

## Stork Plastics Machinery B.V. (Stork IMM) General Terms & Conditions of Delivery & Payment

### Introduction

The following general terms & conditions for the supply of goods (hereinafter referred to as 'the Terms & Conditions'), subject to the express rejection of any other (purchase) conditions applied by the buyer (hereinafter referred to as the 'Buyer'), shall apply to all agreements to be entered into by Stork IMM (hereinafter referred to as the 'Supplier') with a Buyer regarding the sale and delivery of goods, unless the parties have agreed otherwise in writing. Buyer and Supplier are jointly referred to as 'parties'.

### **1 - Offer and order confirmation**

1.1. The Supplier's offers for the supply of goods are valid for thirty days. A contract shall only be concluded after the Supplier has confirmed the order in writing. The contents of the contract shall be determined solely by said order confirmation.. The Buyer is then no longer entitled to change or cancel, unless the Supplier agrees with such a change or cancellation in writing. Changes and/or additions to the contract shall be agreed upon in writing. Verbal commitments and agreements made by and with the Supplier's employees shall only bind the Supplier insofar as the Supplier has confirmed same in writing..

1.2. Illustrations, catalogues, technical data and computer programs furnished by the Supplier shall remain the property of the Supplier and are free of obligation on our part, unless expressly agreed otherwise in the order confirmation.

The Buyer is responsible for ensuring that these items are copied and/or submitted and/or made available to third parties for inspection without the Supplier's permission. The Supplier is not obliged to furnish detailed drawings.

Illustrations, catalogues, drawings, specifications of dimensions and weights furnished to the Supplier by the Buyer shall remain the property of the Supplier.

They shall not be copied and/or submitted and/or made available to third parties for inspection, should the Buyer so request.

1.3. The machinery to be supplied shall be designed and manufactured based on the Dutch standards and regulations applicable on the order date. Unless the offer or agreement states otherwise, adaptations of standards and regulations that apply at the Buyer's place of business shall be made by the Supplier for the Buyer's account and risk.

### **2 - Terms & conditions of payment**

2.1. The Supplier's offers are based on the following terms & conditions of payment, unless the offer states otherwise:

1/3 of the price on the date that the order is placed  
1/3 of the price on the date of notice that the goods are ready for delivery

1/3 30 days after commissioning, but not later than 60 days from the date of notice of the goods being ready for delivery.

2.2. All specified prices are exclusive of packaging material, unless indicated otherwise. All import and customs levies, all other taxes and fees and the costs related to implementing customs formalities are for the Buyer's account.

2.3. For goods that the Buyer wishes to be processed or treated or delivered outside of the normal

working hours, the additional fee(s) applicable or agreed at that time shall be charged.

2.4. All payments shall be made in full and credited to the bank account and in the currency specified on the invoice.

2.5. The costs for transferring the amounts due shall be for the Buyer's account. All costs involved in providing securities for payment shall be for the Buyer's account.

2.6. If it has been agreed that payments shall be made on submission of transport documents, it shall also be possible for such payments to be made on submission of a warehouse receipt, if transportation cannot take place for reasons beyond the Supplier's control. To that end, the Buyer shall make an arrangement with its bank. In that case, the costs of storage shall be for the Buyer's account.

2.7. If the due dates of payment are exceeded, the amounts due shall be increased by the current promissory note discount rate of *De Nederlandsche Bank* plus three per cent, which increase shall be calculated for the period over which the Buyer's payment(s) is (are) overdue.

2.8. If the Buyer is in default of any payment, the Supplier shall be entitled to suspend its own obligations until such time that payment has been made in full. If the Buyer is in default of payment longer than thirty (30) days, the Supplier shall be entitled to terminate the contract by means of a written notice to the Buyer without legal intervention and without liability to pay the Buyer any compensation.

2.9. The ownership of the goods transfers to the Buyer first after the Supplier has received payment of the full amount due.

2.10. As a condition of payment, the Buyer shall furnish the Supplier with security for any outstanding amounts on request.

### **3 - Delivery period**

3.1. The delivery period shall commence on the day on which the Supplier, after the Supplier has sent an order confirmation, has received the first down payment pursuant to the provisions in 3.1, and securities have been provided for the payment of the remaining amounts, and the Supplier has received the data necessary for commencing and during the execution of the work from the Buyer, including any required sample materials. If a fixed date of delivery has been agreed and the Buyer has not complied with its obligation to pay on time or to make the required data available, the date of delivery shall be moved forward accordingly.

3.2. If due to causes beyond its control the Supplier is unable to deliver on time, the Supplier shall see to it that the goods are appropriately stored for the account and risk of the Buyer, without prejudice to the Buyer's obligation to pay any outstanding instalments on time.

3.3. If the Buyer suffers any loss due to a failure on the Supplier's part to observe the agreed delivery period, the Buyer shall be entitled to 0.1% of the total sum of the price for each subsequent working day that the delivery period has been exceeded up to a maximum of 5% of the total sum of the price for the entire and sole settlement of the losses suffered by the Buyer, with the exclusion of any other right to compensation due to the delivery period being exceeded. This right to payment shall lapse if the Buyer does not give the Supplier written notice that it wishes to exercise this right within

14 days after the date of notice of the delivery delay.

### **4 -Delivery/Retention of title**

4.1. Delivery shall be effected 'ex-factory' unless agreed otherwise. The conditions of these forms of delivery are determined according to the Incoterms, as applicable at the time of the order confirmation.

4.2. If contrary to the provision under Article 14 Dutch law would not apply to the contract or would only apply in part, and the applicable law does not permit this retention of title, the Supplier shall enjoy all other rights that grant the Supplier in so far as possible the same rights to the goods. The Buyer shall always provide full cooperation including unhindered access to the machinery delivered, in order to enable the Supplier to establish and exercise these rights. The Buyer shall, in any case until such time that all payments due are paid to the Supplier, maintain the goods delivered in a good state of repair and also have them adequately insured at new value. Proof of insurance will have to be provided at the Supplier's request.

The Buyer is not entitled to pledge the goods or to offer them for security in any other way before the amounts due to the Supplier have been paid.

4.3. If, after the Supplier has given the Buyer notice of default, the Buyer fails to pay the entire amount due under the contract, the Supplier shall be entitled, without judicial intervention, to repossess the goods, and to dissolve the contract without prejudice to its right to compensation.

### **5 - Acceptance and guarantee**

5.1. If the Supplier has to carry out assembly and/or commissioning work or if the Supplier has agreed to preliminary and/or acceptance tests, the Buyer shall make all the necessary auxiliary materials, raw materials, and other materials available to the Supplier free of charge, and the Buyer shall see to it that the foundation for the machinery fully complies with the Supplier's instructions before the date on which the assembly work commences. Any costs related to the failure to meet these obligations or not meeting them on time shall be for the Buyer's account.

As soon as the goods have been delivered in the agreed manner and, in so far as has been agreed, have been commissioned by the Supplier, and the preliminary and acceptance tests have generally been successfully completed, the Buyer shall be deemed to have accepted the goods, by which the Supplier's liability on any ground whatsoever shall cease to exist, with the exception of its guarantee obligations specified in this article. The goods are also deemed to have been accepted if the Buyer has failed to make the above-mentioned raw materials and/or other materials available within 3 months from the date of the Supplier's request, the foundation does not comply with our instructions or if the Buyer has otherwise failed to meet its obligations, or if the Buyer puts the goods to use for commercial production. In the event of shortcomings that do not or hardly affect the envisaged use of the goods, the goods shall be deemed to have been accepted irrespective of these shortcomings. The Supplier shall remedy these shortcomings under the guarantee pursuant to this article as soon as possible.

5.2. The Buyer shall enable the Supplier to implement such improvements and changes as the Supplier deems necessary.

5.3. The Supplier guarantees the reliability of the construction and the materials used for all the goods

delivered by the Supplier in accordance with the contract and during the term specified under 6.4. The defects covered by this guarantee shall be rectified by the Supplier free of charge (at the Supplier's discretion by repair or replacement of the defective part). This guarantee shall commence on the date of delivery or the date of conclusion of the commissioning work, if and to the extent that this work has been agreed.

If by reason of its guarantee obligations, the Supplier replaces parts/products, the replaced parts/products shall be the Supplier's property. Wear and tear parts shall not be covered by a guarantee.

5.4. All guarantee periods shall end 6 months after the date of conclusion of the commissioning work, or 9 months after the date of delivery of the goods, subject to the proviso that the period that lapses first shall terminate the guarantee.

5.5. During the above-mentioned guarantee period the Supplier shall rectify all software errors to the best of its ability whereby such errors are defined as reproducible deviations from the software specifications furnished by the Supplier. The Supplier does not guarantee that the software will function without interruptions or defects, nor that all errors will be rectified. The Supplier may charge the cost of rectification in the case of usage errors on the part of the Buyer or other reasons not attributable to the Supplier. The above-mentioned guarantee does not apply to computer viruses, unless the Buyer can prove that the virus was present in the software at the time that the Supplier made the relevant software available.

5.6. Delays in the performance of the contract that are at the Buyer's risk shall not suspend the periods specified under 6.4.

5.7. This guarantee does not apply to defects that are caused by or related to (1) materials, parts or designs that are furnished by or on the Buyer's behalf; (2) negligence or any other failure to act or omission on the part of the Buyer, its employees, representatives or other third parties; (3) any spare parts that are supplied by the Buyer other than original spare parts; or (4) poor installation of the goods or adjustments that are made without the Supplier's written consent.

The guarantee specifically does not apply to defects that are caused by or related to normal wear or the use, maintenance, service or commissioning of the goods contrary to that which the Supplier or its suppliers have prescribed in the manuals, instructions or specifications. Guarantee claims shall be reported to the Supplier in writing immediately after the occurrence of a defect and at the latest two weeks after the guarantee period has expired.

5.8. The guarantee for parts provided by third parties shall not extend beyond the guarantee period the Supplier is granted by its suppliers.

5.9. This guarantee is the only guarantee that shall be provided with respect to the goods and replaces all other explicit and implicit guarantees, including any other guarantees and/or liabilities for hidden or other defects and other obligations or liabilities ensuing from an agreement or the law. Upon expiry of the guarantee period, the Supplier shall not be held liable for whatever reason.

## 6 - Liability

6.1. The Supplier is not liable for:

- a. claims from third parties due to infringement of their patent rights, licence rights, trademark rights, design rights by whatever name in

connection with the goods supplied by the Supplier, if and to the extent that the Supplier may have violated these rights by making use of data furnished to the Supplier by or on the Buyer's behalf for the purpose of fulfilling the order;

- b. indirect and/or consequential loss such as, but not limited to, trading loss, loss of profits, production loss, depreciation in value of assets, loss of goodwill and/or reputation, suffered by the Buyer and/or third parties as a result of non-, incorrect or late delivery and or performance of the work;
- c. if the Supplier supplies computer equipment within the framework of the contract, the Supplier shall not be held liable for damage as a result of the loss of electronic data and information;
- d. any damage or physical injury arising from acts or omissions on the part of the Buyer or third parties engaged by the Buyer in contravention of the Supplier's operating, maintenance, foundation and other instructions and/or in the case where the Supplier's goods have been altered in any way without the Supplier's express written permission. The Buyer shall indemnify the Supplier against any claims with regard to such damage or physical injury;
- e. errors of defects in any sense whatsoever, if the Supplier has not stipulated a *quid pro quo*.

If the contract should dissolve wholly or in part, and/or the Buyer suffers demonstrable direct damage due to a shortcoming attributable to the Supplier, the Supplier shall refund the value of the substituting performance up to a maximum of the value of the non-fulfilled part of the contract.

6.2. After acceptance and takeover in accordance with Article 6, the Supplier's liability is limited to the guarantee obligations specified in Article 6.

## 7 - Dissolution or nullity of the contract

7.1. After dissolution or, in case of, nullification of the contract, for whatever reason, these General Terms and Conditions shall continue to apply in so far as they have independent significance and/or in so far as required for the regulation of the consequences of the dissolution or nullification, including, but not limited to, the provisions concerning the delivery, penalty clauses, liability, legal jurisdiction and applicable law.

## Section 8 - Software user right and property

8.1. If the delivery also includes software, the Supplier shall grant the Buyer a non-exclusive, non-transferable user right to the software, which is understood to mean computer programs recorded on material that is readable for the computer and corresponding documentation, including new versions, in so far as the supply of newer versions has been agreed.

8.2. The ownership of and all industrial and intellectual property rights to the software shall at all times remain with the Supplier or the supplier that has granted the Supplier the right to provide the software to the Buyer. The Buyer shall not remove any copyright designations. The Buyer is aware of the fact that the software contains confidential information and business secrets of the Supplier or its suppliers and shall see to it that the software is kept secret and not disclosed to third parties. The Supplier is free to take technical measures to protect the software.

8.3. For safety reasons, the Buyer will be permitted to make no more than two copies of the software, which should be equipped with the same labels and designations as the original material.

8.4. The Buyer is not permitted to sell the software, transfer it as security, modify it, place it at the disposal of third parties or to use it for the benefit of third parties.

8.5. The source code of the software shall not be placed at the Buyer's disposal.

8.6. The user right shall come into effect on the date of installation and end as soon as the equipment is disposed of or permanently decommissioned.

## 9 - Force majeure

9.1. Force majeure shall be understood to mean all circumstances beyond the power and reasonable control of the party concerned, provided that at the time of concluding the contract those circumstances could not already have been foreseen by that party or the consequences thereof could have been prevented.

9.2. The party that is unable to perform and invokes Force Majeure shall inform the other party immediately in writing and take all necessary measures to minimise the resulting damage, provided the party concerned can take such measures without unreasonably high efforts or high costs.

## 10 - Assembly, commissioning and service

10.1. If and to the extent that the Supplier has agreed to performing the assembly and/or commissioning work, or supervising and/or giving assistance with the assembly and/or commissioning or service work, the Supplier's General Terms & Conditions for performing assembly, commissioning, and service work shall also apply.

## 11 - Parts

11.1. The Supplier's General Terms & Conditions for (spare) Parts apply to the delivery of parts and spare parts.

11.2. Unless the Supplier and the Buyer have specifically agreed otherwise in advance, the Supplier shall not keep any non-series, specific, unique parts/components in stock.

11.3. The Supplier is entitled to deliver other parts instead of the parts ordered from the Supplier, assuming, that these parts are at least equivalent to the original parts ordered.

11.4. The price does not include the assembly of the parts.

11.5. Guarantee on parts, see the Stork IMM General Terms & Conditions for the Delivery of Spare Parts.

## 12 - Packaging materials

12.1. If packaging materials are provided for the delivery of machines or parts, these materials shall remain the Supplier's property. Said packaging materials shall be specified in the Supplier's order confirmation.

12.2. Packaging other than the packaging referred to in 13.1 shall not be taken back.

## 13 - Disputes

13.1. Any disputes shall be settled exclusively by the competent court in the district of Arnhem, the Netherlands.

## 14 - Applicable law

14.1. These Terms & Conditions are subject to Dutch law.