



## GENERAL TERMS AND CONDITIONS (OF DELIVERY AND PAYMENT)

General terms and conditions of delivery and payment of R. Toes & Zn. B.V., with its' registered office at Viltweg 3, 3295 KT 's-Gravendeel, the Netherlands, (registered at the Chamber of Commerce under number 59868449).

### ARTICLE 1 - APPLICABILITY OF THESE GENERAL TERMS AND CONDITIONS

1. These general terms and conditions shall apply to all offers and agreements and legal relationships which are entered into by the party commissioned and/or R. Toes & Zn. B.V. as seller (hereinafter referred to as "Toes"), as well as to negotiations relating to such delivery and/or work, even if they do not lead to the conclusion of an agreement, a delivery, or work.
2. The Principal shall make all information and documents, which Toes, in its opinion, requires in order to be able to properly execute all offers and agreements and legal relationships, available timely. If the information is not provided timely, Toes shall never be liable for any direct or indirect damages with respect to all offers and agreements and legal relationships and delivery of goods and execution of works.
3. Notwithstanding the provisions of article 6:225 sub 3 of the Dutch Civil Code, if the principal and/or purchaser (hereinafter referred to as "Principal") refers to its General terms and conditions, in any case the applicability of the general terms and conditions of the Principal are expressly excluded.
4. If the general terms and conditions of Toes are applicable, they shall be so in full except as otherwise agreed upon in writing.
5. If any provision of these general terms and conditions or of the agreement for any reason whatsoever appears to be invalid, ineffective or not applicable or is declared null and void, such shall not affect the validity of the other provisions. The provision in question shall, after mutual consultation between the parties, immediately be replaced by a provision that approaches the meaning of the original provision as much as possible.
6. Trade terms, used in these general terms and conditions, offers, order conformations or otherwise, are to be interpreted in accordance with the International Rules for the International Chamber of Commerce, as valid at the time the agreement is entered into (currently: the ICC Incoterms 2000), if an in as far these do not contradict with these general terms and conditions.

### ARTICLE 2 - OFFER

1. Any offer or quotation made or information provided by Toes shall be without any obligation towards Toes and shall be deemed to be an invitation to tender, unless provided otherwise in writing.
2. The information published in price lists,

brochures or other documents does not bind Toes either. All figures, measurements, pictures, weights, information and other descriptions of goods and works have been carefully prepared, but Toes cannot guarantee that there will be no deviations and/or irregularities.

### ARTICLE 3 - AGREEMENTS

1. Agreements to render a number of services and/or works and/or sales agreements and/or the delivery of goods and the supplements thereto shall be deemed concluded between the parties under the condition that if the goods have not been sold at the moment of delivery and to the extent that Toes accepts an order of the Principal in writing within a reasonable time frame or carries out work, unless the Principal immediately objects thereto in writing.
2. The records in Toes' administration relating to the performance of work carried out on behalf of Principal's business, which does not come under any agreement or confirmation of instructions, shall be taken as evidence that that work was carried out at the incidental instructions of the Principal.

### ARTICLE 4 - PRICES

1. The prices indicated by Toes are based on delivery "ex works", that is exclusive of carriage, packing, insurance, levies, taxes (etc).
2. Notwithstanding the fact that Toes has agreed upon a certain price with the Principal, Toes shall be entitled to revise the price: Toes will be entitled to charge the price in conformity with its' pricelist at the time of delivery or rendering of the services. Price revision may for instance occur due to pricing and supply fluctuations, raw materials, auxiliary materials and other materials, commodities, freight costs, changes in currency exchange rates or similar factors, wages or circumstances of any other kind which occur between the moment the offer is made and the moment of delivery of the goods or the moment services are being rendered.
3. In case the increase of the price agreed upon amounts to more than 10%, the Principal shall be entitled to terminate the agreement, provided that the Principal has the obligation to purchase goods already fabricated or ordered by Toes for the price agreed upon, increased with (a maximum of) 10%.
4. If Toes has accepted an order without (dis) assembly, but still carries out (dis)assembly of whatever nature, the Principal shall bear the costs.

### ARTICLE 5 - PACKING

Packing shall not be included in the price and shall be charged separately at cost, unless otherwise agreed upon in writing between the parties. With observance of the applicable legislation and the purpose the packing material is used for, the goods shall be packed in the manner commonly applied in the branch of industry. Toes shall not take back any packing material unless Toes is forced to do so by law.

### ARTICLE 6 - DELIVERY AND DELIVERY TIME

1. All deliveries shall be "ex works". Consequently transport, packing, insurance (etc). shall be for the account and at the risk of the Principal, unless expressly agreed otherwise in writing.
2. Times for delivery are by approximation, unless expressly mentioned otherwise. These delivery times are not deadlines and shall always be without obligation towards Toes. Exceeding agreed delivery times, for whatever reason, does not give the Principal – even after notice of default – any right to dissolution, compensation and/or suspension. Expiry of a time for delivery on itself does not constitute an event of default. In any case the time for delivery shall not commence before an agreement is reached in writing about all technical details and all data required for the proper execution of the order are in the possession of Toes, after order confirmation.
3. If the goods are ready for delivery to the Principal, before or after expiry of the time for delivery and such has been notified to the Principal, the goods will be at his disposal and stored for his account and at his risk as from a period of 14 days after the date of notification.
4. If the Principal decides upon last minute changes or instructions, the delivery, insofar this has been agreed upon, will not be valid anymore. Delivery and delivery time will be postponed for the period necessary to alter these changed instructions into the agreement.
5. Toes shall as the case may be at any time have the right to make partial deliveries and will be entitled to demand payment for each partial delivery, in which case an invoice will be sent for each partial delivery.

### ARTICLE 7 - PAYMENT

1. Toes will be entitled to ask for an advance payment to be paid at the time of order placement, before the performance of the agreement commences.

2. Unless otherwise agreed upon in writing, payment of the agreed price shall be effected within 30 days of the date of invoice.
3. Before making delivery Toes will always be entitled, whether or not while continuing to execute the agreement, to demand proper security for the performance of the payment obligations of the Principal. For example by means of a bank guarantee. The Principal's refusal to issue the required security shall give Toes the right to terminate the agreement(s) by means of a written notice, without prejudice to its right to claim compensation for (all) damages, costs and interests. This provision shall also apply in case credit was stipulated.
4. If the Principal fails to perform his (payment) obligations, Toes shall furthermore be entitled to suspend the work and/or delivery, even in case a fixed time for delivery has been agreed on. (Governmental) regulations preventing the use of the goods to be delivered do not change the Principal's financial obligations.
5. All payments made by the Principal must be without any deduction, discount or setoff.
6. The entire price and/or price increase shall in any case be immediately due and payable if the agreed price and/or price increase (or parts thereof) is/are not paid promptly, if the Principal:
  - is declared bankrupt;
  - is winding up his business or is in similar circumstances;
  - applies for suspension of payments;
  - is being placed under legal restraint or guardianship is applied for;
  - if any attachment or adjustment is made on the goods or claims of the Principal; and
  - if the Principal deceases or is dissolved.
7. No protest or guarantee claim or complaint shall suspend the Principal's payment obligation(s), unless and to the extent the parties did agree otherwise in writing.
8. If the Principal fails to make payment within the agreed terms, he shall be deemed to be in default immediately and Toes shall be entitled, without any prior notice of default and without prejudice to the other rights of Toes, to charge legal interest pursuant to article 119a Book 6 of the Dutch Civil Code as from the due date, increased by 1% per month on the total amount due, a part of a month being considered a whole month.
9. Pursuant to article 96 sub 2c Book 6 of the Dutch Civil Code, besides the contracting or purchase price and interest Toes shall be entitled to claim all collection costs caused by non-payment, which sum shall have a minimum amount of EUR 150,00 or 15% of the price. All payments made by the Principal to Toes are in the first place considered to be payment of all costs and interests due, and in the second place of the invoices due which have been outstanding longest, even if the Principal states that the payment relates to an invoice of a later date.

**ARTICLE 8 - RESERVATION OF TITLE ("EIGENDOMSVOORBEHOUD") AND PLEDGE**

1. The ownership of the goods shall exclusively remain with Toes, until the Principal has fulfilled all his obligations arising out of

the agreement(s) on the goods or any other agreement relating thereto. Obligations shall include inter alia payment of the price, price increase, rebates due, interest, costs, penalties (etc).

2. Furthermore, the Principal shall, under no circumstances, be entitled to pledge or mortgage any of the goods or alienate them in another manner or transfer them to third parties before the moment referred to in paragraph 1 hereof.
3. In case the Principal fails to perform (on time) any obligation under the agreement relating to the sold and/or delivered goods - for example because the Principal is declared bankrupt or is winding up his business or is in similar circumstances, such as suspension of payments - Toes shall be entitled, without prior notice of default, to recover the goods. Toes and its representatives having the right of entry to all business and other premises of the Principal or third parties that are holding the goods for the Principal, the latter herewith giving them irrevocable power of attorney to do so. The Principal is obliged to render every assistance to this end, on pain of a penalty of 15% of the price per day the Principal did not render the aforementioned assistance. The Principal is not allowed to invoke a right of retention in respect of Toes as regards storage costs and/or other claims that the customer has or alleges to have on Toes.
4. In case Toes invokes reservation of title as described above, Toes shall be entitled to terminate the agreement(s) with the Principal by means of a written notice, without prejudice to its right to claim compensation for all damage, costs and interests.
5. The Principal herewith binds himself to give Toes immediately written notice of the fact that third parties (will) enforce claims on goods subject to reservation of title by virtue of this article. Should the Principal at any time appear to have failed to fulfil the obligations under this article, he shall be due - in addition to his other obligations - a penalty amounting to 15% of the price.

**ARTICLE 9 – WARRANTY**

1. Principal shall conduct all necessary inspections and test of the deliveries and is obliged to check the deliveries for any irregularities to the agreement immediately after the delivery.
2. All claims and complaints relating to the goods delivered and works executed by Toes have to be submitted in writing to R.Toes & Zn. B.V. within 14 (fourteen) days after the delivery on the proof of receipt, all this to confirm that the claim existed at the time of delivery of the goods. After the expiration of this period, the goods are considered irrevocably and unconditionally accepted by the Principal.
3. Claims and complaints with respect to small deviations, common in trade, and differences in quality, colour, weight, etc., which from a technical point of view can not be avoided, can not be submitted.
4. Claims and complaints in respect of shortages, differences in dimensions or sizes, or damage,

shall only be acknowledged if Toes is given the opportunity to inspect the delivered goods in their original condition and in their original packing.

5. If the Principal's claim is not without merit, Toes can choose to execute her part of the agreement once more, or fully or partially terminate the agreement in case that despite a Principal's proper written request, Toes fails to perform due to own fault. The Principal must return the defected goods to the seller.
6. No warranty is provided for defects caused by:
  - deterioration from normal use;
  - improper use;
  - absence of, or improper maintenance;
  - installation, assembly, change of repairs by the Principal or a third party.
7. Goods may only be returned after a prior written permission granted by Toes.

**ARTICLE 10 - (NON-PERFORMANCE NOT IMPUTABLE TO TOES) FORCE MAJEURE**

1. If in case of force majeure, the execution of the agreement on the part of Toes becomes unreasonably strenuous or impossible and the execution is still desired, Toes is authorized to choose to postpone or to discontinue the execution, in which case the Principal will be informed of this decision as soon as possible, considering the circumstances.
2. By "Force Majeure" is meant and included any failure in performance due to circumstances or occurrences beyond Toes' reasonable control - whether or not foreseeable at the time of the Offer, Confirmation or Agreement - as a result of which Toes cannot reasonably be required to execute its obligations. Such failure in performance is present if it is neither due to Toes fault nor for his account pursuant to law, a juridical act or generally accepted principles.
3. In any case, the following circumstances are qualified as force majeure (not limitative)
  - unforeseeable technical complications;
  - defects in objects or materials of third parties which the Principal has required Toes to use;
  - impediments caused by third parties;
  - strikes;
  - non delivery or late delivery by suppliers;
  - stagnation of supplies;
  - exceptional circumstances, such as import end export bans, restrictive measures taken by any government, war risk, armed conflicts, fire, storm and other natural disasters;
  - in general all circumstances, events, causes and consequences beyond the control, influence or authority of Toes.
4. The price increase or decrease following from the modification of the agreement shall be settled between the parties, whereas in addition Toes shall be compensated for work and deliveries which has/have already been carried out or made but appeared to be useless, if in case of force majeure. In that case settlement shall take place within four weeks after the moment it was established that the agreement could no longer be executed.

**ARTICLE 11 - LIABILITY**

1. Any liability of Toes for all direct damage inter

alia as a consequence of delivery of defective goods or defective materials as well as work not properly carried out, shall be limited to the amount of the invoice of those goods, materials and work save the exceptions provided in the present conditions and cases of deliberate failure or gross negligence.

2. If Toes has accepted an order without (dis) assembly, but still carries out (dis)assembly of whatever nature in order to perform her duties, Toes shall, under no circumstances, be liable therefore.
3. Liability of Toes for indirect damage, amongst which consequential loss, loss of profits, lost savings and loss due to business interruption, including stagnation in the normal course of business in the undertaking of the Principal, in anyway related to the sale and/or delivery of goods and/or execution of works by Toes is excluded.
4. If, notwithstanding the exclusion of liability contained above, Toes could be held liable for any direct and/or indirect damage, this combined (direct + indirect) liability shall be limited to the net invoice amount of the defective goods supplied or services rendered at most.
5. Toes is not liable for any kind of damage that is caused by Toes relying on incomplete and/or false information provided by the Principal, unless it is considered reasonable to assume that information to be false and/or incomplete.
6. Toes is not liable for damage caused by servants, agents or Sub-Contractors as a result of false or late instructions.
7. Toes' liability for injury or damage through death or bodily injury or because of material damage to objects will be limited to the amount or amounts covered by the liability insurance policy taken out by Toes. If, for whatever reason, no insurance payment can be made pursuant to the liability insurance policy taken out by Toes, the liability will be limited at all times up to the amount of the invoice of the goods in question.
8. The Principal shall indemnify Toes against all third-party claims because of product liability

ensuing from a defect in a product which has been delivered by the Principal to a third party and which partly consisted of equipment or other materials delivered by Toes.

#### **ARTICLE 12 - LAPSING OF RIGHTS**

Insofar as these general terms and conditions do not provide otherwise, rights of action and other powers of the Principal on whatever ground vis-à-vis Toes in connection to the sale and/or delivery of goods and/or execution of works by Toes shall in any event lapse 3 months after the time at which the goods were delivered or works were executed.

#### **ARTICLE 13 - TERMINATION**

1. If the Principal fails to perform, or fails to perform on time, any obligation arising for him out of the agreement(s) between the parties, he shall be in default and Toes shall be entitled, without notice of default or judicial intervention:
  - A.** to suspend the execution of the agreement and the agreement(s) directly related thereto until payment is sufficiently secured, and/or;
  - B.** to terminate the agreement and the agreement(s) directly related thereto wholly or partly;
  - C.** without prejudice to its other rights and without being bound to pay any damages.
2. In case the Principal is declared bankrupt or winds up his business or is in similar circumstances such as suspension of payments, all agreements between Toes and the Principal shall be terminated by operation of law, unless the Principal or his authorized representatives inform Toes within a reasonable time frame after the event mentioned above that they wish (part of) the agreement(s) in question to be executed, in which case Toes shall be entitled without notice of default:
  - A.** to suspend the execution of the agreement in question until payment is sufficiently secured, and/or;
  - B.** to suspend its payment obligations towards the Principal, without prejudice to its other rights towards the Principal and without being bound to pay any damages.

#### **ARTICLE 14 - CANCELLATION**

1. If the Principal wishes to cancel the agreement(s) and Toes agrees thereto in writing, the Principal shall be obliged to take delivery of all materials, raw materials, whether processed or not, at cost, including wages, and to indemnify Toes on account of inter alia loss of profits by payment of 15% of the price, without prejudice of all other rights of Toes or unless otherwise agreed between the parties.
2. In case of cancellation the Principal shall be obliged to indemnify Toes against claims of third parties having arisen as a consequence thereof.

#### **ARTICLE 15 - CHANGES**

Toes is allowed to make changes in these general terms and conditions. These changes take effect on the announced date of commencement. Toes will timely send the changed general terms and conditions to the Principal. If no commencement is stated, the changes take effect towards the Principal as soon as they are conveyed to him.

#### **ARTICLE 16 - DISPUTES**

All disputes arising out of the offers made by Toes or the agreements concluded with Toes and the supplements thereto, will be exclusively submitted to the judgment of the competent court in Rotterdam (having absolute jurisdiction), with reservation of the right of appeal to the Court of Appeal or the Supreme Court.

#### **ARTICLE 17 - APPLICABLE LAW**

All offers made by Toes and all (sale) agreements concluded with Toes, the deliveries and supplements thereto or extra work to which these general terms and condition apply, and all disputes arising therefrom shall be governed by Dutch law, the applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) being excluded.

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