

## GENERAL SALES AND DELIVERY CONDITIONS TRICORP

Filed on 6 June 2018 at the Chamber of Commerce under number 18083823

### General

The user of these general sales and delivery conditions (also called "these general conditions" in the following) is Tricorp BV (also called "Tricorp" in the following) with offices in 5126 RK GILZE, on Hercules 22, their legal universal successor(s), or companies and businesses connected with Tricorp or these legal successor(s).

Intended by "the counterparty" is in these general conditions every (legal) person who is listed in the Trade register of the Chamber of Commerce disposing of a business account created at Tricorp and/or with whom Tricorp enters into an agreement or to whom Tricorp makes an offer to provide a service or to deliver matters. Unless expressly established otherwise in writing, to our offers and contracts between us and the counterparty, exclusively these general conditions apply. The applicability of general purchasing and/or other conditions which may be applied by the counterparty, under whatever name, is hereby emphatically rejected.

### 1. Offers And Agreements

- 1.1 All quotations, offers, prices, and conditions provided by us are always non-committal and lapse after expiry of 30 days.
- 1.2 Each quotation is based on the information which is furnished by the counterparty. Counterparty guarantees the accuracy and completeness of this information.
- 1.3 Apparent mistakes or errors in the offer do not bind Tricorp.
- 1.4 All indications by Tricorp of dimensions, drawings, pictures, weights, compositions and/or other indications of the products are provided with care, but Tricorp cannot guarantee that no deviations regarding will occur. Shown or furnished samples are only indications of the relevant products. Deviations in dimensions and/or the weight are possible and are accepted by the counterparty. If the counterparty proves that the delivered products deviate to such a degree from the indications of Tricorp or from the samples that they can no longer reasonably be forced to purchase them, the counterparty will have the right to rescind the agreement, though exclusively for the part the rescission of which is reasonably necessary, and only after the counterparty has declared the default of Tricorp, granting Tricorp a term of at least 14 days to still eliminate the grounds for (partial) rescission.
- 1.5 All drawings, pictures, measures, and indications of weights provided by us, as well as all other information provided by us to the counterparty in the context of the agreement, remain our property, subject emphatically to copyrights and model and patent rights, also in case charges have been applied for them. Barring our prior emphatic permission in writing, it is not permitted to the counterparty to (let) copy this documentation, nor to give it for perusal to third parties or to make it available.
- 1.6 Information and advice from us are of a general nature and non-committal. The counterparty itself is responsible for the implementation of our advice.
- 1.7 A quotation lapses in case the product which the quotation regards, has become unavailable in the meantime.
- 1.8 Orders and modifications thereof are only binding for us on condition they were accepted or confirmed by us in writing, or if delivery has been commenced on.
- 1.9 The confirmation of the order of Tricorp is considered correct, unless the counterparty has objected to it within 8 days after the order confirmation date in writing.
- 1.10 Arrangements with or commitments by our representatives or other collaborators are not binding for us, unless these arrangements or commitments have been confirmed by us in writing.
- 1.11 The breaching and cancellation of the agreement by the counterparty is only possible if we consent to it. In such case, the counterparty is obligated to compensate the costs incurred by us in preparations and – partial – implementation, as well as to compensate the adverse financial effects for us on due to not implementing the agreement. These compensations will jointly amount to at least 10% of the established contract value.
- 1.12 The counterparty guarantees that all legal requirements regarding the data which are to be processed, including especially the requirements pursuant to the privacy legislation applicable in the case occurring, are and will be met with strictly, and that all prescribed registrations and other formalities have been carried out and that the required permission of its staff has been granted. The counterparty will forthwith provide Tricorp with all requested information concerning in writing.
- 1.13 The counterparty safeguards Tricorp against claims by persons whose personal data are registered or are processed in the context of a personal registration conducted by the counterparty or for which the counterparty, pursuant to European and/or Netherlands legislation, is otherwise responsible, or against third-party claims whether or not on account of the compensation of damages, fines, settlements, judicial plea bargains or otherwise and will indemnify Tricorp for such in full.

### 2. The agreement

- 2.1 Under reservation of the provisions in article 2.2, the agreement is concluded at the moment of acceptance by the counterparty of the offer and of compliance with the conditions thereby stipulated.
- 2.2 If the acceptance (whether or not on minor issues) deviates from the offer included in the quotation, Tricorp will not be bound by such. In that case, the agreement is not adopted in accordance with this deviating acceptance, unless indicated otherwise by Tricorp.
- 2.3 If the counterparty has accepted the offer through electronical channels, Tricorp forthwith confirms the receipt of the acceptance of the offer through electronical channels.

- 2.4 Tricorp may ascertain – within statutory boundaries – whether the counterparty is able to comply with its payment obligations and inform itself of all those facts and factors which are of importance for the responsible entering into the distance agreement. If Tricorp has valid grounds, based on this investigation, not to enter into the agreement, it has the right to refuse an order or request or to subject the implementation to special conditions. Tricorp has the right at all times to demand advance payment or the pledging of a security by the counterparty.
- 2.5 Every agreement is adopted under the suspensory condition of sufficient availability of the relevant products and/or services.
- 2.6 Modifications and supplements to any provision in an agreement and/or these conditions can only be established in writing.
- 2.7 If a modification and/or supplement as intended in article 4.7 is established, this modification or supplement is only applicable to the agreement in case.

### **3 Pricing**

- 3.1 Our prices are listed in Euros and are exclusive of VAT and levies imposed by government and/or semi-governmental institutions. They apply to delivery Ex Works (Incoterms 2010), unless agreed otherwise.
- 3.2 Unless emphatically established otherwise, the cost of packaging and shipping, im- and export duties and excise, as well as all other levies or taxes imposed or withheld with regard to the products and their transport, are borne by the counterparty.
- 3.3 Every quotation is based on the information which is provided by the counterparty. The counterparty guarantees the accuracy and completeness of this information.

### **4 Cost-increasing factors**

- 4.1 Unless emphatically agreed otherwise, Tricorp may pass on any change to the factors which impact on the price and on the costs of Tricorp mentioned in article 3, including purchase prices, exchange rates, import and export duties and other levies due upon importation or exportation, insurance rates, shipping rates and other levies or taxes, to the counterparty, to the extent no mandatory legal provision opposes such. For the pricing referred to in article 3, the delivery date is determinant. In any case, Tricorp will be permitted to pass on the price increases mentioned above if at least 3 months have expired between the agreement and the price increase, without it being possible to rescind the agreement.
- 4.2 In case a counterparty from an EU-country purchases a product with its business account, 0% of VAT is applied in connection with intra-community deliveries pursuant to article 138 EU VAT directive 2006/112/EC.

### **5 Delivery and risk**

- 5.1 The delivery of the products takes place in conformity with the provisions regarding the cost of delivery and the transfer of risk pursuant to the conditions which are customary in international trade (Incoterms 2010) or otherwise to the subsequent version(s) thereof applicable at the moment of the order.
- 5.2 Unless established otherwise, deliveries take place Ex Works place of establishment Tricorp, and the delivery and the risk transfer of the products always take place at the moment and place at which the products are ready for shipment to the counterparty.
- 5.3 The delivery term indicated by Tricorp is based on the circumstances applicable for supplier at the time of adoption of the agreement and, to the extent dependent on third-party performances, on the information provided by those third parties to Tricorp. An established delivery time is not a strict time limit, unless emphatically established otherwise.
- 5.4 In case of late delivery, the counterparty must declare our default beforehand in writing, before our default can be said to pertain.
- 5.5 In case of late delivery, the counterparty is not entitled to compensation of damages, nor to rescission or cancellation of the agreement, and it will not be permitted to them either to suspend reception and payment, such barring the event of intent or gross negligence on our part, unless the overrunning of the delivery term is such that it cannot reasonably be demanded from the counterparty that it leaves intact the relevant part of the agreement. In such case, the counterparty has the right to rescind or cancel the agreement for the part for which it is strictly required, on condition it notifies Tricorp accordingly in writing and without prejudice to the right of Tricorp to still deliver the relevant products to the counterparty within 14 days after receipt of the notification.
- 5.6 Unless established otherwise, the items of the order are delivered to a single address.

### **6 Force majeure**

- 6.1 Tricorp is not held to comply with any obligation towards the counterparty if it is impeded to do so as a consequence of a circumstance which is not due to culpability and which is neither pursuant to legislation, a legal action, nor a commonly held opinion can be attributed to it. During force majeure, the delivery obligations are suspended. If this period lasts longer than 3 months, each of the parties has the right to rescind the agreement. In case of force majeure, the counterparty is not entitled to any compensation (of damages), not either in the event Tricorp were to obtain any advantage from the force majeure.
- 6.2 If we, upon the entry into effect of the force majeure, have fulfilled our obligations partially, or if we are able to partially fulfill our obligations, we have the right to invoice what is already delivered or the deliverable part separately and the counterparty is bound to settle this invoice as if it regarded a separate contract.
- 6.3 Also designated as factors of force majeure are fire, acts of God, riots, strikes, company occupations, company disruptions, war, self-defense, delays in or the ceasing of the supplies of material or ancillary means and/or services or other issues in manufacturing by Tricorp or its suppliers, the meddling of government or monitoring institutions, legal arrangements which impede the use of the delivered goods, and, generally, any cause lying outside our control, foreseen and unforeseen, as a result of which the implementation of the agreement is rendered more difficult for us.

6.4 Tricorp also has the right to appeal to force majeure in case the circumstance which impedes (further) fulfillment of the agreement enters into effect after Tricorp should have complied with its contract.

## **7 Payments**

7.1 Every payment of the counterparty primarily serves for the settlement of the interest due by the counterparty and for the collection costs incurred by us, and subsequently for the settlement of the claims outstanding the longest, even if the counterparty states that settlement regards a later invoice.

7.2 Payments must be made without discounts, suspensions or set-offs, to the bank account indicated for it by us, no later than thirty (30) days after invoice date. Any possible corrections desired by the counterparty as a consequence of price and quantity variations are evaluated by Tricorp and credited where necessary. This leaves unaffected the obligation of the counterparty to pay the initially billed amount to Tricorp within the term established for it. Objections against the amount of an invoice do not suspend the payment obligation.

7.3 We have the right, however, at our discretion, to deliver only on condition of advance payment or against securities pledged by the counterparty and/or under deviating provisions, including the conditions of documentary credit as customary in commercial exchanges, such as irrevocable letters of credit, cash against documents, or cash against delivery, in the absence of which Tricorp will not proceed to deliver. The delivery time will, in case of such advance payment, will come into effect at the moment that payment is received by Tricorp.

7.4 Tricorp may invoice all purchases made in the relevant month to the counterparty on each last day of the month jointly. Tricorp has the right to set a maximum to the total amount of the monthly post-payment.

## **8 Interest and cost**

8.1 The payment terms mentioned in article 7 are strict time limits. The counterparty is, therefore, in default with notification in case of expiry of the established payment term.

8.2 From the moment of default until the day of full settlement, the counterparty owes 1% in default interest per month over the outstanding amount, unless the statutory commercial interest is higher, in which case the statutory commercial interest is due over the outstanding amount. The interest over the payable amount will be calculated from the moment that the counterparty is in default until the moment of settlement of the full amount due.

8.3 All judicial and extrajudicial costs to be incurred by us, including the expenses for legal assistance and the costs which cannot be liquidated through a court ruling, will be borne by the counterparty. The extrajudicial costs are set at at least fifteen percent of the principal, with a minimum of € 500, exclusive of VAT. At our discretion, counterparty may also be charged with the actual expenses. The judicial costs are set at the costs effectively incurred by us.

## **9 Partial deliveries**

9.1 In case part of an order is ready, we may, at our choice, deliver this part or wait until all ordered items are ready.

9.2 In case of the delivery of orders in batches pursuant to the preceding, as well as in the case of deliveries of successive parts of an order pursuant to agreement, each delivery will be considered to constitute a separate agreement, which will be ineligible for revocation after acceptance of the delivered matters by the counterparty.

## **10 Storage**

10.1 If for whatever reason the counterparty is not able to receive the matters at the moment agreed on and they are ready for shipment, the counterparty falls into default without prior notice. Tricorp has the right in such case, on condition our storage facilities allow for this, to store the matters at the expense and risk of the counterparty for a period of no more than six months, or to sell them to a third party.

10.2 In such case as may occur, the counterparty is obligated to compensate the cost of storage and keeping according to reasonably applied standards over the period from the moment of the foreseen delivery time until the date of actual delivery. The counterparty remains indebted for the purchase sum, increased by the interest and costs (by way of compensation), where applicable diminished by the net yield of the sale to that third party.

## **11 Security, liens, and retention of property**

11.1 If in our opinion there are grounds for it, we have the right at all times to demand the counterparty to pledge adequate, whether or not additional, security for payment of the matters bought by it. In the absence of the pledging of such security, we have the right to suspend implementation of the adopted agreement or to rescind it, without judicial intervention, by way of simple written notice, and to claim compensation of damages if so desired.

11.2 All matters we hold for the counterparty are considered as being pawned to us for all amounts which the counterparty owes or will owe to us on whatever account.

11.3 All matters delivered by us and located at or under the control of the counterparty, or under its holder, remain our property until the moment that the counterparty has paid our claims regarding remuneration – which include not only the purchase price, but also the claims we hold on it due to shortcoming in fulfilling the aforementioned agreement, also including our claims on account of fines, interests, and costs – for the matters delivered or to be delivered by us to the counterparty or for the activities carried out or to be carried out pursuant to agreement.

11.4 The counterparty must constantly do everything which may reasonably be required of it to secure the property rights of Tricorp; if, and as soon

as, the counterparty falls short in fulfilling one or more of its obligations or it acts in violation of what is stipulated here, we have the right to recover the delivered matters, as intended in this article, without judicial intervention, as our property. The counterparty preemptively grants its unconditional and irrevocable permission to Tricorp and to third parties indicated by Tricorp to enter all those areas where the property of Tricorp is located and to take back those matters, and the counterparty will cooperate with this. All costs of recovery of the goods subject to retention of property will be borne by the counterparty.

- 11.5 As long as the counterparty has not settled the aforementioned claims, it does not have the right to sell off the matters delivered by us, nor may these ever be used as barter, neither by way of a lien [whether or not including possession] nor by encumbering it in any other matter. This alienation, pawning, and encumbering prohibition has an emphatic effect at the level of property rights. It is, therefore, not possible to transfer the matters in property, nor to pawn them or to otherwise encumber them
- 11.6 The counterparty commits itself towards third parties which wish to establish such titles on them, that it is not authorised to grant them.
- 11.7 When the counterparty has fulfilled all its payment obligations on account of the claims referred to in the preceding, we will grant the titles to the delivered matters, subject to a lien falling to us as an additional security for other claims which we have on the counterparty. Upon our first request, the counterparty will give its cooperation for all actions which are required in this context.
- 11.8 In case of application for bankruptcy, a request for the granting of (temporary) suspension of payment or in the event precautionary measures are taken with regard to matters of the counterparty, or if third parties wish to establish or exercise rights with regard to them, the counterparty is obligated to forthwith inform us accordingly and to immediately notify the bailiff enforcing seizure, the administrator or the liquidator of the property titles of Tricorp.
- 11.9 If the counterparty, despite written summation to that effect, refuses to give his cooperation for the recovery of the delivered matters, the counterparty falls into default concerning and forfeits an immediately payable fine of € 500 per day that he is/remains in default.
- 11.10 The counterparty is liable towards us for all damage occurring to the goods before the transfer of property has taken place as intended in section 3. Rescission and recovery leave our rights to compensation of damages and loss unaffected. In these cases, every claim by us on counterparty will be directly and fully payable.

## **12 Warranty and complaints**

- 12.1 We guarantee the proper quality of the goods delivered by us and guarantee, for the duration of 1 year after delivery, that our goods can be used for the purpose they were manufactured for, that the components used are compliant with the standards stipulated for them, and in accordance with the specifications provided in the agreement. Were unacceptable deviations, damaging, deficits and/or other imperfections to be demonstrated by the counterparty, we are willing, at our choice, to either provide free reparation and/or replacement against the returning of the products proven inadequate, or otherwise to credit the value of the delivered goods qualified as inadequate by us, under the following conditions and clauses.
- 12.2 Outside the warranty fall defects to the products which have occurred as a result of normal wear, wrong or careless use and/or due to damage which is the consequence of circumstances on which Tricorp cannot exert any influence, including weather conditions, processing by the counterparty or the final users, the impact of sun and light and/or damage which has occurred during storage or transport by the counterparty.
- 12.3 The counterparty is obligated to inspect the delivered matters for defects within three (3) days after the goods have been made available to it and check whether the quality and quantity correspond with what was agreed on and, in the event it identifies any deviations, file a written complaint.
- 12.4 Complaints regarding immediately identifiable deviations in the quantities delivered and/or immediately visible defects, delivery not in conformity with sample, deficits, and damaging to a shipment received by the counterparty, must be noted on the bill of lading, in the absence of which any right to file complaint concerning will lapse. Complaints about invoices must be received by us, on pain of the lapsing of rights, within fourteen (14) days after the invoice date in writing.
- 12.5 During this term, the counterparty will handle the products and the packaging with diligence. The counterparty will only unwrap or use the product to such an extent as is necessary to be able to assess whether it wishes to retain the product. The goods which the complaint is in regard to must be rendered available to us.
- 12.6 If a complaint subsequent to the term indicated is accommodated by us, whether or not partially, such is done free of any obligations and without the counterparty being able to derive any rights from it.
- 12.7 The reported complaints are assessed by us. In case they are declared well-founded, the products qualified as inadequate by us are restored or repaired to the extent possible. In case of repair or replacement of goods, such takes place at our establishment or, if we wish so, at the location where the goods are effectively located.
- 12.8 In case such is not possible, new products will in principle be supplied by us after the products proven inadequate have been returned to us.
- 12.9 In case recovery, back-delivery or supplemental delivery is not possible, or if such a back-delivery or supplemental delivery does not comply with the original specifications, the equivalent value of the delivered goods will be credited by us. We are not held in any way whatsoever to compensate any more than the value of the goods qualified as inadequate by us.
- 12.10 In case the complaints turn out to be unfounded, the cost of the investigation will fall to the counterparty, under the obligation of taking back again the contested goods.
- 12.11 Complaints do not give the right to the counterparty to suspend its payment and set-offs are emphatically excluded. Complaints with regard to a part of the order does not give the right to the counterparty to reject or refuse the entire order.
- 12.12 By complying with one of the performances mentioned above, Tricorp will have fully discharged of its warranty obligations and Tricorp will not be held to any further compensation (of damages).

### **13 Returns**

- 13.1 Unless agreed otherwise, returns are only possible in conformity with the return procedure applied Tricorp.
- 13.2 Return shipping by the counterparty is only possible after the prior electronic application of a return on info@tricorp.com, under specification of: the item number, the color, dimensions, and the number of the goods to be returned, as well as the Tricorp sales order number, or the purchase number of the counterparty, and after receipt, the return number attributed by Tricorp upon the return application.
- 13.3 After receipt of the return number, the reported articles may only be returned to Tricorp in their original, unused, and undamaged condition and in their original packaging to Tricorp, under specification of the attributed return number and with due regard for the reasonable and clear return instructions furnished by Tricorp. Unless agreed otherwise, return shipments take place at the expense and risk of the counterparty.
- 13.4 For items returned within one month after purchase, 100% of the purchase amount (exclusive of shipping costs) is reimbursed. Afterwards apply respectively a reimbursement of 75% in the event of returns within 2 months and a reimbursement of 50% in case of returns within 3 months. Articles returned after 3 months will not be reimbursed.
- 13.5 Only unused and undamaged items in their original packaging are accepted. In case items have to be repackaged, we charge € 1 per item for this. Fitting or customized series are only accepted after mutual consultation.
- 13.6 Because the processing of items which are not reported in accordance with the return procedure takes more time, we are forced to apply handling costs for this. We reserve ourselves the right to destroy returned products which are older than 3 months, with or without prior consultation.
- 13.7 Returning in conformity with the provisions in 13.1 through 13.6 is possible for standard stock-products. On account of the unique design created on order of the counterparty, specials cannot be returned.

### **14 Set-offs**

- 14.1 We have the right to set off amounts owed to us by the counterparty, as well as unpaid interest, against turnover bonuses and promotional compensation as they may have been pledged by us.

### **15 Liability**

- 15.1 We are not liable for any damage, whether direct or indirect, due to any cause whatsoever on the part of the counterparty or third parties in connection with the matters or services provided by us, unless the damage has occurred as a result of intent or gross negligence on the part of our managing staff.
- 15.2 Intended by direct damage is exclusively the reasonable costs to determine the cause and extent of the damage, to the degree the determination regards damage in the sense of these conditions, the possible reasonable expenses to make the inadequate performance of Tricorp compliant with the agreement, to the extent these can be attributed to Tricorp, and reasonable costs incurred to prevent or limit direct damage as intended in these general conditions.
- 15.3 Without prejudice to the preceding, we are never liable for:  
 A consequential and/or indirect damage such as operational stagnation and loss of profit, losses, lost savings, and other consequential damage;  
 B damage caused by ancillary persons;  
 C damage occurring to goods of third parties.
- 15.4 If we, despite the provisions in this article, are held for whatever reasons to compensate any damage, per event (whereby an interrelated series of events counts as a single event) will only be eligible for compensation, however, the amount of the net invoice value for the relevant delivery, or the amount to be disbursed by the insurance company in the underlying case, in the event the latter sum is higher.
- 15.5 In case the proportion of the compensation payable by the counterparty vis-a-vis the damage suffered by the counterparty constitutes grounds for such, the compensation of damages will be moderated by us.
- 15.6 Barring the event of gross negligence or intent on the part of Tricorp or its managing staff, the counterparty will safeguard us against all third-party claims, on whatever account, in the matter of compensation of damage, cost, or interest with regard to delivered matters and/or services, or resulting, respectively, from the use of the delivered matters or caused by or resulting from, respectively, the agreement concluded with the counterparty.
- 15.7 We are never liable for the content of data which are attached, whether or not by our hands, to our products (imagery, sound, or data). Tricorp is not liable for damage of whatever nature, occurring because Tricorp based itself on inaccurate and/or incomplete information provided by or on behalf of the counterparty.
- 15.8 All rights of action vis-a-vis Tricorp lapse 1 year after delivery.

### **16 Suspension and rescission**

- 16.1 In case the counterparty does not adequately, does not within the established term, or does not otherwise timely comply with any obligation from any agreement, in case a precautionary or enforced seizure is lodged at the expense of the counterparty, (temporary) suspension of payment is granted or its bankruptcy is applied for, or in the event of the shutdown or liquidation of the business of the counterparty, the counterparty falls into default, and Tricorp will have the right, without default notice or judicial intervention, to:  
 A suspend the implementation of that agreement and of directly related agreements until payment has been sufficiently secured; and/or  
 B completely or partially rescind that agreement with the counterparty as well as agreements directly related to it;  
 C and all matters without prejudice to the other rights of Tricorp, stipulated in any agreement with the counterparty whatsoever, and without binding Tricorp to any compensation of damages.

16.2 In case an event occurs as intended in in art. 16.1, all claims of Tricorp on the counterparty are immediately and fully payable and Tricorp will have the right to recover the relevant products. In that case, Tricorp and their authorised representative(s) will have the right to enter the premises and buildings of the counterparty with the purpose of taking possession of the products. The counterparty is obligated to take the necessary measures to enable Tricorp to exercise its rights.

## 17 **Miscellaneous subjects**

17.1 The text of the Dutch version of these general conditions is decisive in case of ambiguities.

17.2 In case any provision of these general conditions is void or annulled, the remaining provisions of these general conditions will remain fully effective and we will enter into consultations with the counterparty so as to agree on a new provision to replace the void or annulled provision, whereby the purpose and substance of the void or annulled provision respectively will be observed as much as possible.

17.3 We have the right to unilaterally change these general conditions. Modifications also apply with regard to agreements already entered into. Modifications become effective one month after announcement by way of a written notification to the counterparty, including the forwarding of the modified general conditions. If the counterparty does not wish to accept the modifications to the general conditions, it has the right to refuse these modifications until the moment they become effective. In case the counterparty does not proceed to do so, the counterparty is considered to have accepted the modifications after the moment of their becoming effective.

## 18 **Applicable law and disputes**

18.1 To the agreement between us and the counterparty and to the contracts resulting from it, Netherlands legislation is exclusively applicable, to the exclusion of the provisions of the Vienna commercial treaty.

18.2 All disputes resulting from offers, agreements and other legal relationships between us and the counterparty will be exclusively settled by the competent court of law of Zeeland - West Brabant, location Breda.

A TEAM ■

WORK LIKE

A TEAM ■