

# GENERAL CONDITIONS OF SALE AND DELIVERY OF KIMTEC INTERNATIONAL BV, HEIJNINGEN, THE NETHERLANDS

## ARTICLE 1: DEFINITIONS

1.1 In these general conditions ("Conditions") the terms used will have the following meanings:  
**Kimtec:** Kimtec International BV, having its registered office in Heijningen, as well as its successors and assigns;  
**Client:** any individual or legal entity which orders Kimtec to deliver Products and/or perform Services or with which Kimtec negotiates or enters into an Agreement;  
**Agreement:** any agreement which is concluded between Kimtec and Client and any amendment or addition thereto, as well as any acts in preparation or performance of such agreement;  
**Products:** all products/goods which are the subject of an Agreement, including documentation, and any (other) results of performance of services by Kimtec;  
**Services:** all activities of whatever kind, including provision of services, contracting for performance of work, deployment of employees etc., carried out by Kimtec for or for the benefit of Client;  
**Order:** any order for Products or commission for Services from Client in whatever form.

## ARTICLE 2: APPLICABILITY OF THESE CONDITIONS

2.1 These Conditions are applicable to all offers, sales, deliveries and Agreements, as well as to negotiations for an Agreement, even if such negotiations do not lead to conclusion of an Agreement.

2.2 Any conditions or stipulations deviating from these Conditions and any other general conditions which may be referred to in Client's Order, in correspondence or otherwise or which are usual within the branch, are superseded by these Conditions and are applicable only if and to the extent explicitly accepted in writing by Kimtec.

## ARTICLE 3: OFFERS AND ORDERS

3.1 Any offer or quotation by Kimtec constitutes an invitation to place an Order and shall not be binding on Kimtec. Kimtec is bound only to the extent that it has accepted Client's Order in writing, following an offer or quotation, unless Client demonstrates that Kimtec has otherwise accepted Client's Order fully and unconditionally. If Kimtec, on request of Client, performs any activity before the price and conditions of payment for such performance are fully agreed upon, Client shall compensate Kimtec therefor in compliance with the provisions of articles 5 and 6 according to Kimtec's then current fees. To the extent that Kimtec makes an offer which, contrary to the provisions of the first and second sentences of this paragraph, is binding on Kimtec and Client accepts such offer with minor deviations, those deviations do not form part of the Agreement and the Agreement shall be concluded in accordance with Kimtec's offer.

3.2 Any electronic communication between Kimtec and Client shall be effective as originals and shall be considered to be "writing" between the parties. The electronic communication system, used by Kimtec, will serve as sole proof for the content and the time of delivery and receipt of such electronic communications.

3.3 All quotations by Kimtec of numbers, measures, weights and/or other characteristics of the Products and/or Services are carefully made. Kimtec cannot, however, warrant that these are without error. Samples, drawings or models shown or provided to Client are only indications of the relevant Products and/or Services. If Client demonstrates that the Products delivered and/or the Services performed deviate from Kimtec's quotations or from samples, drawings or models to such an extent that Client cannot reasonably be bound to accept them, Client shall have the right to rescind (in whole or part) the Agreement, however, only to the extent that such rescission is reasonably necessary.

## ARTICLE 4: AGENCY AND DISTRIBUTION AGREEMENTS

4.1 Client does not constitute an agent or distributor of Kimtec, unless explicitly appointed as such in a written agency or distribution agreement.

4.2 An agency and/or distribution agreement is non-exclusive unless it is explicitly stated that the relationship is exclusive in whole or part.

4.3 Kimtec shall not be liable for any (goodwill or customer) compensation on termination of an agency or distribution agreement unless such compensation is required by mandatory law.

## ARTICLE 5: PRICES

5.1 Kimtec is entitled to pass through to Client any price increases in raw materials, components, and/or partial products used by Kimtec in Kimtec's Products, as well as for each unfavourable change in exchange rate in the currency in which Kimtec pays its suppliers compared to the currency in which Client pays Kimtec.

5.2 In case of price adjustment other than because of increase in cost of freight and custom tariffs Client shall be entitled within 14 days after having been advised thereof in writing to rescind or terminate the agreement to the extent in which it has not yet been executed.

## ARTICLE 6: PAYMENT

6.1 Amounts due to Kimtec must be paid full in wire or bank transfer. Payment other than mentioned here fore needs Kimtec's prior approval and shall only be considered as payment after the amount to which Kimtec is entitled shall have been cashed by Kimtec or credited to Kimtec's accounts. All cost and risk connected to such payment shall be for the risk and for the account of Client.

6.2 Client may not suspend its obligations to pay unless mandatory law explicitly provides for such right.

6.3 Client shall not off-set amounts owing to Kimtec against any reimbursement due to the former from Kimtec of whatever kind.

6.4 Client must make payment to Kimtec as agreed by the confirmation of the order and mentioned on the invoice.

6.5 Any complaint with respect to the invoice must be notified to Kimtec in writing within 20 (twenty) days after the date of invoice. Thereafter, Client shall be deemed to have approved the invoice.

6.6 In case Client should be late with any payment or in case for other reasons doubts should arise in regards of his credit worthiness Kimtec is entitled to require advanced payment or an adequate guaranty to our sole discretion and, in case Client should not provide these, to suspend the execution of any and all agreements and to cancel payment terms. In that case all outstanding debentures shall immediately mature.

6.7 In the event of late payment, overdue amounts will accrue interest at the rate of 1% per month or part thereof from the date the payment is due until the date it is paid. In the event Client has not paid all amounts due, Kimtec may refuse all further Orders and suspend all further deliveries. If Client defaults on any payment to Kimtec, all amounts due shall be claimable immediately and Kimtec shall be entitled to charge Client for all extrajudicial and judicial costs of collection reasonably incurred, including attorneys' fees.

## ARTICLE 7: DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

7.1 Agreed delivery periods apply by approximation – even if a specific ending date of specific term has been agreed – and are not deadlines, unless the contrary has been agreed explicitly. In the event of late delivery Kimtec must be put in default in writing, whereby Kimtec must be given a reasonable time, to be determined in consultation with it, within which it can still comply.

7.2 Kimtec reserves the right to deliver partial Orders.

7.3 The risk of the Product shall pass to Client according to the applicable incoterms.

7.4 In the event Client fails to accept delivery of the Products when presented for delivery, Kimtec shall store the Products for the account and risk of Client and shall give Client the opportunity during a period of two weeks to accept and collect the Products at the location where Kimtec has stored them. All costs involved with failure or late acceptance of the Products by Client shall be at Client's expense. If Client does not accept the Products within the said two week period, Kimtec may still demand performance of the Agreement by Client, without prejudice to Kimtec's right to claim full compensation for damages from Client.

7.5 Orders subject to delivery on call shall be called and delivery shall be accepted by Client within that agreed period of time. In the event of non-compliance with the foregoing, Kimtec shall have the right to deliver the remaining part of the Order all at once and to charge price increases to Client.

7.6 Products are delivered under international trade terminology. These terms shall be defined according to the Incoterms 2000, approved by the UNCITRAL (United Nations Commission on International Trade Law).

## ARTICLE 8: RETENTION OF TITLE

8.1 Title to the Products shall not pass to Client, even after delivery, until all amounts due or to become due to Kimtec for Products or Services under an Agreement, including the purchase price and any surcharge, interest, taxes or costs due pursuant to an Agreement of these Conditions, have been paid in full.

8.2 Until Client obtains title to the Products, Client shall hold the Products as bailee of Kimtec and shall store them separately from other Products and identified as the property of Kimtec.

8.3 Any products in which the delivered Products are incorporated or which are made of modified by using the delivered Products are owned by Kimtec.

8.4 Kimtec reserves the right to immediately repossess any Products to which it has retained title as mentioned above, and for this purpose Client hereby grants an irrevocable right and license to Kimtec and its representatives to enter all business premises at all times. This right shall survive any nullification or dissolution of the Agreement between Kimtec and Client on any ground.

8.5 Client shall in respect of all Products to which title is retained by Kimtec take all care necessary to safeguard Kimtec's interest thereto, to grant Kimtec access to these Products and to immediately inform Kimtec in writing of any action of third parties which may in a negative way affect Kimtec's concern in these Products.

8.6 Client herewith grants Kimtec in respect of every order for delivery of Products which he may deliver to third parties a lien on all debentures which will for him result from such delivery. In case of default of Client Kimtec shall be entitled to notify his debtor of that lien. Client shall then assist Kimtec by all means in Kimtec's efforts to collect the debentures under that lien and shall provide Kimtec with all information and documents, which Kimtec shall thereto deem necessary.

8.7 Any amounts received from Client shall be applied in the first instance to payment for the claims which Kimtec may have against Client which are not covered by the retention of title set forth in paragraph 1 of this article. Any further amount received from Client shall be applied in the first instance to payment of compensation of any interest and costs due pursuant to Article 6.7 of these conditions.

## ARTICLE 9: FORCE MAJEURE

9.1 If Kimtec cannot perform its obligations to Client due to "force majeure", those obligations shall be suspended for the duration of the circumstances of the force majeure.

9.2 If the circumstances of the force majeure continue more than three months, both parties shall have the right to terminate the relevant part of the Agreement in writing.

9.3 Force majeure on the part of Kimtec shall mean any circumstance outside the control of Kimtec which prevents or delays performance of Kimtec's obligations or makes such performance uneconomical or due to which Kimtec cannot reasonably be expected to perform its obligations.

9.4 Parties shall inform each other as soon as possible of (possible) circumstances of force majeure.

## ARTICLE 10: WARRANTY AND LIABILITY

10.1 Subject to the provisions of these Conditions and any further specific Agreement, Kimtec guarantees the good quality and functioning of the Products for a period as indicated on the product label and under normal conditions.

10.2 Client shall inspect all Products immediately and thoroughly. Deviations in the number of bags or packages shall be communicated to Kimtec and mentioned on the bill of lading. Deviations in the quantities per bag of package and defects which show upon opening of the bags or packages shall be reported to Kimtec within 8 (eight) days of delivery. Any defect which is manifested at a later time must be reported to Kimtec no later than on the 8<sup>th</sup> day after it is discovered or could have been discovered, but no later than the expiry date of the Product. Any claims not brought by Client in accordance with the conditions set forth in this paragraph, shall lapse.

10.3 If Kimtec responds to a complaint by the Client, this does not imply that Kimtec therefore accepts liability. If a complaint should prove to have been made unjustifiably, Kimtec shall be entitled to charge the work it had performed and the goods delivered at its customary prices. Submission of a complaint shall not release the Client from its obligation to pay and shall not give it the right to suspend any payment.

10.4 In no event shall Kimtec be liable for any indirect damages to Client or any third parties, including consequential damages non-material damages, loss of profits or environmental damages.

10.5 Kimtec's liability to Client on any ground whatsoever shall be limited per event (whereby a sequence of events shall be deemed to be one event) to the moneys which are to be paid by Client under the contract. Should no contractual amount be indicated, then Kimtec's liability is limited to the amount which it shall receive from its insurer in connection with its corporate liability insurance.

10.6 The limitations of liability of 10.3 and 10.4 shall not be applicable if the relevant damages are caused by wilful misconduct by Kimtec or its managerial personnel.

10.7 Except in case of wilful misconduct by Kimtec or its managerial personnel, Client shall indemnify and hold Kimtec harmless from and against any claims from third parties on any ground whatsoever with respect to damages, costs or interest relating to the Products or caused by use of the Products.

## ARTICLE 11: RESCISSION

11.1 If Client fails timely to pay all its debts or reaches an agreement with its creditors with respect to measures which can be taken according to applicable law against debtors who are unwilling or unable to pay all their debts, or if Client fails to fulfil any obligation set forth in any contract with Kimtec, Kimtec is authorized, in its reasonable discretion, to:

- suspend shipment and interrupt transport of Products to be delivered until payment is secured to the satisfactory of Kimtec and/or
- suspend all payments and/or
- by written notice rescind any Agreement with Client with retroactive effect, without prejudice to its other rights under any Agreement with Client.

## ARTICLE 12: EXERCISE OF SUSPENSION, RESCISSION AND NULLIFICATION RIGHTS BY KIMTEC

12.1 If Kimtec, based on the circumstances known to it or which should have been known to it at that time, reasonably is of the opinion that it can lawfully exercise a suspension, rescission and/or nullification right, Kimtec shall not be liable for any damages to Client, and in any case not be liable to pay legal interest, in case it is later established that Kimtec has not lawfully exercised such right(s).

## ARTICLE 13: OTHER OBLIGATIONS AND RESPONSIBILITY OF CLIENT

13.1 Client shall at all times provide Kimtec with the data necessary for fulfillment of Kimtec's obligations and warrants the correctness and completeness thereof.

13.2 Client shall not remove or render any marks on the Products fully or partly invisible.

13.3 If necessary for performance of the agreed upon Services, Client shall give Kimtec at all times timely access to and free disposition of all means and facilities necessary.

13.4 Should it appear that the Services cannot be performed in whole or in part due to the non-fulfillment by Client of any obligation to Kimtec or circumstances otherwise attributable to Client, Client shall compensate the costs which Kimtec has made in relation thereto, calculated based on Kimtec's then current fees.

## ARTICLE 14: AMENDMENTS AND ADDITIONS

14.1 Any amendments or additions to any provision in an Agreement and/or the Conditions can be agreed upon only in writing.

14.2 If an amendment or addition as meant in paragraph 1 is agreed upon, this amendment or addition shall apply only to the relevant Agreement.

## ARTICLE 15: APPLICABLE LAW AND COMPETENT COURT

15.1 These conditions and all Agreements between Client and Kimtec are governed by Dutch law. Any legal claim regarding an Agreement between Kimtec and Client will in the first instance be brought before the competent court at Breda. The applicability of the following treaties, conventions and laws to these Conditions or any Agreement is explicitly excluded:

- the Uniform Law on Formation of International Contracts for the Sale of Product dated 01.07.2964;
- the Uniform Law on International Sale of Product dated 01.07.1964;
- all (uniform) legislation based on these treaties in any country;
- the United Nations Convention of Contracts for the International Sale of Product, Vienna 1980 (CISG).