

## General Terms and Conditions

These General Terms and Conditions are deposited with the Chamber of Commerce and Industry in Zwolle under number 05055988. On request we will gladly send you a copy free of charge.

### 1. General

1.1 These General Terms and Conditions apply to all agreements concluded by Toppoint B.V. - hereinafter referred to as the Seller - with a third party / third parties - hereinafter referred to as the Buyer - or agreements resulting therefrom, as well as all offers made by the Seller.

1.2 The applicability of terms and conditions used by the Buyer is hereby explicitly rejected by the Seller.

1.3 Insofar as these General Terms and Conditions are also drawn up in a language other than Dutch, the Dutch text is always decisive in the event of differences.

### 2. Offers and orders

2.1 All offers are subject to confirmation and without any liability on the part of the Seller, unless agreed otherwise in writing.

2.2 An agreement is formed by the Seller sending a written order confirmation or the actual execution of the agreement by the Seller. In the first case, the order confirmation is deemed to represent the correct relationship between the parties and the parties are bound by the content of the order confirmation.

2.3 Offers and promises made by representatives of the Seller are only binding if confirmed in writing by the Seller.

2.4 Images, catalogues, samples and drawings provide a general representation of any items supplied by the Seller. The dimensions, weights, or technical data included in an offer in the broadest sense of the word are only approximate, unless explicitly guaranteed in writing. Usual deviations, which are acceptable within the industry, are permitted.

2.5 Other product-specific rules/conditions are included in our price list and are deemed to have been accepted by the Buyer and form part of these General Terms and Conditions.

2.6 The Buyer must decide for itself whether the goods are suitable for the purpose for which it wants to use them.

### 3. Cancellation

3.1 If the order is cancelled then the actual costs incurred will be charged, which shall be a minimum of € 29.50.

3.2 The Seller can terminate an order or refuse to accept a Buyer without giving reasons.

### 4. Prices

4.1 Unless agreed otherwise in writing, all prices are 'ex works' Bergentheim (EXW, Incoterms 2010) and exclude VAT, special packaging, transport, insurance, import duty, etc.

4.2 The Seller will conclude a breakage risk insurance policy for earthenware, glass and porcelain products for a fee amounting to 3% of the total value of the goods excluding VAT. If the Buyer does not state that it does not want this insurance when placing its order, this fee will be deducted by us and charged to the Buyer.

4.3 At the time of the purchase and/or the contract and/or the conclusion of the agreement, the prices provided are based on the price of materials, salaries, social security charges, etc. that apply at that time. An increase or decrease in one or more cost factors can be charged on by the Seller at all times, provided that it has notified the Buyer of this price change in a timely manner prior to charging it on.

### 5. Delivery

5.1 Specified delivery times are approximate and will never be regarded as a deadline. The Seller will always endeavour to meet a specified delivery time as far as possible, but if a delivery time is exceeded, the Buyer must first give the Seller notice of default in writing, with due observance of a reasonable period of time. Exceeding the delivery time can never lead to liability on the part of the Seller, except in the case of an intentional act or omission or gross negligence, and it does not entitle the Buyer to full or partial termination of the agreement, or to cancel the order or to refuse receipt of the goods.

5.2 The Seller reserves the right to deliver in parts and to invoice accordingly. The payment obligation commences after invoicing.

5.3 The applicable delivery time only starts after the Buyer has confirmed to the Seller that the film test is approved.

5.4 The obligation of the Seller to deliver is suspended in the following circumstances:

(I) the failure of the Buyer to meet any payment obligation on time;

(II) the failure of the Buyer to provide the information required for the commencement and execution of the work on time (this also includes all cases of force majeure as described in more detail in Article 8).

5.5 In the event of delivery on a call up basis, the goods - as long as they have not been called up - are held by the Seller at the expense and risk of the Buyer. The Buyer is obliged to call up the goods within the period set for that purpose, and in the absence of a period agreed in advance, the Buyer must in any case call up the goods within two months of the conclusion of the agreement. In the absence of a call up within the aforementioned periods, the Seller is entitled to charge for the movables sold, or to terminate the agreement by

informal notice, without judicial intervention being required and without prejudice to the right of the Seller to compensation, including for any costs for storage.

5.6 The Buyer is obliged to take delivery of the goods when they are delivered to it in accordance with the applicable Incoterms or when they are made available to it in accordance with the agreement. If the Buyer refuses to take delivery or fails to provide information or instructions necessary for delivery, the goods will be stored at the expense and risk of the Buyer.

5.7 If the Buyer remains in default of payment, the Seller is not obliged to make further deliveries and the Seller is entitled to terminate the agreement without judicial intervention and without prejudice to the obligation of the Buyer to indemnify the Seller.

5.8 The Seller will be entitled to carry out and charge the Buyer for any additional or reduced deliveries of up to 10% of the quantity ordered.

5.9 A consignment note, delivery note or similar document issued on delivery will be deemed to correctly represent the quantity and quality of the goods delivered, unless the Buyer immediately notifies the Seller in writing of any objections to this. In the event that the Buyer has made a timely notification of objections, it will not be entitled to suspend payment of what has been delivered (properly), except in the event of any mandatory statutory provisions to the contrary.

5.10 The transport of the goods to be delivered will always be at the expense and risk of the Buyer. The Buyer is obliged to cooperate in the processing of the delivery at all times. Unless otherwise stipulated, the Buyer will ensure that the delivered goods are unloaded.

## 6. Complaints

6.1 The Seller will deliver in accordance with what is usual and customary in the trade in the goods in question, subject to a written guarantee of quality provided by the Seller. Any complaints concerning the delivered goods must be made known to the Seller in writing within a reasonable period of time, but no later than eight days after the date of delivery, subject to the forfeiture of rights. The Buyer is obliged to inspect the soundness of the goods delivered immediately after receipt.

6.2 Non-visible defects relating to delivered goods must be demonstrated in writing by the Buyer to the Seller within ten days of discovery, but at the latest within one month of delivery.

6.3 In the event of a justified and timely complaint, the Seller will never be obliged to do more than to replace the movables that are the subject of the complaint, or, at its discretion, to pay fair compensation, which will, however, never exceed the invoice amount or the value of the movables that are the subject of the complaint. Any further obligation to pay compensation for damage,

including indirect damage, is expressly excluded, except in the case of an intentional act or omission or gross negligence on the part of the Seller.

6.4 The guarantee of the Seller does not apply if:

- (I) the defects in the goods are the result of normal wear and tear and/or improper use;
- (II) the goods have been exposed to abnormal conditions;
- (III) the defects are the result of use that is contrary to the maintenance instructions;
- (IV) the Buyer and/or third parties engaged by the Buyer have

– without the written consent of the Seller - made or carried out alterations and/or carried out other work on the delivered goods.

6.5 A justified and timely complaint regarding a part of the delivered goods does not suspend the payment obligation of the other delivered goods, except for any mandatory statutory provisions to the contrary.

## 7. Payment

7.1 The payment term of the Seller is 30 days from the invoice date, effectively received in the bank account of the Seller, unless agreed otherwise in writing.

7.2 All payments will be made in the manner to be determined by the Seller, without any deduction or set-off. The Seller expressly excludes the right of the Buyer to suspend or set-off.

7.3 The Seller is entitled to suspend the execution of the agreements concluded with it until such time as it has received full payment of invoices that are past due. The Seller reserves the right, including after the partial delivery of goods and/or services, to demand financial guarantees and securities from the Buyer, all this bearing in mind Article 5.

7.4 The Seller is also entitled to invoice after a partial delivery.

7.5 The prices charged and all invoices sent are, without any demand or notice of default being required, immediately due and payable at all times in the event that the Buyer is declared bankrupt, the Buyer applies for or obtains a provisional suspension of payments, the Buyer (a natural person) requests that the statutory debt rescheduling scheme be declared applicable and this is granted by the court, the Buyer loses the right to dispose of its assets or parts thereof through attachment, placement under guardianship or otherwise, as well as in the event that the Buyer fails to fulfil one or more of its obligations, regardless of whether these arise from the present agreement or from another agreement or from the law. The Buyer is, without any demand or notice of default being required, in default by operation of law merely by the expiry of the agreed payment term.

7.6 If the payment term is exceeded, the Buyer will owe default interest of 1.5% per month from the day of default, whereby part of a month will be counted

as a whole month. At the end of each year, the amount on which the interest is calculated shall be increased by the interest due for that year.

7.7 If a Buyer fails to meet its payment obligation on time, it will owe an immediately due and payable penalty of 15% of the remaining invoice amount due by the Buyer, with a minimum of € 250.00.

7.8 Insofar as this penalty is not allowable, the Buyer must in such case reimburse the Seller for at least the extrajudicial costs in the amount of the actual costs that are payable to the collector engaged by the Seller in the event of extrajudicial collection.

7.9 In the event of legal proceedings, the Seller will also be entitled to pass on to the Buyer all actual costs incurred by its legal counsel, irrespective of the flat-rate compensation system laid down by law.

## **8. Intellectual property**

8.1 The Seller reserves the rights and powers vested in it by virtue of the Copyright Act (*auteurswet*) and other intellectual property laws and regulations.

8.2 The intellectual property rights to the agreements between the Buyer and the Seller remain vested in the Seller or in the third party from whom the Seller has acquired the rights.

8.3 No provision in the agreements or these General Terms and Conditions extends to the full or partial transfer of intellectual property rights to the Buyer.

The Buyer acknowledges these rights and shall refrain from any form of direct or indirect infringement of these rights.

8.4 The Buyer fully indemnifies the Seller against any claims and demands for compensation from third parties in this respect, and it also indemnifies the Seller against all costs incurred by it in connection with these claims and demands.

## **9. Retention of title**

9.1 The Seller retains title to all goods it delivers or has delivered to the Buyer - paid and unpaid - under the hire purchase agreements and purchase agreements it has concluded and related services.

9.2 If the Seller, within the framework of these agreements, carries out or will carry out work for the benefit of the Buyer that will be paid by the Buyer, the aforementioned retention of title shall apply until the Buyer has also paid these claims of the Seller in full.

9.3 The retention of title shall also apply to any claims which the Seller has or may acquire against the Buyer due to the failure of the Buyer to fulfil one or more of its obligations towards the Seller under the aforementioned agreements.

9.4 The risk of the goods (and/or related services) delivered by the Seller to the Buyer are, including with due observance of Article 5, at the expense of the Buyer from the moment that the goods are actually handed over to the Buyer or as soon as the Buyer leaves the premises of the Seller.

## **10. Force majeure**

10.1 The Seller is not obliged to fulfil any obligation if it is prevented from doing so as a result of force majeure. Force majeure is understood to mean all external causes, foreseen or unforeseen, over which the Seller has no influence, as a result of which the Seller or third parties engaged by the Seller are unable to fulfil their obligations. This includes in any case delayed, late or non-delivery by third parties; bankruptcy, suspension of payments, transfer of ownership of the business of the Buyer or of the Seller; an intentional act or omission or fault of the personnel of the Seller; transport blockades or other transport difficulties; fire; disasters, including natural disasters; strikes; industrial accidents; riots or uprisings; wars and statutory restrictions on trade. Force majeure on the part of suppliers or other third parties that are engaged and on which the Seller depends, will also be regarded as force majeure on the part of the Seller.

## **11. Liability**

11.1 The Seller excludes any form of liability towards the Buyer for as long as the Buyer has not fully complied with its payment obligation.

11.2 The Seller is not liable for any damage suffered by the Buyer, including the obligation to pay damages on the grounds of dissolution or wrongful act, unless the Buyer proves that the damage is the result of the deliberate or wilful reckless actions of the Seller or the management or other executives of the Seller.

11.3 Under no circumstances will the Seller be liable for consequential damage, including the obligation to pay damages on the grounds of dissolution or wrongful act, of any nature whatsoever.

11.4 Should the Seller nevertheless be liable in a particular case, the amount of the damage to be compensated to the Buyer will always be limited to the cover provided by the liability insurance of the Seller and provided that the insurer of the Seller also pays out in that particular case, increased by the excess.

11.5 If the insurer or the insurance policy of the Seller does not provide cover and/or does not pay out, the maximum liability of the Seller will in all cases be limited to the cumulative amount of the invoice(s) (not including VAT) that relate(s) to the contract in which the damage occurred, with a maximum of € 25,000.00.

11.6 In all cases in which the Seller invokes the provisions referred to above and appeals to the courts, any of the employees of the Seller who may be held liable may also invoke these provisions in accordance with this article as if the provisions were stipulated by the employees of the Seller themselves.

11.7 Liability for third parties engaged by the Seller, within the meaning of Article 6:76 of the Dutch Civil Code (*Burgerlijk Wetboek*), is expressly excluded. In

the event that a third party is engaged, the Buyer must insure itself for this.

11.8 The Buyer will indemnify the Seller against any claims by third parties that may suffer damage in connection with the execution of the agreement, irrespective of the cause thereof.

11.9 In particular, the Seller excludes any form of liability, however named, which is caused by the consequences of the presence of the bacteria, seeds, germs, fungi and other organisms as referred to in Article 3.3.

11.10 Claims for damages must be submitted by the Buyer to the competent court in accordance with these conditions within one year of the occurrence of the event giving rise to the damage (Article 13). After this period, the right to compensation will lapse.

## **12. Entire agreement**

12.1 If the Buyer does not comply with any obligation, or does not do so in good time or properly, arising for it from any agreement concluded with the Seller, it will be in default by that single fact, without it being necessary for the Seller to give notice of default, and the Seller is entitled to declare the agreement terminated without judicial intervention, without prejudice to all other rights to which it is entitled.

## **13. Applicable law**

13.1 All offers made by the Seller, agreements concluded between the Seller and the Buyer, or agreements resulting therefrom, will be governed exclusively by Dutch law. If the Buyer is not a Dutch legal entity.

13.2 All disputes between the Buyer and Seller will be resolved exclusively by the court within whose jurisdiction the Seller or the Buyer has its registered office, such at the discretion of the Seller, subject to mandatory legal provisions.

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