



## **GENERAL DELIVERY AND PAYMENT CONDITIONS**

### **Article 1 - General**

- 1.1 These conditions apply to all agreements regarding the delivery of goods as well as the provision of services or the availability of goods with a member of NOVE, hereinafter referred to as "the Seller", being a party. The other party to the agreement is hereinafter referred to as the "Purchaser".
- 1.2 Where applicable, the term "goods" in these conditions also include "services".
- 1.3 An agreement will be concluded once it has been confirmed in writing by the Seller, or, in the absence of such a confirmation, once the Seller has commenced executing the agreement.
- 1.4 An agreement that has been entered into on behalf of the Seller by a representative is only binding on the Seller if and insofar as the Seller has confirmed it in writing.
- 1.5 The applicability of any conditions used by the Purchaser is explicitly excluded, unless the applicability thereof has been agreed upon between the parties in writing.
- 1.6 In case of any derogation of one or more provisions of these conditions, the other provisions of these conditions remain in full force.

### **Article 2 – Offer without Obligation**

All quotations and offers are without obligation.

### **Article 3 – Prices**

- 3.1 The prices set by the Seller are based on the prices for raw materials, materials, wages, taxes, duties, levies, charges, freights as well as all other domestic and international price-determining factors current at the time the agreement was concluded.
- 3.2 If any changes occur in the price-determining factors referred to in the preceding paragraph, even if these occur as a result of foreseeable circumstances on entering into this agreement, the Seller may change the agreed prices accordingly.
- 3.3 All prices and/or rates quoted by the Seller are exclusive of VAT, unless explicitly stated otherwise. If the goods are supplied free of VAT or excise duty at the Purchaser's request, the Purchaser will be responsible for having the required authorisation and fully indemnifies the Seller in relation to the supply against the payment of VAT and/or excise duty and/or any other duties or levies, whether additional or not, imposed by the authorities.
- 3.4 The Seller may charge the Purchaser a permissible credit expansion rate or grant the Purchaser a prompt payment discount.

#### **Article 4 – Delivery Period**

- 4.1 The delivery period stated by the Seller is not a strict deadline, unless explicitly agreed upon otherwise.
- 4.2 The delivery period furthermore applies subject to undisturbed labour situation and materials supply, undisturbed transport and timely supply by the Seller's own supplier, such that the Seller is capable to observe the delivery period.
- 4.3 Exceeding the delivery period does not give the Purchaser the right to terminate the agreement, unless the Purchaser proves that delivery in good time is essential in running its business. In that case, the termination must be effected in writing and within not more than five days after the expiry of the delivery period and may only be effected if the Seller is in default.
- 4.4 Exceeding the delivery period never gives the Purchaser the right to claim compensation or to cease to fulfil any obligations ensuing from the agreement.
- 4.5 In the articles 4.2, 4.3, and 4.4 the term "delivery period" is understood to mean the period legally set by the Purchaser in its notice of default or the agreed delivery period, if a strict deadline has been agreed upon.

#### **Article 5 – Delivery / Transport**

- 5.1 Delivery takes place at the offices of the Seller, unless the parties have explicitly agreed upon another delivery address.
- 5.2 The delivery is deemed to have taken place in the following cases:
  - a. The goods have been collected by or on behalf of the Purchaser: on taking delivery of the goods by or on behalf of the Purchaser;
  - b. Transport by a means of transport not by or on behalf of the Purchaser: on delivery of the goods at the delivery address agreed upon with the Purchaser.
- 5.3 The Seller has the right to deliver goods sold as one batch or a quantity of goods sold as one batch in consignments.
- 5.4 On delivery as referred to in article 5.2(b), the Purchaser is obliged to immediately give the opportunity to unload the goods in an installation that is suitable for this purpose or in a storage space that is suitable for the goods. If the Purchaser fails to render its cooperation, all costs and overtime for each hour or part thereof resulting from this will be borne by the Purchaser.
- 5.5 The Seller's obligation to transport the goods does not extend further than to the place that can be reached reasonably easy by the means of transport chosen by the Seller. The Purchaser is responsible for arranging further transport.
- 5.6 From the beginning of the transport, the goods to be delivered are at the Purchaser's expense and risk.
- 5.7 Measures and weights will be determined in accordance with the Seller's usual method (including the relevant temperature) and will as such have

binding force. In other cases, the measures and weights stated by the installation delivering the goods will be normative. The Purchaser has the right to be represented during this determination and to have the goods measured and/or weighed at its own expenses.

- 5.8 Any statement by the Purchaser in respect of the maximum contents of and the liquid level in its tanks as well as the nature of the goods in those tanks are deemed correct. The consequences of an incorrect or unclear statement will be at the Purchaser's expense. Any damage, environmental and cleaning damage as well as the loss of the goods delivered as a result of the storage tanks flowing over while filling and due to the absence of or malfunction of dipsticks, gauge, or flow safety valve will also be at the Purchaser's expense.
- 5.9 In the event that the pump speed to be used according to the Seller is deviated from on delivery of the goods at the Purchaser's request, any damage resulting from this, including any damage incurred by third parties and demurrage, will be at the Purchaser's expense.
- 5.10 If a refuelling ship is used for the delivery, the Purchaser is responsible for the navigation of the system connected by the captain of the ship to be refuelled on the orders of the Purchaser.
- 5.11 The Seller may insure the goods to be delivered if the Seller deems this necessary without prior notice hereof to the Purchaser; the insurance costs will be passed on to the Purchaser at market rates.

#### **Article 6 – Sampling**

Only the samples taken by the Seller and signed for by the Purchaser and the Seller are representative.

#### **Article 7 – Packaging**

- 7.1 Packaging is included in the price, unless agreed upon otherwise.
- 7.2 Packaging that is not included in the price will be provided on loan and consequently remains the property of the Seller. The provisions of article 9 are applicable.
- 7.3 Unless agreed upon otherwise, the Purchaser will return any packaging that has not been included in the price as soon as possible in undamaged condition carriage paid to the Seller to the address to be designated by the Seller. If the Purchaser fails to do so, it must pay the Seller the cost price of new alternative packaging and the Purchaser will be liable for all fines and levies that may be imposed on the Seller in relation to the failure to return the packaging.

#### **Article 8 – Brand**

- 8.1 On taking delivery of the goods, the Purchaser declares to be familiar with the brands used by the Seller.
- 8.2 In the event of resale/onward supply, the Purchaser shall market the goods exclusively under the brand determined by the Seller and to demand from its

purchaser, by way of a perpetual clause, that the goods be resold exclusively under that brand.

- 8.3 The Purchaser declares not to infringe the brand determined by the Seller and to inform the Seller immediately of any infringement.

#### **Article 9 - Loan / Lease / Hire-Purchase**

- 9.1 All materials and installations provided by the Seller on loan, on lease or by hire-purchase may solely be used for storing and/or processing the goods supplied by the Seller.
- 9.2 Immediately on or after the delivery, the Purchaser is to ascertain the good condition of the materials and installations provided. Article 11.1 applies equally.
- 9.3 The materials and installations provided on loan, on lease or by hire-purchase are at the Purchaser's risk under all circumstances. The Purchaser is obliged to have the available materials and installations maintained properly by an expert with the relevant qualifications. All costs of using and maintaining the materials and installations will be borne by the Purchaser.
- 9.4 If the Purchaser acts contrary to its obligation(s) under article 9.1 and/or article 9.3, the Seller has the right to terminate the agreement with immediate effect.
- 9.5 In the event referred to in the preceding paragraph and as soon as the period for which the materials and installations have been provided on loan or lease has expired, the Purchaser is obliged to make the materials and installations immediately available to the Seller, such in a good state of repair, clean and empty at a place designated by the Seller, subject to the Seller's right to compensation.

#### **Article 10 – Liability**

- 10.1 The Purchaser is and always continues to be fully responsible for the sound condition and safety of its own installations, mechanisms, and goods.
- 10.2 The Seller is not liable for any damage arisen as the result of errors or unlawful acts by the Purchaser itself, its employees or any other persons who have become involved in the execution of the agreement concluded with the Purchaser by or on behalf of the Seller, unless it concerns an error or unlawful act of persons that may be considered bodies of its company or executives and the Purchaser also proves that it is a matter of wilful conduct or gross negligence.
- 10.3 The Seller does not guarantee the suitability of the goods and services provided and made available by it or the goods made available for a specific purpose.
- 10.4 The Seller is not liable for any damage arisen as the result of or directly or indirectly connected with the use of alternative or biological fuels, irrespective of whether such fuels have been added or pure biological fuels have been supplied.

- 10.5 The Seller is not liable for any damage arisen as the result of any recommendations for use made by it, unless it concerns a recommendation made by persons that may be considered bodies of its company or executives and the Purchaser proves that it is a matter of wilful conduct or gross negligence on the part of the Seller.
- 10.6 The Seller is not liable for any damage ensuing directly or indirectly from defects in goods supplied by the Seller, goods made available by the Seller, or goods used in the execution of the agreement or for any damage ensuing from a varying quality of the goods supplied by the Seller, unless any or full liability cannot be excluded pursuant to mandatory provisions. In that case, the Seller's liability for compensation shall not exceed the amount to which the Seller is obliged pursuant to the law.
- 10.7 Subject to the mandatory provisions as referred to in article 10.6, each liability of the Seller is always limited to
- a. the invoice amount, or in the absence of an invoice amount, the value of the performance agreed upon;
  - b. on delivery in consignments - the invoice amount, or in the absence of an invoice amount, the value of the relevant performance;
  - c. the amount covered by the insurance policy if and insofar as the Seller has taken out insurance against the relevant liability and if the amount covered by the insurance policy is higher than the invoice amount or the value of the performance referred to under (a) or (b).
- 10.8 The term "damage" is understood to mean damage of whatever nature, including but not limited to damage to property, environmental damage, consequential damage or loss, loss of profit, costs, fines, resulting damage or loss, and everything whatever named and however arisen.

### **Article 11 – Complaints**

- 11.1 Immediately on or after the delivery, the Purchaser is obliged to inspect the goods delivered. All complaints of the Purchaser about the quantity of the goods delivered must be lodged immediately to the Seller in writing; all complaints about the quality of the delivery and/or the goods delivered must in any case be reported to the Seller in writing within 8 calendar days from the delivery or within 8 calendar days after the goods have been made available to the Purchaser. In case the Purchaser fails to report the written complaint to the Seller immediately or within the above-mentioned period of 8 calendar days, the goods delivered by the Seller are considered approved and accepted by the Purchaser.
- 11.2 It is not possible to lodge complaints about goods that are no longer in their original condition and which can consequently not be investigated by the Seller. Slight commercially permissible or technical deviations in the quality or quantity of the goods do not constitute a ground for complaints.
- 11.3 If a complaint is considered justified by the Seller, the Seller has the right to credit the Purchaser with the loss in value up to a maximum of the invoice amount instead of repairing or replacing the goods delivered or delivering a supplemental quantity.
- 11.4 Any complaints about an invoice sent by the Seller (whether or not electronically) must be lodged to the seller in writing within 8 calendar days

from the invoice date. At the end of this period, any or all claims from the Purchaser will have lapsed for that reason.

- 11.5 Each claim against the Seller will have lapsed, until legal proceedings have been instituted against the Seller within 12 months from the delivery of the goods.

## **Article 12 – Payment**

- 12.1 In derogation of any payment conditions agreed upon, the Seller has the right to demand payment of the goods already delivered and/or require advance payment before it continues to supply the goods.
- 12.2 Payment is immediately claimable and must have been transferred into the Seller's account on the delivery date, unless explicitly agreed otherwise or another payment term is stated on the Seller's invoice.
- 12.3 Each payment term is a final deadline, so that the Purchaser is in default after the expiry of said term without a demand or notice of default being required.
- 12.4 In respect of payment, the Purchaser shall not rely on setting off any claim which the Purchaser alleges to have against the Seller. Nor shall the Purchaser be permitted to defer payment on the basis of an alleged counterclaim or objections regarding the execution of the agreement.
- 12.5 In case of payment by debit card or credit card, the Purchaser is responsible for having a sufficient balance. If the balance appears to be insufficient for full payment, the Purchaser is obliged to provide security for performing its obligations on demand. The Seller has the right to retain goods of the Purchaser, including a means of transport which has been filled up with fuel, until full payment is effected or sufficient security is provided, such at the Seller's discretion.
- 12.6 If the Purchaser has several financial obligations towards the Seller or if it has been agreed upon that the delivery will be effected in consignments and payment will be effected in instalments and the Purchaser is in default of payment in respect of one of the claims, all other claims of the Seller, including future instalments, will become immediately due and payable, without prejudice to the Seller's rights pursuant to article 12.1.
- 12.7 In case of the failure to pay or overdue payment by the Purchaser, as well as if the Purchaser's financial situation gives cause to this, such at the Seller's sole discretion, the Seller has the right to suspend further execution of the agreement until the Purchaser has provided security for the proper payment thereof to the satisfaction of the Seller and the Seller has obtained this security.
- 12.8 In case of the failure to pay or overdue payment, the claim of the Seller will be increased by extrajudicial collection costs, including all other extrajudicial costs as well as the costs of legal assistance.
- 12.9 The Purchaser is obliged to pay the statutory commercial interest on the outstanding claim (Book 6, Section 119a of the Dutch Civil Code) as from the date on which the debt became due and payable.

- 12.10 In case of an call-off order and the order has not been called off fully after six months, the Seller has the following options:
- Demand full payment forthwith, in advance, of the goods still to be delivered and claim compensation for any damage it has suffered;
  - Terminate the agreement and claim compensation for any damage it has suffered.

### **Article 13 – E-Invoicing**

- 13.1 E-invoicing is the electronic transfer of invoices from the Seller to the Purchaser. An e-Invoice is an electronic invoice which complies with current regulations.
- 13.2 The Seller may offer the Purchaser the possibility of e-Invoicing. Participation in e-Invoicing is only possible after having accepted the conditions set by the Seller.
- 13.3 By participating in e-Invoicing, the Purchaser accepts that he will no longer receive any paper invoices from the Seller. This applies to invoices sent to the invoice address as well as the invoice copy address (where applicable).
- 13.4 The Purchaser shall keep any User ID(s) and password(s) secret with utmost care and is responsible for careful use and management. If the Purchaser suspects abuse, it will immediately inform the Seller of this.
- 13.5 The e-Invoice is made available online to the Purchaser for a period to be determined by the Seller. The Purchaser itself is responsible for saving the e-Invoice in electronic form (PDF+certificate) offline for its own records.
- 13.6 The Purchaser may always request to stop its participation in e-Invoicing. Upon receipt of such a request, the Seller will send paper invoices again as soon as possible. The Seller may charge a fee for sending paper invoices in the future, which the Purchaser hereby explicitly accepts.

### **Article 14 – Involuntary Liquidation**

In case of a suspension of payments – provisional or otherwise – involuntary liquidation, or cessation, or winding-up of the Purchaser's company, all agreements with the Seller will be terminated by operation of law, unless the Seller states to require execution of the relevant agreement(s), or a part thereof, within a reasonable period of time, in which case the Seller has the right to suspend its obligations ensuing from the relevant agreements until execution by the Purchaser has been secured sufficiently, all this without prejudice to all other rights to which the Seller is entitled.

### **Article 15 – Reservation of Ownership/Right of Pledge**

- 15.1 The Seller reserves the right of ownership, or otherwise, to the goods delivered until all claims from the Seller against the Purchaser on the basis of the delivery of those goods, or on the basis of activities performed or to be performed in relation to that delivery, including interest, charges and/or damage, have been satisfied fully.

- 15.2 The reservation of ownership also applies to all claims from the Seller against the Purchaser due to the Purchaser's failure to perform one or several of its obligations ensuing from the agreement.
- 15.3 The Purchaser is obliged to maintain any goods owned by the Seller with due care. As long as the ownership of the goods delivered has not passed to the Purchaser, the Purchaser is not permitted to dispose of these goods or to grant any right to these goods to any third party, unless the Seller has explicitly consented to this in writing in advance and unless it concerns the resale/onward supply in the Purchaser's ordinary business operations.
- 15.4 If the Purchaser fails to perform its payment obligations towards the Seller or if the latter has good reasons to fear that the Purchaser will fail to perform said obligations, the Seller has the right to repossess the goods delivered under reservation of ownership, without prejudice to any further rights of the Seller with respect to the Purchaser.
- 15.5 In case the goods delivered by the Seller have been supplied on by the Purchaser, the Purchaser pledges all its rights ensuing from that onward supply with respect to third parties to the Seller and/or the Purchaser undertakes to pledge such claims to the Seller on the Seller's demand as security for all that is claimed or will be claimed by the Seller from the Purchaser at any time. As soon as the Purchaser fails to perform its payment obligations towards the Seller, the Seller is obliged to inform the above-mentioned third parties of this pledge in order to create this right of pledge. The Purchaser is obliged to render the required cooperation to this end, in particular by immediately providing a statement on the Seller's demand listing the names and addresses of all third parties to whom the Purchaser has supplied the goods delivered by the Seller, as well as all rights the Purchaser has acquired with respect to those third parties in respect of that onward supply. If the Purchaser fails to render its cooperation on the Seller's demand, the Purchaser incurs an immediately payable penalty of twenty-five percent of the outstanding claim against the Purchaser, as well as an immediately payable penalty of five percent of the outstanding claim for each subsequent day that the Purchaser's failure continues, without prejudice to the Seller's right to claim execution in addition.

#### **Article 16 – Circumstances beyond One's Control**

- 16.1 Circumstances independent on the will or through no fault of the Seller of such a nature that execution or continued execution of the agreement cannot be reasonably required are considered circumstance beyond one's control and give the Seller the right to terminate the agreement or to suspend its execution to a date to be determined by the Seller, without the Seller being obliged to pay compensation.
- 16.2 If the Seller uses its right of suspension referred to in article 16.1, the Purchaser does not have the right to terminate the agreement, unless the Purchaser can prove that earlier execution is essential in running its business. In that case, the termination must be effected in writing and within five days from the Seller's reliance on suspension.
- 16.3 The circumstances referred to under article 16.1 include war; threat of war; full or partial mobilisation; vandalism; riots; uprising or disturbances; terrorist actions or the threat thereof; strikes; protests; blockades; import and export



bans; commandeering of stocks at the Seller or the Seller's own suppliers by the civil or military authorities; damage caused by fire or storm; inconvenience caused by weather conditions (for instance but not confined to snow, hail, and freezing rain); floods; earthquakes or other natural disasters or calamities; traffic hold-ups or transport delays; transport ban by the authorities; strikes, boycott, vandalism and other standstills in the Seller's company or in the Seller's own supplying companies; as well as such a shortage – whether or not as a result of price increases – of the goods that the Seller cannot be required to supply, even not at a higher price.

#### **Article 17 – Substitution**

Both in respect of the agreement concluded with the Purchaser and the execution of this agreement, the Seller has the right to appoint another to act in its place. If this situation arises, the Purchaser states that it will consent to this substitution. The substitution is established as soon as the Seller, also on behalf of its substitute, has informed the Purchaser of this in writing.

#### **Article 18 – Applicable Law and Choice of Forum**

- 18.1 All agreements between the Purchaser and the Seller are exclusively governed by Dutch law, with the Vienna Sales Convention, however, being disregarded and/or not being applicable.
- 18.2 Any disputes arising in the execution of or in connection with the agreement concluded between the Purchaser and the Seller will be submitted to the competent court in the district where the Seller has its registered office. Only the Seller may opt for submitting the dispute to the competent court in the Purchaser's place of residence or business place.
- 18.3 Article 18.2 does not apply if the Purchaser and the Seller agree to submit the dispute to arbitration.

#### **Article 19 – Partial Invalidity/Conversion**

If any provision of these general conditions is wholly or partially invalid, for whatever reason, the agreement and the other provisions of these general conditions will remain in full force, while the parties – as far as the invalid provision is concerned – are deemed to have agreed upon a provision that in view of its purport legally corresponds as much as possible to the invalid provision.

#### **Article 20 – Goodwill Gesture / No Forfeiture of Rights**

If the Seller does not rely on any applicable provision of these general conditions with respect to the Purchaser as a goodwill gesture or for other reasons of commercial nature, the Seller does not forfeit its right to still rely on the relevant provision and all other applicable provisions of these general conditions at a later stage.



## **Article 21 - Consumers**

These General Delivery and Payment Conditions apply fully to agreements with consumers. If it, however, involves a consumer purchase within the meaning of Book 7 of the Dutch Civil Code (a purchase concluded by a natural person), the mandatory provisions included therein will be given prevalence insofar as these provisions derogate from the provisions included in these conditions.

These NOVE General Conditions were filed at the Rotterdam Chamber of Commerce under file number 40348374 on 25 September 2008.