

## GENERAL TERMS AND CONDITIONS

### CBP EUROPE B.V.

lodged with the Breda District Court under number 10/2012

#### Clause 1

##### **Definitions**

For the purposes of these general terms and conditions ( the "*terms and conditions*"), the following definitions shall apply:

<i>CBP Europe</i> :	the private limited liability company CBP Europe B.V., having its registered office in Zevenbergen, the Netherlands;
<i>Contracting Party</i> :	the (legal) person with whom CBP Europe has entered into a contract or with whom CBP Europe is conducting negotiations in that respect;
<i>Parties</i> :	CBP Europe and the Contracting Party;
<i>Contract</i> :	every contract between CBP Europe and the Contracting Party, every modification thereof or addition thereto, as well as all (juridical) acts in preparation for and in execution of that contract;
<i>Products</i> :	all things (and/or services and/or other actions) which are the subject of a Contract.

#### Clause 2

##### **General**

- 2.1 These terms and conditions shall form a part of all Contracts. Special conditions which deviate from or supplement these terms and conditions shall only be binding if they have been agreed upon in writing and shall only apply in that particular case.
- 2.2 Any failure by CBP Europe to require the strict observance of these terms and conditions in a particular case does not mean that these terms and conditions shall not apply or that CBP Europe shall forfeit the right to require strict performance of these terms and conditions in future cases, whether or not they are of a similar nature.
- 2.3 If these terms and conditions are also drafted in a language other than the Dutch language, the Dutch text shall always prevail in cases of inconsistency.
- 2.4 If, for whatever reason, any provision in the Contract and/or these terms and conditions cannot be invoked, this provision shall be deemed to have most similar possible meaning in terms of substance and purport in such a way that it is then able to be invoked. If a part of the Contract and/or these terms and conditions is found to be null and void, the validity of the remainder of the Contract and/or these terms and conditions shall not be affected.

#### Clause 3

##### **Offers**

- 3.1 All CBP Europe 's offers, quotations, cost estimates etc. are entirely free of obligation, regardless of whether they have been made orally or in writing. CBP Europe shall be entitled to revoke its offer within 3 workdays after the acceptance has been received.
- 3.2 All information and/or specifications concerning quantities, sizes, weights, contents etc. provided with an offer are mere approximations and shall only be binding on CBP Europe if they have been expressly confirmed in writing. Variations of up to 10% shall be allowed as a matter of course.
- 3.3 The provisions of Clause 3.2 shall also apply to samples, models or examples that have been shown or, where appropriate, provided. The qualities of the Products to be delivered can deviate from the sample, model or example, unless CBP Europe expressly informs the Contracting Party in writing that the delivery shall take place in conformity with the sample, model or example.
- 3.4 If CBP Europe 's offer is not followed up with an order within 30 days, the offer and all the calculations etc. associated with it shall, if CBP Europe so requires, be returned to CBP Europe by post within 8 days after such a request has been made, unless otherwise agreed in writing.

#### Clause 4

##### **Contracts**

- 4.1 A contract between the Parties shall come into effect at the moment that CBP Europe confirms this in writing or, where appropriate, at the moment that CBP Europe begins performing the Contract.
- 4.2 Any subsequent supplementary agreements or modifications shall only bind CBP Europe if they have been confirmed by CBP Europe in writing.
- 4.3 Agreements made with subordinate members of staff as well as representatives or other intermediaries of CBP Europe shall only bind CBP Europe in so far as these agreements have been confirmed by CBP Europe 's management or, where appropriate, the managing clerk.
- 4.4 If CBP Europe enters into a Contract with two or more people or, where appropriate, legal persons, each of these (legal) persons shall be severally liable for the full and complete performance of the obligations for which they are responsible under the Contract.
- 4.5 CBP Europe expressly retains the right to engage third parties during the performance of the Contract that has been entered into with the Contracting Party. CBP Europe shall be authorized to accept any limitations of liability of the third parties engaged by it on behalf of the Contracting Party without prior consultation with the Contracting Party.

Clause 5**Intellectual and industrial property**

- 5.1 Unless otherwise agreed in writing, CBP Europe shall retain all the copyrights and other intellectual and industrial property rights pertaining to the offers it makes, to the samples it has provided and to the images, drawings, (pilot) models, software, delivered Products etc.
- 5.2 All offers, designs, images, drawings, pilot models, software etc. shall remain the property of CBP Europe, regardless of whether the Contracting Party has been charged for the costs of the making thereof. The things and documents referred to here may not be copied, shown to third parties or used in any other way without CBP Europe 's express consent. If this provision is breached the Contracting Party shall be liable to pay to CBP Europe a fine of EUR 10,000 for each breach and EUR 1,000 for every day that the breach continues, without prejudice to any other rights that CBP Europe has under the Contract or otherwise.
- 5.3 The Contracting Party shall be bound to return the things and documents mentioned in Clause 5.2 to CBP Europe when first requested. If a breach of this provision occurs the Contracting Party shall be liable to pay to CBP Europe a fine of EUR 2,500 for each breach and EUR 250 for every day that the breach continues, without prejudice to any other rights that CBP Europe has under the Contract or otherwise.

Clause 6**Prices**

- 6.1 The agreed prices are based on factors that determine the cost price at the moment the offer is made. CBP Europe retains the right to pass on to the Contracting Party all the changes that occur in the factors which determine the cost price after the date of the offer or the order confirmation over which it cannot reasonably exercise any control, such as increases in the price of materials, freight and transport rates, national insurance contributions, customs duties, import or export duties and value added tax.
- 6.2 The cost of supplements and/or modifications to the Contract shall be for the Contracting Party's expense.
- 6.3 The prices shall apply to delivery from the factory/warehouse/shed ("ex works", in conformity with Incoterms 2000) and are exclusive of (value added) tax and levies. Any transport costs shall not be included in the price, unless otherwise agreed in writing.

Clause 7**Payment**

- 7.1 The following general term and condition shall apply to every Contract. If an invoice is sent, payment shall be made no later than 30 days after the invoice date. Payment agreements that deviate from this shall only apply if they have been made in writing. When the Contracting Party fails to perform its obligations or when CBP Europe has reasons for doubting that the Contracting Party will perform its obligations promptly, all CBP Europe 's claims shall become immediately due and enforceable.
- 7.2 All payments shall be made at CBP Europe 's office or into a bank account to be notified by CBP Europe, without discount or settlement, whatever the grounds. Payment other than in cash shall be allowed if the Contracting Party so requests and CBP Europe expressly so agrees.
- 7.3 Payments shall be made in euros, unless the Parties have agreed in writing that the Contracting Party shall settle its debt in another currency.
- 7.4 Payments from the Contracting Party shall always be used first to settle any back interest and (extra)judicial costs that it owes and shall then be deducted from the oldest outstanding claim, notwithstanding that the Contracting Party informs that the payment relates to a later claim.
- 7.5 The Contracting Party shall be in default when the payment term expires, without a default notice being required.
- 7.6 The Contracting Party shall owe back rent of 1.5% per month or part thereof over the outstanding claims for the duration of the default. Time and again after the expiry of a year the amount over which the back rent is calculated shall be increased by the interest due over that year.
- 7.7 In the case of an extrajudicial claim the Contracting Party shall, in addition to the principal and back rent, also be liable for any collecting charges incurred by CBP Europe. The extrajudicial collecting charges shall amount to at least
- |                              |     |        |                             |
|------------------------------|-----|--------|-----------------------------|
| - 15% over the first         | EUR | 5,000  | (with a minimum of EUR 150) |
| - 10% over the surplus up to | EUR | 10,000 |                             |
| - 8% over the surplus up to  | EUR | 20,000 |                             |
| - 5% over the surplus up to  | EUR | 60,000 |                             |
| - 3% over the surplus above  | EUR | 60,000 |                             |
- 7.8 In the case of judicial collection, including filing for bankruptcy, the Contracting Party shall remain liable for the back rent and the extrajudicial collecting charges.
- 7.9 If the Contracting Party defaults on any payment, in the event that it is declared bankrupt or even if no temporary suspension of payments is granted to it or, where appropriate, if application is made for the Contracting Party's bankruptcy or suspension of payments, in the event that it is declared that debt reconstruction even if not temporary applies to the Contracting Party, in the event of executorial attachment of the Contracting Party's movable goods or real estate or provisional attachment that continues for longer than one month, in the event of the liquidation of the Contracting Party's company or demonstrable plans for this or if the Contracting Party reaches or attempts to reach agreement of some kind with its debtors, CBP Europe shall be entitled to suspend its performance, while also having the right to declare that the Contract is terminated without judicial intervention. In the latter case the Contracting Party shall be obliged to pay CBP Europe 25% of the terms that have not yet lapsed and/or the amounts that are not yet due as compensation for the selling costs that have been incurred and the loss of profit. Moreover the Contracting Party shall be obliged to compensate CBP Europe for all the other costs it has incurred in preparation for its contractual performance, as well as all the other damage that CBP Europe has suffered.

Clause 8**Down payment and security**

- 8.1 CBP Europe shall be entitled to require the making of a down payment or advance payment when entering into a Contract, as well as prior to or during the performance of the Contract.
- 8.2 CBP Europe shall always be entitled to require the Contracting Party to provide sufficient security for the performance of its payment obligations, before delivery or at the time of delivery or performance. The Contracting Party is obliged provide the required security within eight days.

Clause 9**Ownership reservation**

- 9.1 CBP Europe shall retain ownership of all the Products it has delivered to the Contracting Party for itself until such time as the purchase price of those Products has been paid in full. If CBP Europe carries out work under these purchase agreements at the Contracting Party's expense and risk, the aforementioned ownership reservation shall apply until such time as the Contracting Party has also satisfied these claims of CBP Europe in full. The ownership reservation shall likewise apply to the claims that CBP Europe may obtain against the Contracting Party as a result of the Contracting Party's failure to fulfil one or more of its obligations to CBP Europe. So long as the ownership of the delivered Products has not passed to the Contracting Party, the Contracting Party may not pledge the Products or grant any other right over them to a third party except in the circumstances described in Clause 9.3. In the case of delivered Products whose ownership has passed to the Contracting Party by reason of payment, CBP Europe shall reserve a predetermined right of lien as meant by Article 3:237 of the Civil Code, other than that which is mentioned in Article 3:327 of the Civil Code, so that any claims that CBP Europe may still have against the Contracting Party, whatever the grounds, shall be better secured.
- 9.2 The Contracting Party shall be obliged to keep the Products that have been delivered under ownership reservation with the requisite care and as the recognizable property of CBP Europe . The Contracting Party shall be obliged to insure the Products against fire, explosion and water damage as well as theft for the duration of the ownership reservation and to allow CBP Europe to inspect these insurance policies when first so notified. All claims filed by the Contracting Party with the Products' insurers by reason of the abovementioned insurance policies shall, as soon as CBP Europe informs that it so wishes, be pledged to it by the Contracting Party in the manner indicated in Article 3:239 of the Civil Code, to secure CBP Europe 's claims against the Contracting Party better. If the Contracting Party fails to meet its payment obligations to CBP Europe or CBP Europe has good grounds for believing that it will not meet its obligations, CBP Europe shall be entitled to repossess the Products that have been delivered under ownership reservation. After repossession the Contracting Party shall be credited with the market value, which shall never exceed the original purchase price, less the costs that have been incurred when repossessing the Products.
- 9.3 The Contracting Party shall be allowed to sell and transfer the Products that have been delivered under ownership reservation to third parties in the normal course of its company's business. When a sale is made on credit the Contracting Party shall be obliged to stipulate that its customers grant an ownership reservation based on the provisions of this clause. The Contracting Party undertakes not to cede or pledge the claims that it obtains against its customers to third parties without CBP Europe 's prior written consent. For the purpose of the claims, the Contracting Party further undertakes, as soon as CBP Europe informs that it so wishes, to pledge to it in the manner indicated in Article 3:239 of the Civil Code so that the claims it has against the Contracting Party, whatever the grounds, are better secured.
- 9.4 If the Products that have been sold are destined for a country whose laws recognize a more far-reaching application of the reservation of ownership than has been agreed upon, then this more far-reaching application shall be deemed, on CBP Europe 's behalf, to bind the Parties, on the understanding that when it is not possible to determine which far-reaching rules are concerned, the existing provisions shall remain in force.
- 9.5 If and so long as CBP Europe is the owner of the Products, the Contracting Party shall immediately inform CBP Europe when the Products are (or likely to be) impounded or a claim is otherwise made to (any part of) the Products and/or a petition for bankruptcy is filed or a (temporary) suspension of payments is sought with regard to the Contracting Party. Moreover the Contracting Party shall inform CBP Europe when CBP Europe first requests where the Products that owned by CBP Europe are to be found.
- 9.6 In the event of impoundment, (temporary) suspension of payments or bankruptcy the Contracting Party shall immediately draw the attention of the process server responsible for the impoundment, the administrator or the receiver to CBP Europe 's (ownership) rights. The Contracting Party guarantees that an impoundment of the Products shall be overturned forthwith.

Clause 10**Right of retention and lien**

- 10.1 CBP Europe shall be entitled to retain things, documents and monies at the Contracting Party's expense and risk against one and all, until such time as the Contracting Party has fully met all its payment obligations to CBP Europe.
- 10.2 All the things, documents and monies that CBP Europe has or shall have in its safekeeping, whatever the grounds, shall provide it with security against all the claims that it has or shall receive that are chargeable to the Contracting Party.
- 10.3 CBP Europe can also exercise the rights granted to it under paragraphs 1 and 2 of this Clause in respect of that which the Contracting Party still owes under the previous Contracts.
- 10.4 When the claim is not satisfied the sale of the security shall take place in the manner prescribed by law or – if such agreement exists – privately.

Clause 11**Delivery time, delivery**

- 11.1 When determining the delivery time CBP Europe shall assume that it can perform the Contract in the circumstances that are known to it at that moment. If any change occurs in these circumstances, CBP Europe may extend the delivery time by the time that is required for it to perform the Contract in the new circumstances. In the case of additional work the delivery time shall be extended by the time that is required to deliver (have delivered) the requisite materials and parts and to perform the additional work. If the (additional) works cannot be accommodated in CBP Europe 's planning they shall be completed as soon as the planning allows.
- 11.2 The delivery times specified by CBP Europe shall become effective once agreement has been reached on all the technical details, all the necessary information and documents are in CBP Europe 's possession, the agreed (term) payment has been received and the conditions necessary for the performance of the Contract have been satisfied.
- 11.3 The delivery times shall always be approximate and shall never be considered as of the essence. Breach of these delivery times shall not give the Contracting Party any right to damages, suspension of its obligations under the Contract or termination of the Contract.
- 11.4 The Products sold by CBP Europe shall be delivered from the factories and/or warehouses and/or sheds where they can be found at the time the Contract is entered into (" ex works", in conformity with Incoterms 2000). The risk shall pass to the Contracting Party as soon as the Products have left the industrial premises or, where appropriate, the storage area or as soon as the Products are set apart for the Contracting Party and a message has been sent advising that the purchase is ready for delivery. The Contracting Party shall always bear the risk of storage, loading, transport and unloading. If, contrary to standard practice, it has been agreed that delivery shall be made FOB then the Contracting Party shall also bear the risk of transport. CBP Europe shall not be obliged to insure the sold Products for the duration of the transport. CBP Europe shall always choose the means of transport and the route.
- 11.5 CBP Europe shall be entitled, but never obliged, to deliver the sold Products in instalments and to invoice each instalment separately.
- 11.6 The Contracting Party's right to delivery under a Contract shall never be assigned without CBP Europe 's written consent.
- 11.7 The Contracting Party shall be obliged to take delivery of the purchased Products within 48 hours after they have been put at its disposal.  
After the expiry of this time CBP Europe shall be entitled to cancel the order, without prejudice to its power to demand performance, in which case the Contracting party shall be obliged to pay CBP Europe 25% of the agreed selling price as compensation for the selling costs and the loss of profit. Moreover the Contracting Party shall be obliged to compensate CBP Europe for all the other costs it incurred in preparing for the delivery, as well as all the other damage, including storage costs, that CBP Europe has suffered.

Clause 12**Packing**

- 12.1 CBP Europe shall charge packing at cost price. The packing shall be non-returnable.
- 12.2 The Contracting Party shall clean any packing that is 'on loan' and shall return it to CBP Europe in an undamaged state within 14 days after the delivery date. If the Contracting Party fails to do this, it shall be liable to pay CBP Europe the respective costs of cleaning and/or repair and/or replacement of the loaned packing.

Clause 13**Claims**

- 13.1 The Contracting Party shall inspect the Products for any deviations from that which has been agreed upon in the contract immediately after the delivery. Any claims shall be submitted to CBP Europe in writing, accompanied by a detailed description of the facts which form the basis of these claims, and shall be received by CBP Europe within 8 days after the delivery date. If the Contracting Party fails to do this it shall be deemed to have irrevocably and unconditionally accepted the delivery. Any legal actions shall be commenced, under penalty of expiry, no later than one year after the timely claim has been brought before the court.
- 13.2 Claims shall not be allowed in respect of deviations in quality, size, weight, colour, quantity etc. that the trade and branch accept as usual or minor.
- 13.3 CBP Europe shall only be obliged to take cognizance of claims that have been submitted, whatever the grounds, if the Contracting Party has satisfied all its contractual obligations to CBP Europe . The Contracting Party shall not be entitled to suspend its obligations on the grounds that it has submitted a claim.
- 13.4 If the Contracting Party's claim is well-founded, having also had due consideration for the provisions above, CBP Europe shall after consultation with the Contracting Party see to it that the same sort of product is delivered, that the necessary improvements are made or that a reasonable reduction in price is given. The Contracting Party shall only be entitled to terminate the Contract wholly or in part with CBP Europe 's consent. The Contracting Party shall not be entitled to seek damages.
- 13.5 The delivered Product may not be returned without CBP Europe 's prior written consent. Consignments to the Contracting Party that are returned to CBP Europe shall likewise be for the Contracting Party's expense and risk. If CBP Europe stores the returned Products or deals with them in any other way, that shall be for the Contracting Party's expense and risk. At no time shall these measures be construed as implying approval or acceptance of the return.

Clause 14**Liability**

- 14.1 Except and in so far as the law shall decree otherwise, CBP Europe 's liability shall be governed by the following provisions.
- 14.2 In the absence of malice or gross negligence on the part of CBP Europe or its managing subordinates, CBP Europe shall not be liable for damage suffered by the Contracting Party or third parties. This exclusion of liability shall apply to damage caused by shortcomings on the part of third parties engaged by CBP Europe during the performance of the Contract, to damage caused by the failure of equipment, software, data bases, registers or other things, without exception, used by CBP Europe during performance of the Contract, as well as to damage caused by computer viruses and by the interception of audio and/or data transmissions by telephone, fax or e-mail.
- 14.3 CBP Europe shall never be obliged to compensate damage other than to persons and things.
- 14.4 Without prejudice to the provisions of the foregoing paragraphs and except in so far as a higher amount shall be payable under its liability insurance, CBP Europe 's liability shall be limited to the damage which could reasonably be foreseen as a result of the act which gave rise to the duty to pay compensation with a maximum amount equivalent to the net invoice value of the act/delivery which gave rise to the claim made by the Contracting Party and/or third parties.
- 14.5 Without prejudice to the provisions of the foregoing paragraphs, CBP Europe 's liability in things that are consequential on third parties shall be limited to the liability that these third parties have to CBP Europe.
- 14.6 CBP Europe shall not be liable if the Contracting Party fails to notify CBP Europe of the damage within 14 days after the date on which it discovered this.
- 14.7 CBP Europe stipulates that it shall invoke all the available lawful and contractual means of defence against the Contracting Party to deny liability on its own behalf and also on behalf of its subordinates and non-subordinates for whose actions the law deems it liable.

Clause 15**Indemnity**

- 15.1 The Contracting Party shall fully indemnify CBP Europe against every form of third party liability for which CBP Europe could be liable as a result of the Products delivered by CBP Europe .
- 15.2 The Contracting Party shall fully indemnify CBP Europe against any third party claims in relation to things that CBP Europe has in its keeping in connection with the performance of the Contract.
- 15.3 The Contracting Party shall reimburse CBP Europe for reasonable defence costs against third party claims.

Clause 16**Force majeure**

- 16.1 Force majeure (unforeseeable circumstances which prevent the performance of a contract) shall be taken to mean: every circumstance that is beyond the control of or, where appropriate, not able to be foreseen by the Parties as a result of which neither the Contracting Party nor CBP Europe can reasonably be expected to perform the Contract.
- 16.2 Force majeure shall at all events include: strikes, extremely high absenteeism on the part of CBP Europe 's (or the suppliers' ) personnel due to illness, theft or destruction of industrial plant or, where appropriate, industrial information, transport problems, epidemics, fire and the threat of fire, war and the threat of war, terrorist attacks, full or partial mobilization, government regulations, including at all events import and export bans, levies, import laws and quota restrictions, interruptions of work at CBP Europe or, where appropriate, its suppliers, storm damage and/or other damage caused by natural forces, forced interruptions or hindrances as a result of which performance of the Contract becomes more expensive and/or more difficult, as well as failure to deliver (imputable non-performance) on the part of CBP Europe 's suppliers, as a result of which CBP Europe can not (can no longer) perform its obligations to the Contracting Party.
- 16.3 If a situation of force majeure arises, CBP Europe shall be entitled to suspend performance of the Contract or to terminate the Contract.
- 16.4 CBP Europe shall be entitled to demand payment for work that has been carried out under the Contract in question before the circumstance which constitutes force majeure became apparent.
- 16.5 CBP Europe shall also be entitled to invoke force majeure if the circumstance which constitutes the force majeure took effect after its performance should have been delivered.

Clause 17**Applicable law and disputes**

- 17.1 All legal relations between the Parties shall be governed exclusively by Dutch law.
- 17.2 The provisions of the Vienna Sales Convention shall not apply, nor shall any other existing or future regulation concerning the sale of moveable chattels the functioning of which can be excluded by the Parties.
- 17.3 All disputes that may arise between the Parties and that fall within the jurisdiction of the civil section of a District Court shall, in the first instance, be heard exclusively by the (interim measures judge of the) Rotterdam District Court, unless CBP Europe prefers for reasons of its own to make the case pending at the District Court in Contracting Party's place of domicile or business and without prejudice to any other agreement the Parties may have reached with regard to the settlement of disputes.