

# **GENERAL TERMS AND CONDITIONS**

Thornton & Co NV, Treurenborg 9, 2030 Antwerpen - BE 0403.470.906

## **Definitions**

|                   |   |
|-------------------|---|
| <b>Contractor</b> | THORNTON & CO NV  |
| <b>Client</b>     | Any natural or legal person that enters into an agreement with one of the above mentioned Contractors |
| <b>Agreement</b>  | The agreement between Contractor and Client   |

## **1. General**

- 1.1 These general terms and conditions apply to all the Agreements concluded by the Contractor, including Agreements concerning the provision of services, the sale of goods, the execution and implementation of these Agreements, and all offers and quotations issued by the Contractor. The counterparty of these Agreements and/or quotations is called: "Client".
- 1.2 The Client accepts the applicability of these general terms and conditions by the simple fact of concluding the Agreement with the Contractor. This acceptance also applies to every future Agreement between the Client and the Contractor. The Contractor explicitly rejects the applicability of any general terms and conditions imposed by the Client. The present general terms and conditions will prevail over conflicting terms and conditions of the Client.
- 1.3 Deviations from (a part of) these general terms and conditions shall only be valid if they have been explicitly agreed upon in writing by the Contractor.

## **2. Quotations and Prices**

- 2.1 Unless explicitly stated otherwise in writing, all offers and quotations are without engagement for the Contractor. They are not binding for the Contractor, unless confirmed in writing by the Contractor on the basis of that offer.
- 2.2 These offers, quotations and estimates are only binding insofar as they have been signed by an authorized signatory of the Contractor and only remain valid for a period of 30 days calculated from the date of the offer, unless explicitly stated otherwise.
- 2.3 All prices mentioned by the Contractor are exclusive of VAT, unless explicitly stated otherwise.
- 2.4 Projects will be invoiced at the prices and conditions as stated in the Agreement. If after the conclusion of the Agreement one or more cost price determining factors (including, but not limited to, prices of raw or ancillary materials, energy, cargoes, transportation, devaluation,...) are increased, due to foreseeable circumstances or not, the Contractor explicitly reserves the right to unilaterally change the agreed price without any prior notice.
- 2.5 In case of discrepancy between the name and the part number, the part number will determine the order.
- 2.6 The Contractor is not liable for printing, writing and/or counting mistakes and/or other unclaritys

in quotations, offers, order confirmations and/or prospectuses, nor for the consequences thereof.

- 2.7 Unless otherwise agreed, the Client that acts for the account of a third party is deemed to guarantee the solvency of that third party.
- 2.8 Any terms or conditions other than these general terms and conditions that are provided by the Contractor in quotations, estimates and/or proposals, will prevail in case of conflict with these general terms and conditions.

## **3. Orders**

- 3.1 Orders of the Client are not binding for the Contractor. An Agreement between the Client and the Contractor can only be concluded provided that both the Client and an authorized signatory of the Contractor sign the quotation, estimate, offer, order confirmation, or any other agreement in writing.
- 3.2 Additional works not mentioned in the quotation or Agreement are as a rule agreed in writing and dated by both parties.  
In any case they are invoiced separately based upon materials used and time spent.
- 3.3 Any modification at the request of the Client to an assignment after conclusion of the Agreement has to be notified in good time and in writing to the Contractor. This notification must be accompanied by a clear description of the work to be carried out. These modifications will be the subject of an extra charge to the Client.
- 3.4 The Contractor reserves the right to carry out and charge for additional work that was not included in the original Agreement between parties, insofar as this additional work is necessary for the proper execution of the works, this always in best interest of the Client.  
The Client shall be notified without delay of this additional work and the cost thereof.
- 3.5 In the event that the Client cancels the assignment or order, he is obliged to compensate the Contractor for all costs incurred for the purpose of the execution of that assignment or order, together with compensation for damages in the amount of 20% of the agreed upon total amount.
- 3.6 Any modifications and/or cancellations of orders are only binding for the Contractor after written acceptance by the latter.

## **4. Delivery and execution of the order**

- 4.1 All deliveries by the Contractor are ex-works Antwerp warehouse. Unless agreed otherwise, delivery will thus take place in the business premises of the Contractor. From that moment on, the entire risk of the goods passes to the Client. However when the Contractor has to organize the transportation (including, but not limited to,

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storage, loading, unloading, transportation of the goods itself) the Contractor does this as a nominee of the Client, at the risk of the latter. The Client can insure itself against these risks.

### **5. Delivery and execution terms**

5.1 Any stipulated delivery and/or execution terms are merely indicative and not binding. Any delays or the exceeding of terms cannot give rise to termination of (a part of) the Agreement, or to the payment of any compensation by the Contractor.

5.2 Unless agreed otherwise, if due to circumstances other than force majeure and not due to the Contractor, the execution of the order is not possible on the agreed upon date, the Contractor is entitled to claim the damage actually suffered (including, but not limited to, employee costs, costs of subcontractors,...) from the Client.

5.3 If due to circumstances due to the Client the delivery cannot take place on the agreed upon date of delivery, the Client is not entitled to suspend any of its obligations under the Agreement with the Contractor. The Contractor will be entitled to submit an invoice for the goods and store those goods at the risk and expense of the Client, subject to payment of compensation of 1% per month of the total invoice amount during the entire period the delivery is suspended.

### **6. Lease of reefers, machinery and material**

6.1 Unless parties have agreed otherwise in a written lease agreement, the following applies for rental of reefers, machinery and material:

6.1.1 The leased goods will at all times remain property of the lessor/Contractor.

6.1.2 From the moment of reception until the moment of restitution to the lessor/Contractor, the lessee/Client bears the risk of preservation of the leased goods and is responsible for all damages caused, as well as for loss or theft.

If the leased goods are returned damaged, the lessor/Contractor is entitled to claim compensation from the lessee/Client. This compensation is at least equal to the repair costs of the leased good, plus the loss of lease income during these repairs.

6.1.3 The lessee/Client is prohibited from disposing of, pledging, subleasing to third parties, (partly) giving in use or otherwise disposing of the leased goods, unless the lessor/Contractor explicitly agrees to this in writing.

6.1.4 The lessee/Client has to treat the leased goods with due and proper care, secure these effectively and only use them in compliance with their purpose and their manuals.

### **7. Storage**

7.1 In the event that the Contractor stores goods belonging to the Client or to third parties in its warehouses, depot or terminals, the Contractor is

not obliged to verify the state of the goods, nor their content.

The Contractor can in no case be held liable for any damage to the stored goods and/or their content, nor for loss or theft thereof, nor in the event of force majeure as defined in art. 8.1.

7.2 At the end of the Agreement the stored goods are deemed to be returned to the Client in the state in which they were at the moment of receipt by the Contractor, other than in the event of force majeure as defined in art. 8.1.

### **8. Force majeure**

8.1 On the part of the Contractor, force majeure exists when, after conclusion of the Agreement, the Contractor is unable to comply fully and/or in a timely manner with its contractual obligations due to for instance, but not limited to war, mobilization, civil unrest, fire, water damage, flood, natural disasters, weather influences (e.g. in the event of a storm with a wind speed of at least 14 metres per second as measured by the Royal Meteorological Institute of Belgium or a department thereof, local whirlwinds or tornadoes), earthquakes, water levels, strike, occupation, import and export restrictions, government measures, defects to machinery or transportation, power supply failure, failure to deliver sold goods or needed parts/auxiliary materials in time, traffic jams, traffic accidents; all this either within the Contractor's company, at third parties from whom the Contractor procures all or some goods/needed materials, as well as in case of storage or during transport, whether or not under its own management and furthermore due to all other causes arisen through no fault or action of the Contractor.

8.2 In the event of force majeure, the party suffering it shall inform the other party in writing within a period of 8 days after the occurrence of the situation constituting force majeure.

This report shall contain all facts necessary to enable the other party to determine the existence of force majeure.

As of that moment the execution of the obligations affected by force majeure are suspended for the same period as the duration of force majeure.

The party suffering force majeure shall do everything reasonably possible to minimize the delay and shall notify the other party of the measurements taken in that respect.

In case the situation of force majeure lasts or is certain to last for more than 90 days, both parties are entitled to terminate the Agreement without any obligation to pay any indemnification to one another.

8.3 In the event of force majeure the Contractor is entitled to elect to terminate the agreement without judicial intervention, to cancel it, or to suspend the moment of service/delivery up until the moment force majeure ceases to exist, without the Client being entitled to any compensation. The Contractor shall then be entitled to demand full and immediate payment of all costs incurred up until that point.

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### **9. Payments**

- 9.1 Unless explicitly stated otherwise, all invoices are payable in cash at the Contractor's premises upon delivery.
- 9.2 In the absence of any objection to the invoice of the Contractor within 8 days of the invoice date, the invoice has been accepted. This also implies acceptance of present general terms and conditions.
- 9.3 In the event of non-payment of the invoice within the stipulated period, compensation of 10% of the outstanding amount, with a minimum of 50 EUR, is due by law and without any prior notice, without prejudice to the Contractor's right to prove and claim higher damages.  
Furthermore, as from the due date of every unpaid invoice, its amount shall be increased by law and without prior notice by late-payment interest of 1.5% per month of the outstanding amount.
- 9.4 Without prejudice to the right of the Contractor to compensation, the Contractor is also entitled to suspend the execution of the Agreement without any prior notice or to terminate the Agreement by registered mail, should the Client fail to pay any invoice on its due date or fail to comply with any other contractual obligation.
- 9.5 In the event of non-payment by the Client of any invoice within the stipulated period, all the other invoices of the Client not yet due shall also be immediately payable by law and without any prior notice.

### **10. Complaints**

- 10.1 Complaints regarding goods delivered or works performed, insofar as these concern visible defects, shall be reported in writing to the Contractor within 8 days after delivery/execution, in the absence whereof all right to compensation is lost.
- 10.2 Complaints concerning hidden defects regarding the goods delivered or works performed shall be reported to the Contractor within 1 month after the Client has discovered the defect or should reasonably have discovered the defect, in the absence whereof all right to compensation is lost. This complaint shall be made by registered mail and shall contain a detailed description of the defect.
- 10.3 The Contractor will investigate as soon as possible whether the complaints are sufficiently founded.  
In case of disagreement between parties, two experts shall be appointed, one chosen by each party, to assess the defect in question.  
In case of disagreement between the two experts, a third independent expert with decision-making power shall be appointed by them.
- 10.4 If a complaint regarding delivered goods or services is justified in the opinion of the Contractor and the Client has furthermore provided sufficient evidence in the Contractor's opinion that the defect in question already existed at the moment of delivery or execution of the works, the Contractor will, each time at its own option, (i) replace the

defective good or part of that good free of charge, (ii) repair the defect or the defective part of the good, or (iii) reimburse the purchase price of the defective good to the Client, without the latter being entitled to any damages.

- 10.5 The Contractor accepts no liability whatsoever for defects in goods delivered or services provided caused by or arising from actions on the part of the Client, third parties, or external causes.

- 10.6 Complaints shall never suspend the obligations of the Client arising from the Agreement, nor can the Client in this case claim dissolution of the Agreement.

### **11. Liability**

- 11.1 The liability of the Contractor is limited to what is referred to in article 10.4.  
Thus, the Contractor shall not be liable for or be obliged to reimburse any non-pecuniary loss, indirect or consequential damages, including, but not limited to, loss of profit, loss of sales, loss of income, output limitations, administration or personnel costs, an increase of overhead costs, loss of clientele or third-party claims, incurred other than as a result of its own intentional act or gross negligence.
- 11.2 The Contractor cannot be held liable for:
- damage or loss suffered by the Client or third parties as a result of inaccurate or incomplete documentation and/or information provided by the Client, even if this documentation and/or information originates from third parties, and/or damage as a result of instructions from the Client and/or any other act or omission of the Client;
  - damage or loss suffered by the Client or third parties as a result of an act or omission of a person whose assistance is used by the Contractor (not including employees of the Client), even if such a person is employed by an organization affiliated with the Client;
  - damage or loss suffered by the Client or third parties as a result of force majeure as set out in article 8.1;
  - damage or loss suffered by the Client or third parties due to the setting of the temperature, humidity and/or ventilation openings of reefer containers. The Client/lessee is obliged to check the setting of the temperature, humidity and/or ventilation openings whenever goods are received;
  - damage or loss suffered by the Client or third parties to goods that are in sealed containers;
  - damage or loss suffered by the Client or third parties as a result of storage of the goods and/or containers in the open air;
  - any indirect or consequential damage or loss suffered by the Client or third parties, such as but not limited to damage due to stagnation of normal business, loss of profit or loss of turnover. The Client must insure itself against this damage if it so wishes.
- 11.3 The Contractor is not responsible for defects which arise after delivery of the goods or after the date of completion of the works and which have

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been caused by normal wear and tear, incompetent use or a lack of diligence.

- 11.4 In case of liability, the Contractor can never be obliged to compensate a higher amount of damage than the amount of the invoice exclusive of VAT for the delivery of the goods or the executed works in question.

In the event the Contractor is insured, its liability shall be limited to the amount which is paid in the case concerned under the terms of the insurance policy.

- 11.5 Second hand goods are delivered by the Contractor to the Client in the state in which they are, inclusive any visible and/or hidden defects. Unless incurred as a result of its own intentional act or gross negligence, the Contractor rejects all liability for these defects. Without prejudice to the foregoing, any claim of the Client against the Contractor for compensation or otherwise will in any case lapse 1 year after the occurrence of the damage, or before that if the Client has not held the Contractor liable within this period as described in art. 10.1 and art. 10.2.

### **12. Retention of title**

- 12.1 The Contractor retains title to all the goods delivered or made available until the entire purchase price of all such goods has been paid.

- 12.2 The Contractor does not lose the retention of title if the Client has processed, manufactured or assembled the received goods.

### **13. Warranty**

- 13.1 The warranty provided by the manufacturer applies to delivered goods.

- 13.2 The Contractor does not provide a warranty for the Client on repair services.

- 13.3 The warranty lapses in case the Client has made changes to the delivered goods or if, in the opinion of the Contractor, the Client has not used the goods in accordance with their designated use.

### **14. Language**

- 14.1 The Dutch version of these general terms and conditions remains the only official and legally enforceable version, notwithstanding any translation thereof communicated by the Contractor to the Client.

### **15. Partial nullity**

- 15.1 The nullity of one or several articles of the present general terms and conditions does not imply the nullity of this document in full.

- 15.2 The nullity of a part of one or several articles of the present general terms and conditions does not imply the nullity of that article in full.

### **16. Disputes**

- 16.1 The legal relationship between the Contractor and the Client is governed exclusively by Belgian law.

- 16.2 The courts where the Contractor's registered office is located have exclusive jurisdiction for all disputes and conflicts related to and arising from these general terms and conditions and or the Agreement governed by these general terms and conditions.