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GENERAL TERMS AND CONDITIONS VAN DER LEE Turbo Systems

OF:

VAN DER LEE Turbo Systems

Jan 2019

Kleine Tocht 3, 1507 CB Zaandam

Article 1 Definitions


1. In the present general terms and conditions, the following terms are used in the sense given below, unless explicitly indicated otherwise.

Seller: VAN DER LEE Turbo Systems and / or other entities affiliated to VAN DER LEE Turbo Systems.

Buyer: Seller's opposite party, acting in the course of a business or in the course of a profession.

Agreement: the agreement between the Seller and Buyer.

Parties: Seller and Buyer.


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Article 2 General

1. The stipulations of the present terms and conditions shall apply to each and every offer and Agreement between Seller and Buyer, to which Seller has declared the present terms and conditions applicable, insofar as parties have not explicitly deviated from the present terms and conditions in writing.
2. The present terms and conditions shall also apply to all Agreements with Seller, the execution of which calls for the services of third parties.
3. Buyer's general terms and conditions shall herewith be explicitly deemed rejected.
4. If one or more stipulations in the present general terms and conditions and/or the Agreement should be null and void or declared null and void, then the other stipulations of the present general terms and conditions and/or the Agreement shall remain fully applicable. The case ensuing, Seller and Buyer shall enter into negotiations to agree upon new stipulations replacing the null and void conditions, or, as the case may be, the conditions declared null and void, whereby the purpose and the meaning of the original conditions shall be heeded as far as possible.


Article 3 Offers

1. All offers shall be free of obligation unless the offer contains an acceptance term.
2. The offers made by Seller shall be free of obligation; they shall be valid for a period of thirty days, unless stated otherwise in writing. Seller shall only be bound by the offers if the acceptance thereof is confirmed in writing by Buyer within thirty days.
3. The prices given in the above-mentioned offers shall be exclusive of VAT and other government levies, as well as of shipment costs and possible packaging and administration costs, unless explicitly stated otherwise.
4. If the acceptance deviates (on secondary items) from the offer given, Seller shall not be bound by it. The Agreement shall in such event not be concluded in accordance with said deviating acceptance, unless Seller indicates otherwise.
5. A compound quotation shall not oblige Seller to execute part of the assignment against a corresponding part of the given quotation.

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Article 4 Execution of the Agreement

1. Seller shall execute the Agreement to the best of his knowledge and ability.
2. If and in so far required for the proper execution of the Agreement, Seller shall have the right to have certain work done by third parties.
3. Buyer shall see to it that Seller shall be provided in due time with all data which Seller has said to be necessary or which the Buyer must in all reasonableness understand to be necessary for the execution of the Agreement. If Seller has not been provided in due time with the data necessary for the execution of the Agreement, Seller shall have the right to suspend the execution of the Agreement and / or to charge Buyer for the additional costs resulting from the delay at the generally accepted rates.
4. Notwithstanding the provisions of clause 15 of the present general terms and conditions, Seller shall not be liable for damage of whatever nature caused by the fact that Seller worked on the basis of incorrect and / or incomplete data provided by Buyer.
5. If parties have agreed that the Agreement will be executed in stages, Seller can suspend the execution of the parts belonging to a following stage until Buyer has approved in writing the results of the stage prior to it.
6. If Seller, or third parties engaged by Seller within the scope of the assignment, do work at Buyer's site or at a site designated by Buyer, Buyer shall provide the employees having to work there free of charge with all facilities desired in all reasonableness by said employees.
7. Buyer shall safeguard Seller against possible claims filed by third parties who may sustain damage attributable to Buyer in connection with the execution of the Agreement.
8. If Buyer fails to comply with any of his obligations pursuant to the Agreement, Seller shall be entitled to immediately and without judicial intervention suspend the execution of any of its obligations pursuant to the Agreement, all of this without prejudice to Seller's right to exercise any other legal right.

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Article 5 Delivery


1. Delivery shall be made ex works/store/warehouse (as meant in the Incoterms valid at the moment the Agreement is concluded) of Seller, unless specified otherwise.
2. Buyer shall be held to take delivery of the goods the moment that Seller delivers them to him or has them delivered, or the moment at which the goods are put at Buyer's disposal under the Agreement.
3. If Buyer refuses to take delivery or fails to give the information or instructions necessary to complete the delivery, Seller shall be entitled to store the goods at Buyer's risk and expense.
4. If, in the framework of the execution of the Agreement, Seller requires data to be given by Buyer, the term of delivery shall commence after Buyer has provided Seller with said data.
5. If Seller has given a term of delivery, it shall only be indicative. A given term of delivery shall therefore never constitute a term to be observed on penalty of forfeiture of rights. If a term is exceeded, the Buyer must give Seller notice of default in writing.
6. Seller shall be entitled to deliver the goods in parts, unless Parties specifically agree upon otherwise in writing. Seller shall be entitled to invoice the thus delivered goods separately.
7. When shipment is requested to be arranged by Seller and if no insurance is specifically agreed, Seller will use 100% insurance cost as standard to be paid by Buyer.

Article 6 Samples, Tooling and Models

1. If a sample or model has been given to Buyer, then the assumption is that such has been given by way of indication only, unless parties agree explicitly that the product to be delivered shall correspond with it.
2. In the event of purchase of immovable property or tooling (samples), the surface area or other measurements and indications given shall also be assumed to be merely indicative without any obligation to have the product to be delivered correspond with it.

Article 7 Inspection & Complaints

1. Buyer shall be held to examine the delivered goods at the moment of delivery (handing over), but in any case in as short a period of time as possible thereafter, to avoid loss of traceability of the goods when integrated in the Buyers process. Possible shortcomings must be communicated in writing to Seller within two days following the delivery. After the

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lapse of the aforementioned two days period, the goods shall be deemed accepted. Contrary to the provisions of clause 15 of the present terms and conditions, Seller shall not be liable for damages incurred by Buyer, of any kind whatsoever, resulting from Buyer's use or processing of goods accepted by Buyer pursuant to this clause 7.1.


2. If in accordance with the previous paragraph, Buyer files his complaint in due time, he shall still be held to take delivery and effect payment of the goods purchased. If Buyer wishes to return defective goods, he shall do so following prior consent in writing from Seller.
3. Any costs resulting from Buyer claims on shortcomings will not be accepted. If any costs are deducted from payments, Seller shall reserve the right to stop delivery of goods

Article 8 Remuneration, Price and Costs

1. If Seller and Buyer have agreed upon an administered price, Seller shall nevertheless be entitled to increase said price.
2. Seller shall be allowed among others, to charge on price increases if changes in price have occurred between the moment the offer was made and the moment of execution of the Agreement with respect to, e.g., exchange rates, salaries and wages, raw material, semi-finished products or packaging material.
3. Notwithstanding the provisions of this clause 8, the prices quoted by Seller are subject to amendment at any time after the offer is accepted by Buyer in accordance with clause 3.2 if upon Buyer's request alterations were made to:
 - the models as set out in Seller's quotation;
 - the request for quotation ("RFQ") and any specifications and/or requirements set out therein;
 - the engineering specifications as set out in amongst others Seller's offer.

Article 9 Changes to the Agreement

1. If it is shown during the execution of the Agreement that the work to be done needs to be changed and / or supplemented in order to ensure its proper execution, Parties shall adapt the Agreement accordingly in due time and in mutual consultations.
2. If Parties agree that the Agreement needs to be changed and / or supplemented, this decision may influence the time of completion of the execution. Seller shall inform Buyer thereof as soon as possible.

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3. Should the change and / or supplement to the Agreement have any financial and / or qualitative consequences, Seller shall inform Buyer thereof in advance. Seller reserves the right to charge all costs made to Buyer.
4. If a fixed rate has been agreed upon, then Seller shall indicate the degree to which the change or supplement to the Agreement will result in an increase of said fixed rate.

Article 10 Payment

1. Payment must be made according to payment terms stated in the sellers quotation. If not specifically mentioned payment is in advance with no later payment than 2 weeks from the date of invoice. Payment in the currency in which the goods were invoiced. Contestation of the amount of the invoices shall not suspend the fulfilment of the payment obligation.
2. Seller shall be entitled to have the payments made by the Buyer go first of all to reduce the costs, subsequently to reduce the interest still due and finally to reduce the principal sum and the current interest. Seller shall have the right, without this leading Seller to be in default, to refuse an offer for payment, if Buyer designates a different sequence of attribution. Seller shall be entitled to refuse full payment of the principal sum, if said payment does not include the interest still due, the current interest and the costs.

Article 11 Retention of Title

1. All goods delivered by Seller, possibly also including designs, sketches, drawings, films, software, (electronic) files, etc., shall remain Seller's property.
2. Buyer shall not be authorised to pledge or encumber in any way the goods falling under the retention of title.
3. If third parties seize goods delivered subject to retention of title or wish to establish or assert a right to them, Buyer shall be held to inform Seller thereof as soon as can reasonably expected.
4. Buyer shall undertake to insure the goods delivered subject to retention of title and to keep them insured against damage caused by fire, explosion and water as well as against theft and make this insurance policy available for inspection on first demand.

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5. Goods delivered by Seller falling under the retention of title by virtue of the stipulations under paragraph 1 of the present article, may only be sold on within the framework of normal business activities and must never be used as instrument of payment.
6. In the event that Seller wishes to exercise its ownership rights mentioned in the present article, Buyer shall give Seller or third parties to be appointed by Seller, now for then, unconditional and irrevocable permission to access all sites and locations where Seller's property might be found and to take these goods back.

Article 12 Guarantee

1. Seller shall use all reasonable skill and care to ensure that the goods are manufactured to specification. All other warranties ("garanties") and conditions as to quality or fitness for purpose, whether express or implied, are excluded.
2. Parts will be supplied according to mutually signed drawing and specification sheet.

Seller takes responsibility for quality of workmanship only. Verification and sign off of the product performance and durability does not belong to the responsibilities of the seller. Buyer is fully responsible for the part of the selection, design, development and durability of the product.

3. If the goods to be delivered do not comply with said guarantee, Seller shall, at his discretion, replace or see to the repair of the goods, within a reasonable period of time following receipt thereof, or, if the goods cannot be returned in reason, following notification of the defect by Buyer. In the event the goods are replaced, Buyer shall already now undertake to return the replaced goods to Seller and to transfer ownership to Seller.
4. The guarantee mentioned for this purpose shall not apply when the defect originated as the result of wear and tear, or Buyer's injudicious or improper use or when the Buyer or third parties have introduced changes or tried to introduce changes to the good without Seller's consent in writing.
5. If the guarantee given by Seller concerns a good produced by a third party, the guarantee shall be limited to the guarantee given by the producer of the good.

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Article 13 Collection Charges

1. From the time that Buyer is deemed to be in default, it shall be obliged to pay the Dutch statutory interest on the outstanding amount. All judicial and extra-judicial costs incurred by Seller in respect of recovery and collection of any overdue amount shall be borne by Buyer. These costs shall be fixed at 15% of the amount due and payable with a minimum of € 500 (five hundred euro).
2. If Seller demonstrates that it has incurred higher expenses, which were necessary in reason, said expenses shall also qualify for reimbursement.


Article 14 Termination

1. Seller may cancel, terminate or rescind (any part of) the Agreement at any time by written notice – with notice of default stating a reasonable period for repairing a breach – to the other Party if the other Party breaches any obligation under the Agreement.
2. Seller may immediately terminate the Agreement, without notice of default and without judicial intervention, either in whole or in part, if with regard to Buyer a bankruptcy petition is presented or winding-up proceedings are instituted; or if Buyer’s undertaking is wound up or closed down for the purpose of reconstruction or amalgamation of enterprises or if a change in Buyer’s ownership or management has occurred or threatens to occur.
3. Upon termination of the Agreement, all rights and obligations of the Parties shall cease to have effect immediately except that termination shall not affect accrued rights and obligations of the Parties under the Agreement at the date of termination or any express obligations in the agreement of a continuing nature.

Article 15 Liability

1. Seller’s aggregate liability vis-à-vis Buyer resulting from failure to perform in accordance with the Agreement of which these conditions form part, or based on tort or otherwise, shall be limited to liability with respect to direct damage with a maximum to the amount of the total sum of the value of the relevant order and shall never exceed the total sum to be paid out under the liability insurance policies taken out by Seller, plus the amount of any deductible (“own risk”) sum, with the total of these amounts being limited to a maximum of € 500.000,- or value of goods which ever comes first.


Direct damage shall solely mean:

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- a. reasonable expenses which buyer would have to incur to make Seller's performance conform to the underlying Agreement; this alternative damage shall not be compensated, however, if said Agreement is terminated by or at the suit of Buyer;
 - b. reasonable expenses incurred to prevent or mitigate damage, insofar as Buyer demonstrates that these expenses resulted in mitigation of direct damage within the meaning of this article 15.
2. Seller's liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Buyer's customers, mutilation or loss of data, damage relating to the use of objects, materials of third parties prescribed by Buyer to Seller, damage relating to engagement of suppliers prescribed by Buyer to Seller and all other forms of damage or injury besides those mentioned in section 15.1 above, shall be excluded.
 3. Buyer shall indemnify Seller against all claims from third parties - including Buyer's personnel - arising out of or relating to the performance of any Agreement entered into by Buyer and Seller and of which these conditions form part.
 4. Any claims, legal or otherwise, regarding Seller's contractual obligations, or based on tort or otherwise, are only valid if made in writing within 6 months after delivery of the goods.
 5. The limitations of liability set out in this clause 15 shall not apply if the damage is due to intentional act or omission or gross negligence on the part of Seller or its executives.
 6. Buyer will ensure that purchased products, processes, and services are conform to the current applicable statutory and regulatory requirements in the country of receipt, the country of shipment, and of the customer-identified country of destination, if provided.
 7. Territory of USA, Canada and EU sanctioned countries are excluded from seller liability.

Article 16 Transfer of Risk

1. The risk of loss of, or damage to the products being the subject of the Agreement, shall be transferred to Buyer the moment said products are judicially and/or actually delivered to Buyer and therefore fall into the power of Buyer or of third parties to be appointed by Buyer.

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Article 17 Force Majeure


- Parties shall not be held to fulfill any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action or generally accepted practice.
- Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfillment of their obligations. If this period lasts for more than three months, either of the parties shall be entitled to dissolve the Agreement without any obligation to pay the opposite party damages.
- Insofar Seller has already partially fulfilled his obligations resulting from the Agreement at the moment the circumstance of force majeure commenced or shall be able to fulfill them and insofar separate value can be attributed to the part already fulfilled or still to be fulfilled respectively, Seller shall be entitled to invoice the part already fulfilled or still to be fulfilled respectively. Buyer shall be held to pay this invoice as if it were a separate Agreement.

Article 18 Safeguarding

- Buyer shall safeguard Seller against claims filed by third parties concerning intellectual property rights on material or data provided by Buyer, which shall be used for and during the execution of the Agreement.
- If Buyer provides Seller with information carriers, electronic files or software etc., the former shall guarantee that said information carriers, electronic files or software are free of viruses and defects. Buyer shall be liable for all costs caused by viruses and defects in information carriers, electronic files or software, etc.

Article 19 Intellectual Property and Copyrights

- Without prejudice to the other stipulations of the present general terms and conditions, all intellectual property rights with respect to the goods shall be, and remain, vested in Seller.
- The Buyer shall not be allowed to introduce changes to the goods and material provided, unless agreed upon otherwise in writing.
- The designs, sketches, drawings, films, software and other material or (electronic) files, possibly produced by Seller within the framework of the Agreement, shall remain Seller's property, irrespective of the fact whether they have been handed over to Buyer or to third parties.

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4. All documents, such as designs, sketches, drawings, films, software, (electronic) files, etc., provided by Seller, shall be destined to be used by Buyer exclusively and must not be reproduced, made public or brought to the notice of third parties by Buyer without prior consent from Seller, unless the nature of the documents provided dictates otherwise.
5. Seller shall reserve the right to use the knowledge gained due to the execution of the work for other purposes, in so far no confidential information shall be brought to the notice of third parties when doing so.

Article 20 Secrecy

1. Both Parties shall be bound to secrecy of all confidential information they have received within the scope of the Agreement from each other or from another source. Information shall be considered to be confidential if the other party has indicated so or if the confidential character results from the nature of the information.
2. If a statutory provision or a judicial decision compels Seller to convey confidential information to third parties designated by law or by the court and Seller cannot for that purpose invoke a legal right to refuse to give evidence or such a right acknowledged or allowed by the competent court, Seller shall not be held to pay damages or compensation and the opposite party shall not be entitled to demand the dissolution of the Agreement on the ground of any damage resulting from said circumstance.

Article 21 Applicable law and disputes

1. Dutch law shall apply to each and every Agreement between Seller and the Buyer. The Vienna Sales Convention shall be explicitly excluded.
2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations. All disputes arising out of or in relation to the Agreement between the Parties shall exclusively be settled by the competent court of Amsterdam, The Netherlands.

Article 22 Changes to the Terms and Conditions, interpretation and their location

1. The present terms and conditions have been filed at the office of the Chamber of Commerce in Amsterdam.
2. The most recently filed version shall always apply, or, as the case may be, the version valid at the time the Agreement was concluded.