

GENERAL TERMS AND CONDITIONS OF SALE GILLAIN & CO nv

ARTICLE 1 - COMING INTO EXISTENCE AND OBJECT OF THE CONTRACT

Our tenders are made for information only and without any commitment; the data with regard to dimensions, weights, performances etc. mentioned in our catalogue, brochures, in our publication and on our website are only an indication without any commitment in case of non-conformity: these specifications are never part of the contract.

The specifications and tenders are based on the current values of wages and materials. In case these values change substantially, we reserve the right to adapt our prices accordingly.

Only the order confirmation signed by the seller, commits the seller. The execution of the order takes place according to the present general terms and conditions, to the exclusion of the terms and conditions of the buyer, even if they are communicated afterwards.

Consequently, orders deviating from the present general terms and conditions are binding on the seller only after express written approval by the seller of the deviating provisions.

The goods are sold according to the technical specifications given by the manufacturer(s), with the dimensions stipulated in the special conditions. The buyer has to verify if the goods he ordered are appropriate for the intended use and the buyer relieves the seller of every obligation to verify if the goods are appropriate for the use the buyer intends them for, except in case the seller has explicitly and in writing accepted such verification.

We reserve the right to modify the construction of the goods ordered and to make all useful modifications. The buyer can never require that these modifications or transformations will be done to the already ordered or delivered goods.

In case an order comprises several deliveries, there is the indisputable presumption in favour of the seller, and only in his favour, that every delivery is presumed to be part of a separate contract; possible conflicts with regard to the execution of the commitments of the seller regarding a delivery consequently do not affect the rest of the order, so the buyer cannot invoke any dispute with regard to the delivery to be released from his obligations with regard to the other deliveries.

The cancellation of the order must be made in writing and is only valid subject to the written approval by the seller. In the event of approval of the cancellation, the buyer has to pay a minimum compensation of 30% of the total amount of the order with a minimum of € 40, without prejudice to the right of the seller to require a higher compensation. In that case the goods have to be returned to the seller at the expense of the buyer, being neither damaged nor used, and always in the original packaging.

The goods that are sent back without the consent of the seller, are refused by him. For the goods that are sent back with the prior consent of the seller, the procedure as mentioned a.o. on our website and as known and accepted by the buyer, has to be followed.

ARTICLE 2 - DELIVERIES

All our deliveries are done "Ex Works" in conformity with the 2010 edition of the Incoterms. The goods will be made available as soon as they have been individualized and the buyer will be informed of this by ordinary mail, fax or e-mail stating the term within which the buyer has to collect the goods.

If the goods are collected late by the buyer, the storage charges are invoiced at 0,5 % of the total order amount, exclusive of VAT, per day of delay.

The storage of the goods awaiting the delivery or the collection, is at the risk of the buyer. The goods are sent at the risk of the buyer. Unless otherwise agreed upon in writing, the costs of transport are paid by the buyer.

If the Incoterm (2010) "delivery duty paid" is mentioned on the order form and this has been explicitly and in writing accepted by the seller, the buyer will unload the goods at his own costs and risk and in case of damage or loss the buyer has to make a complaint against the carrier with copy to the seller, within the term and in the form prescribed by the law that applies to the transport of goods; the buyer has to proceed to the establishment of the disputable findings required by this law. In the absence of such complaint and/or establishment by an expert of the extent of the damage, between the buyer and the seller there is the indisputable presumption of acceptance of the goods by the buyer.

If the Incoterm (2010) "carriage paid to" is mentioned on the order form and this has been explicitly and in writing accepted by the seller, the risk for loss and damage passes to the buyer at the time of handing over of the goods to the first carrier. The seller does not have to conclude any insurance for the transport.

The seller will charge the price for the transport separately to the buyer.

Partial deliveries are allowed, unless otherwise agreed upon in writing. The transport price will be charged by the seller per partial delivery.

The delivery periods are mentioned for information only and are not binding, unless such has explicitly and in writing been agreed upon between the parties. Under no circumstances will a delay in the execution entitle the buyer to compensation or rescission of the contract.

The packaging costs always have to be borne by the buyer, unless otherwise specifically agreed upon in writing. After delivery or collection of the goods the buyer becomes the owner of the packaging. The buyer is responsible for the removal/sorting/processing of this packaging without any recourse against the seller.

The above does not apply for Euro-pallets which have to be returned to the seller.

ARTICLE 3 - ACCEPTANCE OF THE GOODS AND HIDDEN DEFECTS

Unless differently mentioned in the present terms and conditions, all complaints regarding apparent defects and/or the conformity of the sold goods, have to be made at latest two working days after reception of the goods by means of registered letter, with justification of the complaint before taking into use of the goods in one way or another.

In case such complaints are made after the goods have been collected, the buyer will have to prove that the apparent defects and/or the non-conformity were present at the moment of collection of the goods. Such complaint cannot be a ground for the buyer not to pay the price, in total or in part, according to the terms of the special or general terms and conditions. Complaints with regard to the apparent defects and/or the conformity of the sold goods, made in case of late collection, are not accepted.

Complaints with regard to hidden defects are only accepted if they are notified to the seller by means of a registered and sufficiently justified letter, at latest within six months from the date of delivery and within eight working days from the establishment of the defect. The buyer has to prove that such was done on time. The seller only undertakes to replace or repair the parts he recognized being defect, to the exclusion of all other compensations for direct and/or indirect damages like repair, immobilizations, personal accidents or damage to goods of the buyer or third parties etc. The buyer will reimburse to the seller all travel and board expenses outside Belgium.

Complaints for hidden defects are no ground to annul the sale, except when the defect is such that it is impossible to repair or replace the goods. In the latter case, the contract may be annulled at the request of the buyer without the buyer being entitled to any compensation.

The buyer will protect and indemnify the seller against all claims of third parties towards the seller for damage caused by the acquired goods, even in case of apparent or hidden defects and even in case of serious misconduct of the seller.

ARTICLE 4 - PAYMENTS AND ADVANCES

All our prices are valid "ex-works" unless explicitly agreed upon in writing.

All increases of the toll and VAT rates as well as all other charges and taxes, applicable to the sale and introduced after the coming into existence of the contract, shall be borne by the buyer, even if a price "tax included" was agreed upon.

Our invoices are payable to our registered office, even if they are collected at the domicile of the buyer to make it easier for him or in case bills of exchange are brought into circulation. Barring special power of attorney, our agents and representatives are not authorized to collect any sums on our behalf. Our invoices are payable net in cash unless explicitly agreed otherwise in writing. The buyer can only apply offsetting with the prior written consent of the seller.

In the event of non-payment of the amounts due on the due date, a late-payment interest of 1% per month is due, ipso jure and without a special notice of default being required, for the amounts that are not paid on the due date, with as a minimum the legal interest rate or the late-payment interest according to the Law on combating late payment in commercial transactions. The seller decides on the interest that will apply in this case. Moreover, it has been explicitly agreed upon between the parties that the balance still due of our invoices, in case of late payment, will be increased, ipso jure and without prior notice of default, by a fixed compensation amounting to 10 % of the unpaid invoiced amount. These percentages are calculated on the amounts due and on the amounts still to become payable in case terms of payment have been granted.

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In the event of judicial recovery, up to the choice of the seller, the customer will have to pay either the above-mentioned compensation of 10%, or all relevant recovery costs due because of the late payment, among which the fees and costs of the lawyer of the seller.

In case of non-payment of an invoice on the due date, all the other invoices of the seller to the buyer become immediately claimable, without prejudice to the right of the seller to appeal to other rights under the present general terms and conditions. Among other things, the seller reserves the right to stop further deliveries. The drawing and/or acceptance of a bill of exchange, or other negotiable instruments, does not imply novation and is no deviation from the conditions of sale.

Without prejudice to the provisions of article 3, in case of dispute, the invoice has to be contested within eight days from reception of the invoice, in the absence of which the invoice is indisputably deemed to be accepted.

ARTICLE 5 - RIGHT OF OWNERSHIP, RETENTION OF TITLE AND EXPRESS TERMINATION CLAUSE

The seller retains the ownership of all models, manufacturer's trademarks and trademarks, patents, drawings and sketches of which only the use by the buyer himself is allowed. The seller also retains, at all times and without any exception, all rights of ownership of industrial software; the buyer only obtains a personal and non-transferable right of use.

The goods shall remain the property of the seller until full payment of the principal sum, costs and interests. The risk passes to the buyer at the moment of the conclusion of the contract. Consequently the buyer waives the right to sell, let, pledge the goods or to dispose of the goods in any manner whatsoever, and/or to make any changes that could decrease the value of the goods.

If the buyer asks one of his creditors for postponement, summons his creditors, is declared bankrupt, if the buyer does not pay one of the invoices of the seller on the due date or if it appears that the buyer will not fulfil one of his principal obligations under the present or other agreements with the seller towards the seller or there is a risk that this obligations will not be fulfilled, even if this obligation has not become claimable yet, the agreement will ipso jure and without notice of default be terminated by the bankruptcy or a seizure or by the mere fact of the notification by means of registered letter, fax of the seller in which he appeals to the termination and the buyer undertakes to return to the seller within 24 hours the goods and the buyer empowers the seller to take the goods back without any other legal form. Moreover, the seller is entitled to a fixed compensation of 10% of the purchase price without prejudice to the seller's right to claim higher damages.

In case the buyer applies for a judicial reorganization according to the law on the continuity of enterprises, the commitments of the seller will remain, ipso jure and without notice of default, suspended by the mere fact of the application of the judicial reorganization.

Unless explicitly and in writing differently confirmed by the seller, the seller does not have the sold goods in stock and they have to be purchased by the seller. It is explicitly agreed upon between the parties that the cancellation of the sale at the request of the buyer, even if it is established in court, only obliges the seller to restore to the buyer the already paid advances, to the exclusion of all other compensations.

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ARTICLE 6 - FORCE MAJEUR

If the seller fails to fulfil one of his obligations, he will not be liable for such if he can prove that this is caused by circumstances that, to the intention of the parties at the time the contract was concluded, he was not obliged to take into account, to avoid or to overcome.

If it is not clear what is meant by the parties, it has to be considered what the intention usually is of reasonable persons with the same capacities in the same circumstances. If the circumstances are of a nature that the obligations can only temporarily not be met, the seller however is definitively released of his obligations if observance as a consequence of the postponement has changed that much in meaning that it would become observance of a completely different obligation than was meant at the time the contract was concluded.

The circumstances do not have to be unforeseeable or inevitable at the time the contract was concluded, nor must the execution of the contract have become impossible. The parties agree on the following circumstances, without the enumeration being restrictive: all modifications of the manufacturing prices, of the prices of raw materials, of the exchange rates, of the rate of foreign currencies in which the goods or part of them are purchased towards the Euro and more in general modifications to all elements that determine the purchase price of the goods, as a result of which this purchase price increases by more than 3 % between the date of conclusion of the contract and the delivery of the goods in accordance with the present terms and conditions.

In the event of non-delivery by the manufacturers or by the suppliers of the seller, acts of government, export - import or transit ban, strike, revolt, war or war behavior, mobilizations, epidemics, weather circumstances, lack of material or transport, machine breakdown, fire, lock-out, lack of workers, transport problems or transport obstructions causing a delay or serious problems in the execution or increasing the costs of execution by more than 3 %, the seller reserves the right to terminate the contract without the buyer being entitled to any compensation.

ARTICLE 7 - REPAIRS

The repairs give no right to any guarantee unless explicitly otherwise agreed upon.

ARTICLE 8 - WAIVER

Non-application by the seller of one or more provisions of these general terms and conditions of sale shall in no way be regarded by the buyer as a waiver of these terms and conditions.

ARTICLE 9 - JURISDICTION - APPLICABLE LAW

All disputes with regard to the conclusion, validity, interpretation or execution of the contract and the derived contracts shall be governed by the laws of Belgium, excluding the provisions of the Convention of the United Nations on international sales agreements (Vienna Sales Convention, CISG, April 11, 1980) and any other international legislation of which the exclusion is allowed.

Any dispute shall be subject to the exclusive jurisdiction of the Courts of Antwerp. The disputes coming under the jurisdiction of the justice of the peace, will be handled by the justice of the peace court of the district where the registered office of the seller is situated.

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These attributions of jurisdiction are exclusively to the benefit of the seller who can always waive this right.

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