

## **GENERAL TERMS AND CONDITIONS**

**OF:**

**the private limited company GMS EUROPE B.V.**

having its registered office and place of business at Walruskoog 3-5,  
1822 BC Alkmaar, The Netherlands

### **Article 1 Definitions**

Seller : GMS Europe B.V., the user of these General Terms and Conditions;  
Buyer : the other party to the agreement: the customer;  
Agreement : the agreement between the Seller and the Buyer.

### **Article 2 General information**

- 2.1 The provisions of these General Terms and Conditions apply to any offer and agreement between the Seller and the Buyer, to the extent that the parties have not expressly deviated from these conditions in writing;
- 2.2 These Terms and Conditions also apply to any agreements entered into with the Seller, for the execution of which the Seller uses third-party services;
- 2.3 The applicability of the Buyer's General Terms and Conditions is expressly excluded, unless otherwise agreed upon by the parties in writing;
- 2.4 In the event that the Seller enters into agreements with the Buyer on more than one occasion, these General Terms and Conditions will apply to all subsequent agreements, regardless of whether they have been declared expressly applicable;
- 2.5 In the event that one or several provisions of these General Terms and Agreements are null and void or should be declared void, the remaining provisions of these General Terms and Conditions will continue to apply.

### **Article 3 Offers**

- 3.1 All offers in any form whatsoever are without obligation, unless an acceptance period is specified in the offer;
- 3.2 Any estimates, plans or other documents accompanying an offer will remain the property of the Seller at all times, and must be returned postage paid to same upon demand. Such documents may not be reproduced or provided to third parties for review without the Seller's consent;
- 3.3 The dispatch of offers and/or (other) documentation will not oblige the Buyer to accept an order;
- 3.4 The Seller can refuse an order or a portion thereof or attach conditions to an order without giving reasons;
- 3.5 In the case of verbal agreements, the invoice will be deemed to accurately and fully reflect the agreement, with the exception of objections made within 30 days following the invoice date.

## **Article 4 Agreement**

- 4.1 Agreements to which the Seller is a party will be deemed to have been entered into only after the Seller has accepted an order from the Buyer or following the actual ex-warehouse delivery of the goods sold by the Seller to the Buyer;
- 4.2 The Seller's order confirmation will be deemed to accurately and fully reflect the agreement, unless the Buyer has immediately objected to this confirmation in writing;
- 4.3 Any arrangements or changes made at a subsequent stage will be binding on the Seller only if it has confirmed these in writing;
- 4.4 For transactions for which, based on their nature and size, no quote or order confirmation is sent, the invoice will be deemed to reflect the agreement accurately and fully, subject to an objection made within 10 working days following the invoice date;
- 4.5 In the event that a natural person enters into an agreement on behalf of or at the expense of another natural person and/or legal entity, it will warrant that it is authorised thereto by signing the order form/order. This person will be jointly and severally liable for any obligations arising from the agreement, in addition to the other natural person and/or legal entities;
- 4.6 A combined quote will not oblige the Seller to deliver a portion of the products included in the offer or quote in exchange for a corresponding portion of the price specified;
- 4.7 Any agreement is entered into by the Seller on the condition precedent that the Buyer appears sufficiently creditworthy for financial compliance with the agreement. This will be solely at the discretion of the Seller;
- 4.8 Upon or after entering into the agreement, prior to taking further action, the Seller will be entitled to demand security from the Buyer for compliance with both the payment obligations and other obligations;
- 4.9 In addition, the Seller will be entitled to involve third parties in the performance of the agreement if it deems this necessary or desirable for the correct execution of the order it has received and after consultation with the Buyer, with the costs to be charged on to the Buyer.

## **Article 5 Prices**

- 5.1 The prices stated in the offers/catalogues/price lists apply to ex-warehouse delivery by the Seller, in euros, excluding VAT, import duties and duties imposed by the government, excluding shipping, transport, export, insurance, loading, packaging and administrative costs, unless expressly otherwise agreed in writing;
- 5.2 Discounts can only be agreed upon in writing;
- 5.3 The Seller will be entitled to pass on any price increases in, among other things, purchase prices, VAT, government duties, wages and transport costs that become effective after the time of offering/acceptance but before delivery.
- 5.4 The Seller will be entitled to modify its prices each year, adjusting them at least to inflation.

## **Article 6 Delivery**

- 6.1 Delivery will be ex warehouse, unless otherwise agreed upon by the parties;
- 6.2 If the Seller delivers the goods, such delivery will always be made to the most recent delivery address provided by the Buyer;
- 6.3 The Buyer will be obliged to purchase the goods at such time as the Seller delivers these goods or has them delivered, or at such time as they are to be provided to the Buyer according to the agreement;
- 6.4 In the event that the Buyer refuses to purchase the goods or fails to provide information or instructions necessary for delivery, the Seller will be entitled to store the goods at the risk and expense of the Buyer. In the event that the Buyer fails to purchase within two months, the Seller will be entitled to sell the goods to another party. If it does not succeed in doing so, the Seller will be entitled to destroy the goods. Any loss incurred by the Seller as a result of resale or destruction will be borne by the Buyer;
- 6.5 In the case of cash on delivery, the Seller will always charge the cash-on-delivery costs to the Buyer;
- 6.6 If the Seller has specified a delivery period, this will merely be an indication. Therefore, any delivery period specified never constitutes a strict deadline. In the event that a delivery period is exceeded, the Buyer will give the Seller notice of default and allow it a reasonable period;
- 6.7 In the event that the Seller requires information from the Buyer as part of the performance of the agreement, the delivery period will commence after the Buyer has provided this information to the Seller;
- 6.8 The Seller will be entitled to deliver the goods in parts. The Seller will be entitled to invoice partial deliveries separately.

## **Article 7 Trial period**

- 7.1 Solely in the case of consumer orders constituting remote selling, the offer will likewise be subject to a trial period of seven working days, commencing on the day after the goods are delivered. The Seller will be free to deliver specific goods solely from its physical retail outlet. Such deliveries are not subject to a trial period;
- 7.2 During the trial period, the Buyer will have a right of withdrawal, allowing it to return the goods received in their original, intact packaging without any obligation on its part other than payment of the costs of returning the goods;
- 7.3 Any limitations or exclusions of the trial period will be clearly specified in the offer. The Buyer will waive its right to termination by putting the item into use;
- 7.4 The Buyer will only be able to invoke the trial period in the manner specified by the Seller in the offer and/or upon delivery;

- 7.5 In the event that the Buyer exercises its right of withdrawal, the Seller will be obliged to repay any costs already paid by the Buyer within 30 days, including the dispatch costs paid. The costs of return shipment will be borne by the Buyer.

### **Article 8 Models, images**

- 8.1 The models, images, numbers, dimensions, weights or specifications included in the offer/adverts/price lists are displayed only by way of indication;
- 8.2 If a sample/image has been demonstrated to the Buyer, the parties will assume that this has been displayed by way of indication, unless expressly agreed that the good to be delivered will correspond exactly to this sample/image.

### **Article 9 Research, objections**

- 9.1 The Buyer will be required to examine the goods delivered at the time of delivery, or have them examined by a third party. In so doing, the Buyer will examine whether the quality and quantity of the goods delivered correspond to the agreements made. Any visible defects and deviations must be specified on the waybill/packing slip and be reported by telephone within 24 hours, in default whereof the goods delivered will be deemed to be sound;
- 9.2 Any missing items must also be reported to the Seller in writing within 8 days following delivery;
- 9.3 Objections regarding the invoice must be made in writing within 30 days of the invoice date;
- 9.4 Following expiry of the objection period, the Buyer will be deemed to have approved the goods delivered or the invoice;
- 9.5 Even if the objection is filed in time, the Buyer will be required to purchase and pay for the ordered goods. If the Buyer wishes to return defect items, this will be subject to the prior written consent of the Seller. Return shipments must be sent postage paid, intact, and in their original packaging by means of a return form.
- 9.6 The following situations can never constitute cause for any objection:
- deviations in colour, weight and size of less than 10%;
  - the typesetting, printing or spelling errors contained in the catalogue/offer/price list;
- 9.7 Upon first demand, the Buyer will allow the Seller to inspect the goods sold in order to assess the accuracy of the complaint;
- 9.8 If a complaint is justified, the Seller will replace the goods delivered, unless it has meanwhile been demonstrated that this is ineffectual to the Buyer. The latter must be communicated in writing by the Buyer. However, in both cases the Seller will only be liable within the limits of the provisions of the article entitled 'Liability'.

## **Article 10 Payment**

- 10.1 Unless otherwise agreed upon in writing, payment must occur in cash without reduction or offset, or through a deposit into or transfer to a bank or giro account designated by us, within 30 days following the invoice date. The value date specified on the bank/giro statements is decisive and will therefore be considered to be the payment date. Objections to the amount of the invoices will not suspend the payment obligation;
- 10.2 If the Buyer fails to pay within the agreed period, it will be in default by operation of law. In such event, the Buyer will owe interest of 1.5% per month or portion thereof, unless the statutory interest or statutory commercial interest is higher, in which case the highest interest rate will apply. The interest paid on the exigible amount will be calculated from the date the Buyer is in default up to the date the full amount has been paid;
- 10.3 In the event of liquidation, bankruptcy or petition for bankruptcy, if the Buyer is allowed to reschedule its debts under the Debt Rescheduling (Natural Persons) Act [*Wet Schuldsanering Natuurlijke Personen*], in the event that the Buyer is placed under guardianship, in the event of the Buyer's death, in the event of the transfer or cessation of the Buyer's business, if the Buyer is subject to attachment or suspension of payments, provisionally or otherwise, the Seller's claims against the Buyer will be immediately exigible;
- 10.4 If so agreed, the Seller will be authorised to apply a late payment surcharge of 2%, which will not be owed if payment is effected within 8 days after the invoice date.
- 10.5 Payments extend initially to the reduction of the costs, then to reduce the interest owed, and finally towards payment of the principal sum and current interest.

## **Article 11 Collection costs**

- 11.1 If the Buyer is in default or breach of the timely performance of its obligations, the Buyer will bear all reasonable costs incurred to obtain payment out of court. The collection costs will be calculated in accordance with the collection tariff recommended by the Netherlands Bar Association in collection matters, subject to a minimum amount of EUR 350;
- 11.2 If the Seller incurs higher costs, which were reasonably necessary, these costs will also be eligible for compensation. Any reasonable legal fees and execution costs incurred will also be borne by the Buyer.

## **Article 12: Retention of title**

- 12.1 Goods delivered will remain the property of the Seller until the Buyer has paid for all deliveries and activities performed or to be performed under the agreement, including interest and costs. In the event that the Buyer is granted a moratorium, is declared bankrupt or is liquidated, or, if the Buyer is a natural person, in the event of death, the Seller will be authorised to cancel the order in full or in part, without any notice of default or intervention by the court, and to demand the return of that portion of the goods that have not been paid for. Cancellation of the order and recovery of the goods do not diminish the Seller's right to compensation for loss or damage. In such instances, all the Seller's claims against the Buyer will be immediately exigible in full;
- 12.2 Unless the parties have agreed otherwise, the Buyer will not be authorised to pledge the goods falling under the retention of title, to lease them, to sell them on to customers outside the Benelux countries or otherwise encumber them;

- 12.3 If third parties levy attachment on the goods delivered under retention of title or wish to create or assert rights thereon, the Buyer must inform the Seller as soon as possible;
- 12.4 The Buyer will be obliged to insure the goods falling under the retention of title at the new-for-old value. The insurance proceeds paid by the insurer will replace the aforementioned goods and will accrue to the Seller;
- 12.5 Items delivered by the Seller which, pursuant to Section 1 of this article, are subject to retention of title, may only be resold within the scope of normal business operations and may never be used as a means of payment;
- 12.6 In the event that the Seller wishes to exercise its property rights referred to in this article, the Buyer hereby unconditionally and irrevocably authorises the Seller or third parties to be designated by the Seller to access those locations where the Seller's goods are located and to retrieve those goods.

### **Article 13: Suspension and termination**

- 13.1 The Seller will be authorised to suspend the performance of its obligations or terminate the agreement if:
- the Buyer fails to comply with its obligations under the agreement, fails to do so in a timely fashion, or fails to comply in full;
  - after the conclusion of the agreement, the Seller becomes aware of circumstances that give it good cause to fear that the Buyer will not comply with the obligations, will not do so in a timely fashion or will not comply with them in full. If there is good cause to fear that the Buyer will only comply in part or will not properly comply, suspension will only be allowed to the extent that this is justified by the failure;
  - when the agreement was concluded, the Buyer was asked to provide security for the performance of its obligations under the agreement, and the security is not provided or is inadequate. The authority to suspend performance lapses once security has been provided, unless performance has been unreasonably delayed as a result;
- 13.2 Furthermore, the Seller will be authorised to terminate the agreement or have it terminated if circumstances arise which are of such a nature that performance of the agreement cannot possibly be required or can no longer be required according to standards of reasonableness and fairness, or if other circumstances arise which are of such a nature that enforcement of the agreement without amendment cannot reasonably be expected;
- 13.3 If the agreement is terminated, the Seller's claims against the Buyer will be immediately exigible. If the Seller suspends performance of the obligations, it will retain its claims pursuant to the law and the agreement;
- 13.4 The Seller retains the right to claim compensation at all times.

### **Article 14 Cancellation**

- 14.1 If, after an agreement has been concluded with the Seller and before the Seller has delivered to the Buyer, the Buyer wishes to cancel the agreement, the Buyer will be charged 10% of the agreed price, inclusive of VAT, in cancellation costs, without prejudice to the Seller's entitlement to full compensation for loss and damages, including lost profits;
- 14.2 Cancellation must be effected in writing;

- 14.3 Orders for goods purchased specifically for the Buyer cannot be cancelled;
- 14.4 If, in the event of cancellation, the Buyer has already paid the order price to the Seller, the Buyer will be repaid the order price less 10% plus the freight charges.

### **Article 15 Warranty**

- 15.1 The goods delivered by the Seller comply with all requirements and specifications imposed by the laws of the Netherlands;
- 15.2 This warranty is limited to:
- manufacturing errors – this therefore does not include wear and tear or damage resulting from improper, careless or unskilled use or improper processing, treatment, manufacturing errors and maintenance and storage;
  - deliveries to buyers in the EU;
  - the warranty provided by the manufacturer;
  - replacement of the item in question;
  - one year following delivery unless agreed otherwise;
- 15.3 This warranty will lapse:
- in the event that the item delivered has been processed, modified or changed by the Buyer or a third party;
  - if the item is used for a purpose other than its designated use;
  - if any inspection required is not performed annually;
- 15.4 Items sold at a reduced price are not covered by the warranty;
- 15.5 The Buyer cannot rely on these warranty provisions as long as he fails to comply with its obligations ensuing from the agreement between the parties.

### **Article 16 Liability**

- 16.1 The Seller will not be liable for any loss ensuing from the performance of this agreement;
- 16.2 If the Seller is nonetheless liable for direct loss, such liability will be limited to the maximum amount awarded by the Seller's insurer, or to a maximum of the invoice amount, or in any event, that portion of the invoice to which the liability pertains;
- 16.3 The Seller will never be liable for indirect loss, including consequential loss, loss of revenue and profits, loss of savings and loss resulting from interruption of business;
- 16.4 The Seller will never be liable for loss resulting from the rejection of materials on or in the item as a result of changes in environmental legislation implemented after the agreement was concluded;
- 16.5 The Seller will never be liable for damage to the item resulting from improper storage, processing, use or maintenance by the Buyer or a third party;
- 16.6 The Buyer indemnifies the Seller against any claims by third parties that incur a loss in connection with the performance of the agreement, which loss is attributable to the Buyer;
- 16.7 The Seller will never be liable for loss resulting from excessive use, the improper use of the item, use not in accordance with the instructions for use or use for a purpose for which the item is not intended;

- 16.8 The Seller will never be liable for loss resulting from any advice or recommendations provided. Advice is always provided based on the facts and circumstances known to the Seller and in joint consultation, with the Seller taking into account the Buyer's intentions at all times;
- 16.9 The Buyer must determine in advance whether the item purchased is suitable for the purpose for which it intends to use it. If it subsequently transpires that the purchased item is not suitable for the purpose, the Buyer can never hold the Seller liable for any resulting loss;
- 16.10 If the Seller agrees to take the goods back, the Seller will be entitled to charge handling costs of 15% of the invoice amount.
- 16.11 The limitations included in these Terms and Conditions related to liability for direct loss do not apply if the loss can be attributed to gross negligence or wilful misconduct by the Seller or its subordinates.

#### **Article 17 Transfer of risk/transport**

- 17.1 The risk of loss or damage to the goods under the agreement transfers to the Buyer when the goods in question have been legally and/or actually delivered to the Buyer and are therefore controlled by the Buyer or third parties to be designated by the Buyer;
- 17.2 If the Seller arranges the transport/shipment of the goods sold under the agreement, this will be performed entirely at the risk of the Buyer, unless the parties have agreed otherwise. The Seller will determine the method of transport;
- 17.3 Any specific wishes of the Buyer related to the transport or shipment will only be complied with if the Buyer party has agreed to meet the additional costs involved;
- 17.4 If the Seller organises international shipment, this will be subject to the Convention on the Contract for the International Carriage of Goods by Road (CMR).

#### **Article 18: Force Majeure**

- 18.1 The parties are not required to comply with any obligation if they are prevented from doing so by circumstances beyond their control that cannot be attributed to gross negligence or wilful misconduct on the part of the party invoking such circumstances, and for which they are not responsible pursuant to the law, a legal act or generally accepted standards;
- 18.2 In these Terms and Conditions, force majeure is defined, in addition to the relevant definitions in the law and in case law, as all external causes, foreseen or not, which the Seller cannot influence, but which prevent the Seller from complying with its obligation in full or in part or in a timely fashion. This includes strikes in the Seller's business, transportation strikes, traffic congestion, traffic jams, engine trouble, theft, fire, impediments to exports, energy and computer disruptions, and cessation of deliveries by the Seller's suppliers;
- 18.3 The Seller will also be entitled to invoke force majeure if the event that prevents compliance or further compliance occurs after the date on which the Seller should have performed its obligation;
- 18.4 The parties may suspend their obligations arising from the agreement during the period of force majeure. If this period exceeds two months, each of the parties will be entitled to

terminate the agreement without being obliged to compensate the other party for any loss;

- 18.5 To the extent that the Seller has complied in part with its obligations under the agreement or will be able to do so when the force majeure occurs, and that portion of the obligations performed or yet to be performed represents a monetary value, the Seller will be entitled to invoice that portion of the obligations performed or yet to be performed separately. The Buyer will be obliged to pay this invoice as if it were a separate agreement.

#### **Article 19 Copyrights and intellectual property rights**

- 19.1 Without prejudice to the provisions of these Terms and Conditions, the Seller retains the rights and powers accruing to the Seller based on intellectual property law and the Copyright Act;
- 19.2 Unless otherwise agreed upon, all brochures, catalogues, price lists, documents and other materials or physical or electronic files remain the property of the Seller, regardless of whether they were provided to the Buyer or to third parties. These are intended solely to be used by the Buyer and, without the prior consent of the Seller, may not be copied, placed in the public domain or disclosed to third parties by the Buyer, unless the nature of the documents provided entails otherwise.

#### **Article 20 Export**

- 20.1 Unless otherwise agreed upon in writing, the payment of export transactions must be effected by means of an irrevocable letter of credit issued and confirmed by a Dutch bank. If a letter of credit is issued, both transshipment and partial deliveries are possible. The Seller can transfer the letter of credit;
- 20.2 The Buyer warrants that if an import certificate or permit is required by the country of destination, such import certificate or permit has been or will be obtained, absent which the Buyer will be liable for any resulting loss;
- 20.3 For the compliance with the customs and other formalities to be complied with for the delivery of the products, the Buyer will provide the Seller with the necessary documents and all information required;
- 20.4 If the goods to be delivered in the Netherlands are to be used outside the Netherlands, the Seller will not be responsible if the goods do not meet the technical requirements, standards and/or regulations imposed by the laws or statutes of the country where the goods will be used. This does not apply if the use abroad of the goods was reported when the agreement was concluded, with submission of all necessary information, including the requirements and specifications of the country in question, and if the Seller has stated that it can comply with the requirements imposed.

### **Article 21 Authentic version**

Solely the original Dutch version of these Terms and Conditions is authentic. If a translation deviates in any manner from the original meaning of the Dutch text, the latter will prevail.

### **Article 22 Disputes**

The competent court in the district where the Seller has its registered office has exclusive jurisdiction to examine any disputes between the parties. The provision in the foregoing sentence notwithstanding, the Seller will be entitled to bring disputes before the court having jurisdiction according to the law.

### **Article 23 Applicable law**

All agreements between the Seller and the Buyer are governed by the laws of the Netherlands. The application of the Vienna Sales Convention is expressly excluded.

### **Article 24 Filing of the Terms and Conditions**

These Terms and Conditions were filed at the offices of the Chamber of Commerce and Industry for North-West Holland on 1 June 2009 under number 37041530.