

## **GENERAL TERMS AND CONDITIONS OF SALE, PWT EUROSTAAL B.V.**

**PWT Eurostaal B.V., Chamber of Commerce number 24283793, Nieuwland Parc 398, 2952 DD Alblisserdam, [www.eurostaal.nl](http://www.eurostaal.nl)**

### **1. Applicability**

- 1.1. These General Terms and Conditions of Sale apply to any legal relationship in which the characteristic performance is that PWT Eurostaal sells a good or provides a service to the other party ("Buyer"), except to the extent as explicitly provided for otherwise in the order confirmation of PWT Eurostaal.
- 1.2. In case of inconsistency between the content matter of the agreement concluded between Buyer and PWT Eurostaal, and the General Terms and Conditions of Sale, the provisions of the agreement shall prevail.
- 1.3. If the General Terms and Conditions of Sale have been drawn up in a language other than Dutch the Dutch text shall always prevail in case of dispute.

### **2. Extension of parties protected – third-party clause**

These General Terms and Conditions of Sale have also been stipulated for legal entities affiliated to PWT Eurostaal, (indirect) directors and shareholders of PWT Eurostaal and legal entities affiliated to them as well as any persons working for PWT Eurostaal and affiliated legal entities, including any third parties engaged. They may invoke these Terms and Conditions as if they were PWT Eurostaal.

### **3. Offers and conclusion of agreement**

- 3.1. Offers of PWT Eurostaal are free of engagement and will in all cases be valid for a maximum of 3 days or until stocks of such products are exhausted after the time of the offer.
- 3.2. If Buyer provides PWT Eurostaal with information PWT Eurostaal may assume that such information is correct and complete and it will base its offer on such information. Technical and other requirements made by Buyer with respect to the goods to be supplied or produced which differ from requirements customary in the industry in the Netherlands must be expressly specified by Buyer prior to conclusion of the agreement.
- 3.3. Prices referred to in the offer are exclusive of VAT and packaging.
- 3.4. An agreement is not created until after the agreement has been confirmed by PWT Eurostaal in writing. In case of difference between the written confirmation of PWT Eurostaal and that of Buyer, the confirmation of PWT Eurostaal shall be binding. In these General Terms and Conditions 'written' shall also include by fax or email.
- 3.5. In case the agreement with PWT Eurostaal is entered into jointly by more than one Buyer, said Buyers shall be jointly and severally liable towards PWT Eurostaal.
- 3.6. If a model, sample or example has been shown or provided by PWT Eurostaal they are assumed to be shown or provided solely by way of indication: the properties of the goods to be supplied or created may differ from the sample, model or example, unless it has expressly stated that the good supplied or produced would be identical to the sample, model or example that was shown or provided.
- 3.7. Buyer guarantees that (i) during trading of the goods in whatever way (including sale, lease, processing) Buyer will act in accordance with any applicable legislation and/or regulations, more specifically all export control and sanction regulations of e.g. the EU and UN and (ii) that the goods are not directly or indirectly intended or presumably intended for any country to which a sanction for the goods concerned applies pursuant to UN or EU regulations, unless Buyer has obtained an exemption or permit from a proper authority designated by the UN or EU. Buyer undertakes to include or have this guarantee included as a perpetual clause in subsequent agreements under which the goods are disposed of.

- 3.8. Minor deviations that are customary in the industry or that cannot reasonably be avoided for technical reasons and variations in quality, colour, dimensions, weight or finish shall not constitute a failure in performance. Further, PWT Eurostaal shall have the right to supply goods that deviate from the agreement in case of modifications – of goods to be supplied, packaging or accompanying documentation – that are required in order to comply with applicable regulations of the authorities or (licensing) conditions.

#### **4. Intellectual and industrial property**

- 4.1. Except to the extent as agreed otherwise in writing PWT Eurostaal reserves the intellectual and industrial ownership of any documentation including reports, advice, designs, sketches, drawings, software and data media provided by PWT Eurostaal.
- 4.2. The rights referred to in **article 4.1** shall remain the property of PWT Eurostaal, irrespective whether costs were charged to Buyer for the production of the protected good. Such goods are intended to be used by Buyer only for the purpose of the offer and/or agreement and may not be reproduced, made public, used or disclosed to any third parties by Buyer without the prior, written consent of PWT Eurostaal. For each violation of this provision Buyer shall forfeit to PWT Eurostaal an immediately due and payable penalty in the amount of € 25.000,00, without prejudice to the right of PWT Eurostaal to demand performance and damages under the law.
- 4.3. Buyer is obliged to return to PWT Eurostaal or destroy, this at the discretion of PWT Eurostaal, the information provided to Buyer as referred to in **article 4.1**, upon request of PWT Eurostaal within such time as specified by PWT Eurostaal. PWT Eurostaal has the right to verify such return or destruction. Buyer undertakes to lend its assistance in this free of charge. In case of violation of any obligation resulting from this provision Buyer shall forfeit to PWT Eurostaal an immediately due and payable penalty in the amount of 1.000,00 for each day without prejudice to the right of PWT Eurostaal to demand performance and damages under the law.
- 4.4. PWT Eurostaal reserves the right to use any knowledge gained by performance of the services for any purposes other than performance of the agreement, to the extent that no confidential information of Buyer is disclosed to any third parties as a result of that.
- 4.5. Buyer guarantees to PWT Eurostaal that the instructions, information, designs and/or other documentation provided to PWT Eurostaal by Buyer do not violate the intellectual property rights of any third parties and Buyer indemnifies PWT Eurostaal from and against any claims of third parties on account of that.

#### **5. Confidentiality**

Buyer shall keep secret any information, know-how and knowledge, of whatever kind and in whatever shape, provided to Buyer by or on behalf of PWT Eurostaal, and Buyer shall make no statements concerning such information to any third parties and shall not disclose such information to any third parties in any way, either directly or indirectly. Further, Buyer shall use such information, know-how and knowledge only for the purpose of performance of the agreement with PWT Eurostaal, all this subject to the prior written consent of PWT Eurostaal.

#### **6. Performance of the agreement**

- 6.1. Buyer will ensure that any information specified as necessary by PWT Eurostaal or which Buyer should reasonably understand to be necessary for performance of the agreement, is provided to PWT Eurostaal in a timely manner. In case the information that is necessary for performance of the agreement is not provided to PWT Eurostaal in a timely manner, PWT

Eurostaal shall have the right to suspend performance of the agreement and/or charge to Buyer any costs resulting from a delay.

- 6.2. PWT Eurostaal is not liable for damage of whatever kind caused by the fact that PWT Eurostaal has acted on the basis of incorrect and/or incomplete information provided by Buyer unless such incorrectness or incompleteness should have been known to PWT Eurostaal without any further research.
- 6.3. In case it has been agreed that the agreement will be performed in phases, PWT Eurostaal has the right to suspend performance of any parts of a subsequent phase until Buyer has paid for and/or approved the results of the prior phase in writing.
- 6.4. Setting aside art. 7:404 and 7: 407 paragraph 2 BW (Dutch Civil Code) all orders of Buyer are considered to be given to and accepted by PWT Eurostaal only. PWT Eurostaal will determine by what person or persons, including any third parties, the agreement will be performed. Further PWT Eurostaal will determine the way in which and means by which the agreement is performed, taking into consideration the reasonable demands of Buyer to the extent as possible, provided that, in the opinion of PWT Eurostaal, this contributes to a prompt and correct performance of the order. PWT Eurostaal will exercise due care as a contractor during performance of the agreement.

## **7. Delivery and duration of agreement**

- 7.1. Delivery of goods purchased shall take place by making such goods available at the warehouse of PWT Eurostaal ('Ex Works'). Delivery is actually making the goods to be supplied available to Buyer. The risk in the goods shall pass to Buyer at the time at which PWT Eurostaal has notified Buyer that the good has been made available to Buyer. Without prejudice to the above Buyer and PWT Eurostaal may agree that transport is organized by PWT Eurostaal. The risk of transport, loading, unloading and any storage is borne by Buyer. Buyer may insure against such risks.
- 7.2. Buyer is obliged to take delivery of the goods bought at the time at which these goods are delivered to Buyer. In case Buyer refuses delivery or fails to provide information or instructions necessary for delivery the goods shall be transported and stored with PWT Eurostaal or a third party at the risk and for account of Buyer. In case the goods cannot be delivered by an action or omission of Buyer, Buyer shall owe to PWT Eurostaal a penalty in the amount of 5% of the invoice amount for each day with a maximum of 100%, without prejudice to the right of PWT Eurostaal to demand performance or damages under the law.
- 7.3. The time of delivery and/or performance shall not commence until after Buyer has provided to PWT Eurostaal all information necessary for PWT Eurostaal. The time of delivery and/or performance determined by PWT Eurostaal will always be indicative, unless expressly agreed otherwise in writing. When determining such time PWT Eurostaal will assume that it will be able to perform the agreement under the circumstances as they are known to it at that point in time. In case of different circumstances PWT Eurostaal may postpone the time of delivery and/or performance by such time it needs to perform the agreement under these different circumstances.
- 7.4. In case of delay in delivery and/or performance on the part of PWT Eurostaal Buyer must always declare PWT Eurostaal in default in writing. PWT Eurostaal is obliged to compensate the damage caused to Buyer from that point in time at which PWT Eurostaal is in default with delivery in a timely manner. In case of late delivery or performance any rights to any compensation of Buyer towards PWT Eurostaal shall be limited to a maximum of 1% of the invoice amount, unless the late delivery or performance concerns an individually invoiced performance or part thereof that may be individualised, in which case the compensation shall be limited to 1% of the invoice value thereof. This right to compensation will lapse within one year after PWT Eurostaal has first been in default.

- 7.5. PWT Eurostaal is allowed to deliver goods sold in parts. This does not apply in case a part delivery does not have any independent value. If goods are delivered in parts PWT Eurostaal has the right to invoice each part separately.

## **8. Modification of price and agreement**

- 8.1. In case PWT Eurostaal has agreed a certain price with Buyer, PWT Eurostaal shall – in case of changes in factors determining cost price after conclusion of the agreement – have the right to increase the price in proportion to the increased cost price. In case the price increase exceeds 5%, Buyer has the right to cancel the agreement.
- 8.2. If, during performance of the agreement, it appears that proper performance requires that the services to be performed be changed or complemented the parties shall modify the agreement accordingly by mutual consultation and in a timely manner. If this will have financial consequences and/or consequences for quality PWT Eurostaal will inform Buyer of this in advance.

## **9. Defects**

- 9.1. Buyer is obliged to inspect the goods purchased (or have them inspected) upon delivery or as soon as possible after delivery. During inspection Buyer shall at least verify whether the goods supplied are according to the agreement, namely:
- whether the correct goods have been delivered;
  - whether the quantity (e.g. number and volume) are according to the agreement;
  - whether the goods delivered meet the agreed quality requirements or, failing such, the requirements that may apply for normal use and/or commercial use;
- 9.2. In case visible defects or shortages are found Buyer is obliged to report them to PWT Eurostaal in writing within 14 days of delivery on pain of forfeiture of rights.
- 9.3. Non-visible defects must be reported in writing to PWT Eurostaal by Buyer within 14 days of their discovery but no later than 1 year after delivery on pain of forfeiture of rights.
- 9.4. Complaints about services and work performed must be reported in writing to PWT Eurostaal within 14 days of their discovery but no later than within 1 year after the services or work should have been completed on pain of forfeiture of rights.
- 9.5. Buyer must keep goods or documentation (of proof) concerning its complaints, giving PWT Eurostaal a realistic possibility to inspect them, on pain of forfeiture of rights of Buyer.
- 9.6. In case a complaint is well-founded PWT Eurostaal will – at its own discretion – (re)pay the purchase amount or a compensation, subsequently perform the work/services as agreed, or subsequently supply the goods/provide the services, unless this has meanwhile become useless for Buyer. The latter must be shown and substantiated by Buyer. In all cases PWT Eurostaal shall be liable only for damage of Buyer within the limitations of **article 15** (Liability).

## **10. Termination**

- 10.1. To the extent that an engagement agreement exists Buyer has the right to prematurely terminate (that part of) the agreement but only for urgent reasons as referred to in article 7:408 paragraph 2 BW.
- 10.2. In case of premature termination due to an urgent reason Buyer shall owe part of the consideration due, to be determined reasonably, in accordance with the provisions of article 7:411 BW.

## **11. Security**

- 11.1. PWT Eurostaal reserves the title to all goods delivered and to be delivered to Buyer by PWT Eurostaal for the purpose of claims in connection with the consideration for goods delivered or to be delivered to Buyer by PWT Eurostaal under the agreement or in connection with services

performed or to be performed also for the benefit of Buyer, and in connection with claims on account of a failure in the performance of such agreements.

- 11.2. Goods supplied by PWT Eurostaal that are subject to reservation of title under **article 11.1** may not be encumbered, processed or resold by Buyer, not even as part of the operation of Buyer's normal business activities.
- 11.3. In case Buyer fails to comply with its obligations toward PWT Eurostaal or in case of justified fear that it will not comply, PWT Eurostaal has the right to collect (or have collected) any goods supplied that are subject to reservation of title as referred to in **article 11.1** from Buyer or any third parties that hold such good on behalf of Buyer. Buyer is obliged to lend any assistance on pain of a penalty in the amount of 10% of the amount owed by Buyer for each day, without prejudice to the right of PWT Eurostaal to demand full damages and performance.
- 11.4. Buyer is obliged to identify the goods supplied subject to reservation of title of PWT Eurostaal by means of indications showing that these goods have been supplied through and therefore are the property of PWT Eurostaal, failing which it shall be assumed that all goods of the same kind that are present at Buyer's are the property of PWT Eurostaal. This latter provision is an agreement as to burden of proof.
- 11.5. Upon request of PWT Eurostaal Buyer is obliged to provide to PWT Eurostaal (additional) security for any and all existing and future claims of PWT Eurostaal on Buyer, however caused; this security shall be such that PWT Eurostaal will constantly have adequate security, this at the discretion of PWT Eurostaal.
- 11.6. PWT Eurostaal has a right of pledge on all goods which it currently holds or may hold in the future on behalf of Buyer for whatever reason. This right of pledge will serve as additional security for anything which PWT Eurostaal may currently in the future claim from Buyer and entities affiliated to Buyer (**article 13**).
- 11.7. Buyer does not have the right to transfer or pledge a claim on PWT Eurostaal. This provision has consequences under the law of property.

## **12. Payment**

- 12.1. Buyer is obliged to pay invoices of PWT Eurostaal by bank transfer in euro within 30 days of invoice date.
- 12.2. Buyer is obliged to report any complaints about the accuracy of an invoice in writing to PWT Eurostaal within the term of payment on pain of forfeiture of rights. If the term of payment exceeds thirty days Buyer must have submitted its complaint in writing no later than within thirty days of invoice date.
- 12.3. Payments made by Buyer shall – even in case indicated otherwise by Buyer on payment – always first be applied to any interest and cost due, then to invoices due for goods of which the reservation of title has already lapsed and finally, to the oldest, outstanding invoices.
- 12.4. In case Buyer is in default in connection with one of its payment obligations toward PWT Eurostaal, Buyer shall owe an interest on the amount due in the amount of legal commercial interest increased by 4% with a minimum of 12% per year.
- 12.5. PWT Eurostaal always has the right to balance any claims – payable or otherwise – on Buyer with any counterclaims of Buyer. Without the approval of PWT Eurostaal Buyer does not have the right to balance any claims it may have on PWT Eurostaal, and Buyer does not have any right to suspend payments to PWT Eurostaal unless in case of bankruptcy of PWT Eurostaal.

## **13. Maturity of claims & suspension/cancellation**

Any claims of PWT Eurostaal on Buyer shall in any case become due and payable immediately:

- if Buyer is in default with respect to one of its obligations toward PWT Eurostaal;
- if, after conclusion of the agreement PWT Eurostaal has learned of any circumstances that justify the fear that Buyer will not comply with its obligations;

- if Buyer is in default with its obligations toward its main bank;
- in case of an application for suspension of payment or petition for bankruptcy or any (form) of debt restructuring of Buyer or an attachment of a substantial part of the property of Buyer or goods that are held by Buyer but are the property of PWT Eurostaal or are subject to a security right of PWT Eurostaal;
- if PWT Eurostaal reasonably suspects that the goods are directly or indirectly intended for any country to which any sanction applies for the goods concerned under UN or EU regulations and that no exemption or permit has been obtained from the proper authority or authorities;
- if one or more of the above circumstances occurs or occur in connection with an entity affiliated with Buyer and such entity has concluded an agreement with PWT Eurostaal. An affiliated entity is considered to mean an entity that is part of the same group, within the meaning of article 2:24b BW, as well as a participating interest within the meaning of article 2:24c BW.

In those cases PWT Eurostaal will have the right to suspend further performance of the agreement or to cancel or terminate the agreement taking effect immediately, all without the intervention of a court of law being necessary and without prejudice to the right to claim damages.

#### **14. Costs of collection**

- 14.1. In case Buyer is in default with respect to one of its payment obligations toward PWT Eurostaal, Buyer shall be obliged, after one reminder for payment sent by PWT Eurostaal, to compensate the extrajudicial costs of PWT Eurostaal. These costs are determined at 15% of the amount due with a minimum of € 500,00, without prejudice to the right of PWT Eurostaal to demand full compensation of costs and without prejudice to the amount of an order to pay for the costs of proceedings in case collection is by a court of law after a legal dispute.
- 14.2. Buyer shall owe to PWT Eurostaal the court costs incurred by PWT Eurostaal to obtain payment in all instances, except to the extent that Buyer shows that these costs are unreasonably high.

#### **15. Liability**

- 15.1. Any rights of Buyer toward PWT Eurostaal to compensation due to an event, a series of connected events being considered one event, shall be limited to the amount paid by any insurance of PWT Eurostaal on account of that case, increased by the deductible that applies.

Failing an insurance against the event, if such insurance does not provide any cover or does not pay, any right to compensation of Buyer toward PWT Eurostaal shall be limited to a maximum of 15% of the invoice value (exclusive of VAT) of the performance of PWT Eurostaal during the time in which the event took place, unless the event is caused by or concerns an individually invoiced performance or part thereof that may be individualised, in which case the compensation shall be limited to a maximum of 15% of the invoice value (exclusive of VAT) of such part.

- 15.2. Never eligible for compensation are:
  - operating damage/consequential damage including for instance damage due to standstill, penalties, loss of production, transport, travel and accommodation costs and loss of profit;
  - damage caused by intent or conscious recklessness of auxiliary personnel or persons in the organization of PWT Eurostaal not being those charged with the management of its company;
  - damage to property in the care, custody or control of PWT Eurostaal including damage caused to goods that are being processed as a result of or during the performance of such work or to goods that are located near the place where processing takes place;

- costs of assembly and disassembly;
  - costs (such as costs of inspection or shipping) incurred by Buyer within the term for remedy of PWT Eurostaal for the purpose of **article 9** (Defects)
  - damage to materials provided by or on behalf of Buyer due to improper processing by PWT Eurostaal.
- 15.3. The above limitations also apply to unlawful acts of PWT Eurostaal and guarantees provided explicitly or otherwise by PWT Eurostaal. The above limitations do not apply in case damage is caused by intent or conscious recklessness of PWT Eurostaal or those charged with the management of its company.
- 15.4. PWT Eurostaal is authorized to accept any limitations of liability of third parties on behalf of Buyer. Any liability for failure in the performance of such third parties shall be limited to the amount that PWT Eurostaal may recover from such third parties.
- 15.5. Buyer indemnifies PWT Eurostaal from and against any claims of third parties resulting from or in connection with the agreement that has been performed by PWT Eurostaal, if and to the extent that PWT is not also liable for such claims toward Buyer, or the claim – cumulated with any claim of Buyer – exceeds the maximum claim referred to in the General Terms and Conditions of Sale. Buyer is obliged to compensate any damage caused to PWT Eurostaal in connection with this, including all costs of defence.
- 15.6. Any right of Buyer to receive compensation from PWT Eurostaal will expire one year after Buyer has first learned of that right and/or could have invoked its right to compensation against PWT Eurostaal.

## **16. Force Majeure**

- 16.1. Force Majeure is understood to mean a failure in performance on the part of PWT Eurostaal that is (also) caused by circumstances that cannot be attributed to PWT Eurostaal and could not have been foreseen. These circumstances shall in any case include: delays at suppliers such as (sea) carriers on whom PWT Eurostaal depends; strike or work stoppages; weather; rioting, acts of war; natural disasters such as earthquakes; terrorism; fire; loss or theft of tools or machinery; a general lack of required raw materials and/or other goods or services necessary for completion of the performance agreed; roadblocks; import or trade restrictions and cybercrimes.
- 16.2. PWT Eurostaal also has the right to invoke force majeure in case the circumstance preventing (further) performance commences after PWT Eurostaal should have performed its obligations.
- 16.3. During force Majeure the delivery obligation and other obligations of PWT Eurostaal shall be suspended. In case the time during which performance of the obligations by PWT Eurostaal is impossible, exceeds 4 weeks either party shall have the right to cancel the agreement without obligation for either party to compensate the other party on account of that.
- 16.4. In case PWT Eurostaal, at the time at which force majeure commences, has already performed part of its obligations or is able to perform only part of its obligations PWT Eurostaal shall have the right to separately invoice the part that has been or may be performed and Buyer shall be obliged to pay this invoice as if it were a separate agreement. However, this does not apply in case the part performed or to be performed does not have an independent value.

## **17. Applicable law and competent court**

The legal relationship between PWT Eurostaal and Buyer is governed by Dutch law; the applicability of the CISG is excluded. Any disputes between PWT Eurostaal and Buyer shall be submitted to the Dutch court of law exclusively. The court at Breda has exclusive competence, except in case article 93 Rv (Dutch Code of Civil Procedure) applies. However, PWT Eurostaal shall have the right to summon Buyer to appear before the court that is competent in Buyer's registered place of business.