

# General Conditions of Sale and Delivery of Aqua Aero Coatings BV

## 1. General

1.1 These General Conditions of Sale and Delivery shall be an integral part of the contract of purchase or order for work, between the seller, Aqua Aero Coatings BV hereinafter referred to as 'AA' and the buyer, hereinafter referred to as 'the Buyer'.

1.2 Conflicting or deviating conditions of purchase or other reservations made by the Buyer shall not be effective unless AA has expressly accepted them in writing (e.g. in an order confirmation or contract).

## 2. Offers, Orders

2.1. AA' offers shall not be binding with respect to price, quantity, delivery time and availability.

2.2. The Buyer's orders shall become binding on AA upon receipt by the Buyer of AA's written order confirmation (or invoice or delivery note).

## 3. Invoicing

3.1. The prices invoiced shall be AA' prices effective at the time of delivery.

3.2. Should AA, in the interval between conclusion of the contract and delivery, effect a general price increase, the Buyer shall have the right to withdraw from the contract within two weeks of having been informed thereof. The right of withdrawal shall not apply to long-term supply contracts (contracts for the performance of a continuing obligation).

3.3. Where payment has been agreed in a currency other than euros (EUR), AA reserves the right to reduce or increase the amount originally agreed so that, when translated into euros, the sum invoiced is equivalent to the euro value resulting from translation of the amount originally agreed at the time the contract was concluded.

3.4. The weight of the goods on which the invoiced amount is to be calculated shall be ascertained in the dispatch department of AA's plant from which the goods are supplied unless the Buyer wishes them to be weighted, at his expense, by independent authorities at the place of dispatch.

## 4. Payment

4.1. The handing in bills of exchange shall be subject to AA's prior consent and shall not constitute payment. The maturity of bills shall not exceed 15 days from the invoice date. Discount expenses, bill charges, bill tax and similar expenses incurred after the due date of the invoice shall be for The Buyer's account.

4.2. Payment shall not be deemed to have been effected until the amount has been cleared into one of AA' accounts.

4.3. AA reserves the right to use payments for the settlement of the invoices which have been outstanding longest, plus any interest on arrears and costs accrued thereon, in the following order: costs, interest, principal claim.

4.4. The Buyer shall not have the right to withhold payments. Counterclaims may only be offset if they are uncontested or have become res judicata.

## 5. Delivery

5.1. AA shall make every effort to effect delivery of goods or services as early as possible. There shall be no fixed periods for delivery.

5.2. Should, notwithstanding the preceding paragraph, a fixed period for delivery have been agreed, and should AA default with the supply, the Buyer shall grant AA a reasonable respite, normally of four (4) weeks.

5.3. Delivery shall be subject to punctual delivery of the appropriate goods by AA's own suppliers.

5.4. Unless otherwise agreed in writing, the terms of delivery shall be Ex Works Unloaded, as described by the Incoterms 2000. This means that the moment of delivery shall be the moment on which the goods or serviced equipment leave AA' plant, warehouse or other place, which ever AA appoints, and the risk of destruction, loss or damage shall pass to the Buyer upon this moment of delivery.

5.5. If the moment of delivery cannot be ascertained, the moment on which the goods are put at the Buyer's disposal will be the moment of delivery.

5.6. Equipment or parts of equipment shall be delivered to Aqua Aero workshop in re-usable quality packing, to the sole descretion of Aqua Aero. In case Aqua Aero must repack the parts or equipment, the cost of packing including labor hours will be charged to the buyer. Buyer will unconditionally accept these costs.

## 6. Force Majeure, Impediments to Performance

Force majeure of any kind, unforeseeable production, traffic or shipping disturbances, fire, floods, unforeseeable shortages of labour, utilities or raw materials and supplies, strikes, lockouts, acts of government, and any other hindrances beyond the control of the party obliged to perform which diminish, delay or prevent production, shipment, acceptance or

use of the goods, or make it an unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent that the hindrance prevails. Should AA' suppliers fail to supply him in whole or in part, AA shall not be under obligation to purchase from other sources. In such cases, AA shall have the right to distribute the available quantities among his customers while at the same time taking into account his captive requirements.

## **7. Shipment by AA**

7.1 All transportation, insurance or other costs, regarding shipment of the goods or equipment shall be borne by the Buyer.

7.2 If AA has decided, on the Buyer's request, to arrange shipment, AA reserves the right to choose the route and the mode of transport. Any additional costs resulting from special shipping requests made by the Buyer shall be borne by the Buyer. Unless prepaid freight has been agreed, the Buyer shall also bear any increases in freight rates which become effective after the contract has been concluded, any additional costs resulting from re-routing a consignment, storage expenses, etc. This decision of AA to arrange shipment will not affect the terms of delivery as described in article 5.4.

## **8. Retention of Title**

8.1. Title to the goods or services shall not pass to the Buyer until he has fulfilled all liabilities arising from his business connection with AA, which shall include settling accessory claims and claims for damages and honouring cheques and bills. Title to the goods shall also remain with AA if AA's claims have been included in a current account and the balance of this account has been struck and acknowledged.

8.2. If the Buyer defaults in his obligations to AA, AA shall have the right, without granting a respite and without cancelling the contract, to demand the return of the goods to which he retains title. Acceptance of the returned goods shall not constitute cancellation of the contract unless AA has expressly declared this in writing. If AA cancels the contract, he shall have the right to demand compensation for having.

8.3. The Buyer shall be under obligation to provide, on behalf of AA, adequate storage of the goods to which AA retains title and to insure them at his expense against loss and damage up to an extent which may reasonably be expected of a prudent businessman.

8.4. By accepting these Conditions the Buyer assigns in advance to AA any claims which

may accrue to him under the insurance policies.

8.5. The Buyer shall not have the right to pledge, chattel mortgage or otherwise encumber the goods to which AA retains title. When reselling the goods, the Buyer shall make the passing of the title subject to full payment of the goods by his customers.

8.6. By accepting these Conditions, the Buyer assigns in advance to AA any claims which may arise from a resale of the goods to which AA retains title, together with any incidental rights and security interests including bills of exchange and cheques, so as to provide AA with security for all claims he has on the Buyer as result of the business connection. If goods to which AA retains title are sold together with other goods at a single price, the assignment shall be limited to the portion of the invoice value which covers the goods to which AA retains title.

8.7. If the Buyer uses goods to which AA retains title for processing a third party's product on a contract basis, in accepting these Conditions he assigns in advance his contractual claim on the third party to AA in order to provide him with security for his claim. As long as the Buyer duly meets his liabilities to AA, he may collect claims from a resale or from contract processing himself. He shall not have the right to assign or pledge such claims as security.

8.8. If AA believes his claims to be at risk, the Buyer shall, at AA' request, inform his customers of the assignment of his claims to AA and supply AA with all necessary information and documents. Any acts of third parties aimed at seizing goods to which AA retains title or at appropriating claims assigned to him shall be brought to AA' attention by the Buyer immediately.

## **9. Damages**

9.1. No claims for compensation may be lodged by the Buyer - including those of a non-contractual nature - for any minor negligent breach of duty by AA, his executive staff or other agents, unless such breach concerns a duty that is crucial for the object of the contract.

9.2. AA shall not be liable for indirect damage including but not limited to (a) physical damage or abrasion to the Heat Exchanging System caused by animals, flying or falling objects, or natural disasters including but not limited to earthquakes, hailstorms, windstorms, hurricanes, and tornadoes, (b) vandalism, (c) structural movements, (d) defects in the construction of the heat exchanging machine (e) direct contact with hydro-carbons, or any

other chemical (solid, liquid, gas, or any other form) that is not listed or that has not been otherwise approved by AA in writing, or (f) not regular cleaning by a non-authorized party, without any prior written consent by the AA Applicator or (h) damages have occurred during transport to the site or installation (i) damage following serious negligence of the owner (j) all follow up damages to company processes or fines or claims of third parties, (k) damages following poor maintenance or non compliance to maintenance guide lines (l) damages to coils or parts which are not clearly defined under this warranty (m) any other damages to company processes, employees or assets.

9.3 AA shall not be liable for damage which could not be foreseen during or prior to application or at the time of conclusion of the contract.

9.4. None of the above shall affect any statutory liability rights.

9.5. No claims for compensation for damage to the treated article caused by AA, his employees or other agents, may be lodged by the buyer.

## **10 Liability**

10.1 If Client suffers any damage due to a defect in the goods or supplied by AA and/or services provided by AA, AA shall have the choice either to replace the goods concerned or to resolve the shortcoming in its service, or to issue a credit note for the goods supplied and/or services provided up to the amount of the invoice value. In the event of partial deliveries, the liability of AA shall be limited to the invoice value of the partial delivery concerned. Other damage, such as consequential damage, immaterial damage, trading losses or environmental damage shall never qualify for compensation, except if the liability and the damage are covered by AA' insurance company. In such case, AA shall only be obliged to compensate the damage up to the level of the payment made by his insurance company.

10.2 Client shall indemnify AA against all claims of whatever nature which third parties may have on AA with respect to any damage he will suffer or has suffered, which go further than the liability which Client has towards AA.

10.3 With respect to the limitation of the liability in previous paragraphs AA shall only be liable for damage caused by work which has been performed by AA himself or instructed by him.

## **11. Notification of Defects**

11.1. Notification of defects shall only be recognized if filed in writing within two (2) weeks of receipt of the goods or services equipment, together with supporting evidence, at least detailed digital pictures or video's, samples and packing slips, stating the invoice number and date, and the markings on the packaging.

11.2. Hidden defects must be notified to AA immediately upon discovery, but not later than five (5) months after receipt of the goods. This shall not affect the statutory periods of limitation. The burden of proving that a defect is a hidden defect shall rest with the Buyer.

11.3. Goods forming the subject of a complaint shall not be returned to AA except with AA's express consent.

## **12. Warranty**

If The Buyer has notified AA of a defect as stipulated above and his complaint proves justified, AA shall have the right to supply him with a replacement or repair. If AA waives his right to supply a replacement or repair, or if he does not supply a replacement or repair within a reasonable period, or if the goods or services supplied in replacement or repair also prove defective, the Buyer shall have the option of requesting a reduction in the purchase price or cancellation of the purchase.

## **13. Technical Advice, Use and Processing**

Technical advice provided by AA verbally, in writing or by way of trials is given in good faith but without warranty, and this shall also apply where proprietary rights of third parties are involved. AA's technical advice shall not release The Buyer from the obligation to test the products supplied by AA as to their suitability for the intended processes and uses. The application, use and processing of the products are beyond AA's control and therefore entirely The Buyer's responsibility.

## **14. Trademarks**

The Buyer acknowledges the fact that AA is the holder of the trademark 'Aqua Aero', the Buyer shall not use the trademark 'Aqua Aero' for any other reason than to identify the specific products which are delivered by AA, unless AA has given a written approval.

## **15. Applicable Law, Interpretation of Trade Terms, Choice of Law and Jurisdiction**

15.1. Dutch law shall apply. No uniform laws governing the international sale of movable property or the conclusion of international sales contracts for movable property, both

dated July 17, 1973, or the UN agreement on the sale of goods dated April 11, 1980, shall apply. Application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods - both dated July 17, 1973 - shall be excluded.

15.2. Customary trade terms shall be interpreted in accordance with the Incoterms (ICC Paris) effective at the time.

15.3. Even if it has been agreed that AA pays the customs and import duties in the country of destination, any increases in such duties which become effective between the date of the order acknowledgment and delivery of the goods shall be borne by the Buyer. All other charges, taxes and costs connected with the purchase contract shall also be borne by The Buyer.

15.4. Place of performance for delivery shall be AA's plant, warehouse or other place, which ever AA appoints. Place of performance for payment shall be AA's account in Utrecht.

15.5. Place of jurisdiction for both parties shall be Utrecht, the Netherlands.

#### **16. Invalidity of Individual Clauses**

The fact that any clause in these General Conditions of Sale and Delivery is or should become invalid shall not affect the validity of the remaining clauses or remaining parts of the clause concerned. The parties shall replace any invalid arrangement by an effective one which conforms as far as possible to the economic purpose of the invalid clause.

March 2014, Utrecht, the Netherlands

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