



## **GENERAL TERMS AND CONDITIONS of sale and delivery.**

### **EURO SUN IMPORT EXPORT BV - (EURO SUN)**

(deposited by the district court of Alkmaar NL.)

#### **1. DEFINITIONS**

Definitions for the purpose of these general terms and conditions of sale and delivery:

- **EURO SUN:** Euro Sun Import-Export B.V., a private limited company under Netherlands law, having its corporate seat in Hoon (the Netherlands) Gildenweg 29 1695GD Blokker and registered with the Chamber of Commerce at Alkmaar under number 36041489;
- **Customer:** the purchaser of goods and/or services, representative or agent of the purchaser, or any party or legal entity acting on behalf of the purchaser;
- **Goods:** the materials and/or equipment and/or services to which this document relates;
- **Confirmation of order:** the issued proforma invoice (or any other written document that has clearly the status of a confirmation of order) as written confirmation of the sale of goods ordered by the customer.

#### **2. GENERAL**

1. Unless otherwise explicitly stated in writing, these conditions shall apply to all offers, correspondence, information, quotations and agreements concerning the sale and delivery of goods by EURO SUN.
2. In the event, that written additions or exceptions have been made, they shall only apply to the agreement for which they are made.
3. EURO SUN expressly rejects the applicability of any general conditions used by customer.
4. The rights and obligations arising from agreements between EURO SUN and customer may not be transferred by customer to third parties, except with the written consent of EURO SUN.
5. The provisions of title 7, section 1 of book 7 BW (Dutch Civil Code) (order) with the exception of Article 412 shall not apply to the present legal relationship unless otherwise specifically provided in the agreement or in these conditions.

#### **3. QUOTATIONS**

1. All quotations and offers shall be without engagement toward EURO SUN and forms only an invitation to customer to place an order.
2. These quotations and offers shall be valid for a period of fourteen days, without any reservation of the goods, unless otherwise agreed in writing.
3. All machine representations, specifications, etc. are approximates only and shall not be binding, unless they are expressly confirmed in writing by EURO SUN as facts.

#### **4. INSPECTION**

1. Customer shall have the right, for own account, to inspect the goods on/or before delivery at a time and place determined by EURO SUN.
2. If customer chooses not to inspect the goods and once any payment is made by the customer relating to the execution of the agreement, customer explicitly accepts the goods. The payment is customer's confirmation that the goods are in accordance with his expectations and satisfaction.
3. No agreement shall be invalidated by reason of any defect or inaccuracy in any description of the goods in the offer or in the website of EURO SUN or elsewhere and no liability shall be borne by EURO SUN in respect of such faults or errors.

## 5. AGREEMENTS

1. An agreement shall only be deemed to have been legally concluded after EURO SUN has issued a proforma invoice or a start has been made on the execution of the agreement. Any payment by the customer or the reservation of the goods for the customer by EURO SUN will be defined as a start of the execution of the agreement.
2. The contents of the agreement shall be determined by the confirmation of order issued by EURO SUN and these general conditions.

## 6. PRICES

1. All price quotations and the prices which EURO SUN charges are the prices applicable at the time of the quotation or of the conclusion of the agreement. These prices are ex works Blokker (municipality of Hoorn), excluding VAT and other costs attached to the agreement.
2. Deliveries within the European Union (E.U.) are subject to VAT. VAT will not be payable by the customer on condition that he supplies to EURO SUN a correct and valid VAT number according to the laws of the E.U. If there is any reasonable doubt that the information supplied is incorrect, EURO SUN shall levy the applicable VAT in the Netherlands.
3. Where, after making the quotation of paragraph 1, a change occurs to one of the factors determining the price, EURO SUN shall be entitled to adjust the prices accordingly, even when the agreement has in the meantime been concluded.
4. Price revisions of more than 10% shall give the customer the right to cancel the agreement, provided this is done in writing and within seven days of receipt of EURO SUN's notification thereof. This cancellation shall not give the customer any right to compensation for any damage whatever.

## 7. EXECUTION OF THE AGREEMENT

EURO SUN determines the manner in which the agreement shall be executed. Customer shall ensure that all information and assistance which EURO SUN reasonably needs for the proper execution of the order is supplied in the form requested. Assistance includes supply of transport materials by customer (when agreed). EURO SUN is entitled to suspend the execution of the order until all these obligations of customer have been fulfilled.

## 8. PAYMENTS

1. Customer shall be obliged to pay all proforma invoices and/or invoices before delivery of the goods (payment in advance), unless otherwise agreed in writing. In any event EURO SUN requires advance payment within the validity of the proforma invoice or maximum fourteen days from the issue date of the invoice. In case of non payment on these payment conditions the customer shall be in default from the expiration date of the proforma invoice, without any notification of default being required. In the event that EURO SUN agrees to accept partial payments, this payments do not constitute a relaxation of the payment obligation, as referred to above, unless EURO SUN agrees to such relaxation in writing.

2. Where invoices are not payable in advance as in paragraph 1 of this article, customer shall be in default simply by the passing of the agreed payment date, without any notification of default being required.
3. Notwithstanding the other rights accruing to EURO SUN, EURO SUN shall then be authorized to charge interest on the outstanding amount of 1% per month or part of a month, chargeable from the due date in question.
4. All extrajudicial and judicial costs incurred by EURO SUN by virtue of any dispute with customer, both as plaintiff and as defendant, shall be for account of customer: the extrajudicial collection costs are set at 15% of the outstanding amount with a minimum of € 500.00. The judicial collection costs are set at the actual amount paid for the proceedings by EURO SUN, even where this exceeds the awarded costs of the proceedings.
5. Incoming payments will first serve to pay the extrajudicial collection costs incurred by EURO SUN, then the judicial costs, the interest due by them and then the outstanding principal amounts on the basis of the oldest outstanding invoice, regardless of any contrary customer's instruction.
6. In case of late payment any adverse exchange rate difference shall be for account of customer.
7. Instead of demanding payment EURO SUN may also, without further notice, cancel the agreement and resell the goods sold to the customer. In this case the customer forfeits any down payment made to EURO SUN against damages, such as compensation for losses incurred.

## 9. DELIVERY AND REMOVAL

1. Delivery times shall not be regarded as a deadline and are approximate only.
2. In case of late delivery EURO SUN shall only be in default after written notification of default. The time of delivery shall in any case, but not exclusively, be extended by the periods during with:
  - a. there is a delay in the supply and/or dispatch and/or any other circumstance temporarily holding up the execution;
  - b. the customer defaults in one or more obligations towards EURO SUN or there is a justified fear that he will default in these;
  - c. the customer does not put EURO SUN in a position to execute the agreement.
3. Delivery shall be deemed to have taken place at the time when the goods are made available by EURO SUN to customer.
4. Responsibility and risk of removal of the goods shall be borne by customer and, in any case, customer shall use prudence in effecting such removal. EURO SUN reserves the right to require proof of adequate insurance coverage from any customer when goods require dismantling, rigging or hot cutting. Customer agrees to indemnify EURO SUN against any damage caused by the acts of customer or third parties in connection with dismantling or removal of any goods.
5. If for any reason customer fails to remove any goods within the time provided, the goods shall be deemed abandoned and EURO SUN at their sole discretion may resell or store these goods at customer's sole risk and expense, whether by removal to another location or otherwise. In addition, customer shall be liable to EURO SUN for storage charges or for any rent incurred, as the case may be, and for any damages suffered by EURO SUN because of customer's failure.
6. Delivery in the Netherlands shall be carried out ex works in Blokker, unless otherwise agreed in writing. All goods shall be transported for account and risk of customer, even where the dispatch is made carriage paid.
7. Where EURO SUN on request of customer is responsible for dispatch of the goods or where the agreed parity of the ICC Incoterms lays this responsibility on EURO SUN, the time, method of dispatch and dispatch route shall be its choice. Transport insurance shall only be taken out by EURO SUN on the express request of customer; all costs relating to this shall be for customer's account.

8. Delivery outside the Netherlands shall be carried out Ex Works (EXW) Incoterms 2000, unless one of the other Incoterms of the International Chamber of Commerce (ICC), Edition 2000, is agreed.
9. Partial deliveries shall be permitted.

#### 10. RESERVATION OF TITLE

1. All goods sold and delivered by EURO SUN remain its property until paid in full. Delivery shall only be carried out on reservation of title, unless customer has fulfilled all of his obligations.
2. In case that title is reserved, EURO SUN shall be authorized to take back the goods delivered which have remained its property in accordance with the previous paragraph. Such taking back shall be deemed to be cancellation of the agreement. Customer shall authorize EURO SUN, where necessary irrevocably, to remove the goods in question (have the goods in question removed) from where they are located. Should the customer refuse this, this provision shall be deemed to be an irrevocable power of attorney to EURO SUN to remove the goods.
3. Whilst the ownership of the goods (paragraph 1) remains with EURO SUN the customer shall not sell, rent, pledge or allow third parties to come into possession of said goods without the written consent of EURO SUN. Otherwise EURO SUN shall be entitled to a directly payable fine of 1,5 times the net invoice value, notwithstanding EURO SUN's entitlement to additional reimbursement of damages.
4. In any case the customer is obliged to protect and insure the goods against all risks.

#### 11. GUARANTEE

1. EURO SUN sells used goods without any guarantees/warranties (express or implied) on "as it is where it is" terms, unless otherwise specified in writing.
2. In case of new equipment the guarantees/warranties of the factory will be transferred to the customer. In that respect EURO SUN's guarantees/warranties are limited to the factory guarantees.
3. Where customer calls upon the written guarantee given by EURO SUN or makes a claim, EURO SUN shall assess such guarantee or complaint and if necessary settle, taking into account what is provided in the agreement. Guarantee claims may not be transferred to third parties.
4. In case of given guarantee on penalty of lapse of its right, customer must notify EURO SUN in writing of any complaints regarding visible deficiencies in the goods within three days after receipt or delivery, giving an accurate description of the complaints. For all other claims a period of five days after the defects became known or should have become known shall apply. The goods in question must be made available to EURO SUN for examination upon first request at the premises of EURO SUN. Complaints always relate to the level of the invoiced amount.
5. Claim is (when guarantee is given) not possible at all where:
  - the goods have been used for a purpose other than that for which they are normally intended or in the opinion of EURO SUN they have been used or transported injudiciously or have been repaired by customer or a third party;
  - the damage has been caused by negligence of customer (for example by insufficient maintenance) or by customer having acted contrary to instructions, indications and advice given by EURO SUN;
  - customer has not fulfilled his obligations towards EURO SUN (both financially and otherwise).
6. Should EURO SUN agree to assign to, or endorse the claim, EURO SUN shall, at its discretion, replace the goods free of charge (after which the replaced goods shall become its property) or repair them or give a price reduction.
7. The handling of a claim shall not suspend the payment obligation of customer.

#### 12. THIRD PARTIES RELATED TO THE CUSTOMER

1. Any customer shall be deemed to act as principal unless Euro Sun acknowledges in writing that he acts as agent on behalf of a named principal. When the customer represents a principal, or he is acting as an agent, or he is acting in his own name for the agent, he will be held liable jointly and severally for the performance of the agreement. In case of non fulfillment of his obligations he shall, on first demand of EURO SUN disclose the name, post- and email address and telephone number of his principal.
2. All invoices will be issued from EURO SUN directly to the customer. In the event the customer executes any payment(s) or deposit(s) through a third party, such third party shall be acting for and on behalf of the customer and by his payment(s), such third party assumes jointly all the obligations of the customer. Any such payment(s) or deposit (s) made shall be non-refundable to the payee under any circumstances.
3. In the event, that a third party fulfills the obligations of the customer, partly or in full, EURO SUN has the right to its choice either to consider the fulfillment as performance by the customer or considers the agreement as concluded with the third party with elimination of the first customer.
4. In case of a letter of credit (L/C) issued by a bank the extra costs resulting from such L/C shall be charged to the customer.

### 13. NON-FULFILLMENT-CANCELLATION- SECURITY

1. In case of non- fulfillment EURO SUN shall have the right, with immediate effect, to insist on fulfillment, to suspend the execution of the agreement, to cancel the agreement in full or in part, to claim compensation and/or to resell the goods without any notification of default being required and without judicial intervention, when:
  - customer acts in contravention of any provision of the agreement between parties;
  - customer applies for suspension of payment or makes an application for adjudication of bankruptcy
  - bankruptcy of customer has been applied for;
  - the business of customer is shut down or liquidated;
  - a private agreement is offered.In these cases any claim against customer shall be immediately due and payable, to Euro Sun without EURO SUN being held to any compensation or guarantee.
2. The provision of paragraph 1 of this article shall be in force even when customer, after being invited to do so in writing, has provided security which is suitable in the view of EURO SUN. However even in the case that suitable security has been provided within the given time, reinstatement of the agreement is at the sole discretion of EURO SUN.

### 14. RETENTION RIGHT AND RIGHT TO RESELL

EURO SUN shall be authorized to suspend the delivery of goods of customer, which EURO SUN has in its possession by virtue of an order(s), until EURO SUN has been paid for all ordered goods, including interest and costs.

In the event that customer fails to pay the full purchase price on any of the goods (purchased from EURO SUN) within the prescribed time or fails to comply with any other obligation EURO SUN shall retain a possessory lien on all the goods of the customer and at Euro SUN's sole discretion, have the right to resell such goods by public or private sale without any notification to the customer being required.

Should Euro Sun sell any such goods the net proceeds there from (after deducting a sales commission of fourteen percent and any costs) shall be credited to the original customers account and the customer shall forthwith upon demand pay EURO SUN, as damages, any deficiency arising from the sale.

### 15. PART-EXCHANGE

Where customer continues to use part-exchanged goods in anticipation of the delivery of the newly ordered goods, all costs of the first mentioned goods and any diminution in value thereof shall be for his account.

## 16. LIABILITY

1. EURO SUN shall not be liable for damage caused as a result of any default in the fulfillment of its obligation(s) towards customer. The fulfillment of the obligations under guarantee/claim as described in Article 11 shall apply as sole and full compensation. Any other claim for compensation, including claims for trading losses (losses due to stoppage, loss of income and any other consequential losses of whatever nature) and losses incurred as a result of liability in relation to third parties are also expressly excluded, unless intent or gross negligence by EURO SUN is involved.
2. EURO SUN shall also not be liable for intent or (gross) negligence of (non-managerial) subordinates or of others which it has called in by virtue of the execution of the agreement.
3. EURO SUN shall not accept any liability for advice given by or on behalf of it.
4. EURO SUN shall not be liable for damage to motor vehicles of third parties which are located on its site.
5. EURO SUN shall not be liable for any personal injury for persons visiting its sale site or any of its premises. No person shall have any claim against EURO SUN, their agents, employees or principals for any injuries sustained nor for damages or loss of property which may occur from any cause whatsoever.
6. In any case the liability of EURO SUN is limited to the amount for which it is insured, or if not insured, for the amount for which a comparable business would normally insure such risks.

## 17. FORCE MAJEURE

Force majeure shall be understood in the sense of these general conditions to be any circumstance outside the will and agency of EURO SUN, whether or not foreseeable at the time of entering into the agreement, as a result of which fulfillment may not reasonably be demanded of EURO SUN, such as war, government measures, lack of raw materials, factory or transport disruptions of any nature whatever, strikes, lockout or lack of personnel, quarantine, epidemics, hold-ups due to frost, default of third parties called in by EURO SUN for the execution of the agreement, etc.

## 18. PARTIAL NULLITY

Should one or more provisions of these general conditions be deemed not entirely legally valid, this would have no influence on the validity of the other provisions and in this case the parties would replace the provision(s) which are not valid with provision(s) which are valid and whose economic effect is as close as possible to the provisions which are not valid.

## 19. APPLICABLE TEXT- PLACE OF FULFILLMENT- APPLICABLE LAW- COMPETENT COURT

1. In case of dispute the English text of the general conditions shall always prevail.
  2. The seat of EURO SUN shall be the place where customer must fulfil his obligations towards EURO SUN.
  3. Solely Dutch law shall apply to all quotations and agreements of EURO SUN, with the exception of the provisions of Section 6:5.3 BW (Dutch Civil Code).
  4. All disputes which may arise as a result of the agreement made between customer and EURO SUN, or from further agreements, which may follow them, shall be settled by the competent court in Alkmaar, the Netherlands.-----
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