seller only insofar as the goods supplied have not been processed or resold and complaints have been filed within the ten-day term.
- Inevitable minor defects that are considered acceptable in the industry do not constitute ground for complaint.
- Possible enforcement by the Buyer of a claim on account of the above provisions does not entitle the Buyer to suspend payment.
- Goods returned by the Buyer due to defects in the goods supplied will be accepted only with the prior written consent of the Seller and if the products concerned are returned to the Seller carriage paid.

#### **Article 9: Liability**

- The Seller will discharge its duties as may be expected of a business in the Seller's industry. The goods to which the Agreement relates comply with the quality standards applicable in the industry. Any other, implicit or explicit, guarantee in whatever sense is excluded unless explicitly agreed otherwise and save for any warranties explicitly granted by the Seller's suppliers to end customers.
- Any liability of the Seller on whatever account for, indirect or consequential loss or damage including at any rate trading loss, loss of profits and/or loss due to business interruptions, is explicitly excluded.
- The Buyer will indemnify the Seller and its suppliers or, as the case may be, vouches for the Seller and its suppliers, in the event of actions by third parties on account of unlawful acts or product liability in connection with the goods to which the Agreement relates.
- Without prejudice to the provisions contained in paragraphs 1 and 2 of this Article the liability of the Seller and its suppliers will be limited to the net price of the goods to which the Agreement relates, save in the event of wilful intent or gross negligence on the part of the Seller or its immediate managers.
- Without prejudice to the above the Seller's liability will always be limited to the amount of the payment made by its insurer in that particular case.
- If the goods supplied by the Seller come with a manufacturer's warranty that warranty will apply equally between the parties. The Buyer may enforce claims under the warranty only if the Buyer has complied with its payment obligation.
- The Seller's liability will at any rate lapse after expiry of six months of execution of the Agreement by the Seller or after expiry of twelve months if the Buyer is a consumer not acting commercially or professionally.
- The Buyer forfeits its rights towards the Seller and will be liable for all loss and damage and indemnifies the Seller against any third party claim for compensation if and to the extent that:
  - Said loss or damage has been caused by the Buyer's improper or abnormal use, incompetent use and/or use contrary to the Seller's instructions of the goods to which the Agreement relates;
  - Said loss or damage has been caused because the Seller did not act in accordance with the instructions and/or advice of the Seller;
  - Said loss or damage has been caused by errors or inaccuracies in the data, materials, information carriers, etcetera provided and/or prescribed to the Seller by or on behalf of the Buyer;
  - Said loss or damage has been caused by directions to the Seller by or on behalf of the Buyer;

#### **Article 10: Provisions Relating to Resale**

- Except in the event of passive sales within the European Economic Area or in the event the law dictates otherwise, the Buyer undertakes not to export the goods bought from the Seller without the Seller's written consent, or to sell the same to third parties of whom the Buyer knows or reasonably should know that they will export said goods. In the event of breach by the Buyer of these provisions the Seller will make no more deliveries to the Buyer without prejudice to the Seller's right to compensation in full of the loss and damage sustained.
- The Buyer is only allowed to sell goods obtained from Seller to third parties in strict compliance with Article 10.1 and under condition that Buyer provides its buyers the product safety information sheets provided by the Seller to the Buyer.

#### **Article 11: Intellectual and Industrial Property**

- All intellectual and industrial property rights in the goods to which the Agreement relates vest solely in the Seller and/or its licensors and suppliers.
- Without the Seller's prior written consent the Buyer may not use the trade names, trademarks and logos or other intellectual property rights of the Seller and/or its licensors and suppliers.
- Unless explicitly otherwise agreed, the Buyer is not allowed to repack goods acquired from the Seller in other packaging or to sell these goods to third parties under another brand, trademark or logo than Seller's brands, trademarks and logo's as attached to the goods and their packaging.

#### **Article 12: Cancellation and Termination**

- The Buyer waives all rights of termination of the Agreement under Article 6:265 et seq. of the Dutch Civil Code or any other statutory provision unless cancellation has been agreed in accordance with the following paragraph.
- Cancellation by the Buyer is possible only if the Seller agrees. In that case the Buyer will owe the Seller compensation and Buyer will be required to pay the Seller all costs incurred, damage and loss of profits. The Seller has the right to fix the costs, loss and damage and loss of profits and – at the Seller's discretion and depending on deliveries already made – and to charge the Buyer 30 to 100% of the agreed price.
- The Buyer will be liable towards third parties for the implications of cancellation and will indemnify the Seller in this respect from claims of third parties.
- Any payments made by the Buyer will not be refunded.

#### **Article 13: General**

- If one or several provisions of the Agreement or these standard conditions is or at any time becomes invalid or is declared void the other provisions of the Agreement or these standard conditions will remain fully effective. In that case the parties will consult to replace the invalid or void provisions by provisions that are in line with the original provisions.
- Save with the prior written consent of the Seller the Buyer may not transfer or encumber the rights (of action) under the Agreement with the Seller in any way whatsoever.

#### **Article 14: Choice of Forum and Choice of Law**

- Any disputes arising from an Agreement with the Buyer to which these standard conditions apply, or further to related agreements, will be submitted in first instance to the competent court of The Hague, the Netherlands, which will have exclusive jurisdiction, unless the parties, before either party has filed proceedings, have agreed in writing that the dispute will be settled by arbitration to the exclusion of the ordinary court, in accordance with the regulations of the *Raad van Arbitrage voor de Bouw* [Court of Arbitration for Construction] as applicable at the time when the dispute is filed.
- In the event the Buyer is located outside the European Economic Area, the Buyer explicitly agrees that the Seller may at its sole option decide to submit the dispute to arbitration in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The arbitral tribunal will be composed of three arbitrators, the place of arbitration will be The Hague, the Netherlands, and the proceedings will be conducted in the English language.
- All Agreements are governed by Dutch law exclusively. The applicability of the Vienna Sales Convention is excluded.