

# DAJO INTERNATIONAL BV

## General Terms and Conditions

### 1. Definitions

- 1.1 GTCs: These General Terms and Conditions.
- 1.2 Agreement: all agreements covering purchases, sales and/or contracting of work, or other types of agreements which we conclude with customers, and all consequent and/or related agreements and/or commitments.
- 1.3 Offer: Every offer which we make to a (potential) customer.
- 1.4 We: DAJO International BV who apply these Terms and Conditions as such and which act in the capacity of sellers, suppliers and/or contractors in agreements, or, in the case of offers, as the party making the offer.
- 1.5 Customer: All parties which conclude an agreement with us, within the meaning of Clause 1.2, or which receive an offer from us, within the meaning of Clause 1.3.
- 1.6 Days: All calendar days.
- 1.7 Complaints: All the customer's grievances concerning the quality or quantity of goods and services supplied.
- 1.8 Our depot: our commercial properties and/or grounds and/or other locations at which we segregate goods for delivery and prepare them for dispatch.

### 2. Application

- 2.1 All agreements concluded by us are subject to these GTCs. All offers which we make are also subject to these GTCs.
- 2.2 Regardless of date of notification, agreements concluded with us and offers made by us shall not be governed by any other GTCs, such as those of the customer, without our explicit consent, issued to the customer in writing, to the application of such other GTCs. In no circumstances shall such consent denote that other agreements between us and the customer are subject to the customer's GTCs.
- 2.3 The stipulations of these GTCs shall not apply if and in as far as such is prohibited by statutory requirements. If a stipulation is nullified on these grounds in certain circumstances, the regulation which is most favourable to us shall apply and all other stipulations shall remain fully in force.
- 2.4 In all other cases, departures from these GTCs are permissible only with written consent signed by both parties.

### 3. Offers/conclusion

- 3.1 Our offers are made without obligation. Any final term stipulated in an offer shall be binding on the customer only. We have the right to withdraw our offers within 2 days of receiving confirmation of acceptance.
- 3.2 Subject to withdrawal option, within the meaning of Clause 3.1, agreements shall be concluded as of the date on which we receive full acceptance of our offer, confirmed with writing by the due date. If our customer accepts our offer subject to variations of minor significance, such variations shall not form part of the agreement with us and an agreement shall be concluded in accordance with our offer.

- 3.3 Agreements shall also be deemed to have been concluded when we deliver goods in accordance with the accompanying forwarding documents/invoice.

### 4. Prices

- 4.1 Unless a fixed price is agreed, prices are as stated in our price list effective on the delivery date.
- 4.2 Our prices are stated exclusively of value added tax, other taxes and duties and or transport and insurance costs.
- 4.3 We have the right, within reason, to charge cost increases to the customer. Customers shall be notified of such increases in writing.

### 5. Delivery

- 5.1 Unless other methods of delivery are agreed, deliveries shall be deemed to have taken place after we have segregated goods for delivery and prepared them for dispatch at our depots, and have notified the customer thereof in writing.
- 5.2 Following delivery, the customer shall bear the full risks for the delivered goods.
- 5.3 If goods we deliver can not be transported to their destination due to circumstances for which we cannot be held responsible, we shall store the goods at the customer's risk and expense.
- 5.4 We have the right to select the means of transportation.
- 5.5 We have the right to make part-deliveries.
- 5.6 We have the right to require cash on delivery.
- 5.7 Unless we have explicitly agreed to a specific delivery date in writing, stated delivery dates can in no case be regarded as final. In the event of late delivery, the customer is required to serve us with notice of default in writing, allowing us a reasonable period within which to fulfil our delivery commitments, during which neither the customer nor any third party has the right to claim any compensation for damage from us. This Clause shall not apply in the event of temporary or enduring shortcomings, within the meaning of Article 6, for which we cannot be held responsible.

### 6. Force majeure

- 6.1 In the event of shortcomings due to enduring circumstances for which we cannot be held responsible, but which entail that we are unable to meet our commitments, we have the right, within a reasonable period, to cancel all or part of the agreement by means of written notification, without liability to pay the customer any compensation for damages or to reimburse the customer for any ensuing benefits we may have enjoyed.
- 6.2 "Shortcomings due to circumstances for which we cannot be held responsible", within the meaning of Clause 6.1, include shortcomings due to war, the threat of war, unrest, fire, factory breakdowns, strikes, blockades, lock-outs, traffic disruptions, disruptions in supplies of raw materials/semi-manufacturers, illness of employees and the failure of sub-suppliers/contractors to fulfil their commitments, or to do so on time.

- 6.3 Shortcomings due to circumstances for which we cannot be held responsible shall be deemed to be enduring if the activity in question cannot be performed within 60 days of the onset of the circumstances concerned.
- 6.4 If the activity can be performed within 60 days, the circumstances giving rise to the shortcomings are not deemed to be enduring and neither we, nor the customer, may cancel the agreement. Our performance commitment shall be suspended, without liability to pay the customer any compensation for damages or to reimburse the customer for any ensuing benefits we may have enjoyed.

## 7. Security

We have the right at all times to require that the customer provide security for the fulfilment of its commitments. If a customer neglects or refuses to provide security within the period we determine, we have the right to rescind the agreement by means of written notification. If we have already delivered goods to the customer, the latter is required to return these to us within 5 days of the notification date. The customer is also required to compensate us for all damages such which we suffer as a result of its neglect or refusal.

## 8. Payment

- 8.1 Payments shall be made within 15 days of the invoice date, without cost, deductions or any settlement of receivables, unless the customer wishes to settle its cash receivables from us under its statutory rights to do so and has notified us accordingly, in writing, within 7 days of the invoice date.
- 8.2 Payments shall be made in the invoice currency to our offices or to one of our bank or giro accounts.
- 8.3 payments shall first be applied to the settlement of costs, then to the settlement of interest and thereafter to the settlement of outstanding invoices, in chronological order, even if the customer states that its payment relates to other invoices and/or debts.
- 8.4 A customer which fails to pay on time shall be in default, without notification thereof being required, and shall be liable to pay us interest of 1.5% of the invoice amount for each month or part of a month following the payment date, as defined in Clause 8.1, for which payment is overdue.
- 8.5 If a customer remains in default for more than 15 days, we have the right to institute debt collection proceedings. In this case, the customer is liable to cover our extra-judicial collection costs, in accordance with the collection charges of the "Nederlandse Orde van Advocaten" (Netherlands Order of Lawyers), the minimum amount being € 45.00.
- 8.6 A customer which defaults on a payment commitment to us shall be deemed to be in default in respect of all its outstanding debts to us. In this case, Clauses 8.4 and 8.5 shall apply accordingly.

## 9. Reservation of ownership / non-possessory lien

- 9.1 All goods we deliver to a customer shall remain our property until the customer has settled all our receivables under the purchasing/contracting agreements covering such goods and the work performed therefor, plus interest and costs, and any of our other receivables relating to such customer's failure to fulfil the agreement.

- 9.2 If a customer applies goods which we deliver, and which are subject to an ownership reservation, for the production of new goods, it shall follow our instructions in the processing thereof and shall reserve the goods on our behalf. The customer shall become the owner of the goods only at such time as our ownership reservation lapses through settlement of all our receivables.
- 9.3 If we have supplied a customer with goods which are subject to an ownership reservation, that customer shall grant us, and we shall accept, non-possessory lien on such goods as security for the fulfilment of the customer's commitments in respect of our outstanding receivables from the customer, other than those referred to in Clause 9.1. At our earliest request, the customer shall sign a deed conferring the lien. In this case, the customer guarantees its competence to pledge the goods and that the goods are not encumbered by any lien and/or restricted rights, other than our own rights.
- 9.4 The customer has the right to resell or process all goods which are subject to ownership reservation/non-possessory lien in the normal way, as part of its normal business operations.
- 9.5 If the customer resells the goods, we have the right to require that the customer grant us non-possessory lien to its receivables from the buyer in respect of the sale.
- 9.6 The customer shall treat the goods referred to in this Article with due care. The customer shall insure the goods against all disasters, on the basis of the invoice value. The customer shall provide us with the names and addresses of the insurers and with copies of the policies, at our earliest request. The customer shall also grant us non-possessory lien to its receivables from the insurer in this respect, at our earliest request, in as far as this is not afforded by law.
- 9.7 Subject to the stipulations of Clause 9.4 a customer may not pledge the goods referred to in this Article to third parties, or dispose of, transfer or limit, in any way which is to our disadvantage, its legal or actual right of disposal of the goods in question in any other way.

## 10. Quality and complaints

- 10.1 For a period of no more than 6 months following the date of delivery, we guarantee the sound quality of the goods we deliver and the materials used therefor, provided the goods are used with care, in the normal way, in accordance with our instructions and for the purpose for which they are intended. The guarantee is not valid if we deliver goods of lower quality by explicit agreement.
- 10.2 Immediately on delivery, the customer shall count, measure, weight and inspect the goods for visible defects, and for invisible ones which are easily detected, prior to storage or use. Once used, goods are deemed to satisfy the terms of agreement unless they prove to have invisible defects which cannot easily be detected.
- 10.3 Complaints concerning quantities, dimensions, weights, visible defects and easily detectable invisible defects must be submitted to us immediately if the nature of the goods allows and, in all other cases, in writing within 14 days of the delivery of the goods. The final sentence of Clause 10.2 shall apply accordingly.
- 10.4 If, within six months of the date of delivery, goods which we supply prove to have invisible defects which are not easy to detect, complaints must be submitted in writing within 14 days of the discovery of such a defect.

- 10.5 Customers must accept the usual 10% tolerances in our branch of industry regarding quantities, dimensions and weights.
- 10.6 In respect of our customers, we are required to repair, replace or refund the invoice value of goods which do not satisfy the standards described in Clause 10.1, providing that the customer conducts the checks and follows the complaints procedures described in Clauses 10.2, 10.3 and 10.4, thoroughly and in good time.
- 10.7 Goods may be returned to us only with our written consent, both to their return and to the method of dispatch. The customer continues to bear the risk of the goods.
- 10.8 Complaints shall in no event entitle the customer to suspend its payment commitments.

#### **11. limitation of liability / Product liability risk**

- 11.1 Subject to the stipulations of section 6:185 of the Netherlands Civil Code, we have no obligation to compensate customers for damages beyond repair or replacement of goods, or refunding of the invoice value, as described in Clause 10.6.
- 11.2 In particular, we are not liable for direct or indirect damages, consequential damages, loss of profits, emotional injury, damages caused by subordinates, assistants and/or sub-contractors - even when attributable to malicious intent and/or gross negligence on their part - or for damages caused by the use of aids, suffered by our customers or by third parties.
- 11.3 If a customer resells goods supplied by us, or if it processes or incorporates such goods in new products which it subsequently sells, that customer is required to arrange adequate insurance cover against the product liability risk assigned under Section 6:185 of the Netherlands Civil Code. The customer undertakes to send us a copy of the relevant policy at our earliest request.
- 11.4 The customer indemnifies us against all third party claims for which we cannot be held liable under the foregoing.

#### **12. Cancellation**

In all cases in which we cancel an agreement with a customer by written notification, the customer is required to compensate us for all the damages, cost and loss of profit, and to return delivered goods to us. The customer continues to bear the risk of the goods until we have received and approved them. The commitment to pay compensation for damages and loss of profit shall not apply if we cancel an agreement under the stipulation of Article 6, in relation to shortcomings due to enduring circumstances for which we cannot be held responsible.

#### **13. Infringement of third-party rights**

Our customer shall ensure that goods which we produce in accordance with instructions or drawings supplied by the customer, or with the aid of the customer's moulds or forms, shall not infringe on the intellectual property rights of third parties. A single instance of such infringement shall, in itself, afford us the right to rescind an agreement by written notification. The customer indemnifies us against all claims from third parties rightful claimants in relation to such infringements.

#### **14. Special goods**

- 14.1 Unless explicitly agreed otherwise, we have the right to produce for third parties any special goods which we produce for a specific customer.
- 14.2 Samples of special goods must be inspected by the customer within 14 days of their dispatch by us. In the absence of notification of rejection within 14 days, the samples shall be deemed to have been approved.
- 14.3 Unless explicitly agreed otherwise, all models, moulds, samples, forms, drawings and all other equipment and instructions relating to the production of special goods are, and shall remain, our property.
- 14.4 Moulds shall be replaced, repaired and maintained at the customer's expense.
- 14.5 Drawings, know-how and designs which we make available to a customer may not be copied, disclosed or revealed to third parties without our written consent. They must be returned to us immediately after use. For each infringement of this Clause, the customer shall be liable to pay a fine of €45,378.00, payable immediately on demand, plus a further €4,538.00 for each day that such infringement continues.
- 14.6 We have the right to destroy moulds, regardless of whether these are owned by ourselves or by the customer, if they have not been used for five years. We shall notify the customer in writing, 3 months prior to the end of the 5-year period, of our intention to scrap a mould.

#### **15. Applicable law**

All agreements concluded with us, and all consequent commitments, are subject to Netherlands law and Netherlands international private law, not including the 1980 Vienna Convention on the International Sale of Goods.

#### **16. Place of execution**

The execution of agreements is deemed to take place at the location at which we are established.

#### **17. Disputes**

All disputes relating to agreements concluded with us, and/or to commitments arising therefrom, shall be brought before the competent court, as designated by law, for the location at which we are established, unless a different Cantonal Court is stipulated to be the competent court under Article 100-1 of the Netherlands Code of Civil Procedure.

#### **18. Evidence**

- 18.1 In the absence of comprehensive evidence to the contrary, our administrative records are decisive as regards the legitimate extent of the commitments of the parties to agreements concluded with us.
- 18.2 In the absence of comprehensive evidence to the contrary, the quantities, measures and weights stated in invoices, waybills and/or packer's numbers for transactions between us and our customers shall be deemed to be accurate.

**19. Amendments**

We have the right to amend these GTCs. Amended stipulations shall take effect as of the date stated in the amendment resolution. Customers known to us at the time of an amendment shall be notified of such amendment in writing.

**20. Date of commencement**

These GTCs shall come into effect as of 23 January 1998. They are filed with Chamber of Commerce of Tilburg, under registration number 18022448.