

## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF ARIZA B.V., WITH ITS REGISTERED OFFICE IN HELMOND**

Supplier/we: ARIZA B.V., a private limited company.  
Customer/he: anyone who concludes, or has concluded,  
an agreement with the Supplier or negotiates the conclusion of  
an agreement on the sale and/or delivery of goods.  
In writing: by letter, fax or electronic means.

### **Applicability:**

1. These general terms and conditions apply to all our offers/quotations and deliveries and to all (additional) agreements, including agreements that are related to and/or arise from distribution agreements between the Supplier and the Customer.
2. Additional and/or varying conditions - also including purchase conditions - of the Customer do not form part of the agreement between the Supplier and the Customer and therefore do not bind the Supplier, unless the Supplier accepts the Customer's conditions in writing, in whole or in part.
3. Deviations from these general terms and conditions are only binding when agreed on by the Parties in writing and only for the offers, quotations and (additional) agreements they apply to. These general terms and conditions shall apply in full to the other offers, quotations and (additional) agreements.
4. Insofar as these general terms and conditions have also been drawn up in any other language besides Dutch, the Dutch version shall prevail in the event of differences of interpretation.
5. Should any provision of these general terms and conditions be (declared) void, the other provisions shall apply in full and the provision/provisions of these general terms and conditions that are (declared) void shall be replaced by (a) valid provision/provisions, observing as far as possible the purpose and purport of the provisions that are (declared) void.

### **Quotations:**

6. All offers and quotations are without obligation even if the offer contains a period for acceptance.
7. All offers and quotations are based on the performance of the agreement by the Supplier under normal circumstances on the basis of information known to the Supplier and during regular business hours, unless stated otherwise in writing.

**Formation of the agreement:**

8. The agreement will be concluded upon the Supplier accepting the order in writing. Additional agreements and/or amendments, made by whomever, will only be binding if accepted in writing by the Supplier.

9. Any offer or undertaking by a representative of the Supplier will only be binding to the extent confirmed in writing by the latter.

10. If the Supplier has stipulated an additional payment security, the agreements will only be concluded after the Supplier had received a (partial) advance payment and/or after a credit insurance coverage and/or bank guarantee has been obtained and/or after an irrevocable (confirmed) L/C has been accepted in writing by the Supplier.

11. In the case of a compound quotation there is no obligation for the Supplier to deliver the goods included in the quotation for a proportional part of the price stated. The quotation does not automatically apply to repeat orders.

**Price:**

12. Unless otherwise agreed in writing, the price is a net price, excluding turnover tax, service charges and other government levies and/or third party charges on the sale and/or delivery and/or execution of the agreement. The price is based on Free Carrier, Helmond, the Netherlands (FCA, Incoterms 2010), unless otherwise agreed in writing.

13. If after the date of order confirmation but before the delivery by any change in one or more of the cost-determining factors such as the price of commodities, auxiliary materials, wage costs, freight charges, import duties, value of the currency or by any other circumstance the basis of the Supplier's calculation changes, at the sole discretion of the Supplier, the Supplier has the right to increase the agreed price accordingly.

**Delivery:**

14. The agreed or stated delivery period will commence on the date that the relevant agreement has been concluded in accordance with the provisions of articles 8 through 10. The stated or agreed delivery period is an approximate estimate and will not be regarded as a final deadline. Only in case of any excessive excess (more than eight (8) weeks) of the agreed or stated delivery period does the Customer have the right to terminate the agreement, unless the excess is caused by force majeure. However, the Customer does not have any claim to penalty or damages.

15. The delivery is based on Free Carrier, Helmond, the Netherlands (FCA, Incoterms 2010), unless otherwise agreed in writing.

16. The delivery takes place on the dates stated in good time by the Supplier and, if possible, in consultation with the Customer, unless otherwise agreed in writing. The Customer has a purchase obligation. If the Customer fails to take receipt of the goods at the specified time, the Customer is in default and the Supplier can optionally (i) terminate the agreement;

(ii) send the goods to the Customer at the risk and expense of the Customer; (iii) store the goods at the risk and expense of the Customer. Any costs arising from the above circumstances, also including the storage charges and any less profit, will be at the expense of the Customer. The above is without prejudice to the other rights accruing to the Supplier.

17. Partial deliveries are allowed, in which case the (payment) conditions specified below shall also apply to any partial delivery.

18. The Supplier reserves the right to make changes to the composition of the goods to be supplied by the Supplier, if the Supplier must make these changes based on amendments to, inter alia, the law and/or regulations.

**Payment:**

19. Unless other payment conditions have been agreed in writing, payment must be made, without any deduction or bank charges, within thirty (30) days of the invoice date in the currency stated. Payment is deemed to have been made as soon as the amount due has been irrevocably transferred to the Supplier's bank account.

20. Setoff, against any claims the Customer states to have against the Supplier, is excluded.

21. In the event that the Customer fails to pay any claim from the Supplier, the Supplier has the right to suspend the further execution of all the current agreements between the Supplier and the Customer, until the payment has been made, while, even if agreed otherwise, advance payment in cash can be required for further supplies. These provisions also apply in the event of a challenge of a claim. If afterwards the Customer is declared to be right, the Supplier will not be liable for compensation. Any objections to invoices must be submitted to the Supplier within eight (8) days of the invoice date, in writing and giving reasons.

22. If the agreed payment term is exceeded, the Customer is in default by operation of law and from the occurrence of the default an interest of 1% per month must be paid on the outstanding amount, or the statutory interest for trade agreements referred to in directive 2000/35/EC (on combating late payment in commercial transactions), whichever is higher, whereby part of a month will be counted as one whole month, commencing the first day after the payment period has expired.

23. All costs incurred, both extrajudicial and judicial, relating to the collection of the amount due by the Customer and not paid in time by the Customer, will be for the account of the Customer. The extrajudicial costs are fixed at a minimum of 15% of the amount due and will be at least € 250 per claim.

24. The payments made by the Customer shall first of all serve to settle any payable interest, costs and penalties and subsequently the longest outstanding claims arising from the agreement, even if the Customer should state that the payment is related to another claim.

25. In the case of liquidation, insolvency, a winding-up petition or suspension of payments of the Customer, the Supplier's claims, on whatever grounds, are immediately due by the Customer.

26. The Supplier shall at all times have the right to require from the Customer security for the fulfilment of all the Customer's obligations arising from the agreement, in any form, on or after entering into the agreement, prior to (further) performance. If the Customer fails to comply with the request to provide security, the Supplier has the right, without prejudice to its other rights, to terminate the agreement, without any notice of default or judicial intervention, in whole or in part, or to immediately suspend the (further) execution of the agreement without prejudice to its right to compensation for the damage incurred. Furthermore, all that the Customer must pay the Supplier, on whatever grounds, is immediately due and payable.

**Retention of title:**

**(the conditions are different for German Customers, please see articles 50 through 56)**

27. All goods delivered to the Customer will remain the property of the Supplier until the date of payment in full of all our claims, on whatever grounds, including interest and costs. The Customer is not allowed to pledge the goods to third parties or to transfer ownership to third parties before payment has been made in full, except in the course of normal business activities. In case of violation hereof, irrespective of what payment conditions apply, the remainder of the purchase price will become immediately and fully due and payable.

28. The Customer shall at all times assist the Supplier with the exercise of its property rights. As long as the retention of title applies, the Customer has the obligation to grant the Supplier access to its buildings and premises.

29. At the first request of the Supplier, the Customer must pledge to the Supplier all claims of the Customer with respect to goods delivered by the Supplier that fall under the retention of title and have been sold to clients of the Customer.

**Force majeure:**

30. In the event that the Supplier is prevented by force majeure to (further) execute the agreement, the Supplier has the right, for the period in which the force majeure continues, to suspend the obligations arising from the agreement. If the period of force majeure exceeds 30 days, each of the Parties shall be entitled to terminate the agreement, without any obligation to pay damages to the other party.

31. Force majeure also includes any circumstance occurred through no fault of the Supplier as a result of which the normal execution of the agreement is prevented. Such circumstances causing force majeure include in any case: loss, damage and/or delay during and by transport, extreme sickness absence and wildcat strikes by the personnel, actions/measures by customs, (temporary) closure of particular geographical areas, crop failure or disappointing harvests, fire and other severe disruptions to the business of the Supplier or its suppliers and national disasters.

32. If the Supplier partially already fulfilled, or is able to fulfil, its obligations arising from the agreement, at the time when the case of force majeure occurred, the Supplier has the right to separately invoice the part already fulfilled or to be fulfilled. The Customer must pay this invoice as if it were a separate agreement.

### **Liability:**

33. The Supplier is not liable for any damage incurred by the Customer with the exception of intent or gross negligence of the Supplier and subject to statutory liability based on mandatory provisions.

34. If and insofar as, despite the provisions of article 33, any liability rests with the Supplier, on whatever grounds, this liability will be limited to the amount of the net invoice amount of the goods causing the damage, on the understanding that the Supplier will only be liable at most for a maximum amount of € 100,000 per agreement. Furthermore, liability for indirect damage, consequential damage, immaterial damage, trading loss, damage with respect to a product recall initiated by the Customer or third parties, from any cause whatsoever, loss of profits or environmental damage or damage as a result of liability towards third parties, is expressly excluded.

35. Any claim for damages will expire if the claim is not submitted in writing to the Supplier, within one (1) year after delivery of the goods.

### **Indemnity:**

36. The Customer shall indemnify the Supplier against any claims from third parties due to damage incurred by third parties in relation to goods delivered by the Customer to these third parties or in relation to goods incorporating the goods of the Supplier, unless it will be legally established that these claims are a direct result of intent or gross negligence on the part of the Supplier and the Customer also proves that the Customer is not to blame in this matter.

### **Complaints:**

37. Deliveries will be made in accordance with a sample approved by the Customer or a delivery previously made, which will act as a quality reference. Complaints regarding weight and/or externally visible defects must be submitted within 48 hours of the receipt of the goods, specifying the nature and the basis of the complaints. Complaints regarding defects that are not immediately detectable must be submitted within 48 hours of detection and under no circumstances later than two weeks after receipt of the goods. Any right of claim of the Customer against the Supplier relating to errors in the delivery or defects in, or to, the goods delivered by the Supplier will expire irrevocably as soon as the time limits referred to above have expired. Slight or customary deviations and differences in quality, number, size or finishing do not constitute a basis for complaints. The Supplier may deliver up to 10% more or less of the contracted amount.

38. In case of a complaint, the Customer has the obligation to keep the goods complained about at the disposal of the Supplier. The Customer also has the obligation to cooperate with any investigation by the Supplier or by a third party engaged by the Supplier. If the complaint is declared well-founded the costs of the investigation will be for the Supplier. If the complaint is considered to be unfounded the costs will be for the Customer.

39. A complaint does not entitle the Customer to not fulfil the (payment) obligations towards the Supplier, or to invoke suspension or set-off respectively.

40. Returning the goods is only allowed with prior written permission from the Supplier, on conditions to be determined by the Supplier. In the event that goods are returned without permission from the Supplier, carriage and storage of the goods will be at the risk and expense of the Customer.

41. If a complaint is expressed, well-founded and within the time limits set for complaints, the Supplier will only have the obligation to deliver the missing goods, to replace the goods delivered or to take back the goods and to credit the Customer for the invoice amount in question. Under no circumstance is the Supplier obliged to reimburse other costs and/or damage.

#### **Product recall:**

42. The Customer undertakes to assist the Supplier with the execution of any product recall. In this context, the Customer also undertakes to keep proper files of its sales activities and customers for the traceability of the goods delivered, for a period of five (5) years after the date of sale. The files contain at least information about dates of sale, sales figures, batch numbers and batch specifications and all other information that may be required in the context of any product recall.

#### **Cancellation:**

43. Cancellation of an order by the Customer is in principle not possible. However, if the Customer cancels an order, in whole or in part, for any reason whatsoever, the Customer must reimburse the Supplier for all costs reasonably incurred in view of the performance of the order (including preparation costs, storage charges and the like) without prejudice to the Supplier's right to payment for loss of profits and other damage. Furthermore, the Customer must pay the costs arising from the cancellation and any currency exchange differences if the Supplier with regard to the order has concluded a currency agreement with a bank or another third party.

44. In case of cancellation, the Customer must also pay cancellation costs. These costs are 30% of the principal amount, plus VAT.

**Suspension and termination:**

45. If the Customer fails to fulfil the obligations arising from the agreement concluded or fails to fulfil these obligations in time, if there are grounds to fear that the Customer will not fulfil the Customer's obligations or will not fulfil these obligations in time or if the Customer applies for a moratorium, files a winding-up petition or dissolves its company, the Supplier has the right to suspend or terminate the relevant agreement, without any notice of default or judicial intervention being required and the Supplier has no obligation to pay any kind of damages.

46. Any claim from the Supplier relating to a part of the agreement that has already been executed or damage incurred as a result of suspension or termination, which is deemed to include loss of profits, will immediately be due.

**Choice of law and forum:**

47. These general terms and conditions and all offers made and submitted by the Supplier and all agreements between the Customer and the Supplier are exclusively governed by Dutch law.

48. The Vienna Sales Convention and any future international regulation on the sale of movable goods do not apply.

49. Any disputes arising from quotations/offers and agreements, however named, to the exclusion of other courts, will be submitted to the competent court in 's-Hertogenbosch (the Netherlands). Disputes between the Supplier and customers based outside the EU will be finally settled by means of arbitration of the International Chamber of Commerce ('ICC') in accordance with the Arbitration Regulations of the ICC by one or more arbiters appointed in accordance with these Regulations. The language used is Dutch or English. The arbitration will take place in 's-Hertogenbosch (the Netherlands).

**Contrary to the articles 27 up to and including 29, the following applies to**

**German clients: Eigentumsvorbehalt**

50. Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die uns aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer und seine Konzerngesellschaften zustehen. Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für uns her und verwahrt sie für uns. Hieraus erwachsen ihm keine Ansprüche gegen uns.

51. Vorbehaltsware mit Ware anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerben wir zusammen mit diesen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Abnehmers – Miteigentum an der neuen Sache, wobei unser Miteigentumsanteil dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren.

52. Der Abnehmer tritt bereits jetzt seine Forderungen aus der Verausserung von Vorbehaltsware aus unseren gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang unseres Eigentumsanteils zur Sicherung an uns ab.

53. Bei Verarbeitung im Rahmen eines Werksvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten. Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an uns ordnungsgemäß nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretenen Forderungen selbst einziehen.

54. Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen.

55. Scheck-/ Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung.

56. Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.