

# GENERAL TERMS AND CONDITIONS

**Triferto**



## Article 1 Identity of Seller

Seller: Triferto Belgium N.V.  
Koopvaardijlaan 180-182  
BE-9000 Ghent - Belgium

Date: 18 July 2012

## Article 2 Definitions

In these terms and conditions the following shall be understood:

**Seller:** Seller, who offers products and/or services (possibly remotely);

**Buyer:** is a (legal) person who operates in the exercise of a profession or business and enters into a (possibly remote) Contract with Seller;

**Contract:** an agreement with Buyer set down in writing by Seller;

**Remote contract:** a contract whereby within a system organised by Seller for remote sale of products and/or services, up to the conclusion of the contract use is only made of one or more techniques for remote communication;

**Technique for remote communication:** means that may be used to conclude a contract, without Buyer and Seller having come together at the same time in the same room;

**Day:** calendar day;

**Long-term transaction:** a (remote) contract relating to a series of products and/or services, for which the obligation to deliver and/or purchase is spread over time;

**Durable data carrier:** any means that enables Buyer or Seller to store information sent to him personally in a way that permits future consultation and unchanged reproduction of the stored information;

**Delivery:** the actual making available of the goods to be supplied to Buyer;

**In writing:** this is also understood to mean by fax or e-mail;

**Weights:** The metric system.

## Article 3 Applicability of the general terms and conditions

### 3.1

These general terms and conditions shall apply to all quotations made, supplies and services of Seller and form part of the Contract established between Seller and Buyer. These general terms and conditions shall also apply to any offer of Seller and to any remote Contract established between Seller and Buyer.

### 3.2

These general terms and conditions shall apply irrespective of any reference by Buyer to his own terms and conditions. The applicability of the Buyer's general terms and conditions is hereby expressly excluded. Any differently worded terms and conditions or stipulations agreed in writing shall only apply for the quotations for which they have been explicitly agreed. Acceptance of the offer by Buyer implies that Buyer agrees with these general terms and conditions being declared applicable and that he waives any general terms and conditions (of purchase) which he may use himself.

### 3.3

If in the acceptance reservations or changes with respect to the quotation are made by Buyer these reservations or changes shall not be taken into account by Seller and do not form part of the Contract signed between parties. The Contract shall be established on the terms and conditions set out in the order confirmation sent.

### **3.4**

When the remote Contract is concluded, the text of these general terms and conditions shall be made available to Buyer. If this is not reasonably possible, before the remote Contract is concluded, it shall be stated that the general terms and conditions can be inspected at the Seller's and will be sent on request of Buyer as soon as possible free of charge.

### **3.5**

If the remote Contract is concluded electronically, as an exception to the previous paragraph and before the remote Contract is concluded, the text of these general terms and conditions can be made available to Buyer electronically in such a way that they can be saved easily by Buyer on a durable data carrier. If this is not reasonably possible, before the remote Contract is concluded, it shall be stated where the general terms and conditions can be inspected electronically and that on request of Buyer they will be sent electronically or in another way free of charge.

### **3.6**

The provisions of the Vienna Sales Convention are expressly excluded.

### **3.7**

If the "Incoterms 2010" terms and conditions are stated to apply between Seller and Buyer, these general terms and conditions shall have a supplementary effect, where the Incoterms conditions do not expressly depart from them.

## **Article 4 The offer**

### **4.1**

If an offer has a limited validity period or is made under terms and conditions, this shall be expressly stated in the offer.

### **4.2**

The offer includes a full and accurate description of the products and/or services offered. The description shall be sufficiently detailed to enable the Buyer to properly assess the offer. If Seller uses images these shall be a faithful representation of the products and/or services offered. Obvious mistakes or errors in the offer shall not bind Seller.

### **4.3**

Each offer shall contain such information that it is clear to Buyer what rights and obligations are associated with the acceptance of the offer. This concerns in particular:  
the prices stated in Seller's quotations are exclusive of turnover tax (VAT) and other direct statutory levies stipulated by the authorities and excluding transport and packaging costs, unless otherwise expressly agreed in writing;  
any costs of Delivery;  
the method of payment, Delivery or execution of the Contract;  
indicative quantity determination with a maximum margin of 10% with respect to the quantity ordered.

### **4.4**

All quotations of Seller shall be without obligation.

### **4.5**

A remote Contract between Seller and Buyer shall only be established after Buyer has gone through and completed the whole ordering process on the Seller's website and the order has been sent electronically.

### **4.6**

A composite quotation shall not result in any obligation of Seller to sell and/or deliver a part of the goods included in the quotation for a corresponding part of the price quoted.

#### **4.7**

The content of folders, printed matter, websites and so on shall not be binding for Seller.

#### **4.8**

If the acceptance differs from what is stated in the quotation, Seller shall not be bound to this and the Seller's quotation shall not be deemed to be accepted unless Seller expressly notifies Buyer in writing that the change or revision is accepted.

## **Article 5 The Remote Purchase Contract**

#### **5.1**

If Buyer has accepted the offer electronically, Seller shall confirm the purchase(s) electronically without delay.

#### **5.2**

If the Contract is established electronically, Seller shall take suitable technical and organisational measures to protect the electronic transfer of data. If Buyer can pay electronically, Seller shall take suitable security measures for this.

#### **5.3**

The products supplied by Seller shall be obtained from various manufacturers/suppliers under the terms and conditions used by the relevant manufacturer/supplier. The products supplied by Seller to Buyer shall be supplied under the same terms and conditions as those supplied by the relevant manufacturer/supplier to Seller, unless expressly otherwise agreed in writing.

## **Article 6 Delivery and execution**

#### **6.1**

Seller shall take the greatest possible care in taking receipt of and executing orders for products and in assessing requests to provide services.

#### **6.2**

All supplies shall be made Ex Warehouse, unless otherwise agreed in writing.

#### **6.3**

Delivery times in Seller's quotations shall only be indicative and shall not give Buyer any right to cancel the Contract or to compensation if they are exceeded. A delivery time indicated shall therefore never be a final date.

#### **6.4**

Seller shall execute orders accepted with all possible speed unless a longer delivery period is agreed. If delivery is delayed, or if an order cannot or can only partly be executed, Buyer shall be notified of this at the latest 45 days after he has placed the order.

#### **6.5**

If delivery of an ordered product is found to be impossible, Seller shall endeavour to make a replacement product available.

#### **6.6**

The risk of damage and/or loss of goods sold shall rest with Buyer from the time of delivery to Buyer or from the time that Seller has made the goods sold available to Buyer, or from the time when the products have been delivered to the address indicated by Buyer, unless expressly otherwise agreed in writing.

#### **6.7**

Buyer shall be obliged to take delivery of goods sold within the period or delivery date agreed with Seller. If Buyer refuses to take delivery or neglects to provide the information or instructions necessary for delivery, Seller shall be entitled to store the goods sold for account and risk of Buyer.

#### **6.8**

Seller shall be entitled to supply the goods sold in parts and to invoice what has been delivered separately in parts.

#### **6.9**

If for any reason whatever Buyer is not able to take receipt of the products at the agreed time and these products are ready for dispatch, if his storage facilities permit this, on request of Buyer Seller shall keep and protect the products and take all reasonable measures to prevent deterioration in their quality until they have been delivered to Buyer. Buyer shall be obliged to pay to Seller the interest and storage costs from the time when the products are ready for shipping, or if this is a later time, from the delivery date agreed in the Contract. Seller shall in this case at all times be entitled to cancel the Contract without judicial intervention. Buyer shall remain obliged to make payment of the agreed price and any interest and storage costs if he makes or must make use of the storage facilities.

#### **6.10**

Seller shall in case of doubt as to the credit worthiness of Buyer or for another business reason reserve the right to demand an advance payment or the provision of surety before delivery. If the advance payment is not made and/or the requested surety is not provided to the satisfaction of Seller, Seller shall reserve the right to suspend or refuse delivery.

#### **6.11**

If delivery is delayed as a result for example of low or high water levels, any extra costs resulting from this, (such as demurrage, extra waiting time and storage and transfer) shall be for account Buyer.

### **Article 7    Technical requirements etc.**

#### **7.1**

If the goods to be supplied in the Netherlands have to be used outside the Netherlands Seller shall not be responsible for the goods to be supplied meeting the technical requirements and/or the applicable environmental requirements and/or standards laid down by laws or provisions of the country where the goods must be used.

#### **7.2**

All other technical requirements made by Buyer for the goods to be supplied and which differ from the normal requirements, must be expressly stated by Buyer when concluding the Contract.

### **Article 8    Retention of title**

#### **8.1**

All goods supplied by Seller shall remain the property of Seller until Buyer has completely fulfilled all his obligations arising from all contracts concluded with Seller.

#### **8.2**

Buyer shall not be authorised to pledge or in any other way to encumber the goods falling under the retention of title.

### **8.3**

If third parties seize the goods supplied by Seller under retention of title or wish to create or claim rights to them, Buyer shall be obliged to inform Seller of this without delay.

### **8.4**

Buyer shall be obliged properly to insure and to keep insured the goods delivered under retention of title against theft, misappropriation and damage.

### **8.5**

If Seller wishes to exercise his title, Buyer shall now give his unconditional and irrevocable consent to Seller to enter all those premises where the Seller's property is located and to take these goods back.

## **Article 9 Termination of the Contract**

### **9.1**

The claims of Seller against Buyer shall be immediately payable if:

- after the conclusion of the Contract circumstances have come to the knowledge of Seller that give good grounds to fear that Buyer will not fulfil his obligations;
- Seller has asked Buyer to provide surety for fulfilment and this surety is not provided within the period set or is insufficient.

### **9.2**

In the cases mentioned Seller shall be authorised to suspend the further execution of the Contract, or to terminate the Contract, notwithstanding the right to claim compensation.

### **9.3**

If circumstances occur relating to persons and/or material which Seller uses or is accustomed to using in the execution of the Contract, which are of such a nature that the execution of the Contract becomes impossible or so problematic and/or disproportionately expensive that fulfilment of the obligation under the Contract can no longer reasonably be demanded, Seller shall be authorised to cancel the Contract.

## **Article 10 Defects**

### **10.1**

Buyer must check the goods on Delivery for visible defects and note these on the documents to be signed for receipt, in the absence of which any claim relating to visible defects shall be nullified.

### **10.2**

Complaints relating to the products supplied by Seller to Buyer or relating to invoices shall be made in writing within five days after delivery or after invoicing. After the above period has expired the Buyer shall be deemed to have accepted the goods.

### **10.3**

Defects in a part of the delivery shall not give Buyer the right to refuse the whole delivery.

### **10.4**

Buyer may only claim if the condition of the goods after receipt has remained unchanged.

### **10.5**

The handling of a complaint by Seller shall not also mean that it is justified.

#### **10.6**

The submission of a complaint shall not release Buyer from his payment obligations towards Seller.

#### **10.7**

If Buyer and/or a third party treats the products improperly and/or tries to repair or to adapt the products without prior consent in writing from Seller, Buyer may not claim that the products do not correspond to the Contract.

#### **10.8**

If Buyer has a justified complaint, except for the right to replace the product(s), Buyer shall have no right to any other payment whatever.

#### **10.9**

A defect found in one or more products shall not give Buyer the right to cancel remaining or follow-up orders.

### **Article 11 Prices**

#### **11.1**

Unless otherwise provided in the written order confirmation all prices stated by Seller shall be in Euro excluding VAT and excluding any other levies imposed by the authorities.

#### **11.2**

Unless otherwise agreed in writing or if specially indicated in the Seller Webshop all prices stated by Seller for the products shall be net, that is including the costs of packaging and excluding transport and delivery costs.

#### **11.3**

If changes to the Contract between Seller and Buyer result in an increase or reduction in the costs and/or prices, a resultant change to the Contract between Seller and Buyer shall be agreed in writing.

#### **11.4**

If an order is executed in parts, Seller shall be entitled to charge Buyer separately for the part delivery made.

#### **11.5**

Unexpected price increases after establishment of the Contract, but before delivery, may be passed on by Seller. This shall be indicated to Buyer in writing, where ultimately it is considered that the price increases have been agreed.

### **Article 12 Packaging**

#### **12.1**

Buyer shall be obliged to return loaned packaging empty and in an undamaged state within 6 months. If Buyer does not fulfil his obligations relating to the loaned packaging all the resultant costs shall be for his account. Such costs shall include the costs resulting from late return and costs of replacement, repair or cleaning.

### **Article 13 Terms and conditions of payment**

#### **13.1**

Payment shall be made by Buyer within 14 days after date of invoice, unless otherwise expressly agreed in writing or another period is specified by the authorities or third parties. If the latter two circumstances occur, Seller shall notify Buyer of this in writing.

### **13.2**

Buyer shall not be authorised to deduct or offset any amount from the purchase price due to a counter claim made by him and Buyer shall, unless otherwise agreed, not be authorised to pay the purchase price with any deduction or discount.

### **13.3**

If Buyer does not meet his payment obligations within the period stated in Article 13 paragraph 1, he shall from the due date be legally in default, without Seller being obliged to give Buyer notice of default.

### **13.4**

Buyer shall from the time of going into default owe interest on the amount payable equal to the statutory commercial interest rate + 2%. All judicial and extrajudicial costs associated with the collection shall be for account of Buyer, with a minimum of 15% of the amount payable.

### **13.5**

In case of late payment by Buyer Seller shall have the right to suspend the execution of all jobs and orders of Buyer until full payment of the amount due has been made, notwithstanding his right to cancellation on the basis of the provision in Article 14.

### **13.6**

In case of liquidation, bankruptcy or suspension of payment of Buyer or if application of a debt rescheduling arrangement relating to Buyer is pronounced the obligations of Buyer shall be immediately payable.

### **13.7**

Payments made by Buyer shall always firstly cover all interest and costs payable, secondly payable invoices that have been outstanding the longest, even if Buyer states that the payment relates to a later invoice.

### **13.8**

Seller shall be entitled to offset all amounts payable to Buyer against all claims that Seller and group companies associated with Seller have against Buyer, on condition that Seller indemnifies Buyer against claims of group companies associated with Seller relating to the claims thus offset.

## **Article 14 Suspension and cancellation**

### **14.1**

Seller shall also be authorised to suspend fulfilment of his obligations or to cancel the Contract if:

- a. Buyer does not fulfil, or does not fulfil promptly or fully, the obligations arising from the Contract or any Contract concluded earlier, at the same time or later with Seller;
- b. after concluding the Contract circumstances coming to the knowledge of Seller give Seller good grounds to fear that Buyer will not fulfil his obligations, or will not fulfil them promptly or fully.

## **Article 15 Liability**

### **15.1**

The liability of Seller shall be limited to the amount of the payment made by the insurer.

### **15.2**

If in any case the insurer does not make payment or the damage is not covered by the insurance, the liability of Seller shall be limited to once the invoice value excluding VAT with a maximum of € 100.000.



### **15.3**

Seller shall never be liable for (indirect) damage, consequential damage (such as for example growth and flowering damage) and/or loss of profit, or other damage of any kind suffered by Buyer.

### **15.4**

If the damage is caused by any product that has not undergone any processing by Seller, or that is the result of government action or services not charged for, Seller shall not be liable for this damage.

### **15.5**

Buyer must decide independently what goods he buys from Seller and for what and in what way he uses the goods purchased. Buyer may not derive any rights from any notifications made or advice given by Seller on the possible uses and the application method of goods sold by Seller.

## **Article 16 Force majeure**

### **16.1**

In case of force majeure on the Seller's side, the execution of the Contract shall be suspended for as long as the state of force majeure makes it impossible for the Seller to execute the Contract. In case of permanent force majeure Seller shall be entitled to cancel the Contract, without Seller being obliged to pay any compensation to Buyer.

### **16.2**

If the state of force majeure on the Seller's side lasts for more than three months Buyer shall have the right to cancel the Contract free of charge but without it being possible for him to make any claim for compensation for any damage suffered.

### **16.3**

There is force majeure on the Seller's side if after the conclusion of the Contract Seller is prevented from fulfilling his obligations under this Contract or the preparation for this as a result of war, danger of war, civil war, riot, acts of war, fire, water damage, storm damage, flooding, industrial action, plant occupation, lock-out, obstacles to import and export, government measures, faults in machinery, disruptions in the supply of energy, all both in the plant of Seller and at third parties from whom Seller must obtain the required materials or raw materials in full or in part, as well as upon storage or during transport, whether or not under own management, and also due to all other causes beyond the control or the sphere of risk of Seller.

### **16.4**

If the force majeure occurs while the Contract has already been partly executed, if due to force majeure the remaining delivery is delayed by more than three months, the Buyer shall be authorised either to keep the part of the goods already delivered and to pay the purchase price owing for these, or also to regard the Contract as terminated for the part already executed with the obligation to return to Seller what had already been delivered to him for account and risk of Buyer, if Buyer can show that the part of the products already delivered can no longer be used efficiently by Buyer as a result of the non-delivery of the remaining goods.

## **Article 17 Hardship clause**

### **17.1**

If the circumstances on the Seller's side which parties assumed when concluding the Contract change during the term of the Contract such that Buyer cannot according to criteria of reasonableness and fairness be expected to maintain the Contract unchanged, consultation shall take place about interim change to the Contract.

## **Article 18 Settlement of disputes**

### **18.1**

The court of Utrecht shall be exclusively competent to examine all disputes which may arise between Seller and Buyer. Seller shall however remain authorised to summon Buyer to appear before the competent court of the domicile of Buyer.

## **Article 19 Applicable law**

### **19.1**

Dutch law shall apply to any Contract between Seller and Buyer.

## **Article 20 Change to the terms and conditions**

### **20.1**

Seller shall be authorised to make changes to these terms and conditions. These changes shall come into effect at the time of entry into force announced.

### **20.2.**

Seller shall the send the revised terms and conditions to Buyer promptly. If no time of entry into effect is notified changes with respect to Buyer shall come into effect as soon as the change is notified to him.

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