

# General terms and conditions of sale Tsubakimoto Europe B.V.

## 1. General

In these general terms and conditions 'Tsubaki' shall mean Tsubakimoto Europe B.V.

## 2. Applicability

- 2.1 The applicability of the general terms and conditions used by the customer is hereby expressly excluded.
- 2.2 These general terms and conditions are applicable to all legal relationships in which Tsubaki acts as a seller and/or supplier or as a potential seller and/or supplier of products and/or services.
- 2.3 Deviations from the provisions in these general terms and conditions shall be permitted only in writing. No rights in relation to agreements that are concluded later may be derived from such deviations.

## 3. Conclusion of the agreement / Measurements & Weight

- 3.1 If the customer issues an order, the agreement shall have been concluded if Tsubaki accepts the order in writing or electronically or makes a start with its implementation.
- 3.2 Drawings, measurements and weights that are shown or provided on the website of Tsubaki or otherwise, shall only be used as indications. The product and/or service to be provided under the agreement need not correspond with the drawing, measurement and weight.

## 4. Prices / Delivery conditions

- 4.1 Prices are exclusive of VAT.
- 4.2 Prices are ex warehouse, unless otherwise agreed in writing.
- 4.3 Prices are as per Tsubaki described standard unit or packaging only.
- 4.4 In addition to the price, the customer shall fully pay, unless otherwise agreed in writing, any and all, local taxes, duties, excises, licence fees and other charges levied, assessed or imposed upon Tsubaki due to the manufacture, sale, purchase, export or delivery of the products.
- 4.5 The customer shall also pay the cost by which such manufacture is increased by reason of any law, ordinance or regulation adopted or promulgated by any government or governmental subdivision, department or agency, or other source, after the date hereof, but prior to the completion and delivery hereunder.
- 4.6 Changes in labour costs, cost prices of raw materials or materials and/or exchange rate movements related to the performance agreed on, shall entitle Tsubaki to pass on these costs to the customer.

## 5. Delivery/delivery times

- 5.1 The delivery period indicated by Tsubaki starts as from the moment that all data, drawings and the like necessary for the performance of the agreement have been received by Tsubaki in its entirety.
- 5.2 Delivery times agreed with Tsubaki are indicative and shall not constitute deadlines.
- 5.3 Failure to deliver within the indicated delivery period does not entitle the customer to additional or substitute damages, nor to the customer's non-fulfilment, withholding or postponement of any of its own obligations arising from the agreement.
- 5.4 If the customer requests Tsubaki to make changes in the performance of the agreement (including, but not limited to, changes in the design or construction of products), or otherwise delay or interrupt the progress of the work under the agreement, the customer shall fully reimburse Tsubaki for any and all additional expenses arising there from.
- 5.5 Tsubaki shall be entitled to perform its due obligation(s) in stages or in parts. Each partial delivery shall be deemed an independent delivery with respect to the applicability of these general terms and conditions.

## 6. Returned products

- 6.1 No products shall be acceptable for return without prior written consent of Tsubaki.
- 6.2 Special or made-to-order products are not returnable.
- 6.3 The customer shall prepay freight on all returns, and each return is subject to inspection and acceptance by Tsubaki to assure that the products are in a "re-sellable" condition.
- 6.4 The customer shall pay a maximum of 10% (ten percent) of the price for handling and restocking costs charge with regard to all authorized returns.

## **7. Payment**

- 7.1 Payment of Tsubaki's invoices shall ultimately take place within 30 (thirty) days after the invoice date in the manner described by Tsubaki, provided however that Tsubaki may at all times request for payment in advance. Payment shall take place effectively in the currency agreed on and without deduction, set-of, discount and/or deferment.
- 7.2 In case of overdue payment, all payment obligations of the customer, regardless of whether Tsubaki has already issued an invoice in the matter and of whether Tsubaki has duly performed its obligations, shall be immediately due and payable and the customer shall owe an interest of 1.5% (one and a half percent) per month or per part of a month on the amount due.
- 7.3 Extra-judicial collection costs shall be charged to the customer in accordance with the collection rates of the Netherlands Bar Association.
- 7.4 Payment by or on behalf of the customer shall extend to payment of the following charges incurred, in the following order: extra-judicial collection costs, the legal costs, the interest due, and after that the unpaid capital sums according to the order of receipt, regardless of other instructions of the customer.
- 7.5 The customer can only object to the invoice within the term of payment.

## **8. Intellectual Property Rights and know-how**

- 8.1 All documentation, sales leaflets, pictures, drawings etc., provided by Tsubaki to the customer, shall at all times remain the exclusive property of Tsubaki.
- 8.2 The customer shall not be entitled to use the documents referred to in paragraph 1 for any purpose other than for the use of the products to which they relate.
- 8.3 The customer shall not be entitled to use the documents referred to in paragraph 1 or to duplicate and/or make public to third parties data included therein or in any other way made known to the customer without express prior written consent of Tsubaki.
- 8.4 In the event of any violation of what has been stipulated under paragraph 2 and/or 3, the customer shall pay Tsubaki an immediately payable fine of EUR 10,000 (ten thousand euros) for each violation, regardless of any other of Tsubaki's rights to performance, dissolution, compensation, etc.

## **9. Retention of title**

- 9.1 All products that are delivered or are to be delivered by Tsubaki remain the property of Tsubaki until Tsubaki is fully paid with regard to:
  - A. all performances due by the customer for all products that are delivered or are to be delivered in accordance with the agreement, and;
  - B. all claims that are the result of the customer's failing in the performance of such agreement(s); the customer shall not be allowed to claim its right of retention concerning costs of custody and to deduct these costs with the performances required by the customer.
- 9.2 If the customer creates a new product from or partly from products referred to in paragraph 1, this product belongs to Tsubaki and the customer shall consider Tsubaki its owner, until the customer has fully performed all of its obligations referred to in paragraph 1.
- 9.3 If any product belongs to Tsubaki in accordance with paragraph 1 and/or 2, the customer can have exclusive possession of this product or product within the framework of its normal business operations.
- 9.4 If the customer is in default in the performance of its obligations referred to in paragraph 1, Tsubaki shall be entitled to recover all the products from their location, at the expense of the customer. The customer hereby irrevocably grants authority to Tsubaki to enter the area used by or for the customer.

## **10. Security**

- 10.1 If there are valid grounds to expect that the customer shall not perform its obligations, the customer shall be obliged, at the first request of Tsubaki, to immediately furnish adequate security in the form requested by Tsubaki (including complete payment in cash before or on delivery) without prejudice to customer's obligations under the agreement. If and to the extent that the customer has not fully performed its obligations, Tsubaki shall be entitled to suspend performance of its obligations.
- 10.2 If the customer takes no action on the request referred to in paragraph 1 within 14 (fourteen) days after having received a written warning to that effect, all its obligations shall be immediately due and payable.

## **11. Guarantee**

- 11.1 With regard to the assembly carried out by Tsubaki, the following guarantee is provided: For 6 (six) months, Tsubaki shall repair faults in the assembly, free of charge, at the discretion of Tsubaki.
- 11.2 If and to the extent Tsubaki can claim guarantee with respect to its own suppliers, Tsubaki shall provide the following guarantee on products obtained from them: For 6 (six) months, Tsubaki shall supply alternative products, free of charge, if the products supplied exhibit manufacturing defects or defects in the material, at the discretion of Tsubaki.
- 11.3 The customer can only make a non-recurring claim under the guarantee mentioned in paragraphs 1 and 2 if the customer has performed all its obligations towards Tsubaki.
- 11.4 Defects which are the result of normal wear, improper use or improper or incorrect maintenance or which occur after changes or repair carried out by or on behalf of the customer, shall not be part of the guarantee.
- 11.5 Minor differences, which means 10% (ten percent) or less with regard to amounts, measures, weights, numbers and other such data provided, are not considered defects.

## **12. Complaints / obligation to examine / limitation period**

- 12.1 On delivery, the customer has the obligation to examine whether the products are in conformity with the agreement. If this is not the case, the customer cannot make a claim regarding non-conformity if the customer does not notify Tsubaki in writing in a well-founded manner as soon as possible, but in any event within 8 (eight) days after delivery or after detection of non-conformity was reasonably possible.
- 12.2 Any and all of the customer's claims and defences based on facts that support the view that the product delivered is not in conformity with the agreement, shall expire 6 (six) months after delivery.

## **13. Dissolution and release**

- 13.1 If the customer does not perform or incorrectly performs any of its obligations arising from the agreement (such as overdue payment), if the customer is placed under guardianship, involuntary liquidation, suspension of payment or closure or winding up of its company, and also in the case of prejudgment or executory attachment against the customer or if an offer or agreement with regard to an extra-judicial debt settlement with the customer has been made, Tsubaki shall be entitled, at its option, without any obligation for compensation and without prejudice to its other rights, to dissolve the agreement in whole or in part, or to suspend the further execution of the agreement. In these cases, Tsubaki shall be also entitled to claim immediate compensation of the amount due.
- 13.2 If the proper performance by Tsubaki is partially or completely impossible, whether temporarily or permanently, due to one or more circumstances which cannot be held accountable to Tsubaki, including the circumstances mentioned in the paragraph 14.6, Tsubaki, at its option, shall be entitled to suspend its performance or to dissolve the agreement.
- 13.3 If the customer is not willing to cooperate with the delivery after Tsubaki has given the customer 14 (fourteen) days to do so, Tsubaki will be released from its obligations, without prejudice to the obligations of the customer.

## **14. Compensation**

- 14.1 Tsubaki shall only be liable for damages suffered by the customer which can be attributed to gross negligence or intention by Tsubaki to the amount that Tsubaki is insured in accordance with an insurance commonly used in this line of industry and which is actually paid out with respect thereto. The aggregate compensation payable by Tsubaki shall not exceed EUR 500.000 (five hundred thousand euros) per event, whereby a series of related events shall be considered as one event.
- 14.2 Tsubaki shall never be liable to pay any compensation other than personal injury or property damage.
- 14.3 Tsubaki shall never be liable for loss of income, profit or revenue, loss due to shutdown or delay in business activities, production losses, loss of operating hours and/or wages paid in vain, extra costs incurred due to external purchasing, loss due to restoration of lost information, missed savings or agreements, discounts or penalties.
- 14.4 Tsubaki stipulates all legal and contractual defences, which it can invoke to fend off its own liability towards the customer, also on behalf of its employees and non-employees for whose acts it is liable in accordance with the law.

- 14.5 Tsubaki shall not be liable with regard to products supplied by Tsubaki which originate from third parties if and to the extent that the applicable third party has excluded its liability.
- 14.6 Under no circumstance shall Tsubaki be held liable for the following circumstances: actions, except gross negligence or intention, of persons used by Tsubaki for the realisation of the agreement; unsuitability of products which Tsubaki uses for the realisation of the agreement; exercising one or more rights by a third party vis-à-vis the customer in the case of a failure in the performance by the customer of an agreement between the customer and the third party concerning products supplied by Tsubaki; industrial action, lockout of workers, illness, bans on import, export and/or transport, problems with transport, failure to comply with the obligations by suppliers, production failure, natural and/or nuclear disasters, and war and/or threat of war.
- 14.7 The customer shall indemnify Tsubaki against all claims from any third party, in whatever form, with regard to damage and/or loss, which any third party may have suffered due to products of Tsubaki.
- 14.8 Everything stipulated in this article shall be without prejudice to Tsubaki's liability pursuant to mandatory provisions of law.

**15. Amendment of general terms and conditions**

- 15.1 Tsubaki has the right to amend these general terms and conditions from time to time. Amendments apply also with regard to agreements already concluded. Amendments shall be notified in advance in writing or electronically to the customer and shall enter into effect 30 (thirty) days after this notification or on such date as specified in the notification.
- 15.2 In the event the customer fails, with respect to the amended general terms and conditions, to give written notice that it does not accept these amended general terms and conditions prior to the day on which the aforementioned terms enter into effect, such as is indicated here above, the customer shall be deemed to have accepted these amended general terms and conditions.

**16. Conversion**

If and to the extent that any provision in these general terms and conditions cannot be invoked on grounds of reasonableness and fairness or its unreasonably onerous nature, the provision shall be given a meaning that corresponds as much as possible to its content and purpose, making it thereby possible to invoke this provision.

**17. Assignment**

- 17.1 Tsubaki is entitled to assign one or more of its obligations or its entire legal relationship with the customer to a third party without consent of the customer. Tsubaki shall inform the customer of this transfer in writing.
- 17.2 The customer is only entitled to assign one or more of its obligations or its entire legal relationship with Tsubaki to a third party upon Tsubaki's express prior written consent.

**18. Applicable law / competent court**

- 18.1 All legal relationships between Tsubaki and the customer shall be governed by the laws of the Netherlands, without taking into account the principles of conflict of laws.
- 18.2 The applicability of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 18.3 All disputes which may arise between Tsubaki and the customer that fall under the jurisdiction of a district court, shall only be submitted to the court in the judicial district in which Tsubaki has its registered office, unless Tsubaki as a plaintiff or an applicant opts for the competent court in which the customer has its registered office or address for service.

**19. Dutch text prevails**

If and insofar as there is a discrepancy between the general terms and conditions in the Dutch language and those in the English language, those in the Dutch language shall prevail.

These conditions were filed at the Chamber of Commerce and Industry in Rotterdam.