

## GENERAL CONDITIONS OF SALE AND DELIVERY OF ZWARTZ LAMINATING – CONVERTING B.V. TE OLDENZAAL, THE NETHERLANDS.

### 1. Definitions; applicability of the present general terms and conditions; non-applicability of other general terms and conditions

In the present general terms and conditions "Zwartz" shall be understood to be the private company with limited liability Zwartz Laminating - Converting B.V.

In the present general terms and conditions "the other party" shall be understood to be each and every party asking Zwartz for an offer, each and every party concluding a contract of sale with Zwartz and/or which has goods supplied or delivered to it by Zwartz.

The present general terms and conditions shall apply to all offers, sales, supplies and deliveries by Zwartz and shall render other previous general terms and conditions declared applicable to the contractual relationship between Zwartz and the other party inoperative, to the extent said general terms and conditions contain provisions for issues which are also provided for in the present general terms and conditions.

If any commercial clauses which are specified in the so-called "Incoterms" issued by the International Chamber of Commerce in Paris are referred to in the agreement between Zwartz and the other party, then such a commercial clause shall be given the meaning it has in the latest edition of said "Incoterms" in which it is described.

If the commercial clauses thus declared applicable conflict with the other stipulations in the present general terms and conditions, the stipulations of the commercial clause shall prevail over the stipulations of the present general terms and conditions.

Dutch law shall apply to each and every agreement between Zwartz and the other party, including international convention law applicable pursuant to Dutch law. In all cases in which a delivery has to be made by Zwartz by virtue of an agreement to an address outside The Netherlands, the Vienna Sales Convention shall apply to said agreement.

Deviations and/or additions to any stipulation in these General Conditions will only be binding on Zwartz if Zwartz and the other party have expressly and without reservation agreed to such deviations and/or additions in writing. The agreed deviations and/or additions only refer to the Agreement in question.

If any stipulation of these General Conditions – after intervention of a judicial authority – is declared null and void, only the stipulation in question will no longer apply. The remaining stipulations will remain unimpaired.

All agreements that Zwartz enters into are deemed to have been concluded at the registered office of Zwartz, to wit Oldenzaal, The Netherlands, both as regards the execution and the payment of the agreement.

Zwartz reserves the right to refuse orders without giving reasons.

Zwartz is not obliged to perform an offer and/or agreement at a price mentioned in such offer or agreement if this price is based on a printing and/or writing error.

Cancellation of the Agreement by the other party is only possible if this is done in writing before the start of the execution of the Agreement. Subject to the provisions set out below, in case of cancellation the other party will always be charged for all preparation costs incurred by Zwartz.

If the Agreement is cancelled within 72 hours before the agreed time of delivery, in addition to the preparation costs the other party will also have to pay damages in the amount of 50% of the agreed price. If cancellation takes place later than 24 hours before the agreed time of delivery, the other party will have to pay the agreed price in its entirety.

In case of cancellation, regardless the time of cancellation, the other party is obliged to pay Zwartz the costs that Zwartz has to pay to third parties on account of and in connection with the cancelled Agreement.

Immediately after delivery by Zwartz of the agreed goods, the other party is obliged to inspect and verify these goods. The inspection and verification have to take place in the presence of the driver. The other party has to verify if the delivered goods comply with the provisions of the Agreement, to wit:

- a. If the correct goods have been delivered;
- b. If the delivered goods satisfy the requirements set for them and the agreed quality requirements, i.e. the requirements that can be set for normal use and/or commercial purposes;
- c. If the delivered goods in terms of quantity (number, quantity, weight) conform to the agreements made by the parties. If the deviation found by the other party is less than 10%, the other party is obliged to accept the delivered goods in their entirety at a proportional reduction of the agreed price.

If the term of payment is exceeded, the other party is obliged to pay default interest of 1% per month, without prejudice to Zwartz's other rights such as the right to compensation of the extrajudicial collection costs and legal interest.

If the term of payment is exceeded, the other party – without previous notice of default – will have to pay the statutory commercial interest on the outstanding amount. Insofar as established in law that the other party does not have to pay the statutory commercial interest, it will have to pay Zwartz the statutory interest.

If the other party continues to default in paying the amounts due to Zwartz, even after having been given notice of default by Zwartz, apart from the total amount due at that time consisting of the outstanding amounts increased with the interest due, it will be obliged to pay the extrajudicial collection costs. The amount of the extrajudicial collection costs is set at 15% of the principal sum due.

Payments made by the other party will be used first to pay the balance of all interest and costs due and subsequently all longest outstanding invoices that are due and payable. This does not change if the other party mentions that the payment relates to a later invoice.

## 2. Offers and Order Confirmation

The offers made by Zwartz shall be free of obligation. The other party can never invoke any potential offer by or on behalf of Zwartz which has not been made in writing. An agreement shall come into being by a non-verbal acceptance of an offer open to proof, subject to the case in which the offer is withdrawn within two working days from the day of acceptance. After the conclusion of an agreement, Zwartz can dissolve the agreement by means of a written statement if the other party fails to furnish security for its obligation to pay after a request to that effect.

Wherever Zwartz gives a quotation and the opposite is not explicitly demonstrated, said quotation shall be given exclusive of the VAT owed. The financial amounts referred to hereinafter in the present general terms and conditions shall also always be exclusive of the VAT owed.

## 3. Delivery

All shipments shall be for the risk of the other party, unless otherwise shown in the rates published or offered by Zwartz.

Upon delivery of the goods by or on behalf of Zwartz, the other party shall be under the obligation to verify the condition of the goods delivered and, in the event the shipment does not comply with the agreement, to state this on the receipt and to notify Zwartz thereof by fax within three working days from delivery, all this on penalty of cancellation of any remedy at law based on the argument that the goods delivered by Zwartz do not wholly or partially comply with the agreement.

## 4. Delivery Period

Delivery periods given shall only apply approximately and can be exceeded. A delivery period given shall therefore not be a term as referred to in article 6:83, opening lines and under a of the "Nederlands Burgerlijk Wetboek" (The Netherlands Civil Code).

If a delivery is overdue for, or a delivery period is exceeded by more than four working weeks, the other party shall be entitled to dissolve the agreement on condition that the other party first grant Zwartz another term of five working days to discharge its obligations as yet and, for that matter, on condition that the other party offers to compensate the damage resulting for Zwartz from said dissolution, reduced by €500.00 in the event of such dissolution.

The above shall exclude each and every other claim in the event of overdue delivery.

If parties have agreed that Zwartz shall take care of the transport of the goods, Zwartz shall determine the transport method, unless otherwise agreed upon.

If the other party fails to call a delivery on time, Zwartz shall be entitled to claim the immediate and advanced payment of all the goods to be delivered, against the promise to deliver the goods to be delivered, or to cancel the part of an agreement that has not yet been performed, without the other party having the right to derive any right to damages as a result of the action on the part of Zwartz in this respect.

## 5. Complaints and Return

The quantity delivered may deviate 10% from the quantity contracted for. The other party shall have to pay the quantity actually delivered and shall be invoiced accordingly. If defects to the goods delivered are a reason for Zwartz to replace or improve them, Zwartz shall equally be entitled to repeat such replacement or improvement if there is still a defect after said replacement or improvement. Zwartz shall not be liable if goods are sold as second choice or "without guarantee". In the event there are minor deviations in terms of colour, quality, or dimensions and in the event of deviations in colour, quality or dimensions which are generally accepted in the industry, Zwartz shall not be liable and Zwartz shall have met the conditions of the agreement in that case.

Without prejudice to the stipulations of article 3, other visible defects shall have to be reported in writing within fourteen days from delivery and non-visible defects shall have to be reported in writing within six months from delivery. Defects shall have to be reported to Zwartz in writing. The report shall have to be filed immediately upon discovery of the defect.

Goods in respect of which the other party has any complaints, can only be returned following the explicit consent of Zwartz. With respect to the goods delivered, the other party cannot invoke the non-performance of the agreement if the goods have been processed, handled, sold on or cut.

When the other party and Zwartz agree that goods shall be returned, the other party shall have to take care of the accurate packaging of said goods and delivery of them to Zwartz carriage paid. The goods shall then be shipped for the risk of the other party.

## 6. Force Majeure

Overdue deliveries being the result of force majeure for which Zwartz cannot be blamed, including in any case lack of raw materials, interruption of operations, strike, lock-out, lack of personnel, the lack of transport possibilities, government measures and devaluation, shall release Zwartz from its obligation to deliver during the period such circumstances and their consequences last and shall entitle Zwartz to cancel the agreement, to the extent it has not yet been performed. If the delay lasts for more than three months, the buyer can cancel the part of the agreement not yet performed when a reasonable term has been agreed upon first in writing. Damages due to overdue delivery shall always be excluded. The agreement can also be cancelled without giving rise to any claim, in the event of war or civil war in the other party's country through which the goods are transported in normal circumstances.

## 7. Prices

The sales prices of Zwartz shall not include all and everything that is or shall be owed with respect to the transaction in terms of turnover tax or other similar levies and/or duties. All costs caused by such levies shall be for the account of the other party. The invoice amount shall be calculated on the basis of the price applying and published by Zwartz on the delivery date or the price offered to the other party by Zwartz. With respect to the calculation for goods which are invoiced on a weight-basis, the weight of the goods at the time of shipment shall apply. If the other party fails to take delivery within the delivery period agreed upon, Zwartz shall be at liberty to either charge the day price of the goods on the first day the other party could take delivery of them, or on the day the other party finally took delivery of them or on any other day in between

aforementioned days. In case of devaluation or depreciation of the Euro, Zwartz shall have the right to demand that the other party pays in accordance with the changed exchange rate if the other party exceeds the term of payment.

#### **8. Deliveries on call**

In the event of sales whereby Zwartz has to deliver on call, the other party shall be under the obligation to inform Zwartz in due time. If the other party does not call the delivery on time, Zwartz shall point this out to said party and Zwartz shall grant the other party an additional term of three weeks to call the delivery of the goods sold. In the event the other party then still remains in default, Zwartz shall be at liberty to:

- a. Either store the goods not taken possession of in due time for the account of the other party and for the risk of the other party at a location of Zwartz's discretion, without prejudice to the other party's obligation to pay the goods and the costs incurred by Zwartz;
- b. Or to dissolve the agreement in writing to the extent it has not yet been performed, without notice of default or judicial intervention. Said dissolution shall not prejudice Zwartz's right to damages vis à vis the other party in such case.

#### **9. Liability and Specific Instructions**

If after delivery of the goods by Zwartz, the other party or third parties store, handle, use and/or apply the goods incorrectly, Zwartz shall not be liable for the damage resulting from the incorrect storage, handling, use and/or application of these goods.

The other party is liable for the damage – including, among others, damage to Zwartz's reputation and/or image – that Zwartz suffers as a result of the incorrect handling and/or application as well as the incorrect use by this other party of the goods Zwartz delivered.

Furthermore, the other party is liable for the damage that Zwartz suffers as a result of the failure by the other party to perform its obligations arising from the agreement concluded with Zwartz as well as from these general terms and conditions.

If Zwartz is liable for any damage, its liability is limited at all times to the amount paid out under Zwartz's business liability insurance in the case in question, increased with the insurance excess. If for any reason whatsoever no payment under this liability insurance takes place, any liability is limited to the amount that the other party would have been obliged to pay to Zwartz in the context of the agreement.

Zwartz is not liable for damage and loss:

- arising from the condition in which the goods are supplied, such as damages as a result of the presence of metal objects or otherwise in the goods supplied for processing that cause damage to these goods or that of others or to machines of Zwartz. If damages arise and the supplied goods do not satisfy the requirements that can be set on them, the parties use as starting point that the damage is a direct consequence of the circumstance that the supplied good does not satisfy the requirements to be set on it. This is different only if the other party affirms and proves that the damage would also have arisen if the supplied good did satisfy the requirements to be set on it. The other party will be fully liable towards Zwartz for damages to goods of third parties or Zwartz's machines.
- that arise due to the presence of creases or stains in the supplied goods, erroneously rolled supplied goods, or to attacks from microorganisms or light, etc.
- due to incorrect and/or incomplete data provided to Zwartz by the other party in the context of and for the order to be executed.
- resulting from the use of the goods for other purposes than the intended use mentioned by the other party.

Furthermore, Zwartz is not liable for:

- tolerable variations, inevitable waste and size and weight losses.
- damages to goods due to fire, water, storm, theft and other risks, to goods that are the property of the other party, but at the time of the damage-causing event are in the possession of Zwartz in the context of the execution of the agreement. The other party itself is obliged to insure its goods.

#### **10. Default and dissolution**

If the other party fails to comply with any of its obligations arising from the Agreement entered into with Zwartz or, as the case may be, arising from the law, including the obligation to pay in time as included in article 1 of these General Conditions, or fails to do so in time or properly, the other party shall be in default and Zwartz is entitled to suspend execution of the Agreement and/or dissolve that Agreement and/or Agreements directly related thereto wholly or in part without Zwartz being liable to pay any damages and without prejudice to Zwartz's other rights.

If the other party is in default, it shall pay Zwartz the statutory (commercial) interest as well as all (extra)judicial collection costs that Zwartz reasonably has had to incur in order to establish the other party's liability and/or obtain payment of its claim falling under the scope of section 6:96, paragraph 2 of the Dutch Civil Code.

In case of (provisional) suspension of payments or bankruptcy of the other party, cessation or winding-up of the company of the other party, all Agreements with the other party will automatically be dissolved, unless Zwartz notifies the other party within a reasonable period of time to demand performance of (a part of) the Agreement(s) in question, in which case Zwartz is entitled, without giving notice of default, to suspend execution of the Agreement(s) in question, until payment has been sufficiently secured, without prejudice to Zwartz's other rights.

Zwartz is entitled to end the Agreement if the other party is in a permanent state of force majeure. In that case, the other party shall compensate Zwartz for all costs incurred and to be incurred by Zwartz.

In any of the cases mentioned above in this article, all claims of Zwartz against the other party are forthwith due and payable and the other party is obliged to immediately return any leased or unpaid goods.

The other party has to notify Zwartz right away in case of attachment of any movable or immovable properties that are the property of Zwartz and are in the possession of the other party within the context of the execution of the Agreement.

In case of bankruptcy or suspension of payments, the other party shall inform Zwartz hereof without delay and show a bailiff, receiver or administrator the Agreement, drawing attention to Zwartz's property rights.

#### 11. Right of Retention / Security

All goods of the other party held by Zwartz are considered as security and given in pledge for all amounts that are due to Zwartz.

The debt may only be recovered from the pledged goods if payment does not take place after warning within the established period mentioned in such warning, which shall be at least 8 days.

Without prejudice to the provisions set out in the previous paragraphs, Zwartz's right of retention continues to exist in respect of the goods that it has in its keeping insofar as its claim is related to the processing of these goods.

#### 12. Payment Terms

Unless otherwise agreed upon in writing, the firm payment condition shall be net payment carriage paid within 30 days from the date of invoice. No right to discount can be derived from the fact that payments are made early.

Subject to an agreement to the contrary, the buyer shall not be entitled to set-off, to withholding payments or to discount, not even in the case when the other party has filed a complaint about the goods delivered.

#### 13. Retention of Title

1. Zwartz shall retain the title to all goods delivered or to be delivered pursuant to the contracts of sale, until:

- a. The debts pertaining to the consideration for said goods have been paid;
- b. The claims Zwartz has pertaining to the performance of said agreements as well as the activities carried out or to be carried out for the other party have been settled;
- c. The claims resulting from the failure to perform aforementioned agreements have been settled.

2. Goods shall be deemed not to have been paid if the other party has not shown it has paid for them.

3. The other party shall be under the obligation to show the goods to Zwartz at the latter's first request to that effect and in the event the other party fails to pay, to return them to Zwartz.

The other party shall be credited for the goods taken back pursuant to the present article, at the market value the goods represent for the supplier the day he takes them back.

4. The other party can agree with a third party that the latter shall pay the purchase price for the former and shall be subrogated for it in the claim Zwartz has. In the event of payment by a third party subrogated in Zwartz's claim, the retention of title shall not lapse.

5. Through subrogation as referred to in article 4, Zwartz shall transfer the retention of title to the goods for which the third party has paid the purchase price to the subrogated third party. From the moment of subrogation onwards, the other party shall keep the goods described for the subrogated party.

6. Subrogation in the claim by and transfer of the retention of title to a third party as referred to in sections 4 and 5, shall not prejudice the fact that the other party can hold Zwartz responsible in the event Zwartz fails in any way to perform the agreements concluded between them.

7. The other party shall not be authorised to dispose of or to encumber the goods falling under the retention of title. However, the other party shall be allowed to sell and transfer said goods to third parties within the framework of the usual conduct of its business. Said consent shall lapse by operation of law the moment the other party fails in any way with respect to the claims to which the retention of title applies, if the other party is granted suspension of payments or is declared bankrupt. The other party must under no circumstances use the goods falling under the retention of title to furnish security for claims of third parties.

8. The other party shall be under the obligation to insure the goods referred to under section 1 against the risks of fire, theft, storm, and water damage and this in such manner that the insurance policy concerned contains the clause that the insurance also covers goods of (potential) third parties interested. The other party shall not be allowed to pledge potential claims on his insurer by virtue of the insurances as referred to in the present section, to the extent they related to the goods referred to in section 1, to third parties or to use them as security in the broadest sense of the word for third parties. Payments concerning damage to and loss of aforementioned goods shall replace the goods concerned.

9. When the ownership transfers pursuant to the above or by law from Zwartz to the other party or to a third party, Zwartz shall retain a right of pledge to them, by way of security for all the claims Zwartz has or shall have at any point in time on the other party of the third party referred to.

#### 14. Disputes

Any disputes shall in the first instance be submitted to the competent court in the district Zutphen, subject to the cases in which parties themselves are not authorised by virtue of law to determine the relative competence. Contrary to the above, Zwartz shall at all times have the right to have the other party summoned to appear before the court within whose jurisdiction the place of residence of the other party falls.

The present general terms and conditions have been filed with the Chamber of Commerce Veluwe and Twente under number 06035316.

The present general terms and conditions can also be consulted at [www.zwartz.nl](http://www.zwartz.nl).