

# TITO TRADING B.V.

## GENERAL SALES CONDITIONS

Lodged at the Commercial Registry of the Chamber of Commerce and Industry on the 30th of April 2014 under number 09137681.

### 1. SCOPE OF APPLICATION

1.1. These general terms and conditions of sale and delivery shall apply to all offers and agreements, deliveries, services to be provided and work to be performed, whatsoever their nature and howsoever they are called involving the private company with limited liability, Tito Trading B.V., also trading under the name "Tito Spare Parts" established in Nijmegen, hereinafter together referred to as 'Tito Trading'.

1.2. Under any circumstance Tito Trading explicitly rejects the general terms and conditions (of purchase or otherwise) of any of its existing or potential contracting parties (hereinafter referred to as the 'Customer'), even if the Customer refers to the same in a request for Tito Trading to present an offer. The applicability of Customer's general conditions is hereby explicitly excluded.

### 2. OFFER AND ACCEPTANCE

2.1. Any offer shall be free of obligation and shall be treated in its entirety as a single offer.

2.2. An agreement shall only come into effect following acceptance of an offer and written confirmation of the relevant order by Tito Trading, or after the latter had commenced fulfillment of same.

2.3. In the event that no confirmation of an order is sent owing to the circumstances, including the nature, scope or urgency of the order concerned, an invoice issued by Tito Trading shall be considered to constitute such confirmation.

2.4. The written consent of the parties shall be required for any amendment of an agreement. Such an amendment and any additional work which may be required due to the provision of inaccurate or incomplete information or inadequate cooperation on the part of the Customer whatsoever shall be considered additional work and, as such the Customer shall be liable for any costs involved.

### 3. PRICES

3.1. All of Tito Trading prices shall be in Euros and are stated excluding Dutch VAT and/or any other taxes, import, transit and export duties, product board levies, etc., unless explicitly agreed otherwise. In case Dutch VAT is not to be added to the purchase price, Customer shall provide Tito Trading with its correct VAT registration number in the absence of which the purchase price is automatically increased by adding the VAT, without prejudice to Tito Trading's right to claim compensation from Customer.

3.2. The prices quoted by Tito Trading are based on the price determining factors applicable at the time when the offer is made. If, after the date of the offer, one or more of these price determining factors change, even if this is due to circumstances that may be anticipated, Tito Trading shall be entitled to adjust the sum agreed upon the acceptance of the order. After the adjustment of the contract sum has been determined, Tito Trading shall be entitled to claim payment of the adjusted contract sum in the same time installments that apply to the original contract sum.

3.3. If application of the preceding paragraph should result in a price increase of at least 10%, within three months after the agreement has been concluded, the Customer will be entitled to dissolve the agreement within ten working days after having been notified of the price increase, by means of a letter sent by registered mail.

### 4. PAYMENT

4.1. Payment shall be effected within 14 days after the invoice date, unless explicitly agreed otherwise.

4.2. Unless explicitly agreed otherwise, the Customer shall effect payment by means of a net cash payment in Euros into an account designated by Tito Trading without any discount or deduction, howsoever it may be called, and without any recourse to set off.

4.3. Should the Customer fail to comply with any term of payment stipulated in these terms and conditions or agreed separately, it shall immediately be in default by operation of the law without the need for any further notice to this effect. In this case Tito Trading shall be entitled to proceed with collection without any further notice of default, and the Customer shall be charged for any statutory commercial interest permitted under the terms of Book 6, Section 119a of the Dutch Civil Code.

4.4. In addition to the principal sum and interest payable due to the delay, the Customer shall be liable for all expenses, both judicial and extrajudicial, which Tito Trading incurs for the purpose of collecting the debt and securing its entitlements. These judicial expenses shall at any rate include fees declared by lawyers, local counsel, experts and any other person whom Tito Trading has engaged to help it with such collection, or whom Tito Trading has instructed to institute proceedings for this purpose, even if the relevant declarations may exceed any sum which a court of law deems to be the costs payable by the party held to be in the wrong in any proceedings. The extrajudicial expenses shall at any rate include any declarations and bills presented by expert advisers (legal and otherwise), debt collection agencies, bailiffs and anyone else whom Tito Trading has instructed to help it for the purposes of extrajudicial collection. The extrajudicial expenses shall be held to be the equivalent of no less than 15% of the original sum plus VAT subject to an absolute minimum of EUR 250,00.

4.5. Tito Trading shall at any time have the right to require payment in advance or the provision of security in relation to any delivery. Tito Trading shall be entitled to suspend the performance of its obligations if and for as long as the Customer refuses or is unable to provide the payment in advance or security requested.

4.6. Tito Trading reserves the right to suspend performance of the agreement until payment has been received. All storage costs incurred in this respect shall be for Customer's account.

4.7. Tito Trading shall at all times be entitled to set off any claim which the Customer has against it and which can be expressed in pecuniary terms, against any claim whatsoever which Tito Trading (the company that concluded the agreement with the Customer) that any of its associated companies has against the Customer.

### 5. DELIVERY

5.1. Delivery shall be in accordance with the most recent Incoterms EXW (ex works) in force at the time when the agreement is concluded (whereby the place of delivery will be either the warehouse of Tito Trading or the manufacturer affiliated to Tito Trading or the place of storage), except when the parties explicitly agree otherwise.

5.2. Delivery periods are given by approximation and are indicative only. If the delivery period is exceeded,

Customer shall not be entitled to claim damages, nor to claim dissolution of the agreement.

5.3. Customer shall inspect the delivered products immediately after delivery for any defects and shall notify Tito Trading of any visible defects in writing as soon as possible, though not later than forty-eight hours after the products have been delivered.

5.4. Customer shall notify Tito Trading in writing of any hidden defects within forty-eight hours after they were discovered, or could reasonably have been expected to have been discovered.

5.5. If Customer fails to make a complaint within the time periods as stipulated in the preceding paragraphs, it shall be deemed to have approved the delivered products and to have waived any and all rights and powers that are open to it by law and/or under the agreement.

5.6. Minor deviations and variations in quality, color, size, etc. and/or deviations and variations that are acceptable in the sector shall in no event constitute grounds for complaints. Submitted claims do not exempt Customer from its obligation to pay.

5.7. In case Customer has not taken delivery after the delivery period has expired, the products shall be stored by Tito Trading for the account and risk of Customer. Tito Trading is entitled to deliver or at least to make available for delivery all or part of the quantities still to be delivered and to claim direct payment in respect thereof and/or to consider the relevant agreement to be dissolved in respect to the unclaimed or still undelivered part, without prejudice to Tito Trading's right to claim compensation from Customer.

## 6. WARRANTY

6.1. Unless it has been expressly agreed otherwise between parties, Tito Trading warrants for a period of three months after delivery of the products that they are of the quantity, quality and description required by the contract.

6.2. Except where the parties have agreed otherwise in writing, the products are not fit for any particular purpose and do not possess any particular qualities, and Tito Trading will accordingly not be liable for any lack of conformity of the products.

6.3. The warranty does not cover the following causes of damage:

- minor deficiencies or deviations, which fall within the levels of tolerance as accepted in good commercial practice;
- the products have been used for a purpose other than that for which they are normally or specifically intended or in the opinion of Tito Trading have been used, maintained, stored or transported injudiciously;
- the products have been repaired or altered by Customer or a third party;
- the damage has been caused by the installation, set-up and/or connection of the products or the negligence of Customer or a third party;
- the damage has been caused by Customer or a third party having acted contrary to Tito Trading's instructions, indications and advice;
- the defect is caused by normal wear and tear;
- the defect is a result of malfunctioning of a device, part and/or parts operated by electricity;
- the defects ensue from any government regulation with regard to the products or the manufacturing or use thereof;
- Customer has not fulfilled its obligations towards Tito Trading (both financially and otherwise).

6.4. Tito Trading's warranty obligations with respect to the products are strictly limited to the terms of warranty as set forth in this Article 6. Customer explicitly relinquishes all its (other) rights and claims it may have under the applicable law. Tito Trading will determine, in its sole and absolute discretion, whether any warranty claim is covered under Tito Trading's warranty. In the event that Tito Trading deems a warranty claim justified, it shall at its sole discretion, deliver a new product or new components (after which the replaced products or components shall become

the property of Tito Trading) or repair the products free of charge within a reasonable period upon receipt of the claim or give a price reduction or send a credit invoice.

6.5. New products or components under warranty will be delivered under the terms and conditions stated in Article 5. Troubleshooting at the spot will be for the account and risk of Customer, including, but not limited to disassemble, assemble, mounting, installation, set-up and/or connection of the products.

6.6. The products must be made available to Tito Trading for examination upon first request, freight and duty pre-paid by Customer. Customer shall not be entitled to return any products without a material return authorization of Tito Trading. The costs of any returns shall be for Customer and the Products will remain at its risk.

6.7. If Tito Trading delivers products to Customer which Tito Trading has obtained from its supplier(s), Tito Trading shall never be bound by any warranty or liability towards Customer that extends beyond the warranty or liability that Tito Trading can claim of its supplier(s).

## 7. RETENTION OF TITLE

7.1. All products that are delivered to the Customer shall remain the property of Tito Trading, but shall be for the account and risk of Customer, until Customer has paid in full all sums it owes for products that are delivered, or to be delivered under the agreement, as well as any claims arising from Customer's failure to comply with these conditions or with any similar agreement(s), including interest and collection costs.

7.2. Customer shall take all appropriate measures to separate and keep separated the products referred to in the preceding paragraph from the other products in its care, to mark these products in such a manner that they are clearly recognizable for third parties as being the property of Tito Trading. Customer shall at all times grant Tito Trading and its representatives free access to the spaces where the products delivered by Tito Trading are stored.

7.3. For as long as the ownership of the products has not yet passed to Customer, Customer shall not be entitled to process these products, to transfer actual control of them, to alienate them, pledge them or encumber them in any other way.

7.4. If Customer fails to comply with its obligations or if Tito Trading has good grounds to fear that Customer shall fail to comply with its obligations, Tito Trading may invoke its retention of title. If Tito Trading invokes the retention of title, Customer shall, if so requested, transfer the delivered products immediately under to actual control of Tito Trading, free of charge.

7.5. Should the law of the country of destination of the products and/or the country where the work has been performed offer more far reaching alternatives for the retention of title than is provided for in this article, such far reaching alternatives shall be deemed to have been agreed by the parties for Tito Trading benefit, subject to the provision that, if it is possible to determine objectively which far reaching rules these provisions relate to, the foregoing provisions of this article shall continue to apply.

## 8. FORCE MAJEURE

8.1. Any obligation which Tito Trading has to comply with under the agreement shall be suspended for as long as it is impossible for it to do so or to do so properly due to force majeure.

8.2. Under these terms and conditions, force majeure on the part of Tito Trading shall be deemed to cover any circumstances that are beyond its control, be they foreseen and/or unforeseen, as a result of which the Customer can no longer reasonably require Tito Trading to comply for the relevant agreement.

8.3. Force majeure shall include, but not be limited to, fire, flooding, weather conditions, industrial strikes, epidemics, war (civil or otherwise), terrorism, government measures, the absence (temporary or otherwise) of a license, trade

embargo's, labor unrest, power failures, breakdowns, acts of God, breach of contract or delay on the part of any of Tito Trading supplies or subcontractors and the unavailability (temporarily or otherwise) of sufficient raw materials, transport, fuel, energy and labor.

8.4. In the event that compliance is suspended for longer than three months or as soon as it is certain that this will be the case for at least three months, either party may request by means of a registered letter that the agreement concerned either be amended in accordance with the circumstances or that the relevant part of it be cancelled with immediate effect. Customer shall in this event not be entitled to any compensation.

8.5. Should Tito Trading have already fulfilled part of its obligation as agreed when the force majeure situation commences, it shall be entitled to issue a separate interim invoice for the work it has already performed, and the Customer shall be required to pay this invoice as though it concerned a separate order.

## **9. LIABILITY**

9.1. Any liability on the part of Tito Trading for an imputable failure to comply with the contract or on any other grounds is limited to the amount that Tito Trading receives from its insurer under its commercial liability insurance in relation to the damage for which Customer has held Tito Trading liable.

9.2. If no insurance payments are made in relation to the damage in question, the liability of Tito Trading is limited to the warranty settlement provided in Article 6 (direct damages). Customer explicitly waives all other claims it may have against Tito Trading.

9.3. In no circumstances will Tito Trading be liable to Customer for any special, consequential, indirect, criminal or incidental loss, including but not limited to losses caused by delays, lost profits, lost savings, increased operational costs, damages caused by Customer's customers, loss of customers, loss of goodwill, etc., howsoever caused, regardless of the basis of liability, and regardless of whether it was advised in advance of the possibility of such damages arising in any way from the Contract or otherwise.

9.4. The restrictions and exclusions referred to in paragraphs 1 - 3 above do not apply insofar as the damage in question is caused by an intentional act or gross negligence on the part of the management of Tito Trading.

9.5. Save where compliance by Tito Trading is permanently impossible, Tito Trading's liability on the grounds of imputable failure to comply with the contract arises only if Tito Trading receives notice of default in writing from Customer immediately, in which a reasonable period is allowed to remedy the failure, and Tito Trading remains in default of its obligations after the aforesaid period. The notice of default must describe the shortcoming in as much detail as possible and as completely as possible, in order to give Tito Trading the opportunity to respond adequately.

9.6. Customer's right to any damage compensation is always conditional to the notification thereof to Tito Trading immediately upon occurrence. Any claim for damages against Tito Trading is extinguished automatically twelve months after the inception of the claim.

9.7. Customer indemnifies Tito Trading against any claims and impending claims by third parties against Tito Trading, the costs (including reasonable legal fees) of defense against such claims, and any obligations Tito Trading has to third parties if such claims, costs and obligations are based on, arise from or in connection with any act or omission or any use of the Products by Customer or any third party engaged or employed by Customer and/or any failure to properly perform the terms of the Contract.

## **10. DISSOLUTION**

10.1. In the event that:

- a. the Customer fails to comply with any obligation it may have towards Tito Trading, or fails to do so properly or in time;
- b. the Customer is declared bankrupt or an application is filed for this purpose, has applied for or has been granted a suspension of payment, or has sought or has been granted leave to apply debt rescheduling provisions;
- c. all or part of the Customer's property has been attached (by prejudgment attachment or otherwise);
- d. the Customer is dissolved or liquidated, is hived off or is party to a merger;
- e. the Customer ceases or transfers its business operations or a significant part thereof, including the incorporation of its business in another one;
- f. any information provided by the Customer to Tito Trading proves to differ from the actual situation; and if the Customer has not yet fulfilled its obligations towards Tito Trading, the latter shall be entitled merely by the occurrence of any of the aforementioned circumstances and without a need for any notice of a default or judicial intervention, either to consider the relevant agreement to be dissolved and to seek recovery of the delivered products as its property in a manner stipulated in article 6 or to demand full payment of any amount which the Customer owes Tito Trading. Furthermore, Tito Trading shall at all times be entitled to seek compensation from the Customer.

## **11. APPLICABLE LAW AND JURISDICTION**

11.1. Any offers and agreements which are subject to these general terms and conditions shall be solely governed by the law of the Netherlands.

11.2. All disputes arising in connection with the present contract, or further contracts resulting thereof between Tito Trading and a Customer domiciled inside one of the member-states of the European Union shall in first instance be settled by the competent court in the district of Gelderland, the Netherlands, with the exclusion of all other courts.

11.3. All disputes arising in connection with the present contract, or further contracts resulting thereof between Tito Trading and a Customer domiciled outside one of the member-states of the European Union shall be finally settled in accordance with the Rules of The Netherlands Arbitration Institute ("Nederlands Arbitrage Instituut").

## **12. MISCELLANEOUS**

12.1. Tito Trading shall have the right to transfer any of its rights and obligations under any contract with Customer to any third party. Customer shall not be entitled to transfer its rights and/or obligations under a Contract to any third party without Tito Trading's prior written consent.

12.2. Tito Trading shall be entitled to alter these Conditions or make any additions thereto unilaterally. Tito Trading shall notify Customer thereof in writing. Customer accepts such modifications and additions in advance.

12.3. The most recently registered version or, as the case may be, the version applicable at the time of effectuation of the Contract in question shall be applicable at any time.

12.4. In the event that particular provisions or requirements of this conditions are in violation of Dutch law or mandatory rules of the law of the country in which Customer is domiciled, the validity of other provisions or requirements shall not be affected thereby and shall be enforced and remain in full force and effect. In the place of the null or invalid provisions a suitable regulation shall apply which approximates as closely as possible with the intention of the parties and the economic result aimed for by them in a legally effective way.