

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY WHEELSMFG EUROPE B.V.

## 1. Definitions

In the General Terms and Conditions below, the following definitions apply:

- WHEELSMFG EUROPE: Wheelsmfg Europe B.V., located at Hogelaan 8 in (9678 RB) Westerlee, the Netherlands, with Dutch Chamber of Commerce number 33159274, the party that makes an offer to supply goods and/or services as well as the party that has entered into an agreement for the supply of goods and/or services;
- Customer: any party to whom WHEELSMFG EUROPE has made an offer to deliver goods and/or services as well as the person with whom WHEELSMFG EUROPE has entered into an agreement for the delivery of goods and/or services;
- Offer: any offer to supply goods and/or services;
- Agreement: any agreement concluded between WHEELSMFG EUROPE and a customer and to which these terms and conditions have been declared applicable;
- These terms and conditions: these general terms and conditions of WHEELSMFG EUROPE;
- Parties: WHEELSMFG EUROPE and customer.

## 2. Applicability of the terms and conditions

**2.1** Only these terms and conditions apply, to the exclusion of general terms and conditions of third parties. These are explicitly rejected.

**2.2** These terms and conditions apply to and form an integral part of all agreements with WHEELSMFG EUROPE, to all deliveries of goods and/or services of WHEELSMFG EUROPE, as well as to all agreements relating thereto and all related acts, both of a preparatory and an executive nature, such as offers, quotations, order confirmations and deliveries.

**2.3** Agreements or conditions between WHEELSMFG EUROPE and the customer in deviation from, or in addition to these terms and conditions are only valid if WHEELSMFG EUROPE has expressly agreed to them in writing/they have been accepted by WHEELSMFG EUROPE and only apply to the relevant agreements.

**2.4** If one or more provisions in these general terms and conditions at any time for whatever reason turn out to be wholly or partially invalid, prove to be null and void or are annulled, the other provisions of these terms and conditions will remain in force and the relevant provision will be replaced immediately by mutual agreement by a provision that approximates the purport of the original provision as closely as possible. The customer is therefore bound in advance by the provision to be substituted.

## 3. Quotations and offers to the other party

**3.1** All offers made, quotations issued or advice given by WHEELSMFG EUROPE are drawn up on the basis of the information provided by the customer are completely without obligation, both in terms of price, content, execution, delivery time and deliverability, unless otherwise stated in writing, and do not bind WHEELSMFG EUROPE in any way, unless otherwise indicated.

**3.2** Insofar as an offer or quotation contains a non-binding offer and it is accepted by the customer, WHEELSMFG EUROPE has the right to revoke the offer within 2 working days after receipt of the acceptance by the customer.

**3.3** Insofar as offers are made to the customer, quotations are made or advice is given, the amounts stated therein are exclusive of VAT unless stated otherwise.

**3.4** The content of all information provided with a quotation, such as price lists, brochures and other data, is stated as accurately as possible. This information is only binding to WHEELSMFG EUROPE if this has been expressly confirmed in writing by WHEELSMFG EUROPE.

## 4. Formation of agreements

**4.1** An Agreement is concluded at the moment that the acceptance by the customer of the offer of WHEELSMFG EUROPE has reached WHEELSMFG EUROPE, with the explicit acceptance of the terms and conditions of WHEELSMFG EUROPE by the customer and the explicit notification that the customer waives the applicability of its own general terms and conditions.

**4.2** If the customer has accepted the offer of WHEELSMFG EUROPE by electronic means, WHEELSMFG EUROPE will confirm receipt of the acceptance of the offer by electronic means.

**4.3** An Agreement is concluded for the duration of the period specified in the Agreement.

## 5. Expiration of the agreement

**5.1** WHEELSMFG EUROPE only performs those activities that are described in the agreement with the other party. For work and/or deliveries for which no order confirmation is sent due to the nature and/or scope, the invoice also serves as an order confirmation, which is deemed to reflect the agreement correctly and completely.

**5.2** Any additions and/or changes to agreements, the terms and conditions or to the offer after the conclusion of the agreement and/or promises made by staff or on behalf of WHEELSMFG EUROPE by representatives and other persons, are only binding to WHEELSMFG EUROPE if these agreements and/or promises have been confirmed in writing by WHEELSMFG EUROPE.

**5.3** In the execution of the agreement, WHEELSMFG EUROPE is permitted, if WHEELSMFG EUROPE deems this necessary or desirable, to engage third parties for the proper execution of the assignment given to it, in the execution of the agreement. The costs of this will be passed on to the customer in accordance with the quotations provided by WHEELSMFG EUROPE.

**5.4** In that case, the customer indemnifies WHEELSMFG EUROPE against claims from third parties who suffer damage due to the execution of the agreement.

**5.5** If WHEELSMFG EUROPE comes to the conclusion that more or other work has been carried out than described in the agreement, WHEELSMFG EUROPE is entitled to charge the costs of that extra work to the customer. WHEELSMFG EUROPE will inform the customer of this without delay.

## 6. Prices

**6.1** All prices mentioned by WHEELSMFG EUROPE in the offers, quotations and advice are exclusive of VAT and exclusive of any other additional costs, including levies imposed by the government.

**6.2** If prices and/or rates of price-determining factors, such as wages, materials, currency exchange rates, purchase prices, undergo a change, due to whatever cause, WHEELSMFG EUROPE is entitled to adjust the price accordingly (annually). On the basis of these changes, the customer does not have the right to refrain from the cooperation.

**6.3** Unless otherwise stated in writing in the price list, offers or quotations, the prices quoted by WHEELSMFG EUROPE are:

- based on delivery from WHEELSMFG EUROPE's ex-factory/warehouse;
- mentioned in Dutch currency;
- excluding the costs of loading and unloading and insurance.

## 7. Delivery

**7.1** Unless otherwise stated in writing in the quotation or price list, the delivery will take place ex works/warehouse from WHEELSMFG EUROPE or another warehouse. The time of delivery is the

moment when the ordered goods leave the premises/warehouse of WHEELSMFG EUROPE, unless otherwise agreed.

**7.2** From the moment of delivery, including the time referred to in 8.1 and 8.2, the delivered goods are at the expense and risk of the customer.

**7.3** Insofar as WHEELSMFG EUROPE has mentioned deadlines for delivery times within which WHEELSMFG EUROPE will carry out its work, then it must be held that all the periods mentioned are not strict deadlines but are only indicative. WHEELSMFG EUROPE will inform the customer if it is expected that a communicated deadline will not be met.

**7.4** The customer may never refuse the execution of the work by WHEELSMFG EUROPE in the event that the communicated deadlines are exceeded. If the term is exceeded, the customer must send WHEELSMFG EUROPE a written notice of default and offer a reasonable period for compliance with the agreement. The parties may then be able to agree on a new date.

**7.5** If WHEELSMFG EUROPE needs data from the customer for the execution of its activities, the customer will ensure that WHEELSMFG EUROPE has the requested data in a timely manner or the data that the customer could reasonably expect to be required for the execution of the agreement. If the customer does not provide this information to WHEELSMFG EUROPE in a timely manner, WHEELSMFG EUROPE has the right to temporarily suspend the execution of the agreement until the necessary information is provided. WHEELSMFG EUROPE may charge the other party for the damage suffered by WHEELSMFG EUROPE as a result.

**7.6** WHEELSMFG EUROPE is entitled to postpone new deliveries until the customer has fulfilled all its outstanding (payment) obligations towards WHEELSMFG EUROPE.

**7.7** If there is a suspicion that the customer cannot meet the payment obligations, WHEELSMFG EUROPE reserves the right to request payment on delivery (cash on delivery).

## 8. Delivery

**8.1** The customer is obliged to cooperate with the delivery, as well as to take delivery of the delivered goods. In the absence of acceptance of the delivered goods by the customer, WHEELSMFG EUROPE reserves the right to pass on any associated costs (including the costs for storage and transport) to the customer.

**8.2** Acceptance is deemed to have been refused if the ordered goods have been offered for delivery, but delivery has nevertheless proved impossible. The day on which the delivery is refused counts as the day of delivery.

## 9. Transport, risks and packaging

**9.1** The method of transport, shipping, packaging and the like will be determined by WHEELSMFG EUROPE if no further instructions have been provided by the customer to WHEELSMFG EUROPE, without WHEELSMFG EUROPE bearing any liability for this.

**9.2** Unless WHEELSMFG EUROPE has taken out transport insurance, the shipment of goods will always take place, even if free delivery has been agreed, at the expense and risk of the buyer, even if the carrier demands on consignment notes, transport addresses and the like that the clause appears that all transport damage is at the expense and risk of the sender.

**9.3** The customer is liable for all damage (such as transport, water, fire damage and theft) caused during the transport of the goods. The customer must take out proper insurance against this risk.

**9.4** Unless expressly agreed in writing, the products will, if necessary and at the sole discretion of WHEELSMFG EUROPE, be provided with

packaging in which the products are customarily traded, all this with due observance of articles 6, 7 and 9.

**9.5** Unless expressly agreed otherwise in writing with the customer, WHEELSMFG EUROPE does not take back the packaging, unless it consists of special transport trolleys, crates or bags. These packaging materials are always taken back by WHEELSMFG EUROPE. The customer must therefore make these packaging materials available to WHEELSMFG EUROPE at all times.

**9.6** Both transport and consumer packaging will comply with existing and future legal packaging regulations and will be branded as such. In the event that the customer decides to return the packaging for reuse or to have it processed for reuse, the associated costs shall be borne by the customer.

## **10. Payment terms and collection costs**

**10.1** Insofar as nothing has been agreed between the parties regarding the payments, the payment must be made within 14 days of the invoice date, unless expressly agreed otherwise in writing. The value date indicated on the bank/giro statements of WHEELSMFG EUROPE are decisive and are considered as the day of payment.

**10.2** Payments must be made in the manner indicated by WHEELSMFG EUROPE and in the invoiced currency, unless expressly agreed otherwise.

**10.3** WHEELSMFG EUROPE may deduct payments from the customer first to pay the interest and/or costs due and then to pay the oldest outstanding invoices.

**10.4** At the time of or after entering into the agreement, the customer is obliged at the first request of WHEELSMFG EUROPE to provide sufficient security in connection with its payment obligations and other obligations arising from the agreement. Pending this provision of security, WHEELSMFG EUROPE is entitled to suspend its obligations.

**10.5** WHEELSMFG EUROPE may use goods as collateral for any outstanding amounts that WHEELSMFG EUROPE has in its possession on any basis whatsoever. WHEELSMFG EUROPE is therefore allowed to exercise the right of retention.

**10.6** The customer is not entitled to suspend its payment obligation to set off what WHEELSMFG EUROPE has to claim from the customer with what the customer believes it has to claim from WHEELSMFG EUROPE. Objections to invoice levels also do not suspend the payment obligation.

**10.7** If payment by the customer is not made within the period referred to in Article 10.1, the customer will be in default by operation of law without any notice of default being required.

**10.8** In the event of late payment, the customer is therefore automatically in default. The customer will then owe a default interest of 1% per month, or part thereof, or the higher statutory interest rate if applicable. The default interest is calculated from the moment the customer is in default until the day of full payment. This is without prejudice to WHEELSMFG EUROPE's right to full compensation based on the law.

**10.9** All costs of collection of the amount owed by the customer, both extrajudicial and judicial, are for the account of the customer. The amount of the collection costs owed to WHEELSMFG EUROPE is calculated in accordance with the collection rate of the Dutch debt collection practice (Rapport Voorwerk II). If actual collection costs are higher, they are eligible for reimbursement, as well as any court and enforcement costs, on which interest is also due.

## **11. Complaints**

**11.1** Any shortages or damage to the delivered goods and/or packaging that are present at the time of delivery must be stated by the customer on the

delivery note, the invoice and/or the transport documents. These reports must be detailed enough to allow WHEELSMFG EUROPE to respond appropriately.

**11.2** If the customer does not meet the requirements of Article 11.1, the customer is deemed to have purchased and approved what has been delivered. In that case, complaints in this regard will no longer be processed. The right to complain will therefore lapse for the customer. Malfunctions or defects that could not reasonably be detected within the aforementioned period must be reported to WHEELSMFG EUROPE in writing and with reasons immediately after discovery and no later than 3 months after delivery of the delivered goods.

**11.4** If and insofar as the complaint is found to be well-founded by WHEELSMFG EUROPE, then WHEELSMFG EUROPE is only obliged to repair the defect(s) or to replace the defective goods, without the customer being able to assert any right to any compensation whatsoever.

**11.5** If and insofar as the complaint is declared unfounded by WHEELSMFG EUROPE, any associated costs will be borne by the customer.

**11.6** Timely complaint by the customer does not relieve the customer of their payment obligation nor of the obligation to take delivery of and pay for the other ordered goods and/or goods.

**11.7** Return of the delivered goods can only take place after prior permission from WHEELSMFG EUROPE under the conditions to be determined by WHEELSMFG EUROPE.

## **12 Retention**

**12.1** Without prejudice to the provisions of the agreement, all goods delivered by WHEELSMFG EUROPE to the customer remain the property of WHEELSMFG EUROPE until the moment of full payment by the customer of all that the customer owes to WHEELSMFG EUROPE in respect of all the goods on which the supplies are based, concluded between WHEELSMFG EUROPE and the customer, written agreements including all joint (balance) obligations and all claims of WHEELSMFG EUROPE due to the default by the customer (including interest, costs and penalty) with regard to such agreements.

**12.2** The customer is in no way allowed to pledge the goods delivered by WHEELSMFG EUROPE to the customer, nor to encumber them in any other way with a limited right, as long as they are subject to retention of title.

**12.3** WHEELSMFG EUROPE is entitled to remove the delivered goods, based on the provisions of this article, from the customer or its holders if the customer does not comply with their obligations and/or there is a suspicion that the customer will not fulfil their obligations. The customer is obliged to cooperate with the aforementioned removal of the goods, possibly by dismantling, under penalty of a fine of € 5,000.00 per day that the buyer is/remains in default, if WHEELSMFG EUROPE explicitly claims this, without prejudice to the other rights of WHEELSMFG EUROPE on the basis of the law.

**12.4** In the event that other parties claim goods of which parts fall under the retention of title, the buyer is obliged to report the retention of title to these parties and not to proceed with delivery until after written permission from WHEELSMFG EUROPE.

## **13. Dissolution, indemnity and suspension**

**13.1** All claims that WHEELSMFG EUROPE has or will have against the customer are immediately due and payable if:

- a. the customer files for their own bankruptcy or is declared bankrupt;
- b. the customer proceeds to the surrender of the estate or submits an application for suspension of payments;
- c. all or part of the assets of the customer are seized at the expense of the buyer and this is not lifted within 10 days after the seizure;

d. the customer, does not fulfil, does not fully or correctly fulfil any obligations arising from the law or on the basis of contractual conditions (including these terms and conditions) after written notice of default;

e. the customer fails to pay an invoice amount or part thereof within the specified period;

f. the customer proceeds or decides to cease or transfer their business or a substantial part thereof, including the contribution of their business to a company to be established or already existing;

g. the customer decides to change the objective of their business or to dissolve it.

**13.2** In the aforementioned cases, the customer is in default by operation of law.

**13.3** In the cases referred to in 13.1, WHEELSMFG EUROPE is entitled, without any obligation to pay compensation and without prejudice to its rights, such as rights with regard to fines or interest that have already expired and the right to compensation, and without a notice of default or judicial intervention being required, to declare the agreement wholly or partially dissolved by a written notification to that effect to the customer and/or to immediately claim the amount due to WHEELSMFG EUROPE and/or to obtain security from the customer for (timely) fulfilment of its payment obligation before continuing to perform.

**13.4** WHEELSMFG EUROPE is also entitled to dissolve the agreement under circumstances that make the performance impossible or other circumstances that make the unchanged continuation of the agreement unreasonable.

## **14. Documents, tools, advice, etc.**

**14.1** Cost estimates, plans, catalogues, illustrations, drawings, measurements and weight statements or other documents belonging to offers or deliveries, as well as aids such as models, moulds, stamps, moulds and tools drawn up, manufactured or made available by WHEELSMFG EUROPE remain the property of WHEELSMFG EUROPE at all times, even if the manufacturing costs have been charged to the customer, and must be submitted to WHEELSMFG EUROPE at the first request of WHEELSMFG EUROPE. WHEELSMFG EUROPE will never be liable for damage to the customer, of whatever nature, as a result of the fact that certain tools are no longer available when reordering.

**14.2** Unless written permission from WHEELSMFG EUROPE has been issued, the customer guarantees that the information described in the previous paragraph will not be copied or counterfeited, or that it will be made available for inspection or handed over to third parties, whether or not for re-consumption. WHEELSMFG EUROPE is entitled to require the customer to cooperate in the signing of a confidentiality agreement submitted by WHEELSMFG EUROPE.

**14.3** The obligations of confidentiality remain in force after termination of the agreement, regardless of the reason for termination.

**14.4** The costs associated with the development of prototypes are borne by the customer.

**14.5** All moulds, tools, etc. made available to WHEELSMFG EUROPE for the execution of an order placed by the customer remain at the risk of the customer. WHEELSMFG EUROPE will never be liable for breakage or other causes resulting in unusability. All costs of repair or replacement are entirely borne by the customer.

**14.6** WHEELSMFG EUROPE has the right to destroy models, tools, stamps, moulds and any other aids which have been manufactured for a special order and for which no order has been received for two years, without notifying the customer concerned.

## **15. Industrial or intellectual property rights**

**15.1** The customer is not allowed to remove or change any indication regarding brands, trade

names, patents or other rights from the delivered goods by WHEELSMFG EUROPE, including indications regarding the confidential nature and secrecy of the delivered goods. The customer is obliged to impose this clause on its customer as a third-party beneficiary.

**15.2** WHEELSMFG EUROPE accepts no liability for infringements of intellectual or industrial property rights of third parties, which are caused by changes made to the delivered product without the permission of WHEELSMFG EUROPE.

#### **16. Force majeure clause**

**16.1** If WHEELSMFG EUROPE is prevented from (further) executing the agreement due to force majeure of a permanent or temporary nature, then WHEELSMFG EUROPE is entitled, without any obligation to pay compensation, to dissolve the agreement in whole or in part by means of a written notification to that effect without judicial intervention, without prejudice to the right of WHEELSMFG EUROPE to payment by the customer for services already performed by WHEELSMFG EUROPE before there was any question of the force majeure situation, or suspension of the (further) performance of the agreement.

**16.2** Force majeure includes all circumstances as a result of which WHEELSMFG EUROPE is temporarily or permanently unable to meet its obligations, such as strikes, transport options, fire, government measures, including in any case import and export bans, quotas and operational disruptions at its premises or at its suppliers, as a result of which WHEELSMFG EUROPE is unable to fulfil its obligations towards the customer any longer.

#### **17. Limitation of Liability**

**17.1** With due observance of the other provisions of this article, the liability of WHEELSMFG EUROPE is limited to what is laid down in this provision and to what is stipulated in article 11 with regard to complaints, so that WHEELSMFG EUROPE is never liable for any (further) damage, including consequential damage, in connection with goods delivered by it, and WHEELSMFG EUROPE is not obliged to compensate for trading damage, loss of profit, damage as a result of personal accidents, damage resulting from claims of third parties against the customer or any other damage, or at least the liability of WHEELSMFG EUROPE will never exceed the value of the goods delivered by it.

**17.2** WHEELSMFG EUROPE is not liable for damage of any nature whatsoever that has arisen or been caused by the use of the delivered goods or by the unsuitability thereof for the purpose for which the customer has used it.

**17.3** WHEELSMFG EUROPE is not liable for damage of any kind caused by acts or omissions by personnel employed by WHEELSMFG EUROPE or by other persons whose services WHEELSMFG EUROPE uses, including recommendations or other instructions by these persons for the application and use of the services provided by WHEELSMFG EUROPE, except in the case of intent and/or gross negligence.

**17.4** Insofar as WHEELSMFG EUROPE cannot be regarded as a producer in accordance with Article 6:185 et seq. of the Dutch Civil Code, the customer is obliged to contact the producer directly with regard to (personal) damage suffered as a result of a defect in goods delivered by WHEELSMFG EUROPE. WHEELSMFG EUROPE is not liable for such damage, unless it concerns products that WHEELSMFG EUROPE has imported into the EC from outside the EC or it cannot be determined who the producer is and WHEELSMFG EUROPE has not informed the customer of the identity of the producer within a period of 30 days after the submission of the claim by the customer.

**17.5** The customer indemnifies WHEELSMFG EUROPE against all claims by third parties for compensation of damage related to goods delivered by WHEELSMFG EUROPE to the customer, unless the damage is the result of intent/gross negligence on

the part of WHEELSMFG EUROPE personnel and/or third parties engaged by it.

#### **18. Choice of law and jurisdiction**

**18.1** Dutch law applies to all legal relationships and agreements in which WHEELSMFG EUROPE is involved. This also applies where an obligation is partly performed abroad or where the party concerned is established abroad. The Vienna Sales Convention does not apply and any future international regulations on the sale of goods whose effect can be excluded by the parties do not apply.

**18.2** For the settlement of disputes arising from or in connection with the agreement, only the court in the place of business of WHEELSMFG EUROPE is competent, unless legal provisions expressly exclude this or if WHEELSMFG EUROPE prefers a judge in another district. However, WHEELSMFG EUROPE reserves the right to submit the dispute to the legally competent court.

**18.3** Before appealing to the court, the parties will make every effort to resolve the dispute among themselves.

#### **19. Availability and Modification of Terms**

**19.1** These general terms and conditions have been or will be filed with the Chamber of Commerce in Groningen, the Netherlands.

**19.2** At all times, the most recently filed version of these terms and conditions applies, or the version that applied when the legal relationship with WHEELSMFG EUROPE was entered into.

**19.3** The Dutch version of these general terms and conditions is leading in the interpretation of the provisions.

#### **20 Data Privacy**

**20.1** WHEELSMFG EUROPE will process all personal data that it collects and processes in the context of the execution of agreements in accordance with applicable data privacy laws.

**20.2** The customer has the right to inspect, correct and delete their personal data, in accordance with the applicable legislation.