

EPS B.V. STANDARD TERMS AND CONDITIONS OF SALE

1. General

- a. These Standard Terms and Conditions of Sale contain the entire agreement in connection with Products and/or Services and may only be modified or supplemented by separate written agreement between EPS and Customer. All other terms and conditions, express or implied (whether by statute or common law), present or historic (including any statements made in any brochure, website or advertising literature of EPS) are excluded, save in the case of fraud.
- b. Unless otherwise specified: “EPS” means EPS B.V.; “**Customer**” means the person/company buying the Products or Services or, if agent for another, that person and the other jointly and severally; the “**Products**” means the products and any part of them described in EPS’s quotation and includes their packaging and any replacement products; the “**Services**” means any services provided to Customer by EPS whether or not such services are described in a quotation from EPS; “**Specification**” means that specification (if any) included in EPS’s written quotation or any other written specification supplied by EPS

2. Pricing and Payment

- a. Time of payment is of the essence of the contract. Without prejudice to any other remedy, EPS may charge interest under applicable law for late payment. All payments shall be made without abatement, deduction, counterclaim or set-off of any kind. Should default be made by Customer in paying any sum due under any order as and when it becomes due, EPS shall have the right to suspend any or all further deliveries or services until the default be made good and may cancel the order so far as any Products remain to be delivered or Services remain to be performed thereunder.
- b. A cancellation fee of 10% of the contracted price will be payable on cancelled orders. Items sold as made to order cannot be cancelled or amended once EPS has accepted Customer’s order, neither can EPS accept such items for return unless the Product subsequently proves to be faulty.
- c. All prices quoted or invoiced are stated net of any value added tax or any other applicable sales tax and delivery charges unless otherwise agreed in writing.

3. Delivery

- a. If no place of delivery is agreed, delivery shall be EXW (Incoterms 2010) EPS facility.
- b. EPS shall use its reasonable endeavours to deliver the Products and perform the Services within the time specified, but accepts no liability for any expenses, loss or damage whatsoever, suffered by Customer or third parties as a result of failure, for whatever reason, to deliver or perform within the time so specified.
- c. Complaints or disputes about quantities, weights, packing or mistakes in transportation or in expenses shall be communicated in accordance with clause 5.1(a), failing which all quantities, weights etc. shall be deemed to be in accordance with the contract and Customer shall have no rights or recourse against EPS in respect of such complaint.

4. Risk and Title

- a. Risk in the Products shall pass to Customer upon delivery (or deemed delivery) notwithstanding that the property in the Products may not have passed to Customer. EPS shall retain legal and beneficial ownership of the Products until (i) EPS has received payment in full for the Products and of all other sums which are or become due to EPS from Customer (ii) the Products are mixed, processed or used so that they lose their identity or are irrecoverably incorporated in, mixed with or applied to other goods.
- b. Until ownership passes to Customer, Customer shall (i) maintain the Products in satisfactory condition and keep them insured against all usual risks to the full replacement value, (ii) store the Products separately from all other goods of Customer and keep them clearly identified as EPS's property and (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products. If the law of the territory in which the Products are situated does not permit the retention of title but allows other protective rights then this contract reserves such rights and Customer grants such rights to EPS.

5. Limited Warranty, Limit of liability

- a. EPS warrants to Customer, and only to Customer, that the Products purchased from EPS conform to EPS's published specifications. If Customer discovers a failure of the Products to substantially conform to EPS's published specifications, Customer must within 10 days after discovery (but in no event later than 180 days after receipt) notify EPS in writing. Within a reasonable time after timely written notification, EPS will either replace the non-conforming Products or refund the purchase price of the non-conforming Products. Subject to clause 5 (d) these are Customer's exclusive remedies and EPS's exclusive liability.
- b. EPS does not warrant (a) any product used after its shelf life, (b) damage caused by unauthorized modification of Products or use of the Products for purposes other than those for which they were intended, (c) damage caused by disaster such as fire, flood, wind or lightning, or (d) damage during shipment.
- c. **THE WARRANTY SET FORTH ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND EPS DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREEDOM FROM PATENT INFRINGEMENT.**

To the extent permitted by applicable law, EPS is not liable for any special, incidental or consequential damages based upon breach of warranty or any other legal theory. Such excluded damages include, but are not limited to, lost profits, lost savings or revenue, down time, claims of customers or other third parties and injury to property.

- d. Nothing in these Standard Terms and Conditions of Sales excludes or limits the liability of EPS for (i) death or personal injury caused by EPS's negligence, (ii) fraud or fraudulent misrepresentation and (iii) for any matter which it would be illegal for EPS to exclude its liability.

6. Confidential Information

- a. Unless otherwise agreed in writing by Customer and EPS, if Customer and EPS have entered into a separate, written confidentiality agreement relating to the Products which are the subject of this Agreement, that confidentiality agreement supersedes and replaces the terms of this section. Each party shall keep secret at all times (and shall procure that its employees do the same) any information of a confidential nature (including any trade secrets, proprietary techniques and know- how) obtained from the other by reason of this contract except if the

information is already in the public domain, must be disclosed by law or which the receiving party can show was in its possession before disclosure by the other. Neither party shall use, copy or reproduce confidential information except for the purpose for which it was disclosed.

- b. Customer may not analyse, nor permit a third party to analyse, for composition or structure any Products or samples provided pursuant to this Agreement but may freely conduct performance testing of such Products or samples.

7. Miscellaneous.

- a. No waiver by either party of any rights or remedies with respect to a breach of any provision under this Agreement is a waiver of any right or remedy with respect to any other or later breach.
- b. All notices must be in writing to the registered address of Parties.
- c. Neither party is liable to the other party for any delay in performance or non-performance directly or indirectly caused by, or in any manner arising from, any cause or causes (whether or not of a similar nature to those listed below) beyond a party's reasonable control, including but not limited to, fires, floods, riots, acts of God, wars or other conflicts, governmental interference or embargoes, strikes, difficulty in obtaining raw materials, organized labour difficulties or acts by the other party, except that payment obligations hereunder are not excused. If a party becomes aware of a cause that may affect its performance, it must notify the other party as soon as practicable, and the parties will cooperate to minimize the disruption arising from such cause or causes.
- d. This Agreement is governed by the laws and the parties submit to the exclusive jurisdiction of the country where the supplying EPS entity is based, without regard its conflict of laws provisions.
- e. Each provision of this contract is severable and distinct from the others. The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any clauses or sub-clauses shall be held to be invalid or shall not apply to this contract, the other clauses and sub-clauses shall continue in full force and effect.