

# **General Conditions of Sales and Delivery of SMEPRO INTERNATIONAL B.V.**

## **Article 1 - Definitions**

In these general conditions of sale and delivery the following is understood under:

**"SMEPRO"**: The private limited liability company Smepro International B.V., having its registered office and place of business at Nijverheidsweg 31, 6662 NG Elst, registered in the Commercial Register of the Chamber of Commerce of Centraal Gelderland under number 09074939;

**"Client"**: the party giving an order to and/or placing an order with SMEPRO and/or the party entering into an agreement with SMEPRO.

**"Products/items"**: products/items as included at any time in SMEPRO's product and delivery assortment.

**"Article"**: if a certain article is referred to in these general conditions then it concerns a reference to a provision as set forth in these general conditions unless explicitly determined otherwise.

## **Article 2 - Applicability**

- 2.1 All offers, quotes, order confirmations and/or agreements with SMEPRO to deliver items and/or supply services are exclusively subject to these general conditions of sales and delivery of SMEPRO, hereinafter referred to as: **"the conditions"**. In all its quotes, offers, order confirmations and/or agreements SMEPRO refers to the delivery conditions as set forth in the most recent version of the International Commercial Terms (Incoterms). At the time of filing these general conditions, this is the Incoterms 2010. Any quote, offer, order confirmation and/or agreement will show which Incoterm is applicable.
- 2.2 Terms and conditions used by the Client, of any kind and whether or not set forth in general terms and conditions used by the Client, are only applicable if SMEPRO has explicitly accepted these conditions in writing.
- 2.3 Reference to or mention by the Client of its own purchase, tender or other (general) conditions is not accepted by SMEPRO and these purchase/tender or other (general) conditions will not apply to the agreement in question.

## **Article 3 – Quotes**

Any offer or quote issued by SMEPRO is free of obligation unless a term of acceptance is referred to in the offer.

## **Article 4 – Conclusion of the agreement**

Agreements apply as entered into as of the day that the agreement is signed by SMEPRO, or the day that SMEPRO sends a written order confirmation or the day on which SMEPRO actually carries out an order placed with it by the Client. In these general conditions, written is understood to mean: by post, by telefax, by e-mail or any other accepted communication means, with which it is possible to transmit text.

## **Article 5 - Amendments**

Amendments to the agreement as well as to these general conditions will only be effective if they are explicitly agreed on in writing between parties, without prejudice to those referred to in article 6.

#### **Article 6 – Price**

- 6.1 The prices indicated by SMEPRO are exclusive of turnover tax and subject to application of the Incoterm Ex Works (EXW), unless explicitly agreed otherwise with the Client in writing.
- 6.2 If after the date of conclusion of the agreement one or more unforeseen cost price factors undergoes an increase or an increase occurs with regard to amended legislation or regulations, such as import and export duties or other duties or charges, or a cost price increasing change occurs in the currency exchange rate, SMEPRO is entitled to adjust the agreed price accordingly.
- 6.3 If at the time of conclusion of the agreement SMEPRO and the Client have established together at what exchange rate the agreement will be carried out, exchange rate changes of +5% or -5% will not lead to changes in the agreed price. All exchange rate changes which exceed the percentage of +5% or -5% are payable by the Client unless parties explicitly agree otherwise.
- 6.4 If part of the agreed items has already been delivered, the provisions of article 6.2 remain in full force with regard to the items still to be delivered by SMEPRO.

#### **Article 7 – Packaging/dispatch**

- 7.1 SMEPRO determines the manner of dispatch and packaging unless the Client has given SMEPRO other instructions in good time in writing.
- 7.2 Packaging is not taken back by SMEPRO.

#### **Article 8 - Descriptions, models, aids and advice**

- 8.1 Pictures, drawings, size and weight indications and other such data shown in catalogues are only binding if and insofar as explicitly set forth in an agreement signed by parties or an order confirmation signed by SMEPRO without prejudice to the provisions of article 8.5.
- 8.2 Quotes issued by SMEPRO as well as drawings, calculations, descriptions, models, tools and suchlike manufactured or provided by SMEPRO remain property of SMEPRO until the time that the Client has paid the purchase price. The models pertaining to the Client will be kept by SMEPRO unless the parties have explicitly agreed otherwise.  
All information contained in quotes, drawings, calculations, descriptions, models, tools and suchlike, as well as all information on which the manufacturing methods of the items to be delivered by SMEPRO are based, remains exclusively reserved for the Client.
- 8.3 Smepro guarantees that the information referred to in article 8.2 will not be copied or shown, published or made available to third parties in any form, other than with the Client's written consent, except if and insofar as this is necessary for the performance of the agreement entered into with the Client.
- 8.4 All advice, calculations, notifications and specifications given by SMEPRO with regard to capacities, results of items to be delivered and/or work to be carried out by SMEPRO are entirely free of obligation and are provided by SMEPRO by way of non-binding information.
- 8.5 A tolerance of 10% more or less of the quantity of products ordered by the Client applies to delivery by SMEPRO of semi-manufactured products such as castings and mold forgings.

#### **Article 9 - Delivery term**

- 9.1 The delivery term indicated by SMEPRO in its quote or the delivery term agreed on by parties always applies by estimate, unless SMEPRO explicitly states in writing that it is a deadline or parties have explicitly agreed on this deadline in writing.
- 9.2 If SMEPRO exceeds the delivery term, this does not entitle the Client to any compensation nor the right to terminate the agreement and/or otherwise to suspend its obligations ensuing from the agreement.

- 9.3 The delivery term is based on the working circumstances applicable when the agreement was entered into and timely delivery of the items ordered by SMEPRO in order to comply with the agreement. The delivery term will be extended insofar as necessary if a delay arises due to no fault of SMEPRO because of a change in the said work circumstances and/or because items ordered for the performance of the agreement were not delivered on time.
- 9.4 With regard to the delivery term the items apply as delivered when they are ready for dispatch in accordance with the Incoterm Ex Works (EXW), all this after the Client has been notified thereof in writing.
- 9.5 Without prejudice to the other provisions in these conditions with regard to extension of the delivery term, the delivery term is extended by the period of delay arising on the side of SMEPRO as a result of non-compliance by the Client with any obligation ensuing from the agreement or cooperation requested with regard to performance of the agreement.
- 9.6 SMEPRO is entitled to comply with the agreement by way of partial deliveries, unless explicitly agreed otherwise and/or the nature of the agreement prevents this. In the event of partial deliveries, each batch of items is considered as a separate delivery and SMEPRO is entitled to invoice this partial delivery as such.
- 9.7 If the Client places a call off order, this order must be called off and accepted by the Client no later than the last day of the call off period.

#### **Article 10 - Risk and transfer of title**

- 10.1 After the items in question have left the storage site of SMEPRO or a third party designated by SMEPRO, or after the items apply as delivered in the meaning of article 9.4, the Client will bear the risk for these items, all this in accordance with Incoterm Ex Works (EXW) unless the parties have agreed otherwise.
- 10.2 The items are transported under all circumstances for the Client's account and risk unless parties have agreed otherwise.
- 10.3 Damage to the items caused by destruction of packaging is for the account and risk of the Client unless parties have agreed otherwise.
- 10.4 If the Client has made items available to SMEPRO for processing, repairs, inspection or otherwise, these items are kept by SMEPRO based on the agreed Incoterm. In principle, the Client must arrange for adequate insurance of these items unless parties have agreed otherwise.
- 10.5 The provisions of article 10.4 likewise apply to consignment goods supplied by SMEPRO. At all times SMEPRO is entitled to check the quantities and storage of these items at the location where they are kept. The Client will afford its cooperation.

#### **Article 11 - Retention of title**

- 11.1 SMEPRO retains the title to all items it delivers to the Client until the purchase price for all these items has been paid in full.
- 11.2 If SMEPRO carries out other or additional work for the Client in the scope of the concluded agreement, the retention of title applies until the Client has paid the full purchase price for this work to SMEPRO. The retention of title also applies to the claims that SMEPRO might have against the Client due to failure of the Client to comply with one or more of its obligations vis-à-vis SMEPRO.
- 11.3 The Client is not entitled to sell, transfer title to and/or otherwise make items available to third parties and/or to encumber them prior to the time referred to in articles 11.1 and 11.2.
- 11.4 SMEPRO reserves a non-possessory pledge on the delivered items which have transferred in title to the Client due to payment and are still in the hands of the Client as further security for

claims, other than those referred to in Section 92 paragraph 2 of Book 3 of the Dutch Civil Code, which SMEPRO might have for whatever reason against the Client.

11.5 The Client is required to keep the items delivered under retention of title with the necessary care and as recognizable property of SMEPRO. The Client will be obliged to insure the goods for the duration of the period of retention of title for fire damage, explosion damage, water damage and theft, and to submit the insurance policies to SMEPRO for inspection at first request.

All claims of the Client against insurers for the items pursuant to the aforementioned insurance will, once SMEPRO so wishes, be pledged without notice to the debtor by the Client to SMEPRO, as further security for SMEPRO's claims against the Client.

11.6 If a situation as mentioned in article 17.2 occurs, SMEPRO is entitled to repossess the items delivered under retention of title including any required dismantling. The Client will afford full cooperation to SMEPRO in this respect.

11.7 After repossession of the items as mentioned in article 11.6 the Client will be credited for the market value of the repossessed items, which in no case will exceed the original price, less costs incurred by repossession.

#### **Article 12 - Payment**

12.1 Unless explicitly agreed otherwise by SMEPRO and the Client the Client must pay the agreed price within 30 days of the invoice date.

12.2 SMEPRO is always entitled to request security for compliance with payment obligations and/or only to send items for payment on delivery. SMEPRO is also entitled to suspend observance of the agreement until the aforementioned security has been furnished to SMEPRO's satisfaction, failing which all that is owed to SMEPRO by the Client, for whatever reason, shall be immediately due and payable. Furthermore, SMEPRO is always entitled to request advance payment.

12.3 All payments, without any deduction or set off, must be made by the Client at SMEPRO's office or to a bank account indicated by SMEPRO.

12.4 If the Client does not pay within the agreed period, he shall owe an interest of 1% per month from the date of invoice, where part of a month will apply as a full month, as well as all judicial and extrajudicial costs incurred by the collection of the claim. The extrajudicial costs will be fixed at the collection rate used by the Netherlands Bar Association, but at a minimum of EUR 125.

12.5 Any costs incurred in the scope of legal proceedings by SMEPRO, including procedural costs as well as other costs for legal aid, even insofar as these costs are not awarded by the Court, are payable by the Client, unless SMEPRO, as the party found to be in the wrong, is ordered to pay the costs by the Court in a judgment that has become final.

12.6 In a situation as referred to in article 17.2 all claims of SMEPRO against the Client are due immediately.

12.7 Client in the meaning of article 12.6 will also mean any parent company, subsidiary and/or sister company pertaining to the Client's group and/or any other company affiliated with the Client, irrespective of its legal form.

12.8 Payments made by the Client will first be applied to any outstanding interest and costs, followed by any overdue invoices (with payment being used for the oldest invoice first), even if the Client states that the payment made is for a more recent invoice.

### **Article 13 - Guarantee**

- 13.1 Without prejudice to the restrictions referred to hereinafter SMEPRO only provides a guarantee for the items delivered by SMEPRO, in accordance with the guarantee given by the supplier to SMEPRO for the items in question.
- 13.2 The defects falling under the guarantee referred to in article 13.1 will be remedied by SMEPRO by repair or replacement of the defective items, whether or not at SMEPRO's business, or by sending replacement items, all of this at SMEPRO's discretion.
- 13.3 Defects not covered by the guarantee referred to in article 13.1 are in any case defects which occur in, or which are partly or fully caused by:
- a. non-observance of the instructions given for the use of the items delivered by SMEPRO;
  - b. use of the items delivered by SMEPRO for a purpose other than what they are intended for in SMEPRO's opinion;
  - c. normal wear and tear;
  - d. the applicability of any government provision with regard to the nature or quality of the materials used;
  - e. materials or items used in consultation with the Client;
  - f. materials, items, working methods and constructions, insofar as used on the explicit instruction of the Client, as well as materials or items provided by or on behalf of the Client;
  - g. natural disasters such as lightning strike, explosions, storms, earthquakes, avalanches, falling mountain rocks, landslides, floods, tidal waves, fire and loss of a sea container;
  - h. collision with an aircraft, parts thereof, or falling objects therefrom.
- 13.5 If the Client does not, not properly or not promptly comply with any obligation ensuing for it from the agreement entered into with SMEPRO or a related agreement, SMEPRO cannot be held to any kind of guarantee with regard to any of these agreements.
- 13.6 If the Client proceeds to repair or otherwise work on the delivered items or have the delivered items repaired or otherwise worked on without SMEPRO's prior written consent, any liability of SMEPRO with regard to the guarantee will lapse.
- 13.7 No guarantee will be given for inspections, advice and similar actions carried out by SMEPRO.
- 13.8 The alleged non-observance by SMEPRO of its guaranty obligations does not relieve the Client of the obligations ensuing for it from any agreement entered into with SMEPRO.
- 13.9 The guarantee referred to in article 13.1 et seq does not apply to agreements with regard to second-hand items and/or materials unless explicitly agreed otherwise in writing, subject to the proviso that SMEPRO accepts liability with regard to these second-hand items in accordance with articles 15.2 to 15.4.
- 13.10 SMEPRO's liability with regard to this guarantee only applies if the items are used in a professional manner and pursuant to all existing instructions and rules.

### **Article 14 - Complaints**

- 14.1 Complaints about defects must be made by registered letter sent to SMEPRO within the guarantee term, after which term any liability of SMEPRO in this respect will lapse, without prejudice to the provisions of article 14.2.
- 14.2 Complaints with regard to size differences and/or quantities of the items delivered with regard to the agreed sizes and/or quantities, without prejudice to the provisions of article 8.5, must be reported directly after establishment of the defect, but no later than three months after the date of delivery of the items by SMEPRO. Complaints must be made by registered letter sent to SMEPRO, failing which any liability of SMEPRO in this matter will lapse.
- 14.3 Legal claims with regard to the defects must be made pending within six months after the timely complaint subject to lapse.

- 14.4 Defects concerning a part of the delivered items do not entitle the Client to reject or refuse the entire batch of items delivered by SMEPRO.

#### **Article 15 – Liability**

- 15.1 SMEPRO's liability is limited to observance of the guarantee obligation stated in article 13.
- 15.2 Without prejudice to the provisions of article 13.1, SMEPRO's liability is limited to the regulations of this provision.
- 15.3 SMEPRO is not liable for damage of any kind caused because SMEPRO assumed incorrect and/or incomplete data provided by or on behalf of the Client.
- 15.4 If SMEPRO is liable for any damage, then SMEPRO's liability is at all times limited to the invoice value, exclusive of turnover tax, for the work which the liability refers to. In any case, the damage is always limited to the amount of the payment by its insurer in the applicable case.
- 15.5 SMEPRO is exclusively liable for direct damage.
- 15.6 Direct damage will exclusively mean the reasonable costs to establish the cause and scope of the damage, insofar as the establishment refers to damage in the meaning of these conditions, any reasonable costs incurred so that SMEPRO's defective performance corresponds to the agreement, insofar as this can be attributed to SMEPRO and reasonable costs incurred to prevent or limit damage insofar as the Client can demonstrate that these costs resulted in limitation of the direct damage as meant in these conditions. SMEPRO will never be liable for indirect damage, including but not limited to consequential damage, loss of profit, lost savings and damage due to business interruption.
- 15.7 The liability limitations set forth in this article do not apply if the damage can be blamed on intent or gross negligence by SMEPRO or its subordinates.
- 15.8 SMEPRO is entitled at all times to prevent or reduce damage suffered or to be suffered by the Client insofar as possible.
- 15.9 The Client is required to indemnify SMEPRO and hold SMEPRO harmless with regard to all claims by third parties for compensation of damage, for which SMEPRO's liability is excluded in the relationship with the Client in these conditions, including liability pursuant to Section 171 of Book 6 of the Dutch Civil Code (liability for non-subordinates/subcontractors) and Section 185 of Book 6 of the Dutch Civil Code (product liability).

#### **Article 16 - Force Majeure**

Force majeure will mean each circumstance outside of SMEPRO's control even if it could have been anticipated when this agreement was concluded, which prevents observance of the agreement temporarily or permanently, as well as insofar as not included therein, war, risk of war, civil war, riots, work strike, exclusion of workers, transport difficulties, fire and other serious interruptions in SMEPRO's business or that of its suppliers.

#### **Article 17 – Suspension and dissolution**

- 17.1 In the event the performance of the agreement is not possible as a result of force majeure, SMEPRO is entitled to either suspend performance of the agreement for no more than six months or to terminate it partially or fully, without SMEPRO being required to pay any damages.
- 17.2 If the Client does not, not properly or not promptly comply with any obligation ensuing for it from an agreement entered into with SMEPRO or related agreements, or there is good reason to fear that the Client is unable or will not be able to comply with its contractual obligations vis-à-vis SMEPRO, as well as in the event of bankruptcy, application of the statutory debt management scheme, moratorium of payments, death, being put under guardianship, shutdown, liquidation or partial transfer of the business of the Client, including the transfer of

an important part of its receivables, as well as if attachment is levied on the Client and this attachment is not lifted in the reasonably short term, SMEPRO is entitled without notice of default to either suspend performance of each of these agreements for no more than six months or to terminate them partially or fully, such without SMEPRO being required to pay any compensation and without prejudice to any further rights accruing to SMEPRO.

17.3 If the agreement is terminated, the claims of SMEPRO against the Client are due immediately. If SMEPRO suspends compliance with the obligations, it reserves its rights pursuant to the law and the agreement.

17.4 SMEPRO always reserves the right to claim compensation.

#### **Article 18 – Declaration of intent**

If one or more provisions of these general conditions might be void or compliance cannot be demanded for whatever reason, the other provisions of these general conditions will remain in full force. In that case, SMEPRO and the Client will hold talks in order to agree on new provisions to replace the void and/or annulled provisions, in which, if and insofar as possible, the intent and purport of the original provision will be taken into account.

#### **Article 19 - Applicable law/competent court**

19.1 Exclusively Dutch law will apply to all quotes, offers and/or agreements with SMEPRO.

19.2 The applicability of any international treaty, in which the effect between parties can be excluded, is explicitly excluded. More in particular the applicability of the Vienna Sales Convention 1980 (Convention on the International Sale of Goods 1980) is explicitly excluded.

19.3 All disputes ensuing from or as a result of quotes issued by SMEPRO and/or agreements entered into with SMEPRO will in the first instance exclusively be heard by the competent Dutch court. SMEPRO is free at all times to agree on other ways of resolving disputes with the Client (for example mediation or arbitration).

19.4 The provisions of article 19.3 only apply for SMEPRO. Therefore, SMEPRO is entitled at all times to apply to the court that is competent aside from the provisions of article 19.3.

19.5 In the event of disunity about the interpretation of these general conditions of sales and delivery the Dutch text will be binding.

Elst, February 20, 2014

Smepro International B.V.