

GENERAL TERMS AND CONDITIONS

Article 1 - General

1. These are the general terms and conditions applied by Swanenberg IJzer groep BV, established and having offices in Schayk, the Netherlands at Zeelandsedreef 2 (Chamber of Commerce 's-Hertogenbosch, file number 16027388), as well as the companies affiliated with it: Handelsonderneming H. Swanenberg BV (Chamber of Commerce 's-Hertogenbosch, file number 16040089), Swanshop BV (Chamber of Commerce 's-Hertogenbosch, file number 16041225), Swanenberg Buizen BV (Chamber of Commerce 's-Hertogenbosch, file number 16060163), Stal Swanenberg by (Chamber of Commerce 's-Hertogenbosch, file number 16079282) hereinafter referred to, collectively or not as required by the context, as Swanenberg.
2. These general terms and conditions shall be applicable to all agreements, tenders, offers, orders, deliveries, invoices and the further lawful relationships between Swanenberg and its customers, suppliers and third parties it grants assignments to.
3. These general terms and conditions shall not in any manner affect any general terms and conditions of purchasing and/or general terms and conditions of sale as these may be applied by customers and/or suppliers of Swanenberg to the extent they shall not conflict with these general terms and conditions. In that case, the stipulations of these general terms and conditions shall take precedence and prevail.
4. The address at which a contractual party is established at the time Swanenberg concludes an agreement therewith may always be deemed by Swanenberg to be the correct address until the customer shall notify Swanenberg by registered mail/recorded delivery of a new address to be used. All letters, reminders, final demands, writs served and notices issued shall be deemed to have been issued and served properly and lawfully should they have been sent to or served at the address given, for as long as the new address shall not have been the subject of a notice issued to Swanenberg in the aforementioned and prescribed manner.
5. All agreements covered by these general terms and conditions shall be subject to and governed by the law of the Netherlands. All disputes which might arise and which parties are unable to resolve among themselves shall be referred to the District Court of 's-Hertogenbosch, the Netherlands. Swanenberg remains entitled to sue the other party in the jurisdiction with competence under the law or applicable international treaty.

A. SALES MADE BY SWANENBERG

Article 2 – Tenders and prices

1. All tenders and offers made by Swanenberg are non-obligatory unless expressly referred to otherwise in writing.
2. Swanenberg is solely bound by an offer or tender once this shall have been confirmed in writing by a person authorized to do so. The other party shall be bound to an agreement once Swanenberg shall have made it known in any manner that it wishes to conclude the agreement or shall have commenced performance thereof.
3. All prices referred to by Swanenberg are based on the tariffs, levies and premiums and other costs incurred by Swanenberg. If one of those underlying factors changes or is changed outside the direct influence which may be exercised by Swanenberg prior to delivery being made, Swanenberg shall retain the right to change the price agreed with the customer. If Swanenberg increases the price agreed on by more than 10%, the customer shall retain the right, within 14 days after being informed by Swanenberg in writing of that price increase, to dissolve the agreement in writing. However, if Swanenberg shall have already commenced the performance of that agreement, prior to dissolution thereof shall have been invoked, the customer shall remain bound to perform the agreement at the original price to the extent that agreement shall have already been performed, unless Swanenberg shall consent to the dissolution of the agreement which shall remain at the discretion of Swanenberg.

Article 3 – Background check into financial soundness

Swanenberg shall retain the right to conduct a background check into the financial soundness of the other party and if necessary to require sureties for the performance on the part of the other party for the obligation it shall have incurred in the frame of reference of the agreement concluded. The Customer shall provide the sureties requested upon being first requested to do so by Swanenberg.

Article 4 – Inspection of goods and supply

1. The Customer taking goods from Swanenberg shall retain the right to inspect or have the goods inspected which it shall purchase and do so at its own cost or to have the goods in question inspected by an expert. Swanenberg solely sells goods in the condition in which those goods are found.
2. The goods sold by Swanenberg are delivered by from its own site, or the venue where those goods are stored. All goods are hence after delivery hence no later than from that moment in time loading thereof commences, entirely for the risk and for the account of the customer and Swanenberg gives no guarantee whatsoever in connection with quality, scale, weight or suitability of the goods.
3. All transport costs, as well as those for loading and unloading that sold and bringing it to its destination shall be for the account of the Customer unless otherwise agreed on in writing. If in connection with the transport or loading and unloading another agreement shall have been concluded, this shall be with prejudice to that determined in section 2 above in connection with the transfer of risk.

Article 5 – Delivery times

1. Goods sold by Swanenberg shall be delivered within the time period agreed for delivery. If delivery can solely be made at a later time the Customer shall grant Swanenberg a reasonable additional period of at least four weeks in order to make delivery. Late delivery on the part of Swanenberg shall not entitle the Customer to receive any compensation for any damage it might sustain directly or indirectly as a result hereof nor shall any entitlement arise to any consequential damage.
2. Late delivery shall require the Customer to declare Swanenberg in default in writing which notice shall be required to sent by registered mail/recorded delivery in which notice the Customer shall grant Swanenberg a time period to deliver in accordance with that determined in the previous section. After that period of grace shall have expired, the Customer shall have the right to dissolve the agreement without being entitled to receive any compensation for damage from Swanenberg, even if the Customer shall require performance of the agreement it shall never have the right to receive any compensation for any damage it sustains, directly or indirectly or for any consequential damage.

Article 6 - Insurance

Swanenberg shall insure the goods it shall have sold as far as it shall deem necessary against risks connected with, inter alia, storage on the site of Swanenberg or during transport for the account and risk of Swanenberg. All damage which might be sustained after delivery which shall not be compensated for by the insurance company and paid out to Swanenberg shall be entirely for the account of the Customer.

Article 7 – Returned goods/complaints and queries

1. Any complaints or queries about goods supplied by Swanenberg shall be required to be notified to Swanenberg within forty eight (48) hours with a written confirmation being sent within eight (8) days under cover of a description of the nature and scale of the complaint.
2. If a complaint is found grounded by Swanenberg, Swanenberg shall have the right to collect the goods, if paid for and deliver similar replacement goods or to reimburse the Customer up to a maximum of the invoice value of the goods originally delivered by Swanenberg. Swanenberg shall solely be bound to pay further compensation for damage to the extent that and up to the amount of the company damage insurance taken out by Swanenberg shall provide cover for this and providing that the insurance company in question makes payment to Swanenberg.
3. Should it be determined that any complaints made are for the account and risk of the supplier of Swanenberg, Swanenberg shall transfer its receivable due from that supplier to the Customer.
4. Without prejudice to that determined in article 4.2, any minor differences in quality, scale, weight or suitability, this solely being the judgement of Swanenberg, in relation to that agreed on in writing, shall not constitute grounds for complaint, or entitle the customer to return goods or make queries.

Article 8 – Right of retention of property and authorization to use and dispose of goods

Swanenberg shall always be entitled to require pre-payment for and of the goods it is to deliver. All goods delivered by Swanenberg remain its property until the Customer shall have paid all outstanding invoices, including interest and costs and hence also have paid all invoices in full concerning deliveries of goods made previously, even if claims shall have been made in connection with shortcomings in the performance of the agreement or prior agreements. The Customer shall not be entitled to use or dispose of the goods in question in any manner nor make use of them in conducting its professional activities or business activities neither shall the Customer being entitled to transfer the goods in question to any third party, provide them to any third party or make use of them in any manner, alienate them or encumber them, without prior permission to do so having been granted in writing by Swanenberg.

Article 9 – Force Majeure

If Swanenberg is unable to delivery as a result of force majeure or facts or circumstances outside its control, all terms and conditions and time periods laid down in the agreement and concluded between parties and/or those referred to in these general terms and conditions shall be suspended until the force majeure situation shall have been resolved and no longer prevails. Should Swanenberg be of the opinion that the force majeure situation is permanent by nature it shall be entitled to dissolve the agreement, effective immediately. Both when Swanenberg does commence performance after the force majeure situation shall have been resolved as well as should Swanenberg decide to dissolve the agreement, Swanenberg shall never be bound to pay any compensation for damage or any consequential damages.

Article 10 - Payment

1. The Customer shall pay all invoices submitted by Swanenberg, without applying any discount unless otherwise agreed in writing and do so within the time period laid down on those invoices by transferring the sums due to a bank or giro account held by Swanenberg or make cash payment thereof at the offices of Swanenberg. If no payment period is laid down on the invoice(s) in question, payment shall be made within fourteen (14) days after the date of said invoice in which the value date of payment shall be the date on which the payment shall be deposited on the bank account in question held by.
2. All payments received shall first be accounted for by being booked against outstanding invoices for interest and costs and only thereafter applied to defray the oldest outstanding invoice for goods supplied.

3. Should late payment be made, the Customer shall be due to pay lawful interest on the sum paid too late amounting to 1.5% per month without any further notice of being in default being required to be sent out or served on the Customer, in which connection any part of a month shall be deemed to be a whole month.
4. The Customer shall not be entitled to compensate its payment obligations or off-set its payment obligations in respect of Swanenberg with or against any payment obligation or receivable due to or from Swanenberg aside from when advance permission to do so shall have been granted for this in writing by Swanenberg.
5. If the Customer does not pay or does not pay on time, Swanenberg shall retain the right to give its receivable due from the Customer into the hands of a third party including the invoices which at that time shall not have become due. Collection costs shall be entirely for the account of the Customer, in which connection, out of court collection costs shall at least amount to 15% of the receivable due and at least, per occurrence, amount to € 125.00.
6. If the Customer does not pay or does not pay on time or in some other manner fails to meet its obligations or fails to meet its obligations in a timely manner, Swanenberg shall have the right to suspend the performance of its obligations in respect of the Customer or to dissolve the agreement concluded with the Customer. In that latter case, the Customer shall compensate Swanenberg for the damage the latter sustains as a result of the agreement not being performed. The damage resulting from loss of profits shall in that case be set at 20% of the purchase/sales price.

Article 11 - Liability

Without prejudice that determined in the foregoing, Swanenberg shall never be liable in respect of the Customer or any third parties for any damage of whatever kind caused by or connected with goods supplied by Swanenberg. The Customer shall indemnify Swanenberg from any and all claims which might be made by any third parties arising from this. Alongside this, under any and all circumstances each and every form of liability on the part of Swanenberg is at any and all times no more than the damage or consequential damage which shall be covered by the insurance referred to in article and to the extent the insurance company actually effects payment and then only up to the amount for which cover shall have been provided, while the Customer shall be required to first invoke its own insurance prior to endeavouring to invoke the insurance taken out by Swanenberg. Furthermore, Swanenberg shall, without prejudice to the foregoing, never be liable to make any compensation for damage, including consequential damage, exceeding the maximum amount for which Swanenberg shall have submitted an invoice in the case in question.

B. PURCHASING ON THE PART OF SWANENBERG

Article 12 – Orders and assignments granted

1. Orders placed by Swanenberg and assignments granted by Swanenberg shall only be binding if confirmed in writing which confirmations shall be required to be signed by an authorized signatory designated as such by the trade registry.
2. Swanenberg shall retain the right to cancel any assignments granted in whole or in part or to withdraw any assignment granted for as long as the supplier in question or the party to which the assignment shall have been granted shall not have delivered and supplied the goods ordered or rendered the services for which the assignment shall have been granted in whole or in part.

Article 13 – Non-performance or improper performance

1. If Swanenberg should be of the opinion that an assignment shall not have been performed or not have been performed properly, or should it be of the opinion that goods shall not have been delivered, Swanenberg shall retain the rights to suspend payment until proper performance or proper delivery shall have been completed.
2. Should attributable non-performance apply to the supplier or the party to which an assignment shall have been granted, Swanenberg shall retain the right, alongside and in addition to performance, to require the dissolution of the agreement and claim compensation for damage sustained by Swanenberg and compensation for damage yet to be sustained by Swanenberg with a minimum applying in this connection of 25% of the contractually agreed upon price.

Article 14 – Payment of interest and the application of the statute of limitations

1. Deliveries accepted and services rendered shall be paid for by Swanenberg within three month. Only thereafter shall Swanenberg be bound to pay lawful interest commencing from after this time until payment shall have been effected, once a final demand shall have been submitted in writing. Swanenberg shall never be bound to pay any out of court collection costs or pay interest at a percentage which shall exceed the rate applicable to lawful interest.
2. Receivables due to suppliers of goods or renderers of services shall be required to be invoiced within one year after delivery and supply shall have been made to Swanenberg. The receivables in question shall be deemed to have expired due to the application of the statute of limitation upon the expiry of the aforementioned time period.

Article 15 – The transfer of obligations

Swanenberg shall be entitled to transfer its obligations arising out of an agreement to a third party. If the supplier or the party to which an assignment shall have been granted does not agree to this, that objection shall be required to be made known within one week of having been informed of that intended transfer, in writing, to Swanenberg. The agreement between parties shall then be dissolved and parties shall be required to return to on another that which they shall have received from one another in the frame of reference of the agreement.

Article 16 – Proper performance

A supplier or a party to which an assignment shall have been granted shall always guarantee the proper quality of its delivery and activities and shall in particular also be required to guarantee compensation for any damage which the customers and legal heirs and successors of Swanenberg under extraordinary title shall have sustained as a consequence of non-performance or improper performance.

C. PROCESSING ON THE PART OF SWANENBERG

Article 17 - General

If agreements, tenders and offers in whole or in part concern processing goods to be delivered, the following terms and conditions shall also be applicable. Those tenders, offers and agreements shall also be governed by articles 1 through to and including 11 of these general terms and conditions, unless in this section express deviation therefrom shall have been made.

Article 18 – Advice, design and materials

1. Any information and/or advice provided by Swanenberg shall always be non-binding. Swanenberg shall never accept any responsibility for a design detailed by or on behalf of a Customer nor for any advice given in connection with that design or any other advice which might be given. The functional suitability of the materials prescribed by the Customer, processing thereof and designs used in that connection shall always remain the responsibility of the Customer itself. That functional suitability shall also include the suitability of the material, the component, the un-processed as well as the processed product itself, for the purpose for which according to the Customer it is intended.
2. Swanenberg shall never accept any responsibility for components and/or parts and/or materials and/or designs and/or instructions which have been provided by the Customer itself or prescribed by the Customer. The Customer shall be entitled to have third parties inspect and conduct research on materials and/or products to be processed not provided by the Customer. The costs connected therewith shall be for the account of the Customer. After processing the materials or components, the Customer may not invoke the fact that the material used/goods used are functionally speaking unsuitable nor may the Customer invoke any other flaws in the material/the goods delivered which in all reasonableness could have been found had research been conducted.
3. If the Customer wishes to transfer the responsibility for design to be made for it or on its behalf forming the assignment in question to Swanenberg, Swanenberg shall not be bound to accept that responsibility. Accepting such a responsibility can solely be undertaken when a written confirmation thereof shall have been issued by Swanenberg which shall have been signed by an officer of the company who is authorized as a signatory according to the trade registry.

Article 19 - Returned goods/complaints and queries

1. In addition to that determined in this connection in and by article 7 in the foregoing, the Customer shall also be deemed to have carried out of testing within the time period laid down in article 7, section 1, in connection with the goods delivered and also be deemed to have carried out all testing on the properness of the processing carried out on those goods within that self-same time period and to have done so in such a manner that any flaws in said processing would have manifested themselves and hence should no complaint have been made within the time frame set for this purpose, both the goods supplied and delivered as well as the processing thereof may be deemed to have met the demands imposed thereupon.
2. The Customer may not invoke any alleged flaw any longer if it fails, within 8 days, to inform Swanenberg thereof after having discovered that flaw, or could in all reasonableness have discovered that flaw, which complaint shall also be required to be made in writing and submitted to Swanenberg in accordance with that determined in and by article 7.1, to which this article acts as a supplement not a deviation. Moreover, the Customer shall lose all its rights and authorizations which it might otherwise deploy and invoke on the grounds of there being a product flaw if it does not afford Swanenberg an opportunity, within a reasonable time period, to repair any flaws found, as shall similarly apply should the goods, processed or not, have been used (as components in a larger work).

Article 20 - Liability

1. In addition to that determined in connection with liability in article 11, Swanenberg shall never be liable in respect of the Customer or third parties for any consequential damage in whatever form resulting from any improper processing of the goods supplied and delivered. The Customer shall be deemed to have taken out insurance against both direct as well as indirect (consequential) damage which might be sustained from any improper processing of the goods supplied and delivered.
2. Swanenberg shall furthermore never be liable for any damage caused by auxiliary persons, even when deliberate acts or gross negligence shall apply.
3. To the extent that notwithstanding this Swanenberg shall be liable, the damage to be compensated by Swanenberg shall be mitigated of the price to be paid by the Customer is minor in relation to the scope of the damage sustained by the Customer.
4. The foregoing limitations to liability shall not apply as deviations from the limitations to liability included in article 11 but shall solely serve as supplements thereto.