

## GENERAL TERMS AND CONDITIONS

OF: Element1

### **Article 1 Definitions**

- Element1 : Element1 a brandname of Element1. (CoC no. 62109901), the user of the General Terms and Conditions, the seller, the service provider, the contractor;
- Other Party : Element1's counterparty, the buyer and the principal;
- The Carrier : the party providing the logistics services;
- The Shipper : the party where the goods are collected;
- Addressee : the consignee, tenant or co-tenant or employee working at the delivery address where the Carrier is to deliver the goods;
- Agreement : the agreement between Element1 and the Other party.

### **Article 2 General**

- 2.1 These General Terms and Conditions will apply to every offer and Agreement between Element1 and the Other Party, if and insofar the parties have not expressly deviated from these Terms and Conditions in writing.
- 2.2 The current Terms and Conditions will also apply to all agreements with Element1 for the performance of which Element1 uses the services of third parties.
- 2.3 Any applicability of the Other Party's general conditions will be expressly excluded, unless the parties have agreed otherwise in writing.
- 2.4 If Element1 concludes agreements with the Other Party more than once, the present General Terms and Conditions will apply to all subsequent agreements, irrespective of whether same have been explicitly declared applicable.
- 2.5 In addition to these General Terms and Conditions, the General Terms and Conditions of Carriage 2002 [*Algemene Vervoerscondities 2002*, or *AVC*], filed with the Registries of the District Courts of Amsterdam and Rotterdam, will apply in the event of domestic transport, and the Convention on the Contract for the International Carriage of Goods by Road (CMR), concluded in Geneva on 31-08-1956, will apply in the event of cross-border carriage by road, to the extent that these Terms and Conditions do not deviate from same.
- 2.6 If one or more provisions of these General Terms and Conditions are fully or partially null and void or are nullified, the remaining provisions of these General Terms and Conditions will continue to apply (fully or partially, as the case may be).

## **Article 3 Offers/orders/prices**

- 3.1 All of Element1's offers, in whatever form, will be free of obligation, unless a term for acceptance is stated in the offer.
- 3.2 If a natural person concludes an Agreement on behalf or at the expense of another natural person, his/her signature on the form/order will also serve as certification that he/she is duly authorised to do so. This person, in addition to the other natural person, will be jointly and severally liable for all obligations ensuing from the Agreement.
- 3.3 Agreements to which Element1 is a party will not be deemed to have been concluded until Element1 has accepted in writing an order placed by the Other Party or until Element1 has actually delivered the goods sold from its warehouse to the Other Party or to the actual storage location.
- 3.4 In the event of a verbal Agreement, the invoice will be considered to contain a correct and complete representation of the Agreement, unless a written complaint is lodged within 8 days after the invoice date.
- 3.5 The prices stated in the offers/catalogues/price lists will be based on delivery ex Element1's warehouse, in euro, and exclusive of Dutch VAT, government levies, shipping costs, freight charges, export levies, insurance costs, loading costs, packaging costs and handling expenses, unless the parties have explicitly agreed otherwise.
- 3.6 Elements1 may pass on any price rises if between the time of the offer/acceptance and the commencement of the performance of the contract, a VAT increase or another statutory or cost-price increase of more than 5% has occurred.
- 3.7 Element1 will be entitled to adjust its prices each year,
- 3.8 Discounts may only be agreed in writing.
- 3.9 Element1 may refuse an order or part of an order or attach conditions to an order without stating its reasons.

## **Article 4 Delivery**

- 4.1 Delivery will be made ex-works Element1's unless the parties agree otherwise.
- 4.2 Delivery shall always be at the Element1 last known delivery address of the Other Party given by the Other Party.
- 4.3 Element1 will be entitled to charge the Other Party an advance payment. After payment of the advance has been effected, delivery will be made to the Other Party, unless the parties have agreed otherwise.
- 4.4 The Other Party will be obliged to take delivery of the goods when Element1 delivers same to it or has same delivered to it by third parties, or when the goods are made available to it pursuant to the Agreement.
- 4.5 If the Other Party refuses to take delivery of the goods or has neglected to provide information or instructions that are necessary for the delivery, Element1 will be entitled to store the goods at the Other Party's expense and risk. If the Other Party does not take delivery of the goods within two months, the Other Party will continue to owe Element1 the sales prices and Element1 will be entitled to sell the goods to another party. If it is unable to do so, Element1 will be entitled to destroy the goods. The damage incurred by Element1 due to such resale or destruction of the goods will be borne by the Other Party.
- 4.6 If delivery is effected by C.O.D. (Cash on Delivery), Element1 will charge the Other Party C.O.D. charges.
- 4.7 If Element1 has stated a delivery term, that term will be indicative only. A stated delivery term may therefore never be considered a firm deadline. If a term is exceeded, the Other Party must give Element1 written notice of default and grant it a reasonable period of time to perform its obligations.
- 4.8 If Element1 requires information from the Other Party within the context of the Agreement's performance, the delivery period will commence after the Other Party has made such information available to Element1.
- 4.9 Element1 will be entitled to make partial deliveries. Element1 will be entitled to invoice partial deliveries separately.

## **Article 5 Models, illustrations**

- 5.1 The models, illustrations, figures, measurements, weights or descriptions included in offers/advertisements/price lists must be considered as merely indicative.
- 5.2 If the Other Party has been shown a sample or an illustration, the parties will presume that such has been shown as an indication only, unless it has been explicitly agreed by writing that the good to be delivered will be completely identical.

## **Article 6 Inspections, complaints**

- 6.1 The Other Party will be obliged to inspect the goods delivered, or have others do so, at the time of delivery. In doing so, the Other Party should inspect whether the quality and quantity of the goods delivered are in accordance with the agreements made. Any defects and deviations must be stated on the consignment note/packing list and also reported by writing within 48 hours, in default of which the goods delivered will be presumed to be sound.
- 6.2 Any shortfalls must be reported to Element1 in writing within eight days of delivery.
- 6.3 Any complaints regarding the invoice must be submitted in writing within 30 days of the invoice date.
- 6.4 After the end of the term during which a complaint may be lodged, the Other Party will be deemed to have approved the goods delivered or the invoice, as appropriate.
- 6.5 If a timely complaint is submitted, the Other Party will remain obliged to take delivery of and pay for the goods delivered. If the Other Party wishes to return defective goods, this may only be effected with Element1's prior written permission. Return shipments must be effected carriage paid, undamaged and in the original packaging using a return form.
- 6.6 The following situations will under no circumstances justify lodging a complaint:
  - deviations in colour, weight and measurements of less than 10%;
  - any typesetting, printer's or typographical errors in the offer, advertisements or price list;
  - natural irregularities.
- 6.7 A complaint / reclamation is forwarded to the manufacturer, as the manufacturer guarantees the soundness of the goods delivered. The manufacturer will investigate the complaint / reclamation and determine whether the complaint is justified. In determining whether a complaint / reclamation is justified Element1 will take into account the provisions hereinafter provided in these terms and conditions of reclamation.
- 6.8 If a complaint / reclamation is justified, taking into account the relevant provisions set out in these terms and conditions, Element1 will replace the goods delivered, unless this has become demonstrably pointless for Other Party. However Element1 is in all cases only liable within the limits of what is provided in article "Liability" of those conditions.

## **Article 7 Payment**

- 7.1 Payment must be made in euros within the agreed term, or in the absence of an agreed term, within eight days of the invoice date in the manner designated by Element1, unless the parties have agreed otherwise. Objections to the amounts stated in invoices will not relieve the Other Party of its payment obligation.
- 7.2 If the Other Party fails to effect payment within the agreed term, the Other Party will be in default by operation of law. In that event, the Other Party will owe 1.5 % in interest per month or part of a month, unless the statutory interest rate or the statutory commercial interest rate is higher, in which case the highest interest rate will apply. The interest with respect to the payable amount will be calculated from the time that the Other Party is in default until the time of full payment.
- 7.3 If the Other Party is wound up, is declared bankrupt or files for bankruptcy, is admitted to statutory composition pursuant to the Dutch Natural Persons Composition Act [*Wet schuldsanering natuurlijke personen*], is placed under guardianship, dies, or the Other Party's enterprise is transferred or discontinued, an attachment is levied against the Other Party or the Other Party is granted a suspension of payments, provisional or otherwise, Element1's claims in respect of the Other Party will become immediately exigible.
- 7.4 Element1 will be entitled, if so agreed, to charge the Principal a 2% surcharge on late payments, which will not be payable if payment is effected within eight days of the invoice date.
- 7.5 Payment must be made to Element1, unless Element1 has transferred or pledged its claim in respect of the Other Party to a third party. In such case, Element1 will inform the Other Party that it will be relieved of its payment obligation if it effects payment to that third party.
- 7.6 Payments will first be used to cover the costs, then to cover any interest due and finally to cover the principal sum and the accrued interest.

## **Article 8 Collection costs**

- 8.1 If the Other Party is in breach of contract or in default of performing its obligations or performing same in time, all costs incurred in obtaining extra-judicial payment will be borne by the Other Party. The collection costs will be calculated in accordance with the collection rate recommended by the Netherlands Bar Association [*Nederlandse Orde van Advocaten*] in collection cases, subject to a minimum of EUR 350.
- 8.2 If Element1 has incurred higher costs, such costs will also qualify for reimbursement. Any judicial and enforcement costs will also be charged to the Other Party.

## **Article 9 Retention of title**

- 9.1 All goods Element1 delivers will remain Element1's property until the Other Party has fulfilled all of its obligations ensuing from the agreements concluded with Element1.
- 9.2 The Other Party will not be entitled to pledge or lease the goods covered by the retention of title or to resell them to customers, or to encumber them in any other manner, unless the parties have agreed otherwise.
- 9.3 If third parties levy an attachment on the delivered goods subject to the retention of title or wish to create or enforce rights to same, the Other Party will be obliged to inform Element1 of this fact as soon as possible.
- 9.4 The Other Party must insure the goods covered by the retention of title at replacement value. Any damages paid by the insurer will replace the aforementioned goods and will accrue to Element1.
- 9.5 Any goods supplied by Element1 that are covered by the retention of title pursuant to paragraph 1 of this Article may not be sold on without Element1's permission and may never be used as a means of payment.
- 9.6 Should Element1 wish to exercise its proprietary rights as referred to in this Article, the Other Party hereby grants its unconditional and irrevocable permission to Element1 or any third parties to be designated by Element1 to enter those places where Element1's goods are located and to recover those goods.

## **Article 10 Suspension and dissolution**

- 10.1 Element1 will be entitled to suspend performance of its obligations or to dissolve the Agreement in the following event:
  - if the Other Party fails to perform the obligations arising from the Agreement or fails to perform them in time or in full; circumstances arise following the Agreement's conclusion that provide good reason for fearing that the Other Party will not perform its obligations, or will not perform such in good time or in full;
- 10.2 In addition, Element1 will be entitled to dissolve the agreement or have it dissolved if circumstances arise of such nature that performance of the agreement is impossible or can no longer be required pursuant to the standards of reasonableness and fairness, or if any other circumstances arise of such nature that continued unamended maintenance of the agreement can no longer reasonably be expected.
- 10.3 If the agreement is dissolved, Element1's claims in respect of the Other Party will become immediately due and payable. If Element1 suspends performance of its obligations, it will retain its rights and claims under the law and the Agreement.
- 10.4 In case of application of those mentioned in this article, Element1 reserves the right to recover the costs incurred for Element1 and / or damage to the Other Party.

## **Article 11 Cancellation**

- 11.1 If the Other Party wishes to cancel an Agreement for a standard or stock item after same has been concluded with Element1 but before Element1 has effected delivery to the Other Party, the Other Party will be charged 10% of the order price agreed upon, including Dutch VAT, in cancellation costs, without prejudice to Element1's right to full damages, including loss of profit.
- 11.2 Notice of cancellation must be given in writing.
- 11.3 Orders for goods purchased especially for the Other Party cannot be cancelled.
- 11.4 If the Other Party has already paid Element1 the order price, the Other Party will be reimbursed the order price less 10% and the freight charges in the event of cancellation.

## **Article 12 Warranty**

- 12.1 The goods supplied by Element1 will satisfy the requirements and specifications set by Dutch law.
- 12.2 This warranty will be limited to:
- manufacturing defects and will therefore not include any damage resulting from wear and tear, improper, negligent or inexpert use or faulty or improper processing, handling, maintenance or storage;
  - 12 months after date of invoice
  - deliveries to Other Parties within the EU;
  - replacement or repair of the good; and the manufacturer's warranty, unless otherwise agreed.
- 12.3 This warranty will lapse:
- in the event of adaptations of, alterations to or changes to the delivered good by the Other Party or a third party; or in the event of use for a purpose other than that indicated.
- 12.4 As long as the Other Party fails to perform its obligations ensuing from the Agreements concluded between the parties, it cannot invoke this warranty. Reference is also made to article "6 Inspections, complaints"

## **Article 13 Liability**

- 13.1 If Element1 is liable for direct loss/damage, that liability will be limited to the amount paid out by its insurer, or in any event to the invoice amount, or in any event to that part of the invoice to which the liability pertains.
- 13.2 Element1 will under no circumstances be liable for indirect damage, including consequential damage, loss of turnover and profit, lost savings and any damage due to an interruption in business operations.
- 13.3 Element1 will under no circumstances be liable for damage resulting from materials on or in the good that have been declared unfit because of changes in environmental law since the Agreement's conclusion.
- 13.4 Element1 will under no circumstances be liable for any deterioration of the good due to improper storage, processing, use or maintenance by the Other Party or a third party.
- 13.5 The Other Party will indemnify Element1 against any claims of third parties that may incur damage relating to the Agreement's performance, which damage is attributable to the Other Party.
- 13.6 Element1 will under no circumstances be liable for damage ensuing from incorrect use of the good or from use for a purpose other than that for which the good is intended.
- 13.7 Under no circumstances will Element1 be liable for any loss/damage resulting from any advice given. Advice will always be given on the basis of the facts and circumstances known to Element1 and in mutual consultation, in which respect Element1 will always use the Other Party's intention as a guideline and starting point.
- 13.8 The Other Party should ascertain in advance whether the purchased goods are suitable for the purpose for which it intends to use same. Should it emerge in retrospect that the purchased good is not suitable for its intended use, Element1 cannot be held liable for any ensuing damage/loss.



## **Article 14 Passing of risk**

14.1 The risk with respect to the loss of or damage to the goods that are the subject of the Agreement will pass to the Other Party when same are constructively and/or actually delivered to the Other Party and therefore come under the Other Party's control or under the control of a third party designated by the Other Party.

## **Article 15 Force majeure**

15.1 Element1 will not be obliged to fulfil any obligation if it is prevented from doing so due to a circumstance which cannot be attributed to gross negligence or an intentional act or omission on its part, or for which it is not liable pursuant to the law, a juristic act or generally prevailing opinion.

15.2 In these General Terms and Conditions, the term '*force majeure*' must be understood to mean, in addition to its meaning according to statutory and case law, all external causes, foreseen or unforeseen, which Element1 cannot influence, but as a result of which Element1 is fully or partially unable to perform its obligations, or unable to perform them on time. This will include strikes at Element1's company, transport strikes, traffic congestion, tailbacks, car trouble, theft, fire, export impediments, power failures and delays in the supply of goods by suppliers.

15.3 Element1 will also have the right to invoke *force majeure* if the circumstance preventing fulfilment, or further fulfilment, arises after it should have fulfilled its obligations.

15.4 Element1 may suspend the obligations ensuing from the Agreement while the situation of *force majeure* lasts. If this period continues for more than two months, Element1 will be entitled to dissolve the Agreement without being obliged to pay the Other Party damages.

15.5 To the extent that Element1 has performed part of its obligations arising from the Agreement or is able to perform part of same at the time that the situation of *force majeure* first occurs, and that part performed or to be performed has independent value, Element1 will be entitled to invoice the part performed or to be performed separately. The Other Party will be obliged to pay that invoice as though it pertained to a separate Agreement.

## **Article 16 Copyrights**

16.1 Without prejudice to the provisions of these General Terms and Conditions, Element1 reserves the rights and powers vested in it pursuant to the Dutch Copyright Act [*Auteurswet*].

16.2 All brochures, catalogues, price lists, documents and other materials or electronic or other files made available by Element1 will remain Element1's property, irrespective of whether same have been made available to the Buyer or to third parties, unless provisions to the contrary have been agreed. Such goods are exclusively intended for the Other Party's use and may not be reproduced, made public or be brought to the notice of third parties without Element1's prior permission, unless the contrary ensues from the nature of the documents provided.

## **Article 17 Authentic version**

The Dutch-language version of these Terms and Conditions is the only authentic version. In the event of any discrepancy between the Dutch text and a translation, the Dutch text will prevail.

## **Article 18 Disputes**

The competent court in the city or town where Element1 has its registered office will be competent to take cognisance of any disputes between the parties, to the exclusion of all other courts. Nevertheless, Element1 will be entitled to submit any disputes to the competent court according to the law.

## **Article 19 Applicable law**

All agreements between Element1 and the Other Party apply to Dutch law with the exclusion of the application of the CISG.

## **Article 20 Filing of these Terms and Conditions**

These Terms and Conditions have been registered at the Chamber of Commerce under number 62109901 on the 4<sup>th</sup> of February 2015.

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