



## GENERAL TERMS AND CONDITIONS

OF: ATLAS-ACOMFA B.V.

### **Article 1 Definitions**

Seller : Atlas-Acomfa B.V., the user of the General Terms and Conditions;  
Buyer : the Seller's counterparty, the customer;  
Agreement : the agreement between the Seller and the Buyer.

### **Article 2 General**

- 2.1 These General Terms and Conditions will apply to every offer and Agreement between the Seller and the Buyer, to the extent that these Terms and Conditions have not expressly been deviated from by the parties in writing, irrespective of whether the Seller's goods originate from the Netherlands or another country.
- 2.2 Any supplementary or deviating provisions or terms and conditions will only apply if they have been confirmed in writing by the Seller.
- 2.3 The current Terms and Conditions will also apply to all Agreements with the Seller for the performance of which the Seller uses the services of third parties.
- 2.4 The applicability of the Buyer's general terms and conditions is hereby explicitly excluded, unless the parties have agreed otherwise in writing.
- 2.5 In the event that the Seller concludes Agreements with the Buyer more than once, the present General Terms and Conditions will apply to all subsequent Agreements, irrespective of whether or not same have been explicitly declared applicable.
- 2.6 In the event that one or more provisions of these General Terms and Conditions are null and void or are nullified, the remaining provisions of these General Terms and Conditions will continue to apply.

### **Article 3 Offers/orders/prices**

- 3.1 All offers, in whatever form, will be free of obligation, unless a term for acceptance is stated in the offer.
- 3.2 If an offer made by the Seller is accepted by the Buyer, the Seller will be entitled to withdraw the offer within two working days of its receipt of the notice of acceptance. In addition, the Seller may refuse an order or part of an order or attach conditions to an order without stating its reasons.
- 3.3 Agreements to which the Seller is a party will not be deemed to have been concluded until the Seller has accepted in writing an order placed by the Buyer or until the actual delivery ex Seller's warehouse of the sold goods has been effected by the Seller to the Buyer.
- 3.4 Also if the Seller has sold its product through a representative, the sale will not be final until a written notice of confirmation has been issued by the Seller.
- 3.5 Any verbal commitments and/or Agreements will apply only if they have been immediately confirmed in writing by the Seller.
- 3.6 In the event of an oral Agreement, the invoice will be considered to contain a correct and complete representation of the Agreement, unless a complaint is lodged within 30 days of the invoice date.
- 3.7 In the event that a natural person concludes an Agreement on behalf or for the account of another natural person, he/she will be deemed to declare – by signing the order form/order – that he/she is authorised to do so. This person, in addition to the other natural person, will be jointly and severally liable for all obligations ensuing from the Agreement.
- 3.8 The prices stated in the offers/catalogues/price lists will be stated on the basis of delivery ex Seller's warehouse, in euros, and exclusive of Dutch VAT, government levies, shipping costs, freight charges, export levies, insurance costs, loading costs and handling expenses, unless the parties have explicitly agreed on provisions to the contrary.
- 3.9 Unless otherwise agreed, the packaging costs will be included in the sales price. If the Buyer has any special packaging requirements, it will be charged for same at cost. Any deposits paid for packaging materials will be reimbursed, provided that the packaging material is returned carriage paid and undamaged within three months of the invoice date. If the materials are returned at a later date, the reimbursement will be decreased by 10% for each month that the said term is exceeded. If packaging materials are returned more than six months after the invoice date, the deposit will not be returned.



3.10 Discounts may only be agreed in writing.

3.11 In the event of any changes in import duties, import taxes and/or turnover taxes in the Netherlands, the Seller will be entitled to charge the Buyer any increases and, in the event of any reductions, will be obliged to lower the price accordingly. In the event of changes in prices of raw materials, ancillary materials and other materials needed for the production of the order, as well as in the event of changes in freight charges or wages, currency fluctuations, or similar factors, the Seller will be entitled to adjust the agreed prices accordingly. If the Seller increases the price, the Buyer will be entitled for six days after being notified of the increase to cancel the part of the order the production of which has not yet been commenced, without being entitled to any damages. Any part that has already been produced will be supplied at the original price.

3.12 The Seller will be entitled to adjust its prices each year, at least correcting same for inflation.

#### **Article 4 Models, illustrations**

4.1 The models, illustrations, figures, measurements, weights or descriptions included in offers/advertisements/price lists must be deemed to be a mere indication.

4.2 In the event that the Buyer has been shown a sample or an illustration, the parties must assume that such has been shown as an indication only, unless it has been explicitly agreed that the good to be delivered will be completely identical.

#### **Article 5 Delivery**

5.1 Delivery within the Netherlands (not including the West Frisian Islands) will be effected carriage paid to the Buyer's address, unless the parties agree otherwise.

5.2 Delivery will always be effected at the Buyer's delivery address as most recently communicated to the Seller by the Buyer.

5.3 The Buyer will be charged freight charges for orders below EUR 500,-. If the shipment is effected otherwise than by freight traffic, the related costs will always be borne by the Buyer.

5.4 The Seller will be entitled to charge the Buyer an advance. After payment of the advance has been effected, delivery will be made to the Buyer, unless the parties have agreed otherwise.

5.5 Unless the parties have expressly agreed otherwise in writing, the goods will be transported to the Buyer's warehouse, though only up to a point where the vehicle has access to a satisfactory road surface.

5.6 The Buyer will be obliged to take delivery of and immediately unload the goods at the time that the Seller delivers same to it or has same delivered to it by third parties, or at the time at which the goods are made available to it pursuant to the Agreement.

5.7 If the Buyer refuses to take delivery or fails to provide information or instructions necessary to effect the delivery, the Seller will be entitled to store the goods at the Buyer's expense and risk. If the Buyer does not take delivery of the goods within two months, the Seller will be entitled to sell the goods to another party. If it is unable to do so, the Seller will be entitled to destroy the goods. The damage incurred by the Seller in selling the goods to another party or in destroying the goods will be borne by the Buyer.

5.8 If delivery is effected C.O.D. (Cash on Delivery), the Seller will charge the Buyer C.O.D. charges.

5.9 If the Seller has stated a delivery period, same must be deemed to be indicative. A stated delivery time may therefore never be deemed to be a firm deadline. Unless otherwise agreed in writing, the Seller will not issue any guarantee in respect of the delivery term, and any nontimely delivery will not give the Buyer any right to damages or to the dissolution of the sale. If a term is exceeded, the Buyer must give the Seller written notice of default and grant it a reasonable period of time to deliver as yet.

5.10 If the Seller requires information from the Buyer within the context of the Agreement's performance, the delivery period will commence after the Buyer has made such information available to the Seller.

5.11 The Seller will be entitled to deliver the goods in parts. The Seller will be entitled to invoice partial deliveries separately.



### **Article 6 Inspections, complaints**

- 6.1 The Buyer will be obliged to inspect the delivered goods, or have others do so, at the time of delivery or transfer. In doing so, the Buyer must inspect whether the quality and quantity of the products supplied are in accordance with the Agreements made.
- 6.2 In order to be valid, any complaints relating to the goods should be submitted to the Seller in writing within five days of the receipt of the goods, in default of which the goods delivered will be presumed to be in sound condition.
- 6.3 In addition, any complaints based on shortages, deviations from the specifications provided or visible damage should be noted on the receipt by the Buyer for such complaints to be valid.
- 6.4 Complaints based on shortages, discrepancies in size or damage will apply only if the Seller is enabled to inspect the goods delivered in their original state and in their original packaging.
- 6.5 Any complaints regarding the invoice must be submitted in writing within 30 days of the invoice date.
- 6.6 After the end of the period of time in which a complaint may be lodged, the Buyer will be deemed to have approved the goods delivered or the invoice, as the case may be.
- 6.7 Complaints will under no circumstances entitle the Buyer to suspend its payments.
- 6.8 If a complaint proves well founded and has been submitted in a timely manner, the Seller will, at its discretion, either pay fair damages up to a maximum amount equal to the invoice value of the goods supplied to which the complaint pertains, or replace the goods supplied free of charge against the return of the goods supplied. The Seller will not be obliged to pay any further damages or to compensate the Buyer for any indirect damage.
- 6.9 For purposes of any complaints, partial deliveries will be treated as separate sales.
- 6.10 The full or partial treatment or processing of any goods supplied will cause any rights to file complaints to lapse, except in respect of defects that could not have been discovered until such treatment or processing. In that event, the complaint may still be filed within five days of the point in time at which the defect was discovered or should reasonably have been discovered, though never later than two months following delivery.
- 6.11 The following situations will under no circumstances justify the lodging of a complaint:
  - deviations in colour, weight, quantity and measurements of less than 12%;
  - any typesetting, printer's or typographical errors in the catalogue, offer or price list; or
  - problems with colour fastness.
- 6.12 The Seller's liability will, however, always be subject to the limits laid down in the Article 'Liability'.

### **Article 7 Return shipments**

- 7.1 Under no circumstances will the Buyer be entitled to refuse to take delivery of the goods sold or to return same, unless the Seller has agreed in writing to such refusal or return.
- 7.2 If the Buyer returns the goods without having obtained the Seller's written approval in that connection, and the Seller nevertheless takes receipt of the goods, this will always be for the Buyer's account and risk. The shipment will be stored by the Seller at the Buyer's expense and risk and will be kept at the Buyer's disposal, without any acknowledgement of the accuracy of any complaints following from this fact.

### **Article 8 Payment**

- 8.1 Payment must be effected in cash, or in advance pursuant to an advance invoice, or, if the parties have so agreed, within 30 days of the invoice date in a manner to be indicated by the Seller in euros, unless the parties have agreed otherwise. Objections to the amounts stated in the invoices will not suspend the payment obligation.
- 8.2 In the event of a first delivery, the Buyer must effect payment prior to or in any case upon delivery.
- 8.3 The date on which the money becomes available to the Seller will be considered the payment date.
- 8.4 In the event that the Buyer fails to make payment within the period agreed, the Buyer will be in default by operation of law. In that event, the Buyer will owe the Seller 1% in interest per month or part of a month, unless the statutory interest rate or the statutory commercial interest rate is higher, in which case the highest interest rate will apply. The interest with respect to the exigible amount will be calculated from the time that the Buyer is in default until the time of full payment.



- 8.5 In the event that the Buyer is wound up, is declared bankrupt or files for bankruptcy, is admitted to statutory composition pursuant to the Dutch Natural Persons Composition Act [*Wet schuldsanering natuurlijke personen*], is placed under guardianship, dies, or the Buyer's enterprise is transferred or discontinued, attachment is levied against the Buyer or the Buyer is granted suspension of payments, provisional or otherwise, the Seller's claims vis-à-vis the Buyer will become exigible forthwith.
- 8.6 Payment must be effected to the Seller, unless the Seller has transferred its claim vis-à-vis the Buyer to a third party or has pledged same to a third party. In the event that this is the case, the Seller shall inform the Buyer of the fact that it will receive discharge of its payment obligation if it effects payment to that third party.
- 8.7 Payments will first be used to cover the costs, then to cover any interest due and finally to cover the principal sum and the accrued interest.

#### **Article 9 Collection costs**

If the Buyer is in breach of contract or in default of performance or timely performance of its obligations, all reasonable costs incurred in obtaining extra-judicial payment will be borne by the Buyer. The collection costs will be set at 15% of the principal sum, subject to a minimum of EUR 350,- plus all costs incurred by the Seller in the context of legal proceedings, even those costs that exceed the court costs to be settled, as well as any enforcement costs.

#### **Article 10 Retention of title**

- 10.1 All goods supplied by the Seller will remain the Seller's property until the Buyer has fulfilled all its obligations ensuing from the Agreements concluded with the Seller.
- 10.2 The Buyer will not be entitled to pledge or lease the goods covered by the retention of title or to sell such on to customers outside the Benelux or to encumber such in any other manner, unless the parties have agreed on provisions to the contrary.
- 10.3 In the event that third parties levy attachment on the supplied goods covered by the retention of title or wish to create or enforce rights with respect to same, the Buyer will be obliged to inform the Seller thereof as soon as possible.
- 10.4 The Buyer must insure the goods covered by the retention of title at new-for-old value. Any damages paid by the insurer will replace the aforementioned goods and will accrue to the Seller.
- 10.5 Any goods supplied by the Seller that are covered by the retention of title pursuant to paragraph 1 of this Article may only be sold on within the context of normal business operations and may never be used as a means of payment.
- 10.6 In the event of any goods supplied subject to the retention of title being treated or processed, as well as in the event of the specification or confusion of same, all products in which such goods have been processed will become the Seller's property, subject to the Seller's obligation to compensate the Buyer for any surplus value. If the provision above is violated, the sales price will become immediately due and payable.
- 10.7 Should the Seller wish to exercise its retention of title rights as described in this Article, the Buyer hereby grants the Seller or any third parties designated by the Seller its unconditional and irrevocable permission to enter those places where the Seller's property is located and to recover those goods.

#### **Article 11 Suspension and dissolution**

- 11.1 The Seller will be entitled to suspend performance of its obligations or to dissolve the Agreement in the following events:
- in the event that the Buyer fails to perform the obligations arising from the Agreement or fails to perform them in good time or in full;
  - in the event of circumstances of which the Seller has learned following the Agreement's conclusion that provide good reason for fearing that the Buyer will not perform its obligations, or will not perform such in good time or in full; in the event that there is good reason to fear that the Buyer will only perform its obligations in part or will not perform such properly, suspension will only be permitted to the extent that such is justified by the relevant failure; and
  - in the event that the Buyer was requested to provide security upon the Agreement's conclusion for the performance of its obligations arising from same Agreement and such security has not been provided or is insufficient. As soon as security has been provided, the right to suspend performance will lapse, unless the performance has been unreasonably delayed as a result.



- 112 In addition, the Seller will be entitled to dissolve the Agreement or have it dissolved if circumstances arise of such a nature that performance of the Agreement is impossible or can no longer be required pursuant to standards of fairness and reasonableness, or if any other circumstances arise of such a nature that continued unamended maintenance of the Agreement can no longer reasonably be expected.
- 113 If the Agreement is dissolved, the Seller's claims vis-à-vis the Buyer will become immediately due and payable. If the Seller suspends performance of its obligations, it will retain its claims ensuing from the law and the Agreement.
- 114 The Seller will at all times retain the right to claim damages.

#### **Article 12 Cancellation**

- 121 In the event that the Buyer wishes to cancel an Agreement after same has been concluded with the Seller and before the Seller has effected delivery to the Buyer, the Buyer will be charged 10% of the order price agreed upon, including Dutch VAT, in cancellation costs, without prejudice to the Seller's right to full damages, including loss of profit.
- 122 If the Buyer has already paid the Seller the order price, the Buyer will be reimbursed the order price less 15% and the freight charges in the event of cancellation.
- 123 In addition, the Seller will be entitled to claim compensation of all costs, damage and interest, including any loss of profit.
- 124 Notice of cancellation must be given in writing.
- 125 Orders for goods purchased especially for the Buyer cannot be cancelled.

#### **Article 13 Warranty**

- 131 The goods supplied by the Seller will be in accordance with the requirements and specifications set by Dutch law.
- 132 The warranty will be limited to:
- manufacturing defects, and will therefore not include any damage resulting from wear and tear, improper, negligent or inexperienced use or faulty or improper processing, handling, maintenance or storage;
  - deliveries to Buyers within the EU;
  - replacement of the good; and
  - one year after delivery, unless provisions to the contrary have been agreed.
- 133 The warranty will lapse:
- in the event of adaptations of, alterations to or changes to the delivered good by a Buyer or a third party; or
  - in the event of use for a purpose other than that indicated.
- 134 This warranty will in all cases be limited to the manufacturer's warranty.
- 135 Goods supplied at a reduced price will not be covered by the warranty.
- 136 As long as the Buyer fails to perform its obligations arising from the Agreements concluded between the parties, it cannot invoke this warranty provision.

#### **Article 14 Liability**

- 141 If the Seller is liable for direct damage, that liability will be limited to the amount paid out by its insurer, or in any event to the invoice amount, or in any event to that part of the invoice to which the liability pertains.
- 142 The Seller will under no circumstances be liable for indirect damage, including consequential damage, loss of turnover and profit, loss of savings and any damage due to an interruption in business operations.
- 143 The Seller will under no circumstances be liable for damage resulting from materials on or in the good that have been declared unfit because the environmental legislation has changed since the Agreement's conclusion.
- 144 The Seller will under no circumstances be liable for any deterioration of the good due to improper storage, processing, use or maintenance by the Buyer or a third party.
- 145 The Buyer shall indemnify the Seller against any claims of third parties that may incur damage in connection with the performance of the Agreement and which is attributable to the Buyer.



- 14.6 The Seller will under no circumstances be liable for damage ensuing from incorrect use of the good, from use that is not in accordance with the instructions for use or from use for a purpose other than that for which the good is intended.
- 14.7 The Seller will under no circumstances be liable for damage ensuing from any advice given. Advice will always be given on the basis of the facts and circumstances known to the Seller and of mutual consultations, in which respect the Seller will always use the Buyer's intention as a guideline and starting point.
- 14.8 The Buyer must ascertain in advance whether the purchased good is suitable for the purpose for which it intends to use same. Should it emerge in retrospect that the purchased good is not suitable for its intended use, then the Seller cannot be held liable for any ensuing damage.
- 14.9 The limitations of liability with respect to direct damage laid down in these Terms and Conditions will not apply in the event that the damage is attributable to an intentional act or omission or gross negligence on the part of the Seller or its employees.

#### **Article 15 Passing of risk/transport**

- 15.1 If the Seller is to provide for the transport/shipment of the goods that are the subject of the Agreement, this will be fully at the Buyer's expense and risk, irrespective of whether the goods are to be delivered carriage paid, unless the parties have agreed otherwise. The Seller will determine the means of transport.
- 15.2 The goods will always be for the Buyer's account immediately upon leaving the Seller's warehouse, which will include any transport risk, war risk and all other risks.
- 15.3 The Buyer will be obliged to insure any movable goods from the time that they leave the Seller's warehouse.

#### **Article 16 Force majeure**

- 16.1 Neither party will be obliged to fulfil any obligation if it is prevented from doing so due to a circumstance which cannot be attributed to gross negligence or an intentional act or omission on its part, nor be for its account pursuant to the law, a juristic act or generally prevailing opinion.
- 16.2 In these General Terms and Conditions, the term '*force majeure*' must in any case be understood to mean, in addition to its meaning according to the law and in case law, all external causes, foreseen or unforeseen, which the Seller cannot influence, but as a result of which the Seller is unable to perform all or part of its obligations. This will include strikes at the Seller's company, transport strikes, traffic congestion, tailbacks, car trouble, theft, fire, war, mobilisation, floods, machinery breakdowns, power failures, lack of suitable cargo space, lack of raw materials, export impediments and delays in the supply of goods by suppliers.
- 16.3 The Seller will also be entitled to invoke *force majeure* if the circumstance preventing performance or further performance arises after the Seller should have performed its obligations.
- 16.4 The parties may suspend the obligations ensuing from the Agreement during the period that the *force majeure* continues. In the event that this period lasts longer than two months, either party will be entitled to dissolve the Agreement without being obliged to pay the other party damages.
- 16.5 To the extent that the Seller has partly performed its obligations arising from the Agreement or is able to partly perform same at the time that the situation of *force majeure* first occurs, and that part performed or to be performed has independent value, the Seller will be entitled to invoice the part performed or to be performed separately. The Buyer will be obliged to pay that invoice as if it pertained to a separate Agreement.



**Article 17 Copyrights**

- 17.1 Without prejudice to the provisions of these General Terms and Conditions, the Seller reserves the rights and powers vested in it pursuant to the Dutch Copyright Act [*Auteurswet*].
- 17.2 All brochures, catalogues, price lists, documents and other materials or electronic or other files will remain the Seller's property, irrespective of whether same have been made available to the Buyer or to third parties, unless provisions to the contrary have been agreed upon. Such goods are exclusively intended for the Buyer's use and may not be reproduced, made public or be brought to the notice of third parties without the Seller's prior permission, unless the contrary ensues from the nature of the documents provided.

**Article 18 Authentic version**

The Dutch-language version of these Terms and Conditions is the only authentic version. In the event of any discrepancy between the Dutch text and a translation, the Dutch text will prevail.

**Article 19 Disputes**

The competent court in the city or town where the Seller has its registered office will be competent to take cognisance of any disputes between the parties, to the exclusion of all other courts. Nevertheless, the Seller will be entitled to submit any disputes to the competent court according to the law.

**Article 20 Applicable law**

All Agreements between the Seller and the Buyer will be governed by Dutch law. Applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.

**Article 21 Filing of these Terms and Conditions**

These Terms and Conditions have been filed at the office of the Chamber of Commerce for The Hague, the Netherlands, on 12-04-2011 under number 28070057.