

**GENERAL CONDITIONS FOR SALE AND THE PROVISION OF SERVICES OF  
KREMER ZADEN B.V.**

**Article 1 - General**

- 1.1. Kremer Zaden B.V. (hereinafter called: "Kremer"), registered with the Chamber of Commerce under no. 37110156, has its registered and principal office at de Industrieweg 7 in (1775 PV) Middenmeer, municipality Hollands Kroon, the Netherlands.
- 1.2. 'Conditions' means these general sales conditions of Kremer.
- 1.3. 'Buyer' means Kremer's contracting party being the (potential) buyer or a (legal) person on behalf of the (potential) buyer, and also the principal with regard to a contract made with Kremer for the provision of (a) specific service(s), including the selecting, handling, cleaning (reconditioning), treating, drying, mixing and packing of goods.
- 1.4. 'Contract' means the contract and/or further or follow-up agreements between Kremer and the Buyer.
- 1.5. 'Force majeure' means, inter alia, circumstances which hinder the performance of the Contract and which are not attributable to Kremer. Circumstances which in any case are deemed 'force majeure', regardless of whether these circumstances are or were foreseen at the time the contract was entered into, are: whole or partial misproduction, unsuitability of goods which Kremer uses for the performance of the Contract, work strike, blockade, stagnation of energy and water supplies, stagnation in domestic and/or foreign supply of raw materials, import, export and/or transshipment and other impeding government measures, transport problems, non-performance of the obligations by the suppliers, boycott of Kremer or of its suppliers, weather conditions, natural events, natural and/or nuclear disasters, riot, sabotage, fire or other malfunctions in Kremer's operations, war, threat of war and government measures (national or international). This list is not to be deemed exhaustive.

**Article 2 - Applicability**

- 2.1 These Conditions apply to all legal relationships whereby Kremer acts as (potential) seller and/or supplier and/or the party rendering services and/or contractor for work.
- 2.2 Deviations from these Conditions may only be effected explicitly and in writing. Such deviation has no effect with regard to any other (future) contracts.
- 2.3 Applicability of the general conditions applied by the Buyer is explicitly rejected.
- 2.4 If in a given case Kremer does not invoke the provisions of these Conditions, this does not mean that Kremer has thereby waived the right to invoke the provisions of these Conditions in other cases.

**Article 3 - Offers**

- 3.1 All quotes, offers and price specifications made by Kremer are without commitment.
- 3.2 Samples demonstrated or shown only apply by way of indication of the quality to be delivered by Kremer.

**Article 4 - Contract, changes and additions**

- 4.1 A contract between Kremer and the Buyer will first be effected after Kremer has confirmed the Buyer's order/assignment in writing by means of a sales/order confirmation or after Kremer has started with the performance of the contract.
- 4.2 A change in or an addition to a contract is only valid if it has been explicitly agreed in writing between Kremer and the Buyer.
- 4.3 If delivery occurs without prior consultation on price, quantity, composition and/or conditions, the Buyer is bound by the price and conditions which Kremer stipulates for that delivery.

**Article 5 - Prices**

- 5.1 The prices are in Euros, unless otherwise agreed.
- 5.2 The prices are exclusive of taxes and other charges.

- 5.3 In the event of extra costs relating to the performance of the contract as a result of an increase in transport rates, supplements in connection with high tide, low tide or floating ice, shipping which is hindered in whole or in part, government measures, delay in or impossibility of the normal unloading, increasing storage and transshipment rates, congestion, strike, riot or similar events, Kremer has the right to charge these costs to the Buyer.
- 5.4 Kremer has the right to charge the Buyer taxes, import duties, charges and other payments imposed by the government, or an increase therein, which were not known or did not apply when the contract was entered into.

#### **Article 6 - Payment**

- 6.1 The Buyer must pay the agreed price, the taxes and other charges within seven (7) days after the invoice date, unless explicitly otherwise agreed in writing.
- 6.2 The day of payment is the day the payment is deposited on one of Kremer's bank accounts. Payments by cash or cheque will not be accepted.
- 6.3 The payment must be made in the Netherlands, unless otherwise agreed.
- 6.4 The Buyer is in no case entitled to any discount and/or set-off and/or suspension.
- 6.5 If the Buyer does not pay the invoice within the term stipulated by Kremer, passes away, is declared bankrupt or applies for a moratorium on payment, the Buyer will be in default without the need for notice of default and consequently all payment obligations will be immediately due.
- 6.6 In the event of late payment the Buyer owes Kremer the statutory commercial interest for late payment pursuant to Art. 6:119a Dutch Civil Code.
- 6.7 If the Buyer fails on the performance of his obligations, the Buyer will in addition owe Kremer a penalty in the amount of 10% of the purchase price without prejudice to Kremer's right to set aside the Contract as set out in Article 16 or to claim performance of the contract including compensation.
- 6.8 If the Buyer fails on the performance of his obligations he owes extrajudicial (collection) costs which are fixed at 15% of the principal sum due respectively the loss suffered or the actual costs made for legal assistance if this leads to a higher amount, as well as all judicial costs.
- 6.9 If Kremer doubts on reasonable grounds whether the Buyer is able to perform its payment and/or other obligations, which reasonable doubt in any case exists if the Buyer leaves a payable debt unpaid, Kremer is entitled to demand from the Buyer that the agreed amount is paid in advance or that the Buyer gives proper security. Until the Buyer has done so, Kremer is entitled to suspend the performance of the contract. Kremer is always entitled to retain the goods received in storage and/or for processing by it until the full payment has been made of everything, of whatever nature, buyer owes Kremer. The amount of the advance payment or the amount and/or quality of the security to be provided will be assessed by Kremer.

#### **Article 7 - Retention and pledge of title**

- 7.1 Kremer retains title to the goods delivered by it, including the delivered documents, until the Buyer has performed all his obligations. The goods which Kremer delivered to the Buyer thus remain Kremer's exclusive property – even after and despite processing or treatment – until the time of full payment of all of Kremer's claims relating to goods delivered or to be delivered (pursuant to a contract) or work carried out or to be carried out (pursuant to a contract) on behalf of the Buyer, and until the time of full payment of the claim due to default on the performance of such contracts (including costs and interest).
- 7.2 If the Buyer is also obliged to pay compensation the title will first pass after the entire compensation has also been paid.
- 7.3 During the period that the title to the goods still belongs to Kremer, the Buyer is obliged to store the goods delivered subject to retention of title carefully and as recognisable property of Kremer and he cannot transfer the goods to third parties (sell and/or deliver) and/or encumber them with a security right.
- 7.4 The Buyer may make use of goods to be delivered to third parties in the normal course of his business subject to the provisions below:
- a) in the event of whole or partial resale/delivery of the goods, or of the goods obtained through processing, the Buyer undertakes to only effect the sale/delivery subject to retention of title. The Buyer undertakes to assign the claim and rights arising from the resale to Kremer upon first request;

- b) in the event of processing of the goods, the goods so acquired will take the place of the delivered goods. This also applies if the new product has been compiled of goods delivered by Kremer and goods of third parties. If one or more of these third parties also made a retention of title as referred to above, Kremer will acquire co-title to the new goods together with such third party or parties. Insofar as necessary the Buyer hereby grants a non-possessory pledge on these goods in favour of Kremer;
  - c) the Buyer is obliged not to have claims on third parties collected by others or to assign said claims to others, or to allow others to subrogate to the claim rights, without Kremer's prior written consent.
- 7.5 If the Buyer fails on the performance of his obligations to Kremer, or if Kremer has reasonable grounds for fearing that the Buyer will fail on the performance of those obligations, Kremer is entitled to take back the delivered goods at the Buyer's expense without prior notification to the Buyer, without prejudice to Kremer's right to compensation.
- 7.6 If the contract has been set aside by Kremer and/or the Buyer and the goods are still subject to a retention of title, the Buyer must immediately make these goods available to Kremer. The Buyer does not have the right to set off his claims in this respect or suspend his obligations to make the goods available on the basis thereof.
- 7.7 With regard to deliveries by Kremer of goods in Germany the property law consequences of the retention of title as stipulated in Articles 7.1-7.6 of these Conditions are governed by German law. In such cases Articles 7.1-7.6 also encompass the extended retention of title ('Verlängerter Eigentumsvorbehalt').
- 7.8 The Buyer or a representative/agent appointed by the Buyer is not entitled to present documents to third parties, to pledge them to third parties, or to give third parties any other right in respect thereof, until the purchase price has been deposited on the specified (bank) account of Kremer.
- 7.9 If Kremer presents documents to the Buyer, this will be subject to the following conditions:
- a) presentation of documents to third parties will only be 'in trust', in other words: the Buyer will keep the documents on an exclusive basis on behalf of Kremer;
  - b) unless payment has been made to Kremer, the Buyer must transfer the documents to Kremer upon Kremer's request;
  - c) the Buyer will not transfer the documents to a third party, unless the Buyer has received a written confirmation from Kremer that the documents have been paid for;
  - d) the Buyer must immediately inform Kremer in the event that payment will not be made in accordance with the contractual payment conditions when the Buyer becomes aware thereof;
  - e) in this article 'the Buyer' also includes the Buyer's representative or agent.
- 7.10 The Buyer hereby commits to pledging to Kremer upon his first request to that end and who will then accept this pledge in that case, all goods that the Buyer has given to Kremer in storage and/or for processing, as well as all claims the Buyer will have on his customers as a result of resale by the Buyer to their customers of goods that were sold and delivered to the Buyer by Kremer as security for everything Kremer has to or will claim from the Buyer at some point in time. The Buyer shall sign a pledge deed drawn up by the Buyer at the first request. The Buyer has further irrevocably authorised Kremer by the applicability of these general conditions and with the right of substitution, to pledge those goods and claims as referred to before in this Article to himself in behalf of the Buyer, repeatedly if necessary, and to do everything that is required for the pledging.

#### **Article 8 - Risk and delivery**

- 8.1 The Buyer undertakes to provide Kremer with proper insurance for the goods that it delivers to Kremer for processing/storage. The risks in the goods pass at the time of delivery.
- 8.2 The delivery takes place when Kremer makes the goods available to the Buyer. In the event of transport, delivery will first be effected when Kremer has made the goods available to the first transporter or, if the transport is at Kremer's risk according to the contract, at the time that the goods are made available to the Buyer at the agreed place.
- 8.3 Kremer does not guarantee that the goods will be delivered on the agreed delivery date. In the event of late delivery Kremer must be given written notice of default, giving him a reasonable term of four (4) weeks to effect performance.
- 8.4 Kremer is permitted to deliver the goods in part shipments. In such case Kremer is entitled to invoice separately and the Buyer is obliged to pay these invoices as if they were invoices for separate contracts.

#### **Article 9 - Transport documents and other documents**

- 9.1 Kremer's copy of the transport document signed for receipt by the transporter without comments is deemed full proof of shipment of the quantities set out on the transport document, as well as of the external good condition of the goods.
- 9.2 The Buyer is obliged to provide Kremer in time with all documents relating to the transaction and/or sold goods taking into account the prescribed terms and formalities, whereby in the event of default thereof the Buyer is fully liable to Kremer for the loss ensuing therefrom. This also applies with regard to compliance with regulations of the European Union or other national and/or international authorities and governments.
- 9.3 All costs which are caused by or are the consequence of the preparation and delivery of the necessary documents are at the Buyer's expense, unless the contrary has been explicitly agreed.
- 9.4 Upon first request the Buyer will present the insurance policies to Kremer for inspection.
- 9.5 As soon as the Buyer is at default on any obligation or is suffering payment difficulties, Kremer has the right to immediately take back or instruct the taking back of the documents and/or the goods, or the goods obtained through processing, to sell such in its own name and to set off the proceeds against Kremer's claims on the Buyer.

#### **Article 10 - Taking receipt**

- 10.1 As of the agreed delivery date the Buyer is obliged to take receipt of the goods upon presentation by Kremer.
- 10.2 If the Buyer does not or not immediately take receipt of the goods, Kremer is entitled, subject to reservation of Kremer's other rights, to store the goods with Kremer or with third parties, both at the Buyer's expense and risk. The Buyer is obliged to remove the goods at his expense and risk.

#### **Article 11 - Proof**

- 11.1 All certificates issued in the country of origin, which are usually sufficient proof for importers with regard to the quality and/or condition, also serve as sufficient proof for the Buyer of the quality and/or condition.

#### **Article 12 - Quantities, dimensions, weights and further details**

- 12.1 Minor deviations relating to specified dimensions, weights, quantities, colours and other such details are not deemed shortcomings.
- 12.2 Trade custom will determine whether there are minor deviations.
- 12.3 If delivery in part shipments has been agreed, the ordered shipment or delivered quantity will be deemed a separate contract with regard to the quality and further capacities of the delivered goods and in respect of the payment.
- 12.4 The delivered weight determined by Kremer, the delivering factory and/or silo company is final.
- 12.5 However, if based on the purchase contract Kremer has to accept a method for determining the weight which is different from the customary method, the Buyer is also obliged to accept this determination of the weight as final.
- 12.6 In the event of delivery conditions 'Lighter takeover' or 'Silo takeover', the quantity, quality and condition loaded into the transport vehicle/vessel or unloaded from the silo is deemed final, while for the quality and condition, the condition in which the goods find themselves at the time of takeover is decisive.

#### **Article 13 - Liability**

- 13.1 If the delivered goods do not correspond with the contract, the Buyer is only entitled to compensation or a reduction in price. The Buyer is not entitled to set aside the contract. The Buyer can no longer base a claim on a default in the performance (i) if he has not protested in writing to Kremer in this respect within three days after he has discovered or should reasonably have discovered the defect, or (ii) later than two weeks after delivery.
- 13.2 If the delivered goods do not correspond with the contract, any liability of Kremer is limited to a maximum of the invoice value of the delivered goods exclusive of VAT and/or other levies, but in any event to a maximum of 125% of the invoice value of the delivered goods exclusive of VAT and/or other levies. In the event of partial deliveries Kremer's liability is limited to the invoice value of the relevant partial delivery exclusive of VAT and/or other levies, but in any event to a maximum of 125% of the invoice value of the relevant partial delivery exclusive of VAT and/or other levies.
- 13.3 If the delivered goods appear not to correspond with the contract, Kremer has – provided and insofar as the delivered goods are still present and retrieval is still possible – the right, once only, to deliver a replacement party.

- 13.4 In the event of services provided or to be provided by Kremer (to be interpreted, legally or otherwise, as contract of assignment or contracting of work) Kremer is not liable for direct, indirect or other damage or costs.
- 13.5 Any liability of Kremer is in any event limited to the invoice amount which Kremer has charged or will charge in the relevant matter.
- 13.6 If Kremer engages third parties in the scope of the agreed activities, Kremer is not liable for the shortcomings of these third parties. Without prior consultation with the Buyer, Kremer is entitled to accept on behalf of the Buyer an exclusion or limitation of liability on the part of third parties which have been engaged.
- 13.7 If there is force majeure as referred to in Article 1.5, Kremer has the option of performing its obligations after the circumstances which resulted in the non-attributable default have ceased to exist, or to cancel the contract or the part thereof which has not yet been performed, without owing the Buyer any compensation in this respect.
- 13.8 Kremer is never liable for damage caused by death or personal injury as well as every form of financial loss including loss of profits, consequential loss and stagnation loss.
- 13.9 Limitations or exclusions of liability will only not apply insofar as the loss is the result of an action or omission of the partners or the company management of Kremer, effected either with the intention of causing said loss, or recklessly and with the knowledge that this loss would very probably ensue therefrom.
- 13.10 If partners of Kremer, insurers of Kremer, subordinates of Kremer, and persons whose services Kremer uses for the performance of the contract are held liable, these persons can invoke every exclusion or limitation of liability which Kremer can invoke under these Conditions or any other statutory or contractual provision.

#### **Article 14 - Indemnity**

- 14.1 The Buyer is obliged to indemnify Kremer against all claims of third parties relating to loss/damage in relation to the performance of or connected with the contract.
- 14.2 At all times and in all cases the Buyer is obliged to indemnify Kremer against the claims of third parties set out in Art. 14.1 if these claims of third parties exceed the total amount of € 100,000 per event or series of events with the same cause.
- 14.3 These obligations of the Buyer as set out above under 14.1 and 14.2 do not apply insofar as this loss/damage arose from an action or omission of the partners or the company management of Kremer, effected either with the intention to cause such loss, or recklessly and with the knowledge that this loss would very probably ensue therefrom.
- 14.4 Loss also encompasses loss caused by death or personal injury, damage to goods of third parties, every form of financial loss including loss of profits, demurrage and other indirect (consequential) loss, which might arise on the part of Kremer or third parties. This loss also encompasses judicial and extrajudicial costs which Kremer has had to incur in order to defend itself against claims of third parties.

#### **Article 15 - Force majeure**

- 15.1 If Kremer cannot perform its obligations to the Buyer due to force majeure, the performance of those obligations will be suspended for the duration of the situation of force majeure. In the event the performance of obligations which are related to the unloading term, delivery term, arrival date or other term is complicated or impeded as a result of force majeure, Kremer has the right to invoke the strike, force majeure and 'prohibition' clauses of the purchase contract of Kremer.
- 15.2 Kremer will inform the Buyer of a force majeure situation as soon as possible.
- 15.3 If the force majeure situation lasts thirty (30) days or longer, both Kremer and the Buyer have the right to cancel the contract in writing and without judicial intervention in whole or in part insofar as the goods have not yet been delivered, without in that case there being an obligation to pay compensation or any other payment, with exception of payment under the heading of unowed payment or compensation of costs already made.
- 15.4 If partial deliveries are stipulated, the provisions of this article apply to each partial delivery separately.

#### **Article 16 - Cancellation and suspension**

- 16.1 If the Buyer does not perform an obligation following from the contract or from these Conditions or does not perform such properly or in time, then the Buyer will be in default without the need for notice of default and Kremer, without being bound to pay any compensation under this heading and without prejudice to Kremer's other rights, is entitled with immediate effect and without judicial intervention to suspend the performance of all its obligations and/or to set aside or cancel the relevant contract in whole or in part.
- 16.2 In the event of setting aside the Contract by Kremer, Kremer is, at its choice, entitled by way of compensation to:
- a) the negative price difference between the contract price and the market value of the goods at issue on the day of non-performance, or;
  - b) the price difference between the contract price and the price of the covering sale, without prejudice to Kremer's right to additional or replacement compensation.
- 16.3 Kremer is furthermore entitled, without being bound to pay out any compensation under the heading thereof and without prejudice to Kremer's further rights, to set aside the contract with the Buyer with immediate effect and without judicial intervention, if:
- a) the Buyer is granted a moratorium on payment or is bankrupt, or is at risk of such, or if any part of his assets have been attached;
  - b) the Buyer passes away or ceases his activities, decides to liquidate his business or otherwise loses his legal personality;
- one and another without prejudice to Kremer's right to additional or replacement compensation.
- 16.4 Kremer has the right to set off claims on the Buyer with debts to the Buyer, including if the claims and/or debts are not yet due or ready for immediate settlement or arise from different contracts.

#### **Article 17 - Transfer of rights and obligations**

- 17.1 Kremer is entitled to transfer rights and/or obligations arising from the contract to third parties.
- 17.2 Unless otherwise agreed the Buyer can only transfer rights and/or obligations arising from the contract to third parties with the prior written consent of Kremer. Kremer can make this consent subject to conditions.
- 17.3 The Buyer is obliged to assign his claim(s) on his insurance company to Kremer on Kremer's first request.

#### **Article 18 - Language**

- 18.1 These Conditions have been written in Dutch and translated into English and German. In disputes relating to the interpretation of these Conditions the Dutch text will prevail.

#### **Article 19 - Other**

- 19.1 Any invalidity or nullity of a provision in these Conditions will not have an effect on the validity of the other provisions laid down in these Conditions. In such case the Conditions will be interpreted as if the invalid or void provision of this contract were not part of this contract.

#### **Article 20 - Time-barring of claims**

- 20.1 All claims against Kremer will be time-barred one (1) year after the date of the contract.

#### **Article 21 - Applicable law**

- 21.1 The legal relationship between Kremer and the Buyer is governed by Dutch law, with the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **Article 22 - Jurisdiction / Arbitration**

- 22.1 All disputes ensuing from or connected with these Conditions or the contract(s) between Kremer and the Buyer will, in the event that the Buyer has his registered office in the European Union, Iceland, Norway or Switzerland, only be adjudicated by the Court of Noord Holland and in the event the Buyer does not have its registered office in the European Union, Iceland, Norway or Switzerland by means of TAMARA arbitration in Rotterdam.