

- 1 General**
- A. "Person" means any legal or private person. "The product(s)" means the product(s) and services subject of a particular contract, sale or delivery. "Buyer" means the person buying and/or concluding the contract in respect of the product(s) with Seller where such person acts as agent of or otherwise for a third party (principal) such person and the principal are jointly and severally liable. "Seller" means the person issuing the invoice in respect of the product(s).
- B. All quotations and sales are subject to these conditions except to the extent that variation from specific provisions hereof has been agreed to by Seller in writing. Conflicting purchasing conditions or other reservations made by Buyer shall be deemed to have been rejected by Seller unless expressly accepted in writing.
- C. Trade terms shall be construed in accordance with "Incoterms 2000".
- 2 Quotations, orders**
- A. Quotations are subject to change in price, time of delivery and availability to deliver. A quotation even if deemed binding is void if not accepted by Buyer within 30 days or within the period stipulated by Seller.
- B. Orders shall not bind Seller unless and until accepted by Seller's written confirmation or by delivery to Buyer of the product(s) ordered.
- 3 Prices**
- A. Prices exclude any value added or other tax, which must and will be charged to Buyer in accordance with legislation in force at tax point date.
- B. Seller may increase prices for undelivered balances in accordance with general increases in Seller's cost based on Seller's General Price Increase Index (GPI) which is calculated as follows: $GPI = (0.55 * BEAMA \text{ Marine Coatings Index}) + (0.45 * \text{Retail Price Index of Seller's country})$. If Seller's costs incurred in respect of the product(s) increase in the period between acceptance of the order by Seller and delivery owing to circumstances beyond Seller's reasonable control, Seller may at its option at any time before delivery give written notice to Buyer of an increase in the contract price equal to the cost increase and an increase in profit in proportion thereto, and such increased price shall be substituted for the contract price. Where delivery is by installments Seller shall be entitled to increase the contract price as before mentioned in respect of any undelivered product(s).
- C. Prices are normally quoted in the currency as shown in the pricelist. Payments shall be made in the currency specified in Seller's invoice. Prices in a currency other than Seller's pricelist currency will be payable at the middle rate of exchange between the quoted currency and the Seller's pricelist currency on the date when payment is due or made whichever is more favorable to Seller.
- D. Prices are normally quoted Free Alongside Ship (FAS), Free on Board (FOB), Cost & Freight (C&F) or Cost Insurance Freight (CIF) at a specified point. Should no specific trade term be quoted then prices cover delivery "ex works" or "ex warehouse". Where additional delivery costs of whatever nature are incurred to effect delivery or to meet Buyer's requirements, such additional costs will be charged to Buyer.
- E. Unless otherwise agreed prices include Seller's standard packing but exclude export crating. Seller gives no undertaking that when the product(s) are supplied in containers of whatsoever description, such containers are fit to withstand transport to any place or by any method other than specified.
- 4 Payments**
- A. All invoices are payable at the place and at the time specified in the invoice or, if such time is not specified, within 30 days from date of invoice.
- B. If Buyer fails to pay Seller in full by the due date Seller shall be entitled to charge interest at the rate of 2 percent per month, or 2 percent per annum above the current base rate of Seller's bank or above the discount rate of the Central Bank at Seller's domicile, whatever shall be the highest.
- C. All Seller's costs and expenses in respect of collecting overdue accounts shall be reimbursed by Buyer.
- D. If at any time Buyer: fails to take delivery, exceeds its credit limit with Seller or any of its associated companies, is overdue with payments, suspends payments, makes arrangements with its creditors or otherwise in Seller's opinion appears to be in financial difficulties, or ceases to trade, then Seller may without liability or prejudice to its other rights suspend all its obligations, dispose of the product(s) in transit and defer or cancel further deliveries under contract with Buyer or require advance payment or satisfactory security for payment of such deliveries and no forbearance, course of dealings or prior payment shall affect this right of Seller.
- E. Buyer is not entitled to suspend or withhold payment of any sums (or parts thereof) after they have become due by reason of any right of set off or counter claim which Buyer may have or allege or for any other reason whatsoever.
- F. Buyer will be responsible for obtaining any licenses or exchange control consents necessary for the importation and use of, as well as payment for the product(s) ordered, and Buyer shall not be discharged from its contractual obligations towards Seller by any total or partial failure to obtain such license or consent for whatever reason.
- 5 Delivery**
- A. Any delivery date specified is a forecast in the light of current conditions but shall not be legally binding on Seller. Details on delivery times, periods or rates when unspecified will be available when the products are ready.
- B. Unless otherwise specifically agreed in writing, Seller may effect delivery of the product(s) by whatever means Seller thinks most appropriate. If time and place of delivery are not specifically agreed upon in writing in accordance with clause 1C) hereof, delivery takes place ex works, i.e. when and where Seller hands over the product(s) to Buyer or first carrier.
- C. (i) If for any reason Seller fails to meet a specified or fixed delivery date, Buyer may without liability cancel its order provided it notifies Seller thereof before the products are delivered.
- (ii) Seller's liability, if any, in respect of failure to deliver the products in time or at all shall not in any event exceed the amount of any reduction in the value of the products between the date when they should have been delivered and the date on which they were in fact delivered or when the contract was cancelled, as the case may be.
- (iii) In no circumstances shall Seller's maximum liability exceed the invoice value of the products which Seller has failed to deliver at all or in time.
- (iv) In no circumstances shall Seller be liable for any loss of profit or consequential or other loss of whatever nature arising from such failure.
- D. Where the product(s) are sent at Seller's risk Buyer shall upon receipt thereof thoroughly inspect the product(s) and shall at once, or in case of non-delivery, within 2 days of specified delivery date, notify Seller in writing of any loss, damage or non-delivery, and if by reason of any failure by Buyer so to inspect and/or notify Seller, Seller is unable to make a valid claim against the carrier, Seller shall not be liable to Buyer in respect of any loss of or damage to or non-delivery of the product(s).
- E. If the products are sold FOB, FAS or to Buyer's agent an on-board bill of lading, a mate's receipt or other document in prove of such delivery is conclusive evidence of delivery irrespective of whether the person giving the receipt or the document has the authority from Buyer to do so. If the Seller or its carrier is unable for any reason to place the products on board the ship upon arrival at the port of delivery, a warehouse receipt for the products shall be treated as sufficient delivery.
- F. If the products are sold C&F or CIF, a received for shipment bill of lading or waybill is conclusive evidence of delivery.
- 6 Force majeure**
- A. Events beyond the reasonable control of either party shall relieve Seller of its obligation to deliver and Buyer of its obligation to take delivery and entitle either party to withdraw from the contract to the extent that delivery has not taken place.
- B. If, by reason of events beyond Seller's reasonable control, Seller is prevented from delivering to Buyer all or part of the product(s) by appropriate delivery date while at the same time performing in full its contractual obligations to others, then Seller may without liability withhold, reduce or suspend delivery of the product(s) in order to allocate its supply reasonably between Buyer and the other customers. Seller shall in such case give Buyer as much advance notice as is reasonably practicable and Buyer may cancel any partial undelivered order so withheld, reduced or suspended. Seller shall have no obligation to acquire from other suppliers substitutes for the product(s) delayed or unavailable from Seller.
- 7 Liability**
- A. Seller shall not be liable for any infringement of third party's patent rights, which may arise from the use of the product(s).
- B. Seller shall not be liable for adverse effects of storage handling or use of the product(s) unless performed according to Sellers specific written recommendations or unless seller has accepted such liability in advance and in writing.
- C. Seller shall not be liable in respect of any defects in the product(s) or any losses or damage resulting there from unless written notice of such defects is given promptly within 14 days after the defects could reasonably have been discovered by inspection and/or testing of the product(s) before or after use and in no event after expiry of their shelf life or later than twelve months after receipt of the product(s), whichever comes first. Buyer shall subject the product(s) to adequate tests immediately after delivery and/or use as the case may be. Seller shall have no obligation in respect of any claim unless the allegedly defective product(s) are kept available for inspection by Seller's representative and Buyer provides the requested substantiation and evidence.
- D. (i) Seller's liability in respect of product(s) proved by Buyer to be defective is limited to either a refund to Buyer of the purchase price thereof or, at Seller's option, a replacement of such product(s) at their point of delivery, provided that in any event Seller's maximum liability in respect of any product proved to be defective shall not exceed its invoice value.
- (ii) In no circumstances shall Seller be liable for loss of profit or consequential or other loss of whatever nature arising from any such defects.
- E. Where a complaint or a claim has been made in respect of product(s) proved or alleged to be defective, Seller may suspend further deliveries of any such product until the validity of such complaint or claim has been finally determined in which event the applicable delivery date(s) shall be postponed accordingly.
- F. (i) Seller shall have no liability in contract or in tort for any injury, loss or expense or direct and indirect damage, and especially disclaims all liability for damage to property and for loss of profit and other consequential loss in each case howsoever attributable to supply or use of the product(s) or the services rendered by Seller.
- (ii) If, despite the limitations contained herein or made elsewhere, Seller shall be held and found liable for damage, the aggregate sum of compensation shall be limited to the actual damages proved and shall in no circumstances exceed the invoice value of the relevant delivery.
- 8 Risk and property**
- A. All risks in the product(s) shall pass to Buyer when Seller delivers the product(s) in accordance with the terms of sale (including these Conditions) to Buyer or any other person to whom Seller has been authorized by Buyer to deliver the product(s) whether expressly or by implication, thereafter Seller shall not be liable for the safety of the product(s).
- B. Notwithstanding the above, property in the product(s) shall remain with Seller until it has received payment in full of all sums which are or may become due from Buyer to Seller in respect of any product(s) or services supplied under any contract subsisting between them, provided that if Buyer sells part of the product(s) to a third party, the proceeds of such sale shall be held by Buyer for Seller's account until Seller has been paid in full.
- C. If payment in respect of the product(s) is overdue in whole or in part or immediately upon the commencement of any act or proceeding in which Buyer's solvency is involved, Seller may without prejudice to any of its other rights recover and/or resell the product(s) or any of them and may enter upon Buyer's premises by its servants or agents for that purpose.
- 9 Returns**
- All sales are final and no refund or credit will be offered for returned product(s) irrespective of whether the product(s) are the subject of a complaint or not, unless Seller has agreed in writing prior to such return and the returns arrive promptly and in good condition in Seller's opinion.
- 10 Technical advice and assistance**
- If the Seller provides the Buyer with technical advice or assistance related to the use or application of the product(s), the Seller gives no warranty or undertaking and accepts no liability as regards such technical advice or assistance unless the Seller has expressly agreed in writing to the contrary. The Buyer will at all times compensate, hold harmless and indemnify the Seller against any claim resulting from the provision of such technical advice or assistance.
- 11. Health, Safety, Environment and Quality**
- A. Buyer shall ensure that all products are safely and lawfully received, stored, maintained, used or applied by Buyer and that Buyer obtains all relevant information from Seller relating thereto.
- B. Buyer shall ensure that all appropriate safety information is distributed and that attention is drawn to such information from all persons involved in the safe handling or use of the products.
- 12. Applicable law, jurisdiction**
- A. All Seller's contracts with Buyer, including these Conditions shall be governed exclusively by the Dutch law.
- B. The UN Convention on contracts for the international sale of goods (Vienna, 11 April 1980) is expressly excluded.
- C. The Uniform Law on the International Sale of Goods as well as the Uniform Law on the formation of contracts for the International Sale of Goods is expressly excluded.
- D. The courts of Seller's country of domicile shall have sole jurisdiction unless Seller decides to seek judgment at the appropriate court in Buyer's country of domicile, or the country of presence of the products, applied or not applied.
- E. To the extent possible the Buyer expressly waives any and all rights it may have to rescind any contract with the Seller on any ground whatsoever.