

**GENERAL TERMS AND CONDITIONS FOR  
SALE OF PRODUCTS AND PERFORMANCE OF SERVICES OF TOWA EUROPE B.V.**

**1. Definitions**

1.1 In these general terms and conditions the following terms shall have the following meaning:

- “Agreement”** : the agreement between Towa Europe and the Client for (i) the sale of the Products and/or (ii) the performance of Services;
- “Client”** : a counterparty of Towa Europe under an Agreement.
- “Intellectual Property Rights”** : amongst others but not exclusively copyrights trademark rights, patent rights, neighboring rights, performance protection rights, database rights, informational and/or commercial products, know-how, data or other (preparatory) materials;
- “Products”** : the products, including (spare) parts and semi-finished products, sold by Towa Europe to the Client;
- “Request”** : a request from the Client for the delivery of the Products or Services by Towa Europe;
- “Services”** : the services rendered by Towa Europe to the Client as may be requested from time to time, such as but not limited to installation, maintenance, engineering, modification, design, testing, sampling, training etc., all in the broadest sense of the word;
- “Towa Europe”** : TOWA Europe B.V., having its statutory seat and registered address at Geograaf 14, 6921EW Duiven, the Netherlands, registered with the Dutch Chamber of Commerce under number 58915656.

**2. Applicability**

- 2.1 These general terms and conditions apply to all offers, legal relationships, orders and Agreements of Towa Europe, including agreements whereby Towa Europe sells and delivers Products to the Client directly, or through or with the intermediation of third parties, or any agreement for the provision of Services.
- 2.2 Deviations from these general terms and conditions are only valid if expressly agreed upon in writing in advance. Agreed derogations from the general terms and conditions will apply merely to the case in question for which the derogation was agreed.
- 2.3 These general terms and conditions also apply to additional Agreements and successive Agreements between Towa Europe and the Client.
- 2.4 Applicability of any purchase or other (general) terms and conditions of the Client is hereby expressly rejected.
- 2.5 Should any part of these general terms and conditions be nullified or declared null and void, this will not affect the validity of the other parts. The null and void and/or nullified part will be converted into a part that is indeed valid, in so far as possible in the spirit of the null and void and/or nullified part.

**3. Conclusion of the Agreement**

- 3.1 All offers and other expressions of Towa Europe are non-binding, unless expressly stated otherwise in writing. Towa Europe is never obliged to accept and/or execute Requests.
- 3.2 All offers and quotations of Towa Europe will be honored for 30 days, unless an offer, quotation or expression states otherwise.
- 3.3 An Agreement between Towa Europe and the Client is concluded when Towa Europe accepts a Request from the Client in writing, or has confirmed the acceptance of the offer by the Client in writing.
- 3.4 Any description given or applied to the Products and/or the Services are given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Client hereby affirms that it does not in any way rely on any description when entering the Agreement.

**4. Prices**

- 4.1 The prices and discounts mentioned by Towa Europe are the prices and discounts in force on the day of the conclusion of the Agreement, unless Towa Europe and the Client have expressly agreed otherwise in writing.
- 4.2 The prices quoted by Towa Europe apply to delivery FCA (Incoterms 2020). The prices do not include sales tax (VAT), excise duties, import duties, packaging costs and other levies imposed by the government, unless stated otherwise.
- 4.3 The Products are transported at the expense and risk of the Client.

- 4.4 Towa Europe has the right at any time to increase the agreed prices for sale and delivery, whether or not on the basis of increases in purchase prices and/or freight rates of the Products and/or the raw materials necessary for the production of the Products and/or surcharges on the levies imposed by a government.
- 4.5 If the Client does not wish to agree to an increase in prices and/or rates made known by Towa Europe and this increase exceeds 15%, the Client is entitled to terminate the Agreement in writing or to cancel the Request by the date stated in the notification, ultimately within eight days of Towa Europe's notification of the price change.

## **5. Delivery and warranty**

- 5.1 The Products will be delivered to the unloading platform or directly over the threshold of the agreed delivery address, unless otherwise agreed. If the Client refuses to accept delivery of the Products or is negligent in providing information or instructions necessary for the delivery, the resulting costs, including in any case storage costs, will be borne by the Client and the risk will nevertheless pass to the Client at that time.
- 5.2 Towa Europe is at all times entitled to deliver the Products in partial deliveries, unless expressly otherwise agreed in writing.
- 5.3 All (delivery) terms for the Products or Services mentioned and/or agreed by Towa Europe have been determined to the best of its knowledge, but are never binding or final. The mere exceedance of a stated or agreed (delivery) period does not result in default of Towa Europe, nor does it therefore result in an attributable shortcoming. If any period is exceeded, Towa Europe will deliver the Products to the Client or perform the Service for the benefit of the Client as soon as possible.
- 5.4 Towa Europe is never obliged to deliver Products similar to Products delivered to the Client under previously concluded agreements, but will advise the Client at the first request about similar Products if the requested Products cannot be delivered.
- 5.5 The Products are covered by the manufacturer's warranty, as well as replacement and repair of defective parts of the Products.

## **6. Complaints**

- 6.1 The Client is obliged to check within 14 days after delivery of the Products that the delivered Products do not have external defects and correspond to the description on the packing slip. If the Client has not reported any discrepancy between the delivered Products and the description on the packing slip and/or external defects within two working days of the aforementioned period, the description on the packing slip and the delivered Products shall be deemed to correspond to each other in terms of nature and number and the delivered Products will be unconditionally accepted by the Client.
- 6.2 If the Client is of the opinion that the Products do not have the characteristics that it could expect on the basis of the Agreement, the Client must inform Towa Europe in writing immediately after it has established or could reasonably have determined any discrepancy, whereby the Client provides a detailed description of the discrepancy found.
- 6.3 If the Client reports (in time) any discrepancy between the delivered Products and what the Client could reasonably expect on the basis of the Agreement, Towa Europe will confirm this report in writing to the Client. Towa Europe shall consult with the Client as soon as possible and carry out the necessary investigation, whereby the Client must give Towa Europe the opportunity to determine any discrepancy within twenty working days after the report is known to Towa Europe. Complaints do not give the Client the right to suspend its payment obligation(s).
- 6.4 Should Towa Europe find a complaint to be well-founded, Towa Europe shall, at its own discretion, (1) pay compensation up to a maximum of the invoice value of the Products concerned or (2) replace the Products concerned free of charge or (3) repair the Products concerned.
- 6.5 If the Client has modified, processed and/or delivered the Products in whole or in part and after the expiry of a period of 3 months after delivery of the Products, the right to complain and/or compensation lapses.

## **7. Retention of title**

- 7.1 All Products delivered to the Client remain the property of Towa Europe until all amounts owed by the Client for the delivered Products, as well as the amounts referred to in article 10.5 and 10.6 of these general terms and conditions, have been paid in full to Towa Europe. The ownership of the Products delivered and to be delivered to the Client is also reserved by Towa Europe for all future claims against the Client as a result of the sale and delivery of Products under the Agreement.

- 7.2 If the Client acts as a reseller, the Client may resell and deliver the Products that are subject to Towa Europe's retention of title, but only insofar as this is customary in the normal course of its business.
- 7.3 At the first request of Towa Europe, the Client shall provide sufficient security for the full fulfilment of all its (payment) obligations towards Towa Europe.
- 7.4 The Client must notify Towa Europe immediately when:
- i) third parties assert or attempt to control or seize any of the Products covered by Towa Europe's retention of title or otherwise assert rights in such Products;
  - ii) the Client applies for (provisional) suspension of payment or makes arrangements for the benefit of creditors, and/or
  - iii) bankruptcy of the Client is filed or the Client is declared bankrupt.
- 7.5 The Client gives Towa Europe permission to enter the space(s) where the Products are located at all times (including outside the normal working hours of the Client) in order to obtain and take the Products with him by invoking his retention of title.
- 7.6 The Client must, at its own expense, properly insure the Products covered by the Towa Europe's retention of title against normal business risks.
- 7.7 As long as Towa Europe still has a retention of title on the Products, the Client cannot pledge the Products to third parties or otherwise encumber them.

## **8 Returns**

- 8.1 Without the prior written consent of Towa Europe, Towa Europe is not obliged to accept returns from the Client.
- 8.2 Returns for which Towa Europe has given its consent are at the expense and risk of the Client. Receiving returns does not in any way mean recognition by Towa Europe of the ground specified by the Client for return.
- 8.3 Should Towa Europe accept a return from the Client, Towa Europe will credit the Client for this return only after its agreement.

## **9 Services of Towa Europe**

- 9.1 With regard to the execution of all Agreements regarding the performance of Services, Towa Europe has an obligation of best efforts and no obligation of result.
- 9.2 All (delivery) terms for the provision of Services stated and/or agreed by Towa Europe have been determined to the best of its knowledge, but are never binding or final. The mere exceeding of a specified or agreed term does not result in default of Towa Europe, nor does it result in an attributable shortcoming. If any term is exceeded, Towa Europe will perform the Services for the benefit of the Client as soon as possible.
- 9.3 The Client shall ensure that all information and data that Towa Europe indicates are necessary or of which the Client should reasonably understand that they are necessary for the execution of the Agreement, are provided to Towa Europe in a timely manner. If the information required for the execution of the Agreement has not been provided to Towa Europe in time, Towa Europe has the right to suspend the execution of the Agreement and/or to charge the Client for the additional costs resulting from the delay in accordance with the usual rates.
- 9.4 If it has been agreed that the Agreement will be executed in phases, Towa Europe may suspend the execution of those parts, which belong to a subsequent phase, until the Client has approved the results of the preceding phase in writing.
- 9.5 Any service items, defined as distinct units stored at TOWA Europe and subject to services, shall be disposed of three (3) years from the date of the agreement, unless claimed by the client within this period.

## **10 Payment**

- 10.1 Payment of the invoices sent by Towa Europe must be made within 30 days of the invoice date, unless expressly agreed otherwise, in the manner specified by Towa Europe. The Client will not be entitled to any setoff, suspension and/or reduction, unless expressly agreed otherwise. Towa Europe is entitled to invoice the Client for partial deliveries.
- 10.2 All costs related to (the execution of) payment, including the possible provision of security, will be borne by the Client.
- 10.3 If the Client does not pay an invoice to Towa Europe within the period specified in article 10.1 of these general terms and conditions, and has still failed to pay it even after having been reminded to do so by Towa Europe, Towa Europe will be entitled, without prejudice to its other rights, to suspend further performance

of the Services and delivery of the Products, and everything payable by the Client to Towa Europe on any basis will be immediately due and payable.

- 10.4 If the Client is in default under its (payment) obligation(s), Towa Europe is entitled to invoice immediately all work that has been performed and Products that have been delivered that have not yet been charged and to use a payment term of one working day and then to request security or an advance for any further Services that are performed or Products to be delivered.
- 10.5 In the event that a receivable of Towa Europe against the Client has become due and payable, the Client will owe statutory commercial interest due on the payable fee during the period from the last day of the payment term until the day of payment in full.
- 10.6 If the Client fails to pay the receivable, Towa Europe may hand over the receivable, in which case the Client is also obliged to pay extrajudicial and judicial costs, including all costs calculated by external experts in addition to the costs determined in court, related to the collection of this receivable or of exercising the law otherwise. The extrajudicial collection costs incurred by Towa Europe in the event of late payment are for the expense of the Client.
- 10.7 Payments made by the Client will first of all serve to pay all costs due, secondly to pay all interest due under article 10.5 of these general terms and conditions, and in the third place to pay all due and payable invoice amounts.
- 10.8 The Client is never entitled to set off (pretense) claim(s) against the debts owed to Towa Europe.
- 10.9 If the Client disputes the amount of the invoice, it must inform Towa Europe in writing of its objections within 8 days of the invoice date, subject to the penalty of which this right lapses.
- 10.10 When the Client is affiliated with other legal entities in a group within the meaning of article 2:24b of the Dutch Civil Code, it is jointly and severally liable to Towa Europe for the payment of all current and future claims of Towa Europe against the other legal entities with which it is affiliated in a group.

## **11 Third parties**

- 11.1 Towa Europe is always free to engage third parties for the execution of (part of) the Agreement.
- 11.2 Towa Europe will always exercise due care when engaging third parties. However, Towa Europe is not liable for damage resulting from shortcomings of third parties. Towa Europe assumes and, if necessary, hereby stipulates that any assignment given to it by the Client includes the authority to accept any limitations of liability of third parties also on behalf of the Client.

## **12 Liability and indemnification**

- 12.1 The liability of Towa Europe is except for intent and/or deliberate recklessness at all times limited to only property damage and/or personal injury with a maximum of once the invoice amount of the fee that Towa Europe charged the Client in which the cause of the loss lies, or at any rate limited to the amount of the payment under Towa Europe's liability insurance.
- 12.2 The liability of the Client for indirect damage, consequential damage, loss of profit, damage resulting from claims by third parties against the Client, damage due to exceeding a term or property damage consisting of destruction, damage or loss of goods used by the Client in the normal exercise of a profession or business is excluded. More specifically, Towa Europe is not liable for any loss or damage arising from, by or in connection with the performance of Services and/or the sale and/or delivery of Products to the Client, except in the event of intent and gross negligence on the part of Towa Europe.
- 12.3 Towa Europe is not liable for damage of whatever nature caused by Towa Europe assuming incorrect and/or incomplete information provided by the Client in the execution of the Agreement, unless this inaccuracy or incompleteness was or should have been known to Towa Europe.
- 12.4 Liability of Towa Europe only arises if the Client duly gives Towa Europe notice of default in writing within 8 days after it has become aware of the alleged loss, stating a reasonable period of time to remedy the shortcoming, and Towa Europe continues to fail imputably in the fulfilment of its obligations even after that period. The notice of default must contain as detailed a description of the shortcoming as possible.
- 12.5 The condition for the existence of any right to compensation by the Client is always that the Client reports the damage in writing to Towa Europe within 8 days of its occurrence.
- 12.6 The Client shall indemnify Towa Europe against all (legal) claims and claims of third parties (including persons whose services the Client and the Contractor use in connection with the performance of the Agreement), arising from damage suffered by those third parties - in whatever form - as a result of or in connection with the sale and/or delivery of the Product and/or the performance of the Services, unless that damage is the result of gross negligence or intent on the part of Towa Europe.
- 12.7 The provisions of this article also apply to all (legal) persons that Towa Europe uses to execute the Agreement.

### **13 Force Majeure**

- 13.1 If performance of Towa Europe is prevented or delayed by reason of force majeure, Towa Europe shall be excused from such performance to the extent that it is necessarily prevented or delayed thereby, during the period of any such cause, and the Agreement shall be deemed suspended for such period.
- 13.2 Force majeure on the part of Towa Europe shall mean any circumstance beyond the control of Towa Europe, as a result of which the fulfilment of (the relevant part of) its obligations towards the Client is prevented, delayed or made economically impossible, as a result of which the fulfilment of these obligations cannot reasonably be expected Towa Europe. It includes, but is not limited to, danger of war, war, insurrection, molestation, strikes, boycott, business disruption, disruptions in traffic or transport, disruptions in (data) networks, government measures, scarcity of raw materials, natural disasters, epidemics, pandemics, fire, nuclear reactions, machine breakdown and otherwise all circumstances, such as force majeure of suppliers, under which full or partial fulfilment of the Agreement cannot be demanded in reasonableness and fairness.
- 13.3 Parties shall promptly consult over the existence of any conditions of force majeure. If such conditions continue for more than 4 weeks, Parties shall meet in order to seek a mutually acceptable solution. If such conditions continue for more than 3 months, the Client may terminate the Agreement forthwith by providing Towa Europe with written notice thereof.

### **14 Termination and dissolution**

- 14.1 Each of the parties is entitled to terminate the Agreement only if, after a proper and detailed written notice of default setting a reasonable period for remedying the shortcoming, the other party imputably fails to fulfil essential obligations under the Agreement.
- 14.2 Towa Europe may terminate or dissolve the Agreement immediately, at any time, in the event that:
- i. the Client defaults in the performance of any of its (essential) duties and a written notice of such breach or default has been issued by Towa Europe and the Client does not cure or remedy the breach within two weeks after the date or dispatch of this notice, or
  - ii. the Client applies for suspension of payment, makes arrangements for the benefit of creditors, is declared bankrupt or an application for this has not been withdrawn within 15 working days after the submission thereof, or
  - iii. an attachment or garnishment is levied against the Client or a precautionary attachment against the Client has not been lifted within 30 days of attachment, or
  - iv. the Client is dissolved, or loses control over its activities, or ends its activities or reduces them considerably, or makes a decision to dissolve, terminate or liquidate.
- 14.3 Towa Europe shall never be obliged to pay any compensation due to this termination.
- 14.4 In the event of any of the circumstances mentioned in article 14.2, all claims of Towa Europe against the Client will be immediately due and payable.

### **15 Transfer**

Without Towa Europe's prior written consent, the Client is not permitted to transfer its rights pursuant to its legal relationship with Towa Europe or one or more obligations ensuing therefrom to third parties in whole or in part, or to have them carried out by third parties.

### **16 Intellectual Property Rights**

- 16.1 All intellectual property rights relating to the Products, Services and/or the Agreement are vested exclusively in Towa Europe, in so far as third parties are not (also) entitled to those rights. The Client must respect these rights at all times.
- 16.2 The Client will (i) not claim these Intellectual Property Rights from Towa Europe and (ii) in no way contest the validity of these Intellectual Property Rights.

### **17 Governing law and dispute resolution**

- 17.1 This Agreement is governed only by the laws of the Netherlands.
- 17.2 Any applicability of the Vienna Sales Convention 1980 is hereby excluded in accordance with article 6 of this Convention.
- 17.3 Any dispute which may arise between Towa Europe and the Client arising from or in connection with (the execution of) an Agreement entered into between Towa Europe and the Client, as well as in connection with these general terms and conditions, shall be referred exclusively to the competent court of Gelderland, without prejudice to the right of a Party to request a preliminary relief.