

Terms and Conditions

1 General provisions

1.1 These General Terms and Conditions are applicable to any and all offers issued by and any and all agreements concluded with NITTA CORPORATION OF HOLLAND B.V., hereinafter referred to as: "NITTA B.V."

1.2 Any purchasing terms and conditions of the Buyer and any deviations from these General Terms and Conditions are only applicable if and to the extent that they were expressly accepted by NITTA B.V. in writing.

1.3 Verbal commitments shall only have binding effect on NITTA B.V. if and to the extent that they were confirmed by NITTA B.V. in writing.

2 Offers and orders

2.1 Any and all offers issued by NITTA B.V. in any form whatsoever shall be subject to contract, unless explicitly indicated otherwise. NITTA B.V. shall be entitled to withdraw its offer within 8 working days after receipt of the acceptance of the offer.

2.2 If the Buyer places an order that was not preceded by an offer from NITTA B.V. then the latter shall only be bound if it confirms the order in writing within 8 days or if it commences the implementation of the order within 8 days.

2.3 NITTA B.V. is always entitled to alter the Goods, specifications and instructions for use to improve them or to comply with applicable standards and official regulations.

2.4 Unless stipulated otherwise in writing, prices are based on delivery ex works and are exclusive of sales tax (VAT).

3 Delivery

3.1 Unless stipulated otherwise in writing, delivery shall be Free Carrier Nitta Alkmaar (FCA, Incoterms 2010). From the moment of delivery, the risk of loss or damage shall pass to the Buyer, even if the title in respect of the Goods has not yet passed or if NITTA B.V. organises the transport of the Goods at the request and on behalf of the Buyer.

3.2 The time for delivery shall not be of the essence. Therefore, in the event of late delivery, NITTA B.V. must be given formal notice of default and must be granted an additional reasonable term to comply with its obligations. If the extended term is exceeded then the Buyer shall be entitled to rescind the agreement to the extent that deliveries have not taken place yet. NITTA B.V. shall not be liable for damages resulting from a late delivery.

3.3 NITTA B.V. is allowed to deliver the sold Goods in partial consignments. If the Goods are delivered in partial consignments then NITTA B.V. shall be entitled to invoice the Buyer separately for these partial consignments and the Buyer shall be held to pay the said invoices as if they were separate agreements. The Buyer is held to accept delivery of the Goods.

3.4 Unless stipulated otherwise in writing the Buyer shall promptly collect the Goods or arrange for their collection from NITTA B.V. as soon as NITTA B.V. has notified the Buyer that the Goods are ready for collection. If the Buyer refuses to take prompt delivery or is negligent in providing the necessary information or instructions for delivery then the Goods are stored at the risk of the Buyer. The Buyer shall compensate NITTA B.V. for any and all additional delivery, storage and insurance expenses and any other incurred costs along with any loss arising in connection with the said negligence or refusal.

4 Payment

4.1 Unless the parties stipulate otherwise, the Goods shall be paid in the stipulated currency within the payment term indicated in NITTA B.V.'s order confirmation by transferring the payable amount to the bank account mentioned on the invoice. The day of payment shall be the date on which the payable amount is credited to the bank account. The Buyer shall not be entitled to apply any set-off or postponement of payment.

4.2 Upon expiry of the payment term the Buyer shall be in default and, as from the said date, the Buyer shall be liable to pay interest at a rate corresponding to the Dutch statutory interest.

4.3 If the Buyer fails to meet any of its obligations then any and all extra-judicial costs reasonably incurred to obtain such payment shall be at the expense of the Buyer. The said costs shall in any event include the costs of collection agencies, process servers and attorneys. These costs shall amount to no less than 15 per cent of the outstanding amount.

4.4 Where a court fully or substantially awards judgment against the other party and its decision has become final, the other party shall be under a duty to compensate NITTA B.V. for any and all judicial costs incurred in proceedings, including on appeal and including any amounts not awarded by the court.

5 Reservation of title

5.1 NITTA B.V. reserves the title of all Goods delivered or to be delivered to the Buyer until NITTA B.V. has received payment in full of the purchase price of the Goods, the fees for any work done in relation to any sales agreement concluded with the Buyer and any other costs resulting from a breach by the Buyer of any such sales agreement.

5.2 During such time as NITTA B.V. has reserved the title of the Goods, the Buyer shall keep NITTA B.V.'s Goods separate from all other goods in such a way that it is always clearly indicated that the said Goods remain the property of NITTA B.V. The Buyer shall assist and cooperate with NITTA B.V. in any and all measures necessary to protect and secure NITTA B.V.'s property.

5.3 The Buyer shall insure the Goods, of which NITTA B.V. reserves the title, against any and all risks that insurance is commonly taken out for, e.g. theft, fire and/or water damages.

5.4 During such time as NITTA B.V. has reserved the title of the Goods and the Buyer is in possession of the Goods, the Buyer shall be entitled to sell and deliver the Goods within the framework of its normal business operations. For the purpose of repossessing any of the Goods pursuant to this Article, NITTA B.V. shall be entitled to enter any premises and/or buildings where the Goods may be situated. Any and all costs incurred by NITTA B.V. in repossessing the Goods shall be at the expense of the Buyer.

6 Force majeure

6.1 NITTA B.V. shall not be liable for any damages incurred by the Buyer in case of improper performance if the latter can be attributed to the occurrence of events beyond the reasonable control of NITTA B.V. and / or events that cannot be attributed to NITTA B.V. through a fault of NITTA B.V., by virtue of the law, pursuant to an agreement or a generally accepted practice ('force majeure').

6.2 If the period during which NITTA B.V. cannot fulfil its obligations exceeds or shall exceed two months then either party is entitled to terminate the agreement without judicial intervention being required and without being subject to any obligation to pay damages to the other party.

6.3 If NITTA B.V. has already performed part of its obligations when the situation of force majeure arises or if it can only perform part of its obligations then it shall be entitled to invoice the Buyer separately for the partial performance and the Buyer is held to pay this kind of invoice as if it were a separate agreement.

6.4 Within the meaning of this Article, force majeure shall include industrial action, lack of raw materials, delays in deliveries by suppliers and transport difficulties. These circumstances shall constitute force majeure for both NITTA B.V. and its suppliers.

7 Complaints

7.1 Upon receipt of the Goods, the Buyer is held to inspect the Goods on visible defects. The Buyer shall in particular examine whether the correct Goods have been delivered and whether the quantity of the delivered Goods is in conformity with the agreement.

7.2 Visible defects must be reported to NITTA B.V. in writing within 3 working days after delivery. Defects that are not visible upon receipt must be reported to NITTA B.V. within 3 working days after discovery or within 3 working days after the Buyer should reasonably have discovered the defects.

7.3 Even if the Buyer complains in a timely fashion, the Buyer remains liable to pay for and take receipt of all orders placed.

7.4 The right to complain on any basis whatsoever shall lapse if the defect or the damage is not reported in writing within the terms set forth in this Article, or within one year after the delivery, whichever occurs first, unless a different time period is agreed on.

8 Liability

8.1 NITTA B.V.'s liability on the basis of an improper performance of any obligation or on the basis of a wrongful act or tort, shall be limited to repair or replacement of the defective goods or payment of an amount up to the purchase price, the latter at the discretion of NITTA B.V.

8.2 NITTA B.V. shall not be liable for damages resulting from late delivery, damages resulting from any incorrect and / or incomplete information originating from the Buyer, damages resulting from incorrect or improper use of the Goods by the Buyer and any and all forms of consequential damages, in any event including (but not limited to) loss of turnover, loss of profit and loss caused by the inoperability of equipment.

8.3 The limitations of liability set forth in these General Terms and Conditions are not applicable if the damages were caused intentionally or due to gross negligence of NITTA B.V. or its managerial or executive staff. NITTA B.V. shall only be liable for direct damages. The user shall never be liable for indirect damages, including consequential losses, lost profits, lost savings and damages due to business interruptions.

8.4 Any claim for damages or for the repair or replacement of the goods and / or the delivery of a missing part, on whatever basis, as well as any right to rescind the agreement, shall lapse if the defect or the damage is reported too late or one (1) year after the delivery, whichever occurs first, unless a different time period was agreed on.

9 Default

9.1 NITTA B.V. is entitled to suspend any (further) implementation of the agreement or to rescind the agreement, without prejudice to its right to claim alternative or additional damages, if an attachment is imposed on assets of the Buyer or if the Buyer is granted suspension of payment or is declared bankrupt, if the Buyer defaults in complying with one or more of its obligations vis-à-vis NITTA B.V. or if NITTA B.V. fears that the Buyer is or shall be unable to meet its obligations under the agreement and the Buyer fails to provide adequate security for the performance of its obligations.

9.2 If one of the events referred to in this Article occurs then any and all claims that NITTA B.V. may have against the Buyer on whatever basis shall immediately fall due.

9.3 If there are any unforeseen circumstances with regard to the people and/or material (customarily) used by NITTA B.V. for the implementation of the agreement and if those circumstances are of such nature that the implementation of the agreement becomes impossible or so burdensome and/or disproportionately costly that compliance with the agreement can reasonably not be required of NITTA B.V. then it shall be entitled to rescind the agreement, without being liable to pay damages.

10 Assembly

10.1 If NITTA B.V. accepts a request of the Buyer to assemble the Goods ordered from NITTA B.V. then the said acceptance shall constitute a separate agreement. Unless stipulated otherwise, the assembly activities are charged on the basis of the presently applicable hourly assembly rate of NITTA B.V.

10.2 Assembly shall take place during normal business hours. The Buyer is responsible for any and all conditions reasonably required for the relevant assembly, which includes that the place of assembly is clean and dry and that (sufficient) electricity, light, heating and a fork-lift truck is available. The Buyer shall ensure that the work can be performed without any disturbances.

10.3 Any time quoted by NITTA B.V. for the relevant assembly shall be an indication only. In the event that the assembly of the Goods results in damages to the Goods caused by staff of NITTA B.V., NITTA B.V. shall compensate the Buyer for the invoice price of the damaged Goods or replace the Goods, at the discretion of NITTA B.V. Liability of NITTA B.V. for any and all other damages resulting from the assembly and/or the Buyer's abovementioned request is excluded, unless the said damages can be attributed to the wilful conduct of NITTA B.V.'s staff. Under no circumstance whatsoever shall NITTA B.V. be liable for any consequential damages, including damages resulting from any stagnation in the Buyer's production facilities and loss of profits and/or turnover.

11 Applicable law and disputes

11.1 Any and all offers and agreements existing between NITTA B.V. and the Buyer shall be governed by the laws of the Netherlands. Applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) is hereby expressly excluded.

11.2 Any and all disputes shall be brought to the cognisance of the District Court of North Holland, which court shall also have exclusive jurisdiction to impose preliminary injunctions, if so required. This clause shall, however, not preclude NITTA B.V. from its right to bring the dispute to the cognisance of any other competent court, which would have jurisdiction in the absence of this clause.



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Going ahead
with you