



## GENERAL TERMS AND CONDITIONS OF SALE (trading equipment and material)

(Version 01/07/2022)

### Definitions:

In these General Terms and Conditions of Sale of Aertssen Trading SA, hereinafter referred to as "the General Terms of Sale (trading equipment and material)", the terms and expressions used below shall have the following meanings:

**Agreement:** the document and/or any other means of communication used by the Buyer (e-mail, mobile applications, instant messaging, etc.) setting out the nature of the Goods, the price, and details (transport, insurance, and related formalities) of the sale of the Goods.

**Buyer:** the customer, the Party purchasing the Goods.

**Goods:** technical, mechanical and/or other types of Goods, equipment, material, spare parts, components and/or rolling stock, such as cranes, accessories, lifting gear, tyres, tools, without this list being exhaustive.

**Order Confirmation:** the document and/or any other means of communication used by the Buyer (e-mail, mobile applications, instant messaging, etc.) issued by the Buyer, confirming the acceptance of the Quotation issued by the Seller.

**Party:** the Seller or the Buyer.

**Parties:** the Seller and the Buyer jointly.

**Price:** the Price for the Goods and/or services, as agreed in the Quotation/Confirmation, Agreement and/or pro forma invoice.

**Purchase Request (PR):** the document and/or any other means of communication used by the Buyer (e-mail, mobile applications, instant messaging, etc.), indicating which Goods it wishes to purchase from the Seller.

**Quotation:** the document and/or the means of communication used by the Buyer (e-mail, mobile applications, instant messaging, etc.), issued by the Seller, containing the specific terms of the purchase of the Goods.

**Seller:** Aertssen Trading NV.

### Article 1. Applicability of General Terms of Sale (trading equipment and material)

#### 1.1 Applicability

These General Terms of Sale (trading equipment and material) shall apply to all orders, PR's, orders and agreements confirmed by the Seller and/or any other means of communication used by the Buyer (e-mail, mobile applications, instant messaging, etc.), concerning the sale and delivery of the Goods for the benefit of the Buyer or any affiliated Party named in the order and shall always form an integral part of the Agreement.

#### 1.2 Defences

The failure of the Seller to exercise any right or defence granted to it in these General Terms of Sale (trading equipment and material) may never be interpreted as a waiver of such right or defence.

#### 1.3 Deviating agreements

These General Terms of Sale (trading equipment and material) may only be deviated from if and as far as this has been expressly agreed in writing between the Parties.

#### 1.4 Other terms and conditions

These General Terms of Sale (trading equipment and material) are deemed to have been accepted by the Buyer in their entirety. Acceptance of these General Terms of Sale (trading equipment and material) also implies that the Buyer completely waives the application of his own general terms and conditions. If the Seller should accept any

general (purchase) conditions of the Buyer, which is only possible if this acceptance is explicit and not via a pre-printed clause on any document or email (footer), or should enter into a specific agreement with the Buyer, these General Terms for Sale (trading equipment and material) shall supplement the Buyer's general conditions or the specific agreement where these general conditions of sale (trading equipment and material) provide for provisions that are less specific or not included in the Buyer's general conditions or the specific agreement, even if they would explicitly state that these General Terms of Sale (trading equipment and material) shall not apply.

An Order Confirmation by the Buyer shall in no case imply acceptance of any general terms and conditions of the Buyer.

### Article 2. Conclusion of the Agreement

#### 2.1 Agreement

The Agreement is concluded after Buyer's acceptance of the Seller's offer.

If the Order Confirmation deviates from the original Quotation, the Seller shall only be bound after it has expressly agreed to the deviation in writing.

A combined Quotation does not oblige the Seller to deliver part of the Goods offered at a corresponding part of the price.

#### 2.2 Reservation and withdrawal

Unless the Parties agree otherwise in writing, it is not possible to reserve a particular Good.

The Seller shall be entitled to withdraw its offer within five (5) days of the conclusion of the Agreement.

The Buyer shall have no right of withdrawal.

#### 2.3 Amendments to the Agreement

Amendments to the Agreement must always be made in writing. Oral agreements and (oral/telephonic) agreements are only binding if they have been confirmed in writing.

Any amendment to the Agreement shall only be valid if expressly confirmed in writing by both the Seller and the Buyer.

Modifications to the Quotation, Order Confirmation and/or Agreement may lead to the expiry of the predefined delivery periods.

### Article 3. Price

**3.1** The prices stated in the Quotation or price list are in Euro, unless otherwise agreed and exclusive of:

- VAT.
- transport costs, unless an Incoterm has been agreed which commits the Seller to bear the transport costs.
- insurance costs for the cargo, unless an Incoterm has been agreed which commits the Seller to bear the insurance costs.
- inspection costs.
- costs of obtaining export certificates, unless an Incoterm has been agreed which commits the Seller to bearing the costs of export certificates.
- administration costs.
- customs costs, unless an Incoterm has been agreed which commits the Seller to bear the customs costs.
- invoices from hired third parties.

A combined Quotation does not oblige the Seller to deliver a part of the offered Goods at a corresponding part of the price.



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If the Quotation is based on information provided by the Buyer and this information turns out to be incorrect/incomplete and/or this information changes, the Seller shall be entitled to adjust the Price quoted and/or the delivery period.

### **3.2 Price changes**

If between the date of concluding the Agreement and its execution, (cost) price-increasing circumstances occur for the Seller because of legislation and regulations, exchange rate and currency fluctuations, price, or rate changes of the third parties and/or suppliers engaged by the Seller or changes in the prices of the required materials, raw materials, parts, etc., the Seller may increase the agreed prices accordingly and charge them to the Buyer.

## **Article 4. Delivery and delivery times**

### **4.1 Incoterm 2020**

Prices are based on delivery EXW, FOT, FAS, FOB, CFR, or CIF, unless otherwise agreed. The selected Incoterms® are strictly applicable and regulate

- (1) the place of delivery,
- (2) the obligations of both Parties,
- (3) which Party will arrange for insurance, licences, authorisations, and other formalities relating to the carriage of the Goods,
- (4) which of the Parties will arrange for carriage up to and including the point of destination, and
- (5) at which point the costs and risks pass from the Seller to the Buyer.

The applicable Incoterm followed by the place of delivery shall be explicitly included in the Quotation/ Agreement/ pro forma invoice. If arrangements are made that contradict the agreed Incoterm, the Incoterm shall take precedence over such deviating arrangements.

If a delivery period is agreed, it shall be stated on Quotation/ Agreement/ pro forma invoice. Unless a delivery Ex Works has been agreed, delivery times are approximate and always indicative for the Seller. If the Seller exceeds the indicated delivery time, the Seller and the Buyer shall agree on a reasonable additional period, but without any right to compensation or the possibility for the Buyer to rescind the Agreement.

### **4.2 Delivery in parts**

The Seller shall be entitled to deliver the purchased Goods in several parts. Partial delivery shall not give rise to the payment of any compensation or to the rescission of the Agreement.

### **4.3 Delay in delivery of the Goods**

If Seller has any reason to believe that it will not be possible to perform, or timely perform, any or all its contractual obligations, it shall immediately inform Buyer, stating the reasons and the probable duration of the delay.

### **4.4 Suspension of delivery**

The Seller may suspend delivery in the event of a force majeure situation, as stipulated in Article 13(5) of these General Terms of Sale (trading equipment and material).

### **4.5 Delay in collection of the Goods**

If an Incoterm has been agreed which obliges Buyer to collect the Goods, Buyer shall collect the Goods within thirty (30) days of payment. If Buyer fails to collect the Goods in time, Seller may store the Goods at Buyer's expense, risk, and expense.

The Seller shall charge the Buyer 50 euro per day of storage, excluding VAT. These costs must first be paid before the Buyer can collect the Goods.

Unless explicitly requested by Buyer in writing, the Goods shall not be insured during storage. If the Buyer so wishes, the Seller may, upon explicit written request, take out insurance at the Buyer's expense.

However, if the insurer refuses - wholly or partially - to provide cover or imposes certain (aggravated) conditions, the Seller shall never be liable for such refusal.

### **4.6 Delays caused by other parties**

The Seller shall in any case not be liable for delays incurred because of the default of manufacturers and/or suppliers of the Seller, the Buyer and/or any other third party.

### **4.7 Transfer of risk**

The risk shall pass to the Buyer as described under the agreed Incoterm.

### **4.8 Packaging**

Seller shall, where applicable, properly pack and label the Goods in accordance with all applicable regulations.

## **Article 5. The Goods**

Models, colour, capacity, characteristics, measurements, weights, hours of use, availability and other descriptions in brochures, promotional material and/or on the Seller's website are as accurate as possible but are indicative only. The Buyer may not derive any rights from these.

## **Article 6. Inspections**

### **6.1 "As is/where is"**

All Goods are sold "as is/where is", unless otherwise expressly agreed. As is/where is" means that the Goods are accepted by the Buyer in the condition and at the location in which they are at the time of sale without any reservation.

This may therefore mean that the Goods may have defects, irregularities and/or faults and/or may not be fit for a particular purpose or lack merchantability.

The Buyer acknowledges that it has not been influenced by any statements or representations made by the Seller as to the quality of the Goods and that no such statements or representations have been made.

The Buyer acknowledges that Seller has offered the opportunity to fully examine the Goods prior to purchase and that no guarantees of any kind are given unless they are expressly prior stipulated in writing.

The Buyer acknowledges too that Seller makes no warranty that the Goods will comply with the regulations or requirements of any jurisdiction.

### **6.2 Indemnification for hidden defects**

The Buyer expressly indemnifies the Seller against inherent vice/hidden defects on the condition that the Seller was not aware of these defects.

### **6.3 Information on the Goods**

The Seller shall, if requested by the Buyer, provide sufficient and accurate information about its Goods to the Buyer in the appropriate European language as far as the Seller is in possession of such information.

### **6.4 Inspection report**

If the Buyer so requests, the Seller shall provide a copy of previous inspection results or inspection reports and only if available.

### **6.5 Inspection of Goods before shipment/delivery**

To ascertain the condition of the Goods at the time of sale, Buyer or its representative shall be entitled to inspect the Goods prior to shipment/delivery to ascertain whether the Goods fully comply with what has been agreed between the Parties.

Buyer shall timely inform Seller about such inspection and/or testing to allow Seller and/or its representatives to be present at such inspection and/or testing.



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The Seller shall be obliged in such case to allow the employees and representatives of the Buyer and those conducting the inspection access to the premises and areas where these Goods are located, and if necessary to make available a suitable room for the inspection, and to provide the necessary cooperation.

#### **6.6 Costs**

If and as far as the Parties have not expressly agreed otherwise in writing, the costs of inspections, tests or any retests shall be borne by the Buyer.

#### **6.7 Inspection after shipment/delivery**

If the Buyer wishes to inspect the Goods, it shall do so prior to shipment/delivery. The Seller shall not accept any complaints after the Goods have been shipped/delivered.

The Buyer acknowledges that the Seller has offered the opportunity to examine the Goods completely or to have them examined at its expense.

#### **6.8 Notification of non - conformity Goods**

If Buyer discovers during the inspection that the Goods (or any part thereof) do not comply with the description or indications in the Agreement, or do not comply with the Agreement in any other way, Buyer shall be obligated to inform Seller of this in writing and with substantiation immediately or at the latest within two (2) working days after the inspection.

If such complaints are not made in time and/or are not substantiated, the Goods shall be deemed to have been received in good condition and to comply fully with the Agreement. In the absence of a timely formulated complaint, Buyer shall have no claim to compensation.

The Buyer may not rely on the fact that the Goods do not comply with the Agreement if, at the time the Agreement was concluded, it was aware or could have been aware of this.

Complaints about Goods which have changed in nature and/or composition after receipt by the Buyer or which have been processed in whole or in part shall not be admissible.

If the Goods do not conform to the Agreement and/or show defects which the Buyer could not have expected, the Seller is obliged to take all necessary measures to ensure that the Goods will conform to the descriptions, indications and specifications as agreed and expected.

The Buyer shall enable the Seller to investigate the complaint and shall provide all relevant information.

Complaints relating to transport damage shall not be admissible unless Incoterms® 2020 DAT, DAP and DDP have been agreed. The admissibility of the complaint does not imply the Seller's liability for transport damage.

Complaints never suspend the Buyer's payment obligation.

### **Article 7. Terms of payment**

#### **7.1 Payment terms**

The Seller is entitled to demand (full) advance payment and/or other security for payment (bank guarantee/Letter of credit) before making the Goods available or sending them.

The Seller shall provide the Buyer with a proforma containing the details of the purchase of the Goods and the terms and conditions.

The proforma shall state the amount of the advance payment. This advance payment shall be due within seven (7) days of receipt of the proforma, unless the Parties have agreed in writing on a different payment period.

If an advance payment and a residual payment have been agreed, the residual payment shall be due within fourteen (14) days of receipt of the invoice, unless the Parties have agreed to another term of payment in writing.

#### **7.2 Acceptance of the Invoice**

If the Buyer does not make any comments, complaints, or protests within five (5) calendar days after receipt of the invoice, the invoice shall be deemed to have been irrevocably and unconditionally accepted by the Buyer. Complaints made five (5) calendar days after receipt of the invoice or later by the Buyer are inadmissible. If a part of the invoice is protested, the protest must clearly state which part of the invoice is protested and the amount of the protest. Although the invoice remains due and payable in its entirety irrespective of the protest, in the event of a partial protest, the Buyer undertakes to pay immediately at least the amount not protested or the amount corresponding to the part not protested in accordance with these General Terms of Sale (trading equipment and material), without this payment in any way prejudicing the due and payable nature of the other parts and amounts and the applicability of the General Terms of Sale (trading equipment and material) to them.

#### **7.3 Bank fees**

All payment costs, the Buyer shall bear bank charges or commissions.

#### **7.4 Late payment**

In the absence of payment on the due date of the invoice:

- all amounts owed to the Seller, including those not yet due, shall be immediately due and payable by operation of law and without any notice of default.
- any delay in payment will give rise to the application, by operation of law and without notice of default, of interest on arrears at a rate of 1% per month from the due date, capitalised monthly.
- any delay in payment will also give rise, by operation of law and without notice of default, to liquidated damages of 10% on the outstanding balance, with a minimum of EUR 1,000; The granting of this reasonable compensation of 10% does not exclude the granting of any judicial compensation or any other proven recovery costs.
- the Seller shall no longer be obliged to perform or continue the performance and may suspend all services immediately and without prior notice, without any compensation for the Buyer.
- all permissible payment terms expire, and the Seller may decide to proceed with the Agreement only under the strict condition that the price owed, including possible costs, is paid in full before proceeding with the Agreement.

The Seller shall also be entitled to suspend the Agreement if, even before the Buyer is in default of payment, it has valid reasons to doubt the Buyer's creditworthiness.

#### **7.5 Debt comparison**

The Buyer expressly waives its right of set-off against the Seller, with the Parties expressly deviating from (ancient) Article 1291 ff. of the (old) Civil Code. Therefore, the Buyer shall never be permitted to set off the Seller's invoices against claims it may have against the Seller, even if these are related to the Agreement and even if they are certain, definite, and due.

#### **7.6 Discount in cash**

Except in the case of express prior written confirmation by the Seller, no discount shall ever be payable by the Buyer in cash.

### **Article 8. Embargo**

The Seller is bound by international trade laws and regulations and shall strictly observe them. These regulations include sanctions that, for example, prohibit certain transactions, activities, or payments.

These sanctions may be directed against governments of third countries and against non-state entities, companies and/or persons (such as terrorist organisations and terrorists). They may include an arms embargo, another specific or general trade restriction (export or



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import ban), a financial restriction such as an asset freeze, an entry restriction (visa or travel ban) or any other measure as may be appropriate.

Seller shall not ship Goods or otherwise engage in activities for, on behalf of or in favour of any person, entity, territory, country, or organisation subject to such sanctions and subject to the French, European or US authorities or other applicable sanctions regimes, in particular activities directly or indirectly relating to: Crimea/Sevastopol/Donetsk and Lugansk, Cuba, Iran, Myanmar/Burma, North Korea, Sudan, Syria, and Venezuela. This list is not exhaustive and may vary from time to time.

If the Buyer misinforms the Seller as to the use and/or (final) destination of the Goods or the Consignee of the Goods, either intentionally or accidentally, and the Goods are delivered to a sanctioned country and/or customer, either directly or indirectly, the Buyer shall fully indemnify and hold the Seller harmless from and against any penalties and/or costs and pay all legal costs (including legal fees) arising from the misinformation.

In such a case, the Seller shall be entitled to dissolve the Agreement immediately without any right to compensation for the Buyer.

#### **Article 9. Retention of ownership**

All Goods delivered/delivered under the Agreement shall remain the property of the Seller until the Buyer has fulfilled all its payment obligations.

These payment obligations consist of paying the purchase price of the Goods, plus claims for work conducted in connection with the delivery and claims for an attributable shortcoming on the part of the Buyer, such as claims for compensation, extrajudicial collection costs, interest, and any penalties.

If the Goods are subject to retention of ownership, the Buyer shall not be entitled to pledge them in any way, to assign the claim to them or to bring them under the actual control of a third party.

The Buyer shall immediately inform the Seller in writing if any third party make claims to ownership of the Goods or claim other rights in rem in respect of the Goods.

As long as the Buyer has the Goods in its possession, it shall store them carefully and as identifiable property of the Seller.

If the Buyer acts contrary to this Article or the Seller invokes the reservation of ownership title, the Seller and its employees may enter the Buyer's premises and take back the Goods.

In such a case, without prejudice to Seller's right to compensation, Seller shall be entitled to rescind the Agreement without further notice of default by means of a written statement.

#### **Article 10. Suspension of the Agreement**

Unless otherwise agreed, if the Agreement is suspended at the Buyer's request, all services already rendered and costs incurred by the Seller as well as the costs resulting from the suspension shall always be paid for in full by the Seller.

If costs arise from the resumption of services, these shall also be borne by the Buyer.

If the performance of the Agreement cannot be resumed after the agreed suspension, the Seller may rescind the Agreement by a written statement to the Buyer. In such a case, the Buyer shall be liable for all damage suffered by the Seller because of this failure attributable to the Buyer.

The suspension must be in writing. The date of receipt of this letter by the Buyer shall be deemed the date of suspension.

#### **Article 11. Dissolution of the Agreement**

##### **11.1 Notification requirement**

The Party concerned shall immediately notify the other Party in writing of any fact or circumstance as described below that could give the other Party the right to terminate the Agreement.

##### **11.2 Dissolution by both Parties**

###### **Concurrence and incapacity**

In the event of death, application for or declaration of bankruptcy, appointment of a provisional administrator or judicial trustee, application for suspension of payments or judicial restructuring, application for a judicial reorganisation (a WCO ruling, Wet Continuïteit Ondernemingen), declaration of incapacity, any similar condition or proceeding, liquidation, precautionary or executive attachment, or any other form of concurrence of creditors affecting one of the Parties or any other indication of apparent or impending insolvency of one of the Parties, the other Party shall be entitled to terminate the Agreement. Such termination shall be immediately notified in writing to the other Party or its legal successors.

##### **11.3 Dissolution by the Seller**

Without prejudice to the Seller's rights, the Seller shall be entitled, among others, to dissolve the Agreement in whole or in part without notice of default or judicial intervention by means of a registered written statement, without being obliged to pay compensation for any damage, if:

- the Buyer fails to comply with the information obligations on embargo as provided for in Article 8 of these General Terms of Sale (trading equipment and material).
- the Buyer fails to comply with the obligations relating to the sale as provided for in Article 9 of these General Terms of Sale (trading equipment and material).
- there are circumstances as provided for in Article 10 of these General Terms of Sale (trading equipment and material).
- permits of the Buyer which are necessary for the performance of the Agreement shall be withdrawn.
- the Buyer commits fraud, wilful misconduct or deceit or suffers a criminal conviction.
- the Buyer is in default of its payment obligations and the Buyer has been given notice of default by the Seller for this default, which the Buyer has not fully remedied within fourteen (14) calendar days after the notice of default has been sent.

If the Agreement is rescinded by the Seller due to the circumstances mentioned in Article 11(3), the Buyer shall be obliged to reimburse the Seller for all costs incurred as well as 10% of the Purchase Price.

##### **11.4 Dissolution by the Buyer - exceeding delivery term**

The Buyer shall be entitled to rescind the Agreement if the Seller has an obligation to deliver pursuant to the Agreement and fails to deliver the Goods within forty-five (45) working days after the agreed delivery time, after having been notified thereof by registered letter, and this insofar as it does not concern a situation as stated in Article 11(2) of these General Terms of Sale (trading equipment and material) or a force majeure event.

In such a case, the Seller shall be obliged to immediately refund to the Buyer all (advance) payments already received by it under the relevant Agreement.

The Seller shall not be liable for any compensation.

##### **11.5 Netting**

In accordance with the provisions of art. 14 and 15 of the Financial Collateral Act of 15 December 2004 (WFZ), the Parties declare that they agree with the principle of 'netting' in the event of insolvency proceedings, attachment, or any other form of concurrence. As the occasion arises, the Parties shall automatically set off and settle all present and future debts in respect of each other.

This set-off will in any case be opposable to the trustee in bankruptcy and the other concurrent creditors, who will therefore not be able to oppose the set-off implemented by the Parties.



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## **Article 12. Cancellation**

### **12.1 By Seller**

The Seller may cancel the Agreement even if the Buyer has already paid the purchase price. In such a case the Seller shall return the purchase price to the Buyer as soon as possible. The Buyer shall not be entitled to any compensation.

The Seller may no longer cancel the Agreement if the cancellation takes place less than (thirty) 30 days before delivery.

### **12.2 By Buyer**

The Buyer may cancel the Agreement up to five (5) days after the Agreement has been concluded.

Unless otherwise agreed, in the event of cancellation all services already rendered and costs already incurred by the Seller as well as a cancellation fee of 10% with a minimum of 1,000 euro shall always be paid in full by the Buyer, without prejudice to the Seller's right to claim the damage suffered if this is higher.

The Buyer shall also indemnify the Seller against third-party claims arising from the cancellation.

The Seller shall be entitled to set off any compensation due against all amounts paid by the Buyer and any counterclaims of the Buyer.

The cancellation must be made in writing. The date of receipt of this letter by the other Party shall be considered the date of cancellation.

## **Article 13. Liability of the Seller**

The Seller shall only be liable for damage which is the direct and exclusive consequence of a shortcoming attributable only to the Seller. The Buyer shall give the Seller notice of default in writing, granting the Seller a reasonable period of at least thirty (30) days after the notice of default to fulfil its obligations.

If the Seller does not manage to remedy the breach in this time period, the Buyer shall be entitled to rescind the Agreement.

### **13.1 Exclusion of liability**

Apart from the explicitly agreed warranties, the Seller does not accept any liability for the condition of the Goods.

Among other things, Seller shall not be liable if the damage is caused by: (this list is not exhaustive)

- defects caused directly or indirectly by the act of the Customer or of a third party, whether caused by error or negligence.
- injudicious use or use contrary to the purpose of the Goods or the instructions, advice, operating instructions, manuals, etc. provided by or on behalf of Seller.
- unprofessional storage or maintenance of the Goods.
- errors or omissions in the information provided to the Seller by or on behalf of the Buyer.
- the inaccessibility of the place of delivery to the Buyer.
- directions or instructions from or on behalf of the Seller.
- the failure to obtain (in full) information from the Customer that is necessary for the performance of the Agreement (including brand, type, serial number, ... or any other technical information concerning the device)
- a consequence of the Buyer's choice which deviates from what the Seller advised or is customary.
- normal wear or corrosion.
- the choice which the Buyer has made regarding the Goods to be delivered.
- (repair) work or processing on the Goods conducted at the Buyer's request.
- because of the Customer's failure to request and verify all necessary and useful information, as well as for any damage because of incorrect and/or incomplete information provided by the Customer to the Seller and/or its agents or subcontractors.

The Seller shall never be liable for any costs arising from (the nature of) the Goods, additional taxes, fines and surcharges due to customs, errors or misjudgements in customs nomenclature or for costs incurred in preserving the Goods (periods of stay in port).

In the cases mentioned above, Buyer shall be fully liable for all damages resulting therefrom and shall expressly indemnify Seller against all third-party claims for compensation of such damages.

The limitations of liability included in this Article shall not apply if the damage is due to intent and/or gross negligence on the part of the Seller or if mandatory statutory provisions dictate otherwise. Only in these cases will the Seller indemnify the Buyer against any third-party claims against the Buyer.

### **13.2 Notification of damage**

No later than within two (2) working days after the Buyer has become aware or could have become aware of the damage he has suffered, the Buyer must claim against the Seller in accordance with the provisions of Article 6(7) of these General Terms of Sale (trading equipment and material).

The Buyer shall take all necessary measures to prevent or limit the damage.

### **13.3 Limited liability**

Should the Seller's liability be established by all legal means, its liability shall be limited to material and direct damage. Indirect damages, including economic loss, loss of profit, consequential damages or immaterial damages are always excluded from compensation.

The Seller's liability shall always be limited to a maximum of 5% of the purchase price of the Goods with an absolute maximum of EUR 10,000 per claim.

### **13.4 Prescription**

Without prejudice to the mandatory rules of prescription, any claim against the Seller shall become statute-barred three (3) months after the damage and/or shortages are ascertained, or in the event of a dispute six (6) months after the date of the invoice.

### **13.5 Force majeure**

The Seller shall under no circumstances be liable for any failure in the performance of its obligations if such failure is the result of force majeure or unforeseen circumstances.

Force majeure" shall mean the occurrence of an event or circumstance, which prevents a Party from fulfilling one or more of its contractual obligations, if and to the extent that the Party affected by the impediment proves:

- a. that such prevention is beyond its reasonable control; and
- b. that this could not have been foreseen at the time the Agreement was concluded; and
- c. that the consequences of the prevention could not have been avoided by the affected Party.

#### **Are never considered as force majeure:**

- the bankruptcy of the Buyer, or of its Buyer
- a strike or lock-out of the Buyer's staff or its Buyer.

**13.4.1** Where the affected Party fails to perform one or more of its contractual obligations due to the failure of a third Party which it has engaged to perform the contract, in whole or in part, it may only invoke force majeure to the extent that the requirements of Article 13(5) a-c are met for both the affected Party and the third Party.

**13.4.2** In the absence of evidence to the contrary, the events listed below shall be deemed to meet all the conditions of Article 13(5) and





the affected Party need only demonstrate that all the conditions of Article 13(5) are met to constitute force majeure:

- War, hostilities, invasion, act of foreign enemies, major military operations and mobilisation.
- civil war, riots, rebellion and revolution, military or usurping power, rebellion, act of terror, sabotage, or piracy.
- Currency and trade restriction, embargo, sanction.
- a lawful or unlawful act of authority, compliance with a law or a government decision, expropriation, seizure of works, requisition, nationalisation.
- closures or delays at border posts, delays at ports or tolls, etc.
- (pan)epidemic, natural disaster, or extreme natural phenomena.
- explosion, fire, destruction of equipment, long term interruption of transport, telecommunications, information systems or energy.
- calamities.

If it is proven that the damage could have been caused by one or more of the circumstances mentioned above, it shall be presumed to have been so caused.

These circumstances and causes are cited solely by way of example without any restrictive character.

**13.5.3** The affected Party shall notify the other Party without delay of the occurrence.

**13.5.4** The Party that justifiably claims force majeure in accordance with the above shall be relieved of its obligation to perform its contractual obligations and of any liability for damages or contractual compensation for breach of contract from the time the impediment causes its inability to perform, provided that the notification is given without undue delay. If notice is not given promptly, the exemption from performance shall take effect only from the time the notice reaches the other Party.

The other Party may suspend the performance of its obligations, if any, from the date on which the notification reaches it.

**13.5.5** If the effects of the invoked force majeure are temporary, the consequences set out in clause 13.5 above shall apply only for the period during which the invoked impediment prevents the affected Party from fulfilling its contractual obligations. The affected Party must inform the other Party as soon as the impediment no longer prevents the fulfilment of its contractual obligations. The temporary impediment shall not constitute a reason for non-performance of the Agreement but shall only suspend it.

The affected Party must notify the other Party without delay once the force majeure no longer prevents the performance of its contract.

The affected Party is obliged to take all reasonable measures to limit the impact of the event invoked in the performance of the Agreement.

**13.5.6** If the duration of the impediment invoked results in the Parties being significantly deprived of what they could expect based on the Agreement, each Party shall have the right to terminate the Agreement by giving notice to the other Party within a reasonable period. Unless otherwise agreed, the Parties expressly agree that the Agreement may be terminated by either Party if the duration of the impediment exceeds sixty (60) days.

**13.5.7** Any costs arising from such a reported force majeure situation shall be borne solely by the affected Party.

#### **Article 14. Obligation to provide information and confidentiality**

##### **14.1 Information obligation**

The Seller shall provide the Buyer with all information concerning the delivery that may be of interest to the Buyer.

#### **14.2 Confidential information**

Confidential information" means:

all information of a confidential nature which is disclosed by Parties either verbally or in writing and which at any time is deemed to be confidential or whose confidentiality must be assumed by its nature or under the circumstances of its disclosure.

Confidential information shall always remain the property of the providing Party and shall be returned upon request.

Parties are not permitted to disclose confidential information except to:

(i) those third parties for which the providing Party has given its written consent; or

(ii) employees or third parties who need to know such confidential information in connection with the Agreement, if receiving Party ensures that such employees and/or third parties accept obligations of confidentiality, non-disclosure and return of materials at least as stringent as the obligations in these General Terms of Sale (trading equipment and material).

Parties shall not be permitted to use confidential information for any purpose other than the fulfilment of its obligations under the Agreement.

#### **14.3 Appropriate measures**

Parties shall take all necessary or appropriate measures to protect confidential information from unauthorised disclosure or use, shall promptly notify each other of any unauthorised disclosure or use of confidential information, and shall take all actions requested by other Party to prevent any further unauthorised use or disclosure thereof.

The obligation set out in this Article 14 shall not apply to the extent, but only to the extent of confidential information:

- available to the public without this being attributable to one of the Parties.
- under applicable laws, regulations, or government rules.

Prior to disclosure, the involved Party shall notify the other Party of such disclosure, which confidential information is involved and the extent to which the confidential information is disclosed.

Without the prior written consent Parties may not use the other Party's name and/or pictures of the machines in advertisements and other commercial communications.

#### **Article 15. Insurance**

##### **15.1 Obligation to insure**

The Seller shall have no obligation to insure the Goods, unless the Parties have agreed Incoterms which include an obligation to insure.

##### **15.2 Submission of certificates**

If the Parties have agreed Incoterms, which include an obligation to insure, or have additionally agreed to such, the Party required to take out the insurance shall submit the insurance certificates as well as proof of payment of the premiums to the other Party.

#### **Article 16. Protection of personal data**

##### **16.1 GDPR**

Both Parties undertake to comply with the applicable data protection legislation, in particular the General Data Protection Regulation ("GDPR") 2016/679 and to ensure that staff and subcontractors also comply with this legislation.

##### **16.2 Controller**

Both Parties have the capacity of both Processor and Controller and collect and process the personal data for the purposes of the performance of the Agreement, Customer Management, accounting, and the management of any litigation.



### 16.3 Legal basis

The legal grounds are the performance of the Agreement, the fulfilment of legal and regulatory obligations and/or the legitimate interest.

### 16.4 Appropriate measures

Both Parties have taken appropriate measures to guarantee the privacy and security of the personal data. Both Parties will only transfer these personal data to processors, recipients and/or third parties as far as this is necessary for the processing purposes.

### 16.5 Responsibility for correctness of personal data

Both Parties are responsible for the accuracy of the personal data that they provide to each other, guarantee that they have a sufficient legal basis to pass on the personal data, and undertake to comply with the General Data Protection Regulation in respect of the persons whose personal data is transferred.

### 16.6 Data Protection Notice

The Buyer undertakes to provide this information about the processing to the data subjects including reference to the Data Protection Notice.

### 16.7 Rights of data subjects

The Buyer confirms that he has been adequately informed about the processing of his personal data and about his rights to inspect, correct, delete, and object. For further information please consult the Data Protection Notice on the website: <http://www.aertssen.be/en/privacy/>.

## Article 17. Translation General Terms of Sale (trading equipment and material)

These General Terms of Sale (trading equipment and material) were originally drawn up in the Dutch language.

Regarding the translations of these terms of sale into all other languages, the Dutch text shall be the basis in the event of any misunderstanding regarding the verbal and substantive meaning, tenor, scope and interpretation of these translations, and the interpretation of the Dutch text shall prevail over that of any translation. These General Terms of Sale (trading equipment and material) are communicated to the Buyer in Dutch, French, German, or English, as the Buyer chooses.

## Article 18. Disputes

### 18.1 Applicable law

The Agreements entered by the Seller and all other commitments of the Seller are exclusively governed by Belgian law, to the exclusion of provisions of an international private law nature or other rules that declare the law of another jurisdiction to be applicable outside Belgium.

### 18.2 Competent court

All disputes relating to the conclusion, validity, interpretation and/or execution or termination of the Agreements shall be subject to the exclusive jurisdiction and competence of the Courts and Tribunals of Antwerp, Antwerp Division.

The applicability of the Vienna Sales Convention (CISG) is expressly excluded.

## Article 19. Nullity

If one or more provisions of these General Terms of Sale (trading equipment and material) are, for whatever reason, declared unlawful, invalid, void, or unenforceable, in whole or in part, this unlawfulness, invalidity or unenforceability shall not extend to the remaining provisions. If applicable, the Parties shall negotiate to the best of their ability and in good faith to replace this provision with a legal, valid, non-executable provision having a similar economic effect.