

## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF HATO BV**

### **Applicability**

#### Article 1.

1. All quotations, services, recommendations and deliveries are exclusively made subject to the applicable declaration of these general terms and conditions of sale and delivery to both to the quotation and the acceptance of the quotation and to the agreement concluded as a result and any further agreements arising from such.
2. All quotations are free of obligation and have a maximum validity period of one month, unless the quotation states otherwise.
3. The agreement comes into being as soon as acceptance of the quotation has reached Hato B.V. as contractor/seller (hereafter jointly referred to as the Seller).
4. If the acceptance contains amendments in respect of the quotation, in departure from the provisions in the previous paragraph, the agreement only comes into being if the Seller has notified the customer/buyer (hereafter jointly referred to as the Buyer) in writing that it agrees with these deviations from the quotation.
5. If one or more provisions of these general terms and conditions are void or declared void, the remaining provisions will remain applicable.
6. The Buyer's own purchase, tender or other conditions do not bind the Seller unless expressly accepted in writing by the management of the Seller.

### **Amendments and purchase price**

#### Article 2.

1. Amendments to the Agreement made by Buyer and deviations from these general terms and conditions of sale shall only be effective if they have been accepted in writing by the management of the Seller.
2. If amendments on the Buyer's request/instructions lead to an increase in the costs, the Seller will be entitled to pass on the resulting price increase in full. If the Seller has not agreed a fixed price with the Buyer, the Seller will nevertheless be entitled at all times to increase this price, without the Buyer being entitled to terminate the Agreement in that case, if the price increase results from an entitlement or obligation pursuant to laws or regulations or is due to an increase in the price of raw materials, wages and suchlike, or is based on other grounds that were not foreseeable within reason at the time when the Agreement was concluded. The Buyer must accept an increase in the original price by the Seller up to 10%. In the event of a greater price increase, the Buyer will have the right to terminate the Agreement in writing within 14 days of the aforesaid notification. In this context, the Buyer will have to reimburse the Seller in accordance with these general terms and conditions of sale for any costs already incurred.
3. A placed order (hereafter referred to as Instruction), the delivery of which could span over a longer term and which has been accepted by the Seller and in respect of which some actual preparation has been carried out with the assembly of the delivered goods, can only be cancelled by the Buyer until the moment of shipment on board of a ship or the loading onto another (last) mode of transport. The cancellation or amendment must be made in writing (by post or by fax or by e-mail). This cancellation or amendment is only regarded as valid after this notice in writing has been confirmed by the recipient. On cancellation of the Instruction by the Buyer, the Buyer shall compensate the Seller for all losses suffered and to be suffered by the Seller due to the cancellation or amendment, which includes in any case costs incurred and loss of profits.
4. Oral promises by, and agreements with, subordinates of the Seller do not bind the Seller until and insofar they have been confirmed in writing by the management of the Seller.
5. The purchase price is based on prices, exchange rates, wages, charges and freight rates in force at the time of the offer and may be changed in the manner set out in these general terms and conditions of sale and delivery.
6. In the absence of agreement on the change of the purchase price, there is a dispute between the parties to which article 19 of these general terms and conditions of sale applies.

### **Quality and description**

#### Article 3.

1. The Seller undertakes towards the Buyer to deliver to the Buyer the goods in the description, quality and quantity as further specified in the (possibly later amended)

quotation approved by both parties. Goods in these general terms and conditions also include goods of a non-material nature, such as services. Recommendations will always be free of obligation and will not entail a guarantee, unless explicitly agreed otherwise.

2. The Seller undertakes towards the Buyer to deliver to the Buyer the goods which:
  - a. are manufactured of solid materials and are of a solid construction;
  - b. are in all respects equal to any possible samples or models which have been made available or provided by the seller and/or the buyer;
  - c. deliver the performances (capacity, efficiency, speed, finish etc.) as specified in the quotation.
3. The Seller does not guarantee that the goods are suitable for the purpose the Buyer wishes to use them for, not even if this purpose has been made known to the Seller and/or the Seller has given advice in advance in respect of the (use of) the goods, unless the contrary has been agreed in writing by the parties.
4. Complaints must be submitted to the Seller in writing, by registered letter, at the latest within 8 days or as much earlier as is reasonably acceptable in the given circumstances after receipt of the goods or performance of the services. Any complaints received after the aforesaid period will not be processed.
5. Before buying the products of Hato BV, the Buyer must familiarise itself with the details of the European regulations and legislation (the EU Directives) as regards the national regulations in respect of, amongst other things, the recycling of electronics, lighting products, packaging etc. in its own country and to ensure that the goods of Hato BV satisfy the statutory regulations in that country.

### **Packaging and delivery**

#### Article 4.

1. The Seller undertakes towards the Buyer to package the goods properly (unless the nature of the goods dictates otherwise) and/or secure them in such a way that they, with normal transport, arrive at their destination in good condition without, the Seller accepting any liability after the moment of delivery.
2. The Seller shall deliver the goods, or shall dispatch them for delivery, to the agreed place or places in the manner as determined or agreed in the Agreement. The goods are delivered ex warehouse (ex Works Incoterms 2010) of the Seller. The goods travel for the account and at the risk of the Buyer.
3. If the Seller has made pallets, packing cases, crates, containers etc. available for packaging and transport or has had them made available by a third party, whether or not on payment of a returnable deposit or a guarantee deposit, the Buyer is obliged (unless it concerns nonreturnable packaging) to return these pallets etc. in good condition within 1 month of receipt of such for its own account and at its own risk to the address indicated by the Seller on crediting the amount the Seller has charged, failing which the Buyer owes the Seller compensation. The loaned packaging made available by the Seller is, and remains, the property of the Seller at all times and is looked after by the Buyer with due care and insured and handed over on demand.

### **Storage**

#### Article 5.

1. If, for whatever reason, the Buyer is unable to take receipt of the goods at the agreed time and they are ready for dispatch, the Seller shall, provided in its sole discretion its storage capacity so allows, at the request of the Buyer for its account and at its risk, store the goods until the delivery to the Buyer can be resumed.
2. The Buyer is obliged to pay the Seller the storage costs in accordance with the customary rate of the Seller or, in the absence of such, in accordance with the customary rate in the sector, from the time the goods are ready for shipment or, if this is a later date, from the delivery date agreed in the Agreement.

### **Transfer of ownership and risk**

#### Article 6.

1. Subject to the provisions in paragraph 2 and 4 of this article, the ownership and the risk of the goods transfers to the Buyer on delivery ex article 4(2).
2. As long as the Buyer has not fully paid the amount of the purchase price plus any possible associated costs or provided security for such at the request and to the satisfaction of the Seller, the Seller retains the ownership

of the goods. In that case, ownership is transferred to the Buyer as soon as the Buyer has performed all its obligations towards the Seller.

3. If doubt arises with the Seller in respect of the payment capacity of the Buyer, the Seller is entitled to delay the delivery of the goods pursuant to article 4 paragraph 2 until the Buyer has provided security for the payment to the satisfaction of the Seller. The Buyer is liable for the loss to be suffered by the Seller due to this delayed delivery, which in any event includes costs incurred and loss of profits.

4. If the Seller delays the shipment at the request of the Buyer in accordance with the provisions in article 5, the goods shall remain the property of the Seller until the goods are delivered at the place or places referred to in article 4 paragraph 2.

#### **Time of delivery**

Article 7.

1. The stated delivery periods are always without obligation and will never be final deadlines, unless explicitly agreed otherwise. If this period is exceeded, the Buyer will be unable to claim compensation of any kind.

#### **Force majeure**

Article 8.

1. The delivery time referred to in article 7 is extended with the period during which the Seller is prevented from performing its obligations due to force majeure.

2. There is force majeure on the part of the Seller if, after the entering into the Agreement, the Seller is prevented from performing its obligations under this Agreement or the preparation of such, as a result of war, threat of war, civil war, riot, molestation, fire, water damage, flood, work strike, factory sit-in, exclusion, import and export barriers, epidemic, pandemic, staff illness, government measures, defects to machineries, interruptions in the provision of energy, and comparable unforeseen circumstances, all this both in the company of the Seller and of third parties from which the Seller acquires, fully or in part, the necessary materials or raw materials as well as during storage or during transport whether or not by the Seller itself and in addition through all other causes arising outside the blame or control of the Seller.

3. If due to force majeure, the delivery is delayed by more than two months, both the Seller and the Buyer are entitled to consider the Agreement as terminated. In that event, the Seller is only entitled to the costs it has incurred.

4. If the force majeure arises whilst the Agreement has already been partly performed, the Buyer is entitled, if the remaining delivery is delayed by more than two months, to consider the not yet performed part of the Agreement as terminated under the obligation to pay for that part already delivered to it.

#### **Resale**

Article 9.

1. In the event of resale, the Buyer is in its relationship with the subsequent buyer obliged to use the same sale promoting measures as the Seller has employed during the sale. These sales promoting measures can include but are not limited to, advertising, special offers, bonuses and competitions, maintaining certain consumer prices, a particular "display" in the retail space of the buyer, trade-in campaigns.

2. The Buyer is entitled to display its own trademark on the packaging of the goods but it is not permitted to do this in such a way that this causes the industrial trademark of the Seller to not be fully visibly identifiable.

3. If the Buyer breaches any of the obligations stated in this article, the Buyer fully indemnifies the Seller against claims by the Buyer or third parties.

#### **Guarantee**

Article 10.

1. The Seller guarantees the Buyer that the goods are in agreement with the requirements laid down in the approved quotation and in any specifications. This guarantee relates to defects occurring during the guarantee period of the product concerned, unless the damage results from use by the Buyer in contravention of the installation instructions provided, or from improper use, or can otherwise be attributed to a fault of the Buyer. This guarantee does not apply to consequential damage.

2. The goods must be installed by an officially recognised installation company.

3. The Seller's liability does not include activities that consist of the removal or re-installation of systems, unless this has been specifically agreed with the Seller.

4. The guarantee excludes all forms of breakage.

5. If the Buyer repairs the goods itself within the specified guarantee period, the guarantee will lapse with immediate effect and all subsequent costs will be at the Buyer's expense.

6. The Seller has the right to determine that these guarantee provisions do not apply to specific situations, but only if this is to the Buyer's benefit. Such deviating conditions will be laid down in writing.

#### **Price and payment**

Article 11.

1. The purchase price is exclusive of VAT, packaging costs, disposal contribution, costs of loading and unloading, transport costs, costs of (sending of) documents, customs surcharges (including imposed anti-dumping levies, raising of import duties, extra costs levied by customs in respect of import), licences or other data carriers including for the benefit of the transport, insurance premiums, insurances, exchange rates and other levies and/or surcharges whether or not levied or to be levied by the government, unless otherwise agreed in writing.

2. Payment shall be made within 30 days of the invoice date unless otherwise agreed in writing. The Buyer is not entitled to any kind of debt settlement or suspension.

3. The Buyer is obliged to pay the full purchase price without deduction of discounts. The payment of the purchase price shall be made to a bank account indicated by the Seller. All bank charges must be paid by the Buyer at all times.

4. If the Buyer does not satisfy its payment obligations within the term set out in paragraph 2, it is deemed to be in default by operation of law. Furthermore, the Seller is then entitled to terminate the purchase agreement without judicial intervention or, without further notice of default, charge the Buyer the statutory commercial interest on the full outstanding amount from the due date to the date of full payment. In the latter case, the Buyer is also liable for the loss suffered by the Seller which includes in any event incurred costs and loss of profits.

5. All extrajudicial (collection) costs (including the costs incurred for drawing up and sending reminders, settlement negotiations and any other preparations involved in preparing possible legal proceedings) as well as legal costs will be for the account of the Buyer. The extrajudicial collection costs will be calculated on the basis of the Extrajudicial Collection Costs (Standards) Act (*Wet normering buitengerechtelijke incassokosten*) and will be increased by € 25.00 registration fees.

6. The Seller is entitled to request the Buyer to establish a contract of pledge on the goods supplied, if the Buyer fails to fulfil its obligation to pay the complete sum of the purchase, with any possible additional costs.

7. The Seller levies pursuant to the Electric and Electronic Equipment Management Decree in implementation of the European directive regarding the restriction on the use of certain hazardous substances in electrical and electronic equipment nr. 2002/95/EC, a disposal contribution increased with VAT on sales in the Netherlands. The Buyer undertakes to charge this disposal contribution similarly to its buyers provided these buyers are based in the Netherlands.

8. The Buyer that utilises its entitlement to storage as referred to in article 5, remains obliged to pay the purchase price at the time referred to in paragraph 2.

9. Quotations in catalogues and/or price lists are subject to price changes and with due observance of the provisions in article 2 paragraph 5. The Seller is not liable for print or typing errors in these lists.

#### **Liability**

Article 12

1. The Seller will not be liable for any direct or indirect losses of whatever kind, unless the loss is a result of an intentional act or and/or gross negligence on the Seller's part. In that case, the compensation will not exceed the invoice value of the goods that gave rise to the loss. With regard to recommendations, the Seller will never be liable for any direct or indirect losses of whatever kind, unless explicitly agreed otherwise and except in the event of an intentional act and/or wilful recklessness. In that case, the compensation will not exceed the invoice value of the relevant recommendations issued.

2. Under no circumstances shall the liability of the Seller exceed the amount paid out by its liability insurance in the appropriate case.

3. The Seller is not liable for loss which is the result of personal accidents, unless the loss is a result of an intentional act or wilful recklessness of the side of management of the Seller.

4. The Seller is not liable for loss which is the result of insufficient cooperation or information by the Buyer, its management or subordinates or by a third party engaged in the implementation of the Instruction by or on behalf of the Buyer.

5. The Seller is not liable for loss which is the result of a shortcoming which is not attributable to Seller pursuant to the provisions in article 8 of these conditions in the performance of any obligation resting on it.

The Seller is never liable for loss consisting of loss of profits, business interruption or other consequential loss of the Buyer.

6. The Seller will never be liable for any direct or indirect losses of whatever kind, consisting for example of lost profits, business interruption or other consequential losses sustained by the Buyer, unless the loss is a result of an intentional act or gross negligence on the Seller's part.

7. The Buyer indemnifies the Seller against claims by third parties due to defects relating to goods to be delivered and/or already delivered and/or to the auxiliary materials used in the performance of the agreement or due to the acts or omissions by the Seller, its personnel or other parties engaged by it in the performance of the delivery, by whatever name and for whatever reason, respectively.

8. The resale and delivery of the goods in the USA and Canada will be entirely at the Buyer's expense and risk. If a defective product should result in losses imputable to the Seller, the compensation payable by the Seller will never exceed the customary amount under Dutch law. All other costs will be payable by the Buyer.

#### **Intellectual property**

##### Article 13.

1. All intellectual property rights which can be exercised in respect of the goods deriving from the Seller are vested in the Seller. All drawings, calculations, designs, samples and models and such like are, and remain, at all times the property of the Seller and have to be returned to the Seller on demand.

2. The Buyer guarantees that the information described in the previous paragraph shall not be copied or reproduced or made available for inspection or handed over to third parties whether or not for reuse without the written consent of the management of the Seller. The Seller is entitled to demand from the Buyer that it renders its cooperation to the signing of a confidentiality undertaking submitted by the Seller.

3. The Buyer is not permitted to remove or change any notices in respect of brands, trade names, patents or other rights of or from the goods delivered by the Seller, including notices in respect of the confidential character and secrecy of the delivered goods. The Buyer is obliged to impose this stipulation as a third-party clause on its buyers.

4. The Seller is not liable for breaches of intellectual or industrial property rights of third parties which are caused by changes made to the delivered goods without the consent of the management of the Seller.

5. The Buyer indemnifies the Seller against claims from third parties in respect of breaches of intellectual property rights.

#### **Statutory requirements**

##### Article 14.

1. The Seller does not guarantee, barring other written confirmation by the management of the Seller, that the design, the composition and the quality of the goods to be delivered on the basis of the order, satisfy in every respect the relevant applicable requirements laid down by the government in respect of such in the legislation and/or other regulations in the country of delivery or transit.

2. The provisions in paragraph 1 also apply to the normal use of the goods.

#### **Lapse of right**

##### Article 15.

Claims of the Buyer lapse if the Buyer has not brought an action in this matter before the competent court within a reasonable time, but in any case within 1 year after delivery.

#### **Termination**

##### Article 16.

1. Without prejudice to the provisions in article 11, the Seller can, without being liable for any compensation and

without prejudice to its rights, terminate the purchase agreement wholly or in part without further notice of default or judicial intervention being required through the sending of a written statement by registered mail to the Buyer if, on the side of the Buyer there, is:

- a. (a petition for) bankruptcy
- b. (an application for) a moratorium
- c. seizure
- d. placement under receivership or otherwise loss of the power of disposition of its assets or parts thereof,
- e. liquidation of the company or
- f. change in the (in) direct control in the company

of the Buyer.

2. Due to the (partial) termination, the claims of the Seller become immediately due and payable. The Buyer is liable for the loss suffered and to be suffered by the Seller including but not limited to costs incurred and loss of profits.

#### **Indemnity**

##### Article 17.

1. The Buyer is obliged to thoroughly research any existing third-party intellectual property rights and/or patents before placing an order with the Seller for the production or manufacture of a product or any other order in which the Buyer involves the Seller in order to provide it with such a product

2. If an order is placed for the production or manufacture of a product or any other order in which the Buyer involves the Seller in order to provide it with such a product, the Buyer shall indemnify and hold the Seller harmless against any third party claims relating to industrial property rights on materials, information, requests, sketches and any other items provided by the Seller and used in the fulfilment of the order.

3. If the Buyer provides the Seller with data media, electronic files, software etc., the Buyer shall guarantee that the data media, electronic files or software are free from viruses and defects.

4. In the event of an instruction for the production or manufacture of a product, or any other Instruction by which the Buyer engages the Seller to provide it with such a product, the Buyer will indemnify the Seller against third-party claims relating to patent rights in respect of the materials, data, requests, sketches and any other items used in the execution of the Instruction.

5. If the Seller is held liable or taken to court at any time by a third-party concerning infringement of the cases specified in clauses 2 and 4 of this article, the Buyer declares unambiguously herewith that it shall take over such a claim from the Seller directly and without reservation. This shall take the form of a notification sent directly to the third party that the Seller is the party against whom action is to be taken.

6. If the takeover referred to in clause 5 of this article has been declared inadmissible by law, the Buyer declares unambiguously herewith that it will immediately refund all costs and losses incurred by the Seller. This includes but is not limited to the full third-party demand as well as the Seller's legal and other costs.

#### **Compensation monitoring resale**

##### Article 18.

1. The Buyer indemnifies the Seller against claims by subsequent buyers due to defects which, due to national legislation in the country of those subsequent buyers, relate to the goods to be delivered and/or delivered and/or the auxiliary materials used in the performance of the agreement or due to the acts or omissions by the Seller, its personnel or others engaged by it in the performance of the agreement under whatever name and for whatever reason, respectively.

2. The Buyer acting contrary to article 9 forfeits in favour of the Seller an immediately due and payable compensation for every transaction falling under one of the terms and conditions of sale and delivery referred to there. The compensation will be at least 15% of the invoice value of the relevant instruction, subject to the right of the Seller to claim a higher percentage or amount.

3. The Seller is entitled to have an independent accountant audit the records of the Buyer for the account of the Buyer in order to monitor the observance of the provisions of article 9.

**Applicable law**

Article 19.

1. All agreements and quotations to which these terms and conditions apply wholly or in part, are governed by Dutch law. In the event of any disparity between the Dutch original and this translation, the Dutch text will prevail.

**Competent court**

Article 20.

1. In the event of a dispute between the parties, the district court in Maastricht has exclusive jurisdiction to hear the dispute.

**Amendment clause**

Article 21.

1. The Seller is entitled to amend these general terms and conditions unilaterally. The applicable version will always be the latest version declared applicable, or the version that was in force at the time when the Agreement with the Buyer was concluded.

Hato BV

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