

**GENERAL TERMS AND CONDITIONS**  
**OF SALE AND SUPPLY**  
**Van West Holland B.V.**

as filed with the registry of the Chamber of Commerce in Haarlem on June 15th. 1999, under number 34061967, here-after also called VWH.

B.1. **DEFINITIONS**

B.1.1. \* **The Supplier**

Is understood to mean Van West Holland B.V. of IJmuiden and/or its subsidiaries or business units accepting the order and/or entering into an Agreement with purchaser.

B.1.2. \* **The Purchaser**

The company or contractual counterpart with whom a requisition has been placed or an order for the supply of goods and services has been contracted and/or its successors.

B.1.3. \* **Goods and Services**

All materials and equipment, work or services which are the subject of the Order and/or Agreement.

B.1.4. \* **Order and/or Agreement**

The specification and the scope of work relative to the goods and services agreed to between the Supplier and the Purchaser.

B.2. **APPLICABILITY AND BATTLE OF FORMS**

The applicability of the other party's general conditions is expressly excluded. These general conditions shall apply to all legal relations in which the Supplier acts as a (prospective) seller and/or supplier of goods and/or services. Deviations from these conditions may only be made in writing.

B.3. **OFFERS/CONCLUSION OF THE AGREEMENT**

All offers/quotations, drawings and/or other documentation from the Supplier is/are without engagement. The offer may be withdrawn by the Supplier within 5 working days after acceptance. The Purchaser places an order, the agreement shall be concluded upon written acceptance of this order by the Supplier, or upon the Supplier commencing with the performance thereof. Samples or models shown or provided or particulars embodied in documentation relating to the Supplier shall only be considered as indications, without the good owed or the service rendered being required to comply therewith.

B.4. **SUPPLEMENTARY AGREEMENT**

Upon the written request of the Purchaser, the Supplier shall carry out the changes in the order suggested by the former, provided these are reasonably practicable and the Supplier shall have the right to make an extra charge therefor.

B.5. **PRICES**

All prices shall be ex works/warehouse or ex any other place to be determined by the Supplier and exclusive of V.A.T. or other statutory surcharges and exclusive of packing material. Changes in wages, cost prices of raw materials or materials and/or foreign rate variations, relating to the agreement performance shall entitle the Supplier to pass them on without any further additional charge.

B.6. **DELIVERY/TIME OF DELIVERY**

The time of delivery agreed upon with the Supplier shall be held to be an indication and not a deadline. Delivery shall take place ex works/warehouse/any other place to be determined by the Supplier. The Supplier shall determine the means of transport and the insurance during the transport. Both items shall be charged to the Purchaser. The transport shall take place at the Purchaser's risk. The Supplier shall be entitled to complete the performance owed by it in stages.

B.7. **PAYMENT**

All invoices from the Supplier shall be paid within 30 days after the invoice date in the manner to be indicated by the Supplier. Payments must be made effectively in the currency agreed upon and without any set-off, discount and/or suspension. In the event of any payment being overdue, all the Purchaser's payment obligations notwithstanding whether the Supplier has already submitted an invoice therefor, shall forthwith become due and payable. In the event of any payment being overdue, the Purchaser shall owe interest at 3% above the ING bank N.V. base-interest rate but in any event no less than the legal interest per annum. Extrajudicial collection costs shall be charged to the Purchaser in conformity with the Dutch Bar Association's collection rate. Payments made by or on behalf of the Purchaser shall be applied to the satisfaction of his obligations in the following order:

extrajudicial collection costs, judicial costs, interest and further as payment of the principal sums receivable in the order of the length of time they have been outstanding, irrespective of the Purchaser's instructions to the contrary. The Purchaser may only raise an objection to the invoice within the term of payment.

**B.8. TENTENTION OF TITLE**

The Supplier shall retain title in the goods which have been supplied by him or which are to be supplied by him until:

- A) the performance owed by the Purchaser for all goods supplied or to be supplied under the agreement, or in connection with services rendered or to be rendered under such agreement;
- B) claims against the Purchaser for failure to perform such agreement(s); shall have been completed and settled in full. The Purchaser shall not be permitted to invoke the right of retention on account of storage charges and to set off these charges against the performance owed by him. If the Purchaser creates a new good from or with the goods as referred to in paragraph 1, this shall be a good which the Supplier causes to have created for itself and the Purchaser shall retain it on behalf of the Supplier as the owner, until all obligations as referred to in paragraph 1 have been discharged. In respect of a good in which title remains with the Supplier following the provisions of paragraph 1 or paragraph 2, the Purchaser shall only have a right to dispose of it in the normal course of its business. If the Purchaser is in default relating to the performance as referred to in paragraph 1, the Supplier shall be entitled to take back or have taken back the goods owned by it from the place in which they are located. The Purchaser herewith irrevocably authorizes the supplier to enter or have entered for this purpose the locations used by or on behalf of the Purchaser. The Purchaser herewith pledges to the Supplier, who accepts this pledge, all goods in respect of which the Purchaser becomes a (co)owner through the creation of goods, accession, merger/fusion so as to form a single good with the goods supplied and/or to be supplied by the Supplier as security for all that which is owed or will be owed at any time by the Purchaser to the Supplier.

**B.9. SECURITY**

If there is a good reason to believe that the Purchaser will not promptly fulfil its obligations, the Purchaser shall be obliged, upon the Supplier's first request, to forthwith provide adequate security in the manner required by the Supplier and to supplement it if necessary for the fulfilment of all its obligations. As long as the Purchaser has not complied herewith, the Supplier shall be

entitled to suspend the fulfilment of its obligations. If the Purchaser has not complied with a request as referred to in paragraph 1 within 14 days after having received a written summons to that effect, all its obligations shall forthwith become due and demandable.

**B.10. INTELLECTUAL PROPERTY RIGHTS AND KNOW-HOW**

All documentation, sales brochures, illustrations, drawings etc. which are made available by the Supplier to the Purchaser shall remain the property of the Supplier. The Purchaser shall not be entitled to employ them for any other purpose other than for the use of the goods or services to which they relate. The Purchaser shall not be entitled to disclose to third parties the documents as referred to in paragraph 1 or the particulars embodied therein or of which it has acquired knowledge in any other way, unless the Supplier has given its express written consent thereto. If the provisions set forth in paragraph 2 and/or 3 are violated, the Purchaser shall be liable to a penalty of 15% of the invoice value and in any event to a minimum Dfl. 10,000.- for each violation, regardless of all other rescission, damages etc.

**B.11. COMPLAINTS, DUTY TO INSPECT, LIMITATION AND PERFORMANCE**

The Purchaser shall be under an obligation to inspect upon delivery whether the goods comply with the agreement. In the case of non-compliance, the Purchaser shall not be able to invoke non-compliance if it fails to notify the Supplier in writing at the same time giving the reasons therefor, as soon as possible and in any case within 5 days of delivery, or after establishment thereof was reasonably possible. Claims and defences, based upon facts which justify the allegation that the goods delivered does not comply with the agreement, shall be barred upon the expiry of one year after delivery. If the delivery does not comply with the agreement, the Supplier shall, at its option, only be obliged to deliver that which was missing, to repair the good delivered or to replace the good delivered. The provisions set forth in this article are applicable as appropriate to the rendering of services.

**B.12. FIGURES, MEASUREMENTS, WEIGHTS AND FURTHER PARTICULARS**

Minor deviations from the measurements, weights, figures, colours and from other similar particulars are not considered to be failures. The trade customs shall determine whether it is a question of minor deviations.

**B.13. SUB-CONTRACTORS**

The Supplier shall have full discretion to contract out the work entrusted to it in whole or in part to third parties (sub-contractors). The

aforementioned does not alter the mutual rights and obligations of the Supplier and the Purchaser towards each other as these have been laid down in these General Conditions with the provision, however, that the Supplier shall be entitled to make any stringent conditions imposed upon it by its subcontractors (for instance regarding the term of payment, interest, complaints etc.)

apply correspondingly and in full to the other party, provided it notifies the Purchaser of these more stringent conditions immediately. The Purchaser shall be deemed to have accepted these more stringent conditions if it has not, within five days of receipt of the relevant notification, informed the Supplier in writing that it rescinds the agreement.

**B.14. CANCELLATION/SUSPENSION/RELEASE**

If the Purchaser does not, not timely or not properly fulfil any obligation which has to be fulfilled by it under the agreement, and also if the Purchaser is confronted with a bankruptcy, suspension of payments or is placed under legal control or if its business is brought to a standstill or liquidated, the Supplier shall be entitled, at its option, without any obligation to pay compensation and without prejudice to the other rights it may have, to cancel the agreement in whole or in part, or to suspend the (further) performance of the agreement. In those instances, the Supplier shall further be entitled to demand immediate payment of all the amounts owed to it. If proper performance by the Supplier is partly or wholly impossible, either temporarily or permanently, as a result of one or more circumstances beyond the Supplier's control, including the circumstances set forth in the following paragraph, the Supplier shall be entitled to rescind the agreement or to suspend the (further) performance of the agreement. Circumstances which are in any case beyond the Supplier's control are: acts, except wilful misconduct or gross negligence, of persons used by the Supplier for the performance of the obligation; unfitness of goods used by the Supplier for the fulfilment of the obligation; a third party exercising one or more rights as against the Purchaser on account of a failure of the Purchaser in the performance of an agreement concluded between the Purchaser and the said third party in respect of the goods supplied by the Supplier; strikes, lockouts, illness, bans of import, export and transit, transport problems, non-performance by ancillary suppliers of their obligations, interruption in production, natural and/or nuclear disasters and war and/or threat of war. If the Purchaser fails to take up delivery, after having been given a period of 14 days for this purpose by the Supplier, the latter shall be released from its obligations.

**B.15. DAMAGES**

The Supplier's liability shall be limited to damage which was caused by its wilful misconduct or gross negligence. The Supplier shall never be obliged to pay any other compensation for damage other than the damage to persons or goods. The Supplier reserves all legal and contractual defences, which may be pleaded by it on order to defend its own liability as against the Purchaser, also on behalf of its subordinates and non-subordinates for whose acts it would be held liable under and by virtue of the law.

All goods supplied or services rendered by the Supplier shall at the time of delivery comply with all relevant statutory requirements applicable in the Netherlands, which are in force at the time the agreement was concluded. The Supplier shall not be liable for any damage sustained as a consequence of relevant Dutch statutory requirements which became effective at a later date. Furthermore, the Supplier shall not be liable for any damage sustained as a consequence of the fact that the goods supplied or the services rendered do not comply with statutory applicable abroad. The Supplier shall not be liable for any damage sustained as a consequence of the goods being used for any purpose other than the one for which they were reasonably intended. Insofar as the Supplier is liable, the damages to be paid by it shall not exceed the invoice value. The provisions set forth in this Article shall not prejudice the Supplier's third party liability on the strength of statutory provisions having obligatory force.

**B.16. APPLICABLE LAW/COMPETENT JUDGE**

All legal relations between the Supplier and the Purchaser shall be governed by Dutch law. Any disputes between the Supplier and the Purchaser, which fall under the jurisdiction of the District Court shall exclusively be brought before the judge of the city where the Supplier is established, except if the Supplier as the plaintiff or petitioner elects the judge competent in the Purchaser's domicile or place of establishment.

**B.17. CONVERSION**

If and insofar as any restriction embodied in these general conditions may not be invoked on the grounds of reasonableness and equity or because of its unreasonably onerous nature, the contents and purport of this provision shall be deemed to have been set forth in a wording as similar in meaning as possible, so that it may indeed be invoked.

The seller is not responsible for consequential losses.