

## **GENERAL SALES CONDITIONS OF FERDINAND ZANDBERGEN B.V.**

### **Article 1 – Definitions**

In these general sales conditions the following terms have the following meaning:

- 1.1 FZ: the private limited company registered in Woudenberg, Ferdinand Zandbergen B.V., and the companies affiliated with it.
- 1.2 Conditions: these general sales conditions of FZ.
- 1.3 Contract: a contract made between FZ and (one or more of) the Customer(s) concerning the delivery by FZ of one or more goods or the performance of services, as laid down in the contract and additional or follow-up contracts.
- 1.4 Customer: FZ's contracting party (parties) in the contract, and every buyer of goods. In these Conditions Customer also means the representative or agent of the Customer.
- 1.5 Goods: all goods to be sold by FZ to the Customer, and all goods to be delivered by FZ to the Customer and all services to be performed by FZ for the Customer, with the exception of transport as applicable.
- 1.6 Parties: FZ and the Customer.
- 1.7 Incoterms 2010: the Incoterms 2010 drawn up by the International Chamber of Commerce in Paris.
- 1.8 Force majeure: circumstances which prevent the performance of the contract and which cannot be attributed to one of the parties. Circumstances which in any event are not at the expense of or are attributable to FZ are: acts and omissions of non-subordinate persons whom FZ uses in the performance of the contract; unsuitability or poor quality of goods which FZ uses in the performance of the contract; exercising by a third party of one or more rights with regard to the Customer, whether or not in relation to a shortcoming of the Customer in the performance of the contract made between the Customer and such third party; work strike; disruption in business activities; illness(es); import, export and/or transit prohibitions; measures of governments or other competent agencies; transport problems; unforeseen technical circumstances; non-performance of obligations by suppliers and/or other agents of FZ; boycott of FZ or of its suppliers; weather circumstances; natural and/or nuclear disasters; riot; fire; risk of war; war and threat of war. This list may not be deemed exhaustive.

### **Article 2 – Applicability**

- 2.1 These Conditions apply to all offers of FZ and all contracts (and any expansions thereof) made with FZ, and also to all goods to be delivered and services to be performed by FZ. In the event the Customer declares other general conditions to apply, FZ hereby explicitly rejects them. The Customer accepts this rejection of the Customer's conditions and the applicability of these Conditions of FZ.

- 2.2 The contract prevails in the event of conflicts between the contract and these Conditions.
- 2.3 Changes and additions to the contract and these Conditions can only be agreed in writing.
- 2.4 If in a given case FZ does not invoke the provisions of these Conditions, this does not mean that FZ has thereby waived the right to invoke the provisions of these Conditions in other cases.

### **Article 3 – Offers**

- 3.1 An offer made by FZ is always without commitment so that FZ is always entitled to revoke the offer, regardless of whether there is a term within which the acceptance must have been effected. The offer can also be revoked within two working days after acceptance.
- 3.2 Every offer made by FZ is subject to reservation of (timely) deliverability/availability of what is offered.
- 3.3 FZ's offer only applies with regard to the Customer to whom it was made and only applies for the duration of the validity term.

### **Article 4 – Contract**

- 4.1 In the event FZ has made an offer in writing, a contract is made after FZ has confirmed the written acceptance of the Customer within the validity term by means of an order confirmation, unless FZ revokes the offer in accordance with the provisions of Article 3.1 of these Conditions.
- 4.2 FZ is entitled (but not obliged) to accept the acceptance which was made verbally and/or received later as if it were made in writing and/or in time.
- 4.3 In the event FZ has made an offer other than in writing, the contract will first be made by the order confirmation of FZ to the Customer.
- 4.4 If delivery takes place without consultation on price, quantity, composition and/or conditions, the Customer is bound by the price and conditions which FZ determines for that delivery.

### **Article 5 – Price**

- 5.1 All prices are in euro's, unless the parties have explicitly agreed otherwise in writing.
- 5.2 Unless otherwise agreed all prices/rates mentioned by FZ and agreed between the parties are exclusive of the statutorily owed VAT and all other additional costs, including, but not limited to, fees to third parties, taxes, supplements, import duties, charges and all interim increases thereof, which are all fully at the Customer's expense. Also the costs relating to transport including demurrage, detention and (transport) insurance, loading and unloading, retrieval and/or processing of packing material, and storage are fully at the Customer's expense.

- 5.3 In the event the parties have not agreed a price/rate, the prices/rates in effect at FZ on the contract date will apply.
- 5.4 In the event of an increase of one or more cost price components (including, but not limited to, raw materials and labour costs, exchange rate costs or taxes and/or excise duty) arising after the making of the contract, FZ is entitled to increase the original price accordingly.
- 5.5 If FZ incurs costs in the retrieval or processing of packing material it can pass these on to the Customer. Packing material which can be reused (including, but not limited to, crates) remains the property of FZ and must be returned on FZ's request. The Customer is liable for the costs which FZ has to make to retrieve the packing material.

## **Article 6 – Payment**

- 6.1 Payment of all amounts owing by the Customer to FZ must be effected within fourteen (14) days after the invoice date. Payment can be effected both in cash and by bank transfer. In the event of payment via the bank the amount invoiced by FZ must be deposited on FZ's bank account within 14 days after the invoice date.
- 6.2 The payment must be made in the Netherlands, unless otherwise agreed.
- 6.3 In the event of late payment the Customer owes FZ statutory commercial interest for late payment pursuant to Section 6:119 a Dutch Civil Code.
- 6.4 FZ can set off everything it owes the Customer at any time on any grounds against any amount the Customer owes FZ. The Customer, on the other hand, does not have this right of set-off. Nor can the Customer claim any right of suspension.
- 6.5 If the contract provides for payment by means of a letter of credit, the Customer must open an irrevocable and confirmed letter of credit before the agreed date, payable by a bank to be designated by FZ for the full amount of the purchase price, in exchange for documents to be designated by FZ, unless explicitly otherwise is agreed in writing. Costs of payment by means of a bill of exchange, cheque or COD are at the Customer's expense.
- 6.6 FZ is at all times entitled to demand (partial) advance payment of or satisfactory security for the payments (still) to be made by the Customer. Until the Customer has done such, FZ is entitled to suspend the performance of the contract.
- 6.7 In the event of late or incomplete payment the Customer is legally in default upon the end of the payment term. In that case FZ is entitled to suspend all its obligations to the Customer, regardless of whether a fixed delivery time has been agreed and FZ is entitled to dissolve the contract and claim damages.
- 6.8 FZ is entitled to charge the Customer extrajudicial and judicial costs for collection of the amounts owing to FZ. The extraordinary collection costs are owed as of the time that the Customer is in default. The extrajudicial collection costs are calculated on the basis of the

Reimbursement of Extrajudicial Collections Decree (Bulletin of Acts, Orders and Decrees 2012/141) or the last version of that Decree.

- 6.9 Payments by the Customer, regardless of the specification of the payment, will first be deducted from the costs and interest owing (in that order) and then from the principal amount. Payments will first of all be used to cover the longest outstanding principal amount. In the event FZ allows payment to be made in instalments, the VAT for the entire shipment is due upon payment of the first instalment.
- 6.10 Payment will be made in euro's, unless the parties have explicitly agreed otherwise in writing.
- 6.11 If the Customer defaults on payment of any amount owed to FZ or otherwise defaults, or one of the situations referred to in Article 10 arises, all amounts owing to FZ are immediately due.

## **Article 7 – Delivery and risk**

- 7.1 Unless explicitly otherwise agreed in writing between the parties, the goods will be delivered "Ex Factory Incoterms 2010" and all risks relating to the goods pass to the Customer at the time that FZ makes the goods available to the Customer in the FZ business premises.
- 7.2 If it has been explicitly agreed in writing that FZ will transport the goods by road, the Customer is obliged to notify FZ of the necessary shipping and delivery instructions in time and in writing. The Customer must ensure sufficient unloading facilities at the delivery address. If FZ transports the goods by road, in the event of national transport by road, both inside the Netherlands and inside another country, the AVC 2002, last version, applies and in the event of international transport by road the CMR Convention applies supplemented by the AVC 2002, last version. The AVC 2002 can be consulted and stored as a pdf at <http://www.fzandbergen.nl/GB/in/termsandconditions> and will be sent electronically or by post upon first request.
- 7.3 The Customer must take receipt of the goods to be delivered immediately after they are made available/after arrival. If the Customer does not perform these obligation(s) or does not perform them in time, the damage, loss and costs arising in consequence thereof, including but not limited to, damage due to delay, extra (storage) costs for FZ and demurrage and detention, will be fully at the Customer's expense. If the Customer has not taken the goods within 24 hours after they are made available/have arrived, FZ is entitled to store the goods at the Customer's expense and risk. In addition, FZ is then entitled to dissolve the contract and demand damages.
- 7.4 The delivery times given by FZ are only indicative. The Customer cannot derive any rights therefrom.
- 7.5 FZ is permitted to deliver the goods in part shipments. In that case FZ has the right to invoice separately and the Customer is obliged to pay these invoices as if they were invoices for separate contracts.

7.6 Delivery to the party to whom FZ delivers the goods on behalf of the Customer and therefore also to the party who picks up goods for the Customer or otherwise takes possession thereof is deemed delivery to the Customer. Incorrect delivery as a result of information not furnished by the Customer or not furnished in time or as a result of inaccurate information is fully at the Customer's expense and risk.

## **Article 8 – Complaints**

8.1 Goods correspond with what has been agreed if they satisfy the statutory quality requirements which apply at the time of the making of the contract at the place where FZ is registered or if they correspond with what has been specifically agreed.

8.2 Immediately upon delivery of the goods the Customer must inspect whether they correspond with what has been agreed and must notify FZ of every noted defect within 24 hours and confirm this in writing, whereby in the event of failure to do so the goods are deemed to have been delivered in conformity with what was agreed and the Customer cannot enforce any claim with regard to any shortcoming(s) against FZ.

8.3 The Customer must report hidden defects found upon delivery of the goods to FZ within 48 hours after delivery and must confirm the report in writing, whereby in the event of failure to do so the goods are deemed to have been delivered in conformity with what was agreed and the Customer cannot enforce any claim with regard to the shortcoming(s) against FZ.

8.4 After the reporting of defects as stipulated in Articles 8.2 and 8.3 the Customer must have an inspection report drawn up by an independent expert and the Customer must send this report to FZ within 30 days after the report has been made, whereby in the event of failure to do so the Customer cannot enforce any claim with regard to any shortcoming(s) against FZ.

8.5 Minor deviations relating to specified dimensions, weights, quantities, colours and other such data are not deemed shortcomings of FZ. Loss in weight as a result of refrigeration or freezing is also not deemed a shortcoming of FZ.  
Custom in the industry will determine whether there are minor deviations.

8.6 All certificates issued in the country of origin, which are usually used for importers as sufficient proof relating to the quality and/or conditions of the goods, are also deemed sufficient proof of the quality and/or condition of the goods with regard to the Customer.

8.7 Without prejudice to the obligations to which the Customer is subject to demonstrate that the goods do not comply with what has been agreed, the Customer must provide FZ with all cooperation in an investigation of FZ into the nature and scope of the asserted loss.

8.8 In the event the goods do not comply with what has been agreed as referred to in Article 8.1, FZ is obliged at FZ's election to either rectify the defect, or to repay the amounts paid by the Customer with regard to the relevant goods, if and insofar as the Customer demonstrates that FZ is liable for the shortcoming. FZ is not bound to compensate any other damage, loss or costs for the rest.

- 8.9 Insofar as the Customer demonstrates that FZ has defaulted on its obligations, the Customer only has the right to terminate the contract after he has offered FZ a term to rectify the defects or repay the amount which the Customer has paid with regard to the relevant goods and FZ has not rectified the defects or FZ has not repaid said amount.
- 8.10 Goods will not be returned to FZ without FZ's prior written consent.
- 8.11 Complaints about an invoice sent by FZ must be reported to FZ in writing within fourteen (14) days after the invoice date, whereby in the event of failure to do so the invoice will be deemed to be correct and the Customer cannot enforce any claim against FZ in this respect. Such complaints do not suspend the payment obligation.

## **Article 9 – Liability**

- 9.1 If the delivered goods do not correspond with the contract, the Customer is only entitled to compensation or a price reduction. The Customer is not entitled to dissolve the contract.
- 9.2 If the delivered goods do not correspond with the contract and FZ is liable therefore to the Customer, any liability of FZ is limited to a maximum of the invoice value exclusive of VAT and/or other charges relating to these delivered goods on the understanding that this liability is in any event limited to a maximum of € 50,000.
- 9.3 FZ is never liable for loss due to death or personal injury or for consequential loss, trading loss and/or immaterial loss of whatever nature, which in any event includes but is not limited to loss due to stagnation in business activities, loss of profit or income or loss of use on the part of the Customer.
- 9.4 If the delivered goods appear not to correspond with the contract, FZ has the right – provided and for as far as the delivered goods are still present and retrieval is still possible – to deliver a replacement lot.
- 9.5 If FZ engages third parties in the framework of the agreed work activities, FZ is not liable for the shortcomings of these third parties. FZ is entitled without prior consultation with the Customer to accept an exclusion of liability ground or limitation of liability of third parties who are engaged (also) on behalf of the Customer.
- 9.6 Limitations or exclusions of liability will only not apply for as far as the loss is the result of an act or omission of the partners or the management of FZ, effected with the intent to cause such loss, or recklessly with the knowledge that such loss would probably ensue therefrom.
- 9.7 If partners of FZ, insurers of FZ, subordinates of FZ and persons whose services FZ uses in the performance of the contract are held liable, said persons can invoke any exemption or limitation of liability which FZ can invoke under the heading of these Conditions or any other statutory or contractual provision.

## **Article 10 – Food safety**

- 10.1 The Customer must meet all obligations ensuing from Regulation (EC) No. 178/2002 and related regulations.

## **Article 11 – Indemnification**

- 11.1 The Customer is obliged to indemnify and hold harmless FZ against all claims of third parties, including but not limited to claims of government agencies, with regard to loss in relation to the performance of or connected with the contract and the obligations to be performed by the Customer under Article 10.
- 11.2 These obligations of the Customer as set out above under Article 11.1, do not apply for as far as this loss has arisen due to an act or omission of the partners or the management of FZ, effected either with the intent of causing that loss, or recklessly and with the knowledge that said loss would probably ensue therefrom.
- 11.3 Damage also encompasses damage caused due to death or personal injury, damage to property of third parties and consequential damage, trading damage and intangible loss of whatever nature, which in any event includes loss due to stagnation of business activities, loss of profit or income or loss of use on the part of the Customer. This damage also encompasses the costs of legal assistance and the judicial and extrajudicial costs which FZ has had to incur in order to present a defence to claims of third parties.

## **Article 12 – Force majeure**

- 12.1 If FZ cannot perform its obligations to the Customer due to force majeure as defined in Article 1.8, the performance of said obligations will be suspended for the duration of the situation of force majeure. FZ has the option of performing its obligations after all, after the circumstances which resulted in the non-attributable shortcoming no longer exist or cancel the contract or the part thereof which has not yet been performed without owing any compensation to the Customer.
- 12.2 In the event the performance of obligations connected with the loading date, delivery date, arrival date or other date is made more difficult or is prevented as a result of force majeure, FZ has the right to invoke the strike, force majeure and 'prohibition' clauses of the FZ purchase contract.
- 12.3 FZ will notify the Customer of a force majeure situation as soon as possible.
- 12.4 If the situation of force majeure lasts thirty (30) days or longer, both FZ and the Customer have the right to terminate the contract in writing in whole or in part and without judicial intervention for as far as the goods have not yet been delivered, without in such case there being an obligation to pay damages or to make any other payment, subject to payment under the heading of undue payment or compensation of costs already incurred.
- 12.4 If delivery in part shipments has been agreed, then the provisions of this article apply to each shipment separately.

### **Article 13 – Dissolution and suspension**

- 13.1 If the Customer does not perform any obligation ensuing from the contract or from these Conditions or does not properly perform any obligation or does not perform any obligation in time, the Customer will be in default without requiring a notice of default and FZ will, without being bound to pay any damages under the heading thereof and without prejudice to FZ's other rights, with immediate effect and without judicial intervention, be entitled to suspend the performance of all its obligations and/or terminate or repudiate the relevant contract in whole or in part.
- 13.2 In the event of termination by FZ, FZ is at its election entitled by way of compensation to:
  - a) the negative price difference if any between the contract price and the market value of the goods at issue on the day of the non-performance, or;
  - b) the price difference between the contract price and the price of the hedging purchase,
  - c) one and another without prejudice to FZ's right to additional or replacement damages.
- 13.3 FZ is furthermore entitled, without being bound to pay any damages under the heading thereof and without prejudice to the other rights to which FZ is entitled, with immediate effect and without judicial intervention, to terminate the contract with the Customer, if:
  - a) the Customer is subject to a moratorium on payment or is declared bankrupt, or is at risk thereof, or any other part of his assets has been attached;
  - b) the Customer passes away or ceases his activities, decides to liquidate or otherwise loses his legal personality;one and another without prejudice to FZ's right to additional or replacement damages.
- 13.4 FZ is entitled to set off claims on the Customer against debts to the Customer, including claims and/or debts which are not yet due or eligible for immediate realisation.

### **Article 14 – Transfer of rights and obligations**

- 14.1 FZ is entitled to transfer rights and/or obligations under the heading of the contract to third parties.
- 14.2 Unless otherwise agreed, the Customer can only transfer rights and/or obligations under the heading of the contract to third parties with FZ's prior written consent. FZ can make this consent subject to conditions.
- 14.3 The Customer undertakes to assign any claim(s) he may have on his insurance company to FZ upon FZ's first request.

### **Article 15 – Retention of title and insurance**

- 15.1 FZ retains title to the goods it delivers, including the delivered documents, until the Customer has fulfilled all its obligations to FZ. The goods which FZ has delivered to the Customer will thus exclusively remain the property of FZ – even after and despite processing or treatment – until the time of full payment of all of FZ's claims with regard to goods delivered or to be delivered (pursuant to a contract) or services performed or to be

performed for the Customer (pursuant to such contract), and until the time of full payment of the claim relating to default on the performance of such contracts (including costs and interest).

- 15.2 If the Customer also is obliged to pay damages the title of ownership will only be transferred after the full damages have been paid.
- 15.3 Subject to article 15.4 during the period that FZ still holds title to the goods, the Customer is obliged to store the goods which were delivered subject to retention of title carefully and as recognisable property of FZ and it cannot transfer the goods to third parties (sale and/or delivery) and/or encumber them with a security right. In addition, the Customer is obliged to insure these goods on behalf of FZ on the basis of an 'all risks' goods insurance with a first class insurer; on FZ's first request the Customer is obliged to submit the relevant policy to FZ.
- 15.4 The Customer may make use of goods to be delivered on to third parties within the normal course of his business subject to the following provisions:
  - a) in the event of whole or partial resale/delivery of the goods, or the goods obtained by processing, the Customer only undertakes to only sell/deliver such subject to retention of title. The Customer undertakes to assign the claim and rights arising from the resale to FZ upon first request;
  - b) in the event of processing of the goods, the goods obtained in consequence thereof will take the place of the delivered goods. This also applies if the new product is composed of goods delivered by FZ and goods of third parties. If one or more of these third parties has also made a retention of title as referred to above, FZ will acquire co-ownership of the new goods together with such third party (parties). For as far as necessary the Customer is hereby granting a right of pledge on these goods for the benefit of FZ;
  - c) the Customer undertakes not to have others collect the claims on third parties nor to assign the claims on third parties, nor to let others subrogate to the right of action, without FZ's prior written consent.
- 15.5 If the Customer fails on the performance of his obligations to FZ, or if FZ has reasonable grounds for fearing that the Customer will default on the performance of those obligations, FZ is entitled to take back the delivered goods at the Customer's expense without prior notification of the Customer, without prejudice to FZ's right to compensation.
- 15.6 If the contract is terminated by FZ and/or the Customer and the goods are still subject to a retention of title, the Customer must immediately make these goods available to FZ. The Customer does not have the right to set off his claims or suspend his obligation to make the goods available on the basis thereof.
- 15.7 With regard to deliveries by FZ of goods in Germany, the property law consequences of the retention of title as stipulated in Articles 15.1-15.6 of these Conditions are governed by German law. In such cases Articles 15.1-15.6 also encompass the extended retention of title ("Verlängerter Eigentumsvorbehalt").
- 15.8 The Customer or a representative/agent appointed by the Customer is not authorised to transfer documents to third parties, to grant pledges to third parties, or to grant third

parties any other right thereon, until the Customer has received a written confirmation from FZ that the sales proceeds have been deposited on the FZ (bank) account specified therefore.

15.9 If FZ presents documents to the Customer, this will be effected on the following conditions:

- a) presentation of documents to third parties will only be effected 'in trust', in other words: the Customer will keep possession of the documents on an exclusive basis for FZ;
- b) until the moment that payment has been received by FZ, upon FZ's request the Customer must hand over the documents to FZ;
- c) the Customer must immediately inform FZ in the event that payment will not be made in conformity with the contractual payment conditions when the Customer becomes aware thereof;
- d)

#### **Article 16 – Miscellaneous**

16.1 The provisions of these Conditions do not detract from any right, claim, power, remedy or defence that FZ might be entitled to under any other provision or under any other heading whatsoever.

16.2 Any right of suspension, right of set-off and right of termination on the part of the Customer is excluded.

16.3 FZ can make any consent it gives subject to conditions, of whatever nature.

16.4 The Customer will provide all cooperation which is necessary or desired to give FZ sufficient opportunity to properly perform its obligations.

16.5 Agents and subordinates of FZ are only authorised to represent FZ up to the amounts recorded in the trade register of the Chamber of Commerce. Agreements made by agents and subordinates of FZ outside of their mandate do not bind FZ if they have not been confirmed by FZ in writing.

16.6 Anyone who accesses FZ's sites, buildings or other locations, does so – including any vehicles, materials, etc. – at his own risk. The Customer will see to it that this fact is announced to all relevant persons who act for, on behalf of and/or on the instruction of the Customer. Furthermore the aforementioned persons must comply with the regulations and instructions applicable there and established by the competent agencies and/or FZ.

16.7 If a provision of these Conditions is unenforceable or void this will not affect the validity of the other provisions of these Conditions. The Conditions will in such case be interpreted as if the unenforceable or void provision did not form part of the contract.

16.8 If the text of the contract or of (one of) the general conditions in a language other than Dutch deviates from the Dutch text, the Dutch text and the interpretation thereof will have precedence.

### **Article 17 – Time bar**

17.1 For as far as the Customer's claim has not already become time-barred under the heading of Article 8.2 and Article 8.3, all claims against FZ are time-barred one (1) year after the date of the contract.

### **Article 18 – Applicable law**

18.1 The legal relationship between FZ and the Customer is governed by Dutch law, with the exception of the provisions in Article 15.7, which article is governed by German law. The applicability of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) is explicitly excluded.

### **Article 19 – Competent court**

19.1 All disputes ensuing from or connected with these Conditions or the contract(s) between FZ and the Customer will exclusively be adjudicated by the Rotterdam District Court.