

## **GENERAL TERMS AND CONDITIONS OF SALE**

### **1. GENERAL CLAUSES**

These terms and conditions of sale apply to Vitalo Industries NV, hereinafter in short "VITALO". All orders placed with VITALO rightfully include the acknowledgement by the purchaser that it has duly noted and accepted these general terms and conditions of sale. Furthermore, only these terms and conditions of sale shall apply to all orders placed with VITALO, except for any special terms and conditions approved in writing by VITALO and excluding the general terms and conditions of purchase of the customer. They are not to be considered as formal, but determine the actual commitments between VITALO and the customer. The lack of a reaction by VITALO upon a breach of or deviation from these terms and condition of sale may not be viewed as acceptance of any modification of these terms and conditions of sale.

These terms and conditions of sale cancel and replace any previous terms and conditions.

These general terms and conditions of sale shall upon their acceptance apply to all future relations between the parties, except where VITALO communicates a more recent version of the general terms and conditions of sale in any form whatsoever. The purchaser is thus always highly advised to read, print out and keep a copy of the general terms and conditions of sale in force at the time of the purchase, as shown on the website ([www.vitalo.net](http://www.vitalo.net)).

### **2. QUOTE – ENTRY INTO FORCE OF THE AGREEMENT**

A quote from VITALO is completely free of obligations and a binding agreement shall only exist upon a written order confirmation from VITALO.

The start of execution shall equal confirmation, unless this takes place with reservation.

All illustrations, drawings, dimensions, weight specifications, etc. provided with a quote shall be considered as approximations, unless VITALO expressly states that they are to be considered as precise specifications.

Any cancellation of an order must be done in writing and shall only be valid with the written acceptance of VITALO and subject to compensation of all expenses already incurred, with a minimum of 10% of the value of the order.

### **3. PRICES**

a) Prices and rates are only provided for information and are not binding on VITALO, unless they are confirmed in writing by VITALO. Unless expressly stated otherwise, our indicated prices are exclusive of duties, VAT, transport costs, insurance costs and packing costs.

b) VITALO may adjust the prices during execution of the contract as a result among other things of modifications of the quantities ordered, freight insurance rates, taxes and/or duties, increased production costs or raw materials prices, foreign currency fluctuations.

c) Advances paid for assignments and orders which are cancelled prior to delivery shall in all cases remain acquired by VITALO.

### **4. DELIVERY TERMS AND CONDITIONS**

a) The delivery terms and conditions are only provided for information and shall not be binding on our company, unless expressly agreed otherwise by VITALO. Late delivery shall not give the customer any right to cancel the order and/or claim compensation for damages, other than in cases of wilful misconduct. This shall also apply to expressly agreed delivery terms.

b) Cases of force majeure shall suspend the delivery terms and shall not give the customer any right to cancel the order and/or claim compensation for damages. Cases of "force majeure" shall include interruption of or delay in the provisioning of materials or raw materials, general or partial strike or lock-out, war, embargo, terrorist acts or insurrections, fire, flood, natural disasters, explosions, machine breakdown, road blocks, shortage of transportation and in general any unforeseen and unavoidable circumstance independent of our will which leads to the complete or partial closure of our plant or the plants of our suppliers and thus make execution of the agreement impossible.

c) Weight or quantity differences within 5% above or below the goods to be delivered or a colour variation may not be considered as a failure on the part of VITALO. Weight or quantity differences of more or less 5% shall be accepted by the customer, where it is understood that differences in excess

of the order need to be additionally paid by the customer and differences below the order shall be considered to be fully paid.

## **5. DELIVERY AND TRANSFER OF RISK**

Without prejudice to the retention of title conditions as stipulated in Article 7, the delivery of the goods and transfer of the risk, unless expressly agreed otherwise, shall always be considered to take place at the time of departure of the goods from VITALO's warehouses (Ex Works).

Unless proof of the contrary is provided by the customer, the shipping document date shall serve as the delivery date.

## **6. GUARANTEES**

VITALO reserves the right to request suitable guarantees from the customer. If the customer cannot provide any, then VITALO shall be rightfully entitled, without notification of default, to suspend its obligations or dissolve the contract. If necessary, the amount as stated in Article 2 shall be due as compensation for damages.

## **7. RETENTION OF TITLE**

VITALO shall retain the full and exclusive ownership of all processed and yet to be delivered goods, until the sales prices, including any interest, costs and compensation for damages, has been fully settled for all of those goods. If the customer resells the goods, it shall transfer to VITALO the claims it has on its purchaser. Through this transfer, VITALO shall have the right to collect those claims if the purchaser fails to pay or if there is a risk that the purchaser will not be able to fulfil its obligations. VITALO undertakes to return to its customer that portion of the claim collected in excess of 125% of the value of the initially sold goods.

If the customer does not resell the goods, it shall be held to maintain the goods in good condition and to insure them against loss and/or damage, for as long as the retention of title exists. In the event of loss or damage, the customer undertakes to transfer the insurance claim to VITALO.

## **8. ACCEPTANCE, COMPLAINTS AND RETURNS**

a) Complaints regarding visible defects shall only be accepted by VITALO if they are notified by the customer in writing (fax, email or registered mail) within 10 days following delivery of the goods and provided that the goods have in no way been processed. The date of transmission shall serve as the date on which the complaint was sent to VITALO. The submission of a complaint shall give the customer no right to adjourn the payment.

b) The liability of VITALO for any hidden defects shall be limited to defects which appear within 6 months following delivery of the goods. In all cases, the customer must immediately report all hidden defects to VITALO, subject to lapse of the right to recourse, within 8 days following discovery of the defect. Such notification must be made in writing (fax, email or registered mail).

Defects appearing after the delivery, unless with proof of the contrary (to be supplied by the customer), shall be considered not to have existed at the time of delivery and/or to be the result of improper handling by the customer. The customer accepts that VITALO has no knowledge of possible hidden defects. Such knowledge may not be suspected. The customer must prove it. The submission of a complaint shall give the customer no right to adjourn the payment.

c) If the customer neglects to submit a complaint within the above period of time, the goods shall be considered as definitively accepted.

Processing of the goods shall in all cases be considered as acceptance of the goods, even if a complaint was submitted beforehand.

d) The customer can only return goods with the written consent of VITALO. The granting of such consent may not be construed as an admission by VITALO. The products must be returned in their original condition, in the original packaging and at the costs and risk of the customer.

e) In the case of both hidden and visible defects, VITALO retains the right to exchange or repair the delivered goods (if the repair costs are lower than the cost of replacement of the goods), upon which all further claims from the customer shall expire. Repairs may only be made by the customer with the written agreement of VITALO.

f) The liability of VITALO shall in all cases be strictly limited to the amount invoiced for the delivery, exclusive of VAT. VITALO shall in no case be held to compensate for unexpected, indirect or

consequential damages, including but not limited to loss of earnings, reduced value of use, loss of goodwill or any other loss of commercial opportunities.

g) Complaints concerning prototypes shall not be considered.

## **9. PAYMENT**

a) VITALO reserves the right to issue invoices as the deliveries are made, even if they are partial.

b) Payment shall be made according to the conditions stated on the order confirmation and invoice.

c) In the event of non-payment, default interest shall be applied to the invoice from the day following the due date, without notification of default, pursuant to the Act of 22 November 2013 on payment arrears in business transactions, without prejudice to the right of VITALO to suspend all ongoing orders or to dissolve ongoing contracts by fault of the purchaser. Furthermore, in the event of complete or partial non-payment of the amount due on the due date, the outstanding balance shall be increased with a fixed and irreducible compensation for damages of 15% of the outstanding invoice balance (with a minimum of €125) and without prejudice to the right of VITALO to claim higher damages or to the right to compensation of legal costs and all relevant collection costs (such as costs of summons, opening of the case, letters and travel expenses).

d) In the event of non-payment on the due date of an invoice, objection to a bill of exchange (even if it was not accepted), bankruptcy, evident insolvency, amicable or court-ordered reorganisation or liquidation of the customer, or of any other fact suggesting the customer's inability to pay, the balance due for other invoices, even when they have not yet come due, shall rightfully become immediately due, without notification of default. If an adjournment of payment is provided or bills of exchange are signed, whether under this contract or another contract, then all amounts due for any contract whatsoever shall immediately and rightfully become due, without notification of default, in the event that one single instalment is not respected or if one bill of exchange was not paid on the due date.

Furthermore, VITALO reserves the right in all of these cases, without notification of default, to suspend all deliveries and to dissolve the agreement.

e) Bills of exchange or accepted securities shall in no way be associated with a waiver of these terms and conditions of sale or a debt renewal.

f) VITALO may always invoke debt set-off with respect to the customer.

## **10. SUSPENSION AND DISSOLUTION OF THE CONTRACT (express resolute clause)**

a) Without prejudice to its right to compensation for damages, VITALO retains the right to suspend or completely or partially dissolve the agreement at any time without prior notification of default, in the event of non-payment on the due date of any invoice, the objection to a bill of exchange (even if it was not accepted), bankruptcy, evident insolvency, amicable or court-ordered reorganisation or liquidation of the customer, or of any other fact suggesting the customer's incapacity to pay.

b) If the customer does not comply with its contractual obligations in the framework of its business relationship with VITALO, then VITALO reserves the right, following notification of default without results, to either suspend its commitments or to dissolve all ongoing contracts (in whole or in part) and to demand immediate payment of all invoices due to yet to come due.

c) The result of the dissolution shall be that VITALO can immediately, rightfully and without notification of default demand the return of all of its goods gold, delivered and still present. The customer must immediately make all goods still present (delivered under any contract whatsoever) available to VITALO, at the company headquarters of VITALO.

d) In the event of dissolution of the agreement by the customer, the customer shall owe to VITALO a fixed compensation for damages equalling 40% of the unpaid invoiced and/or calculated value of the goods, without prejudice to the right of VITALO to claim the payment of higher damages actually suffered.

## **11. LIABILITY**

VITALO shall not be liable for damages caused due to an error or fraud by its co-contractors and/or agents.

## **12. INTELLECTUAL PROPERTY RIGHTS**

All moulds, designs, drawings, prototypes, etc. made by VITALO on assignment for the customer shall always remain the property of VITALO, even if the customer was charged for the

costs/compensation for the material manufacture of the moulds, etc. The customer acknowledges that such moulds are chiefly the product of the know-how, R&D and investments of VITALO. The participation charged to the customer for the construction of the moulds and tools is generally estimated by mutual agreement at a maximum of 1/3 of the total cost price, considering the know-how, development, research and investments belonging to and carried out by VITALO. Nevertheless, VITALO shall be free, with regard to the construction of state-of-the-art tools, to indicate the correct amount of the development costs it incurred and to pass those on to the customer. It is agreed that the customer, unless with the express written consent of VITALO, even with payment of participation in the production costs for moulds, etc., shall never be entitled to demand the surrender of these moulds to produce itself or by a third party using the moulds or tools developed by VITALO. The customer thus also agrees to not produce the moulds, drawings, prototypes, know-how, designs, etc. itself or to copy or have produced/copied, unless with the express prior written consent of VITALO. Unless agreed otherwise and subject to payment by the customer of the costs of storage, the moulds shall be kept for 2 years after the last series delivered to the customer. After that time, VITALO shall be exempt from all liability and shall destroy the moulds at the costs of the customer, unless it was agreed that after that period the property of the moulds would be transferred to the customer and they would be sent to the customer at its costs. In the event of damage/loss of moulds, drawings, prototypes, know-how, designs (such as due to fire, theft, etc.), VITALO shall not be liable, unless the customer can demonstrate gross misconduct on the part of VITALO. The customer expressly protects VITALO from claims from third parties regarding industrial, intellectual and artistic property for the items to be delivered or made by VITALO.

### **13. MISCELLANEOUS**

- a) The nullity of any clause or a part thereof shall not affect the validity of the other clauses/parts.
- b) In the event of disputes regarding interpretation of the various texts, the Dutch text shall always prevail.

### **14. APPLICABLE LAW AND COMPETENT COURTS**

Only Belgian law shall apply to all contracts between VITALO and the customer, except with regard to the clause regarding retention of title, to which national law in the location of the goods sold shall be applied. Application of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) is expressly excluded.

All disputes shall be exclusively heard by the courts of West-Flanders, Kortrijk division.