

## **GENERAL TERMS AND CONDITIONS OF DELIVERY FOR RIS RUBBER N.V.**

### **1. Definitions**

- 1.1 GTC : these general terms and conditions.
- 1.2 Agreement: any contract of purchase and sale and/or agreement in respect of the contracting of work or another kind of agreement that we enter into with a client and all agreements and/or obligations arising therefrom and/or connected thereto;
- 1.3 Offer: any offer that we make to a (potential) client;
- 1.4 Us: a member of the Dutch Rubber and Plastics Federation (NRK), who is using these terms and conditions as such and acts as the seller, supplier and/or contractor in respect of agreements and as the offeror in respect of offers;
- 1.5 Client: any party that concludes an agreement with us as referred to in sub-clause 1.2 or receives an offer from us as referred to in sub-clause 1.3;
- 1.6 Days: all calendar days
- 1.7 Complaints: all grievances of the client about the quality and/or quantity of the goods delivered;
- 1.8 Our warehouse: our business premises and/or industrial premises and/or other sites where we divide off the goods to be delivered and place these ready for dispatch.

### **2. Applicability**

- 2.1 These GTC shall apply to all agreements concluded by us. The GTC shall furthermore apply to all offers that we make.
- 2.2 No other GTC, such as those of the client, shall apply to agreements with us and offers from us irrespective of the time of reference, unless we have expressly declared in writing vis-à-vis the client that we agree to the applicability of such other GTC. This consent shall never result in the terms and conditions of the client also being applicable to other agreements between the client and us.
- 2.3 Provisions of these GTC shall not apply if and insofar as mandatory legal provisions oppose this. Should a provision be null and void on this basis under certain conditions, then the regulation favourable to us shall apply and all other provisions shall remain in full force.
- 2.4 It shall only be possible to deviate from the GTC by means of a written declaration signed by both parties.

### **3. Offers / conclusion of agreement**

- 3.1 Our offers are without obligation. Should a deadline be set in the offer, this deadline shall only bind the client. We may still withdraw our offer within 2 days of receipt of the acceptance thereof.
- 3.2 Subject to the option to withdraw laid down in sub-clause 3.1, an agreement shall be concluded at the time at which we have received a written acceptance from the client which is made in good time and which fully corresponds to the offer. Insofar as the client accepts our offer with deviations of minor significance, these deviations shall not constitute part of the agreement with us and an agreement shall be concluded in accordance with our offer.
- 3.3 An agreement shall likewise be concluded as a result of our delivering the goods in accordance with the accompanying shipping voucher/invoice.

### **4. Prices**

- 4.1 Unless explicitly agreed otherwise with the client, a price agreement shall be reached with the client per order.
- 4.2 Our prices are exclusive of VAT, other taxes and levies. Transport costs and the costs of insurance shall be passed on to the client.
- 4.3 Unless agreed otherwise, our prices are inclusive of packaging material.
- 4.4 Packaging material for which a charge has been levied must be returned to us with 14 days carriage paid.
- 4.5 The wishes of the client in respect of the manner and type of packaging shall be taken into account as far as possible. Failure to fulfil these wishes shall never constitute grounds for us to pay compensation to the client.
- 4.6 We shall be entitled to pass on reasonable increases in costs, including increases, after the conclusion of the agreement, in raw material prices, energy costs, freight charges, import and export duties or other levies and/or taxes etc inside and outside the country and/or increases in wages, salaries and social security charges pursuant to general regulations or concluded collective bargaining agreements, and/or cost increases as a result of changes to the exchange rates. We shall notify the client in writing that these cost increases will be passed on.
- 4.7 Prices in our offers shall apply exclusively to the quantities referred to therein.

### **5. Tools and models**

- 5.1 Moulds, matrices, spray plates, stamps, tools, drawings and suchlike made by us or on our instructions shall be and remain our property, even if we have received a contribution towards the costs thereof.  
Any moulds, matrices, spray plates, stamps, tools, drawings and suchlike supplied by the client shall be returned after the client has fulfilled all its obligations vis-à-vis us.
- 5.2 Should the moulds, matrices, spray plates, stamps, tools, drawings and suchlike have to be replaced, the price applicable at the time shall be charged. These shall be replaced after obtaining the consent of the client.

## **6. Goods sent for processing**

- 6.1 Goods sent to us for processing shall be transported for the account and risk of the client.
- 6.2 We shall not be liable for the loss of or damage to the goods sent to us for processing that occurs during production and processing, unless the client proves that we are to blame on the basis of intentional acts or omissions or gross negligence on our part.
- 6.3 The proof referred to in the previous sub-clause must be disclosed to us in writing within 14 days of the return of the goods or, should the goods not be returned, within 21 days of the occurrence of the loss or damage.
- 6.4 The loss or damage referred to in sub-clause 6.2 shall never amount to more than the monetary value of the goods sent to us for processing.

## **7. Delivery**

- 7.1 Unless another form of delivery is agreed, delivery shall take place by means of our dividing off the goods in our warehouse and placing these ready for dispatch and notifying the client of this.
- 7.2 The client shall always bear the risk in respect of the delivered goods after delivery.
- 7.3 Should it not be possible to transport goods delivered by us to the place of destination for reasons not attributable to us, we shall store the goods for the account and risk of the client.
- 7.4 We shall be free to choose the means of transport.
- 7.5 We shall be entitled to deliver in consignments.
- 7.6 We shall be entitled to deliver C.O.D..
- 7.7 Unless we have expressly guaranteed a specific delivery date in writing, delivery dates given by us may never be regarded as fixed deadlines.  
Where delivery is not made on time, the client must give us written notice of default granting us a reasonable period in which to fulfil our delivery obligations, without the client and/or third parties being entitled to assert any claim for compensation against us. This sub-clause shall not apply in the event of a failure to perform not attributable to us, irrespective of whether such failure is permanent in nature, as referred to in clause 8.

## **8. Force majeure**

- 8.1 Should we not be able to fulfil our obligations as a result of a permanent failure to perform not attributable to us, we shall be entitled to dissolve the agreement in whole or in part within a reasonable period by means of a written declaration, without being obliged to pay any compensation for loss or damage - or compensation for any benefit derived - to the client.
- 8.2 A non-attributable failure to perform as referred to in sub-clause 1 shall be understood to mean: any circumstance, both foreseen and unforeseen, as a result of which the client can in all reasonableness no longer require the fulfilment of the agreement, including: war, threat of war, riots, fire, factory disruption, strikes, blockades, lock-outs, disruption of traffic, natural disasters, epidemics, explosions, disruptions in the supply of raw materials/semi-finished

products, staff illness, a failure on the part of suppliers/contractors to fulfil their obligations, or to fulfil their obligations in good time.

- 8.3 A failure to perform not attributable to us shall be deemed to be permanent in nature should it not be possible to carry out the relevant performance within 60 days of the occurrence of the circumstances.
- 8.4 Should it possible to carry out the performance within 60 days, however, the failure shall not be permanent and neither we nor the client may dissolve the agreement. Our obligations to perform shall be suspended without our being obliged to pay any compensation to the client for loss or damage or for any benefit derived.

## **9. Bankruptcy etc.**

- 9.1 In the event of bankruptcy, suspension of payment, the winding-up of the client or the direct or indirect takeover of the business of the client by third parties, we shall be entitled to suspend the execution of the agreement or to dissolve this in whole or in part, at our choice, without giving any notice of default and without judicial intervention. Any goods being held by us may be retained by us at our choice.
- 9.2 We shall be entitled to compensation for loss or damage as a result of or in connection with the circumstances referred to in sub-clause 9.1, without being obliged to pay any compensation.

## **10. Security**

- 10.1 We shall at all times be entitled to require the client to provide security for the fulfilment of its obligations. Should the client refuse or fail to provide security within the period set by us, we shall be entitled to dissolve the agreement by means of written declaration. Insofar as we have already delivered goods to the client, the client shall be obliged to return these to us within 5 days of the declaration. The client shall furthermore be obliged to compensate us for all loss or damage suffered by us as a result of its refusal or failure to provide security.
- 10.2 Should a client cancel an order in whole or in part, it shall be obliged to compensate us for all loss or damage suffered by us as a result of this cancellation.

## **11. Payment**

- 11.1 Payments must be made free of any charges and without any discount or set-off within 30 days of the invoice date, unless the client wishes to offset liquid claims it may have against us on the basis of a right to which it is entitled by law and has notified us of this in writing within 7 days of the date of our invoice.
- 11.2 The payment must be made in the currency in which our invoice has been issued and to our office or into one of our bank or giro accounts.
- 11.3 Payments shall always first be used to settle costs owed, thereafter to settle interest and subsequently to settle outstanding invoices in the order in which they have been issued, even where the client indicates that its payment relates to other invoices and/or debts.
- 11.4 Should the client not pay on time, it shall be in default without a notice of default being required and it shall owe us interest of 1.5x the percentage of the statutory interest on the

invoice amount for each month or part thereof by which the payment deadline laid down in sub-clause 11.1 is exceeded.

- 11.5 Should the client be in default by more than 15 days, we shall be entitled to take collection measures. In such case the client must pay our extrajudicial collection costs in accordance with the collection rates of the Netherlands Bar Association with a minimum of € 1000.00.
- 11.6 Should the client be in default in respect of any payment obligation vis-à-vis us, it shall also be in default with regard to all claims which we have against it. Sub-clauses 11.4 and 11.5 shall apply *mutatis mutandis*.

## **12. Retention of title / non-possessory pledge**

- 12.1 All goods delivered by us to the client shall remain our property until the client has satisfied all our claims pursuant to the contract of sale/work with regard to these goods and the work carried out thereon, plus interest and costs, and all our other claims in connection with its failure to fulfil the agreements.
- 12.2 Should the client create a new product from the goods delivered by us which are subject to a retention of title, it shall be deemed to have acted on our instructions in the creation thereof and shall hold the product for us. It shall become the owner thereof only at the time at which the retention of title lapses because all our claims have been satisfied.
- 12.3 Insofar as we have claims against the client other than those referred to in sub-clause 12.1 and we have delivered goods to the client which are not subject to a retention of title, the client shall establish a non-possessory pledge on these goods in our favour, and we shall accept such non-possessory pledge, as security for the fulfilment of such obligations. The client shall on our first request sign a deed establishing the pledge. It shall guarantee that it is entitled to pledge the goods and that no pledge and/or restricted rights other than our rights are vested in the goods.
- 12.4 The client shall be entitled to re-sell or process all goods falling under the retention of title/non-possessory pledge in a normal manner as part of the normal operation of its business.
- 12.5 Should the client re-sell the goods we may oblige the client, simply by asking it to do so, to establish an undisclosed pledge, in our favour, on its claim against the purchaser arising from the sale.
- 12.6 The client shall handle the goods referred to in this clause with the due and proper care. It shall insure the goods against all contingencies on the basis of the invoice value. The client shall provide us with the names and addresses of the insurers and copies of policies on our first request. The client shall furthermore establish an undisclosed pledge on its claims against the insurer in this regard in our favour on our first request, insofar as this has not already occurred by operation of law.
- 12.7 The client may not, subject to the provisions of sub-clause 12.4, pledge the goods referred to in this clause to third parties or relinquish, transfer or restrict, to our detriment, the legal or actual power to dispose thereof in any other way.

## **13. Quality and complaints**

- 13.1 We guarantee, for a period of a maximum of 6 months after delivery, the soundness of the goods delivered by us and the materials used for these, provided that the goods are used in a normal and careful manner in accordance with our instructions and for the purpose for which they were manufactured. This guarantee shall not apply should we deliver goods in respect of which a lesser quality has been expressly agreed.

- 13.2 Immediately after delivery, the client shall count, measure and weigh the goods and check them for visible defects and easily discovered hidden defects, before it stores or uses these. Once used, goods shall be deemed to conform to the agreement, unless the goods prove to have a defect which could not easily be discovered. Any laboratory report delivered with the goods, whether or not originating from us, shall not discharge the client from its obligation to check the goods as described above.
- 13.3 Complaints relating to quantities, measurements, weights, visible defects and easily discovered hidden defects must be submitted to us in writing immediately, insofar as the nature of the goods requires this, and in other cases within 14 days of delivery of the goods. The penultimate sentence of sub-clause 13.2 shall apply *mutatis mutandis*.
- 13.4 Should, within 6 months of delivery, goods delivered by us prove to have a hidden defect which was not easily discoverable, a written complaint must be submitted within 14 days of the discovery of the defect.
- 13.5 As regards quantities and weights of all goods to be delivered or processed goods, the client must accept a tolerance of approximately +/- 10%, while the normal tolerance customary in the industry shall be accepted in respect of colours. Should the client have prescribed a specific shorehardness, it must accept a tolerance of approximately +/- 5%.  
Where an order is given by telephone, no liability shall be accepted for quantities, weights, dimensions and quality. As regards the permissible deviations in size, we refer to the international standard ISO 3302-1, 1st edition 1996-07-15 for the standards set for the relevant articles. The provisions of this clause shall apply insofar as the offer does not expressly deviate therefrom and of course insofar as no separate specification has been agreed.
- 13.6 We shall be obliged vis-à-vis the client to repair, replace or reimburse the invoice amount for goods which do not comply with the standard referred to in sub-clause 13.1, on condition that the client checks the goods, and submits a complaint, in good time and thoroughly as referred to in sub-clauses 13.2, 13.3 and 13.4 .
- 13.7 Goods may only be returned to us if we have agreed thereto and have agreed to the method of shipment in writing. The goods shall remain for the risk of the client.
- 13.8 Complaints shall never result in the suspension of the payment obligations of the client.

#### **14. Limitation of liability / product liability risk**

- 14.1 Subject to the provisions of article 6:185 Dutch Civil Code, our obligation to compensate the client shall never extend further than the repair or replacement of the goods or the repayment of the invoice amount referred to in clause 13 sub-clause 6.
- 14.2 We shall - without prejudice to the provisions of sub-clause 1 of this clause - in particular not be liable for direct or consequential loss or damage, loss of profits, intangible loss, loss or damage caused by employees, auxiliary persons and/or subcontractors - even if this is attributable to intentional acts or omissions or gross negligence on their part - and loss or damage caused by the use of auxiliary materials, suffered by the client or by third parties.
- 14.3 Should the client re-sell goods delivered by us or create new goods (partly) from goods delivered by us and re-sell these, it shall be obliged to insure itself adequately against the product liability risk pursuant to article 6:185 Dutch Civil Code. It shall provide us with a copy of the relevant policy on our first request.
- 14.3 The client shall indemnify us against all claims of third parties for which we are not liable pursuant to the above.

## **15. Dissolution**

In all cases in which we dissolve an agreement with the client by means of a written declaration, the client shall be obliged to compensate us for all loss or damage, costs and loss of profits and to return goods to us already delivered by us. The goods shall remain for the risk of the client until we have received and approved these.

The obligation to pay compensation for loss or damage and loss of profits shall not apply should we have dissolved the agreement on the basis of the provisions of clause 8 on the grounds of a permanent failure to perform not attributable to us.

## **16. Violation of the rights of third parties**

Insofar as we produce goods pursuant to an agreement based on instructions and drawings or with the help of matrices, spray plates or moulds of the client, the client guarantees that we will not violate the intellectual property rights of third parties. The mere fact of such a violation shall give us the right to dissolve the agreement by means of a written declaration. The client shall indemnify us against all claims of third parties entitled to rights in connection with the violation.

## **17. Special goods**

- 17.1 Unless expressly agreed otherwise in writing, we shall be entitled to make special goods, which we make for the client, for third parties as well.
- 17.2 The client must inspect samples of the special goods within 14 days of these being sent by us. Should we not have received a report rejecting the goods after 14 days have passed, the samples shall be deemed to have been approved.
- 17.3 Unless expressly agreed otherwise, all models, matrices, samples, spray plates, moulds, drawings and all other instructions in connection with the production of special goods shall remain our property.
- 17.4 The cost of replacing, repairing and maintaining the matrices and spray plates shall be for the account of the client.
- 17.5 Drawings, know-how and designs which we have made available to the client may not be copied or given to third parties for perusal or disclosed to third parties without our written consent.  
These must be returned to us immediately after use. Should this provision be violated, the client shall be required to pay us an immediately due and payable penalty of € 50,000 per occurrence and € 5,000 for each day that the violation continues.
- 17.6 We shall be entitled to destroy matrices and spray plates, irrespective of whether these belong to us or to the client, should these not have been used for 5 years. We shall notify the client in writing of our intention to scrap such matrices or spray plates 3 months prior to the end of the 5 year period.
- 17.7 Should we make articles at the request of the client which we have not previously made or the specific model of which we have not previously made, then we shall be entitled to make these articles for third parties as well unless expressly agreed otherwise with the client. Should we have agreed not to make these articles for third parties, then this agreement shall lapse at the

time at which the client either has these articles made by another manufacturer (as well), or another manufacturer makes similar articles for a party other than the client.

## **18. Applicable law**

All agreements concluded with us or obligations arising therefrom shall - with the exclusion of the applicability of the Convention on the International Sale of Goods 1980 – be subject to Dutch law and Dutch international private law.

## **19. Place of execution**

The agreements shall be regarded as having been executed at our registered office.

## **20. Disputes**

All disputes pursuant to the agreement concluded with us or obligations arising therefrom shall be adjudicated by the Dutch court with subject-matter jurisdiction over our registered office and according to Dutch law, unless the law specifies that another court is competent.

## **21. Proof**

- 21.1 As regards the financial scope of the reciprocal obligations arising from agreements concluded with us, our accounting data shall be decisive, subject to proof to the contrary by all available means.
- 21.2 Subject to proof to the contrary from the client by all available means, the quantities, measurements and weights given on the invoice, consignment note and/or packing slip shall be the correct ones.

## **22. Amendments**

We shall be entitled to amend these GTC. The amended provision(s) shall come into effect on the date given in the amendment decision. We shall notify those clients known to us at the time of the amendment of such amendment in writing.

## **23. Coming into force**

These GTC shall come into force on 1 September 2004. They have been filed at the Flevoland Chamber of Commerce in Lelystad under number 39067356.

H. Rietdijk  
managing director