

## English Translation of GENERAL DELIVERY CONDITIONS

of  
**Hospital Equipment Services B.V.** Chamber of Commerce no. 72031360  
located at Energiestraat 11, 8263 AG Kampen;

### Article 1. Applicability of these conditions

These conditions apply to every offer and every agreement, between Hospital Equipment Services B.V., hereinafter to be referred to as: HES, and another party, to which HES shall have declared these conditions applicable, for insofar as parties shall not have voiced, specifically and in writing, intent to deviate from these conditions.

### Article 2. Offers, establishment of agreement

- 2.1 The offers prepared by the HES are non-binding, unless such offers shall contain a deadline for acceptance. Should an offer comprise a non-binding offer, and this shall be accepted by the other party, then HES has the right to recall such acceptance within 2 workdays after his receipt of said acceptance.
- 2.2 Should the other party grant HES an order, then the agreement shall take effect only at such time as HES shall have accepted such order in writing, *casu quo* shall have commenced execution of said order.
- 2.3 If the other party cancels this after signing the order confirmation, 15% cancellation costs of the purchase amount will be charged.
- 2.4 The other party is obliged to inform us immediately in writing if third parties assert rights to the goods still belonging to us.
- 2.5 For defects or deviations in illustrations, drawings, and in mention of sizes, weights, and other specifications occurring in folders, price lists, and the like, HES is not liable unless specific reference to such specifications shall have been made in the agreement.
- 2.6 The purchaser shall not acquire any rights whatsoever to any application software (hereinafter referred to as "Software") or data which may still be on the Purchase Object and which is not explicitly designated as being part of the Purchase Object. The Purchaser is obliged to have any existing Software and data deleted without undue delay and at his own expense.  
If the Purchaser is in breach of this obligation and claims are raised by third parties against the Vendor based on the use or disclosure of Software or data, the Purchaser
- 2.7 shall hold the Vendor harmless of any such claims.
- 2.8 The drawings, designs, illustrations, models and offers provided by the HES remain his property and may not be copied, shown to third parties, or utilized in any other manner without the prior written approval of the HES. The other party must make freely available at the first request of the HES, to the HES, the items specified above, under penalty of a directly demandable fine € 500,= per day. The HES remains the owner of all industrial and intellectual ownership rights with regard to the items specified in this paragraph.

### Article 3. Delivery

- 3.1 Unless otherwise agreed, delivery shall take place ex factory/warehouse of HES.
- 3.2 In such case as, as a delivery condition, one of the "Incoterms" shall have been agreed upon, then the Incoterms applicable at the time of the establishment of the agreement shall apply.  
HES shall determine, in such case as he shall be responsible for transport, the manner of such transport and the insurance during transport; the costs hereof shall be charged to the other party. Transport shall take place at the risk of the other party.
- 3.3 The other party is obligated to receive the purchased goods at the moment at which such shall be made available to him, *casu quo* at the moment at which said goods shall be delivered to him.  
In such case as the other party shall refuse such receipt, or shall be negligent in the granting of information or instructions necessary for such delivery, then the goods shall be stored at the risk of the other party. The other party shall in such case be responsible for the payment of all supplementary costs, including in any case storage costs, thus incurred.

### Article 4. Delivery time

An agreed-upon delivery time is not a deadline unless specific agreement shall have been reached to the contrary. In the case of non-timely delivery, the other party is therefore required to place HES in default, in writing.

### Article 5. Partial deliveries

The HES is permitted to deliver the purchased goods in parts. This does not apply in such case as a partial delivery shall have no independent value. In such case as the goods shall be delivered in parts, HES is authorised to invoice each part separately.

### Article 6. Samples, models and examples

In such case as HES shall display or provide a sample, model, or example, this shall be considered to have been displayed or provided only as a demonstration; the quantities of goods to be delivered can deviate from the sample, model or example, unless it shall have been specifically agreed to the contrary that delivery shall take place consistent with such displayed or provided sample, model or example.

### Article 7. Changes in the delivered goods

- 7.1 Minimal deviations with regard to the specified sizes, weights, quantities, colors and other similar specifications in the goods to be delivered by the HES are permissible, and shall not be considered as shortcomings on the part of the HES in his fulfillment of the agreement. A situation of a minimal deviation shall exist in the case of a margin of maximally 10% more or less than the specification made by the HES.

- 7.2 In such case as HES shall take recourse to the option specified in clause 1 of this article, and shall deliver goods which deviate significantly from the agreed-upon goods, then the other party shall be authorized to dissolve the agreement by means of a written notification. The other party shall have such authority for a period of 8 days after he shall have discovered such deviation or could reasonably have discovered it.

#### **Article 8. Price, price increases**

- 8.1 All prices are, unless otherwise agreed in writing, ex factory/warehouse and exclusive of VAT and exclusive of assembly and commissioning costs.
- 8.2 Import and export fees, seal, site and import clearance costs, taxes, etc. are, unless specifically otherwise agreed in writing, at the expense of the other party.
- 8.3 The price stated by the HES is based upon his purchase price and other cost factors. Changes in these factors such as wages for labour, cost prices of basic products and raw materials, currency fluctuations and the like, give the HES the right to charge such extra costs to the other party in the form of an adjustment in the price originally agreed upon. In such case, however, as a price increase shall equal more than 10%, then the other party has the right to dissolve the agreement by means of a written notification. Such dissolution must then take place without delay after other party's becoming cognizant of the price increase.

#### **Article 9. Assembly and commissioning**

- 9.1 Should HES have assumed, in the agreement, the obligation to carry out assembly and commissioning of the delivered goods, then he only accepts liability with regard to the function of the delivered goods in such case as:
- assembly and commissioning take place as per his instructions, at which time he shall have the right to assign a mechanic the supervision of the work;
  - the circumstances at the site where the assembly and commissioning are to take place are such that there is no question of a negative influence upon foundations, supporting surfaces, walls, and the like, or that at/to which the delivered goods must be placed or attached; the said foundations, supporting surfaces, walls, and the like must have been prepared in the proper manner by the other party prior to the commencement of work.
- The execution of all additional work is at the expense of the other party, and in addition the other party must provide, at his own expense, all required assistance in the form of human labour and auxiliary materials.
- 9.2 In such case as the mechanic of the HES cannot, as a result of circumstances independent of the will of the HES, continue without interruption with the assembly and the commissioning work, then such costs as may be incurred due to such interruption shall be at the expense of the other party.

#### **Article 10. Payment and collection costs**

- 10.1 Payment must take place before or upon receipt of invoice by means of legal tender at the offices of the HES, or by means of transfer of the amount owed to the bank account of the HES. Subsequent to the passing of 30 days after the invoice date, during which time payment shall not have taken place, the other party shall be in default; said other party is obligated to pay, commencing at the moment at which he is in default, an interest sum over the amount owed equal to the legal interest rate + 2%.
- 10.2 The other party can only take recourse to payment adjustment in such case as his claim shall be recognized by the HES, or in such case as the validity of his claim can be established in a simple manner
- 10.3 Payments by or on behalf of the other party shall be utilized consecutively for the payment of the extra judicial collection costs owed by the other party, then the legal costs, then the interest owed by the other party, and thereafter, in order of longevity, the main sums still to be paid, irrespective of any specification made to the contrary on the part of the other party. The other party can voice his objection to the invoice only in writing, and such objection must be made prior to the payment deadline.
- 10.4 At such time as the other party shall be in default, or if HES shall have well-founded reason to fear that the other party shall not, or not in a timely manner, fulfill his (payment) obligations, then HES, without any obligation to pay compensation for damages, and without prejudice to his other rights, shall have the right to take the following measures: suspension of the obligations of HES under the terms of the agreement(s) established with the other party; demanding surety from the other party; and rescinding possible earlier payment deadline agreements such that all open claims shall become immediately demandable.
- HES shall only be permitted to take the above measures for insofar as the (feared) shortcomings on the part of the other party shall justify the taking of such measures.
- 10.6 In such case as the other party shall be in default with regard to the fulfillment of one or more of his obligations, then he shall be liable to compensate HES for all reasonable extra judicial costs incurred in the fulfillment of said obligations. These costs shall be charged to the other party consistent with the collection fees as these are specified in the calculation scheme prepared by the Dutch Order of Attorneys for attorney invoices, with the understanding that in such case as the actual extra judicial collection costs shall prove to be higher than said fees, then the actual collection costs shall be compensated by the other party. The other party is further obligated towards HES to pay all legal costs incurred in all cases, with the exception of for insofar as the other party shall demonstrate that these are unreasonably high. This applies only in such case as HES and the other party shall, with regard to an agreement to which these General Conditions shall apply, have carried out legal proceedings, and a legal judgment shall have become res judicata in the case, such that HES shall have been adjudged to be completely or to the greatest extent in the wrong

#### **Article 11. Proprietary rights**

- 11.1 The goods delivered by the HES shall remain the property of the HES until such time as the other party shall have fulfilled all of the below obligations on the basis of all agreements established with the HES:
- the counter-obligation(s) with regard to the actual goods delivered or to be delivered,
  - the counter-obligation(s) with regard to services performed or to be performed by the HES on the basis of the agreement(s),
  - possible claims on the basis of non-fulfilment by the other party of the agreement(s).

- 11.2 Goods delivered by the HES which, under the terms of clause 1, are covered by proprietary rights, may only be resold in the context of normal business proceedings. In the case of bankruptcy or suspension of payment of the other party, the resale of goods in the context of normal business proceedings is also not permitted. In addition the other party is not authorized to pledge the goods or to assign any other rights to them.
- 11.3 In such case as the other party shall not fulfill his obligations or there shall exist well-founded fear that he shall not fulfill such, then the HES is authorized to remove or cause to be removed delivered goods to which the proprietary rights as specified in clause 1 are attached from the other party or third parties who shall hold such goods for the other party. The other party is obligated to grant all cooperation hereto, under penalty of a fine of 10% of the sum which he shall owe, per day.
- 11.4 In such case as third parties shall wish to assign or take recourse to any rights to the goods delivered under proprietary rights conditions, then the other party is obligated to inform HES with regard to such proceedings as rapidly as may reasonably be expected.
- 11.5 The other party is obligated, at the first request on the part of the HES:
- to insure the goods delivered under proprietary rights conditions, and to maintain such insurance, against fire, explosion, and water damages and against theft, and to make available for perusal the policy for such insurance;
  - to pledge all claims of the other party towards insurers with regard to the goods delivered under proprietary rights conditions to the HES in the manner as is specified in art. 3:239 of the Civil Code;
  - to pledge to HES the claims which the other party shall acquire towards his customers in the resale of the goods delivered under proprietary rights conditions in the manner as is specified in art. 3:239 of the Civil Code;
  - to mark the goods delivered under proprietary rights conditions as being the property of the HES;
  - to grant co-operation in other ways to all reasonable measures which the HES shall wish to take for the protection of his proprietary rights with regard to the goods, and which shall not unreasonably hinder the other party in the normal execution of his business.

## **Article 12. Defects; deadlines for complaints**

- 12.1 The other party must examine or cause to be examined the goods upon delivery, or as rapidly thereafter as possible. At such examination, the other party must determine whether the delivered goods fulfill the agreement, specifically:
- whether the correct goods have been delivered;
  - whether the delivered goods fulfil the agreement with regard to quantity (for example, the number and the amount);
  - whether the delivered goods fulfil the agreement with regard to quality standards or, if such quality standards are not specified, then the standards which can be set with regard to normal use and/or industrial purposes.
- 12.2 Should visible defects or shortcomings be observed, then the other party must report such to the HES, in writing, within 10 days after the delivery of said goods.
- 12.3 Invisible defects must be reported in writing to the HES by the other party within 3 days after such defects shall have been discovered or could reasonably have been discovered, but at the latest within 1 month after delivery.
- 12.4 Claims related to defects in the delivered goods shall lapse after 1 year after the date of delivery of said goods.
- 12.5 In such case as the delivered goods shall not fulfill the specifications of the agreement then HES, at his discretion, is held only to delivery of any goods which may be lacking, to repair of the delivered goods, or replacement of the delivered goods. An item so replaced becomes the property of the HES.
- 12.6 That specified in this article is correspondingly applicable to services provided by the HES.

## **Article 13. Liability**

HES is liable towards the other party solely in the following manner:

- 13.1 For damages as a result of a shortcoming in that delivered, HES is only liable for insofar as he shall be insured against such liability, or should reasonably, in terms of that customary within the industry, have been insured, up to maximally the amount of the insurance compensation.
- 13.2 In addition the liability of the HES is limited to the damages suffered by the other party which shall be the direct result of the fault of the HES.
- Such damages are only eligible for compensation in such case as HES shall be insured against such damage or should reasonably, in terms of that customary within the industry, have been insured, up to maximally the amount of the insurance compensation.
- 13.3 HES is at no time liable for secondary damages such as industrial damage (for example in the form of loss of profit). The other party shall, if desired, insure himself against such loss.
- 13.4 The above-specified limitation of liability shall not apply if damage shall have been caused by intent or gross negligence on the part of HES or his management-level subordinates.
- 13.5 HES shall stipulate all legal and contractual means of defense which he may call upon in defense of his own liability towards the other party, including on behalf of his subordinates and those non-subordinates for whose behavior he may be liable under law.
- 13.6 The damages to be compensated by HES shall be limited in such case as the price to be paid by the other party is not in proportion to the damages suffered by the other party.

## **Article 14. Force majeure**

- 14.1 Shortcomings on the part of the HES in the execution of the agreement shall be viewed as force majeure and cannot be charged to him in such case as these shall not be attributable to his fault, nor shall under law, the agreement, or currently acceptable practice be his responsibility. During periods of force majeure, the delivery and other obligations of the HES shall be suspended.

- 14.2 Force majeure shall in any case be understood to mean:  
the circumstance that HES shall not, not in a timely manner, or not properly be able to fulfill an activity which is significant in connection with that which he is to deliver; strikes; disruptions in traffic; government measures which hinder the HES in his efforts to fulfill his obligations in good time or properly; a general shortage of necessary raw materials and other goods or services required for the realization of the agreed-upon performance; excessive missed work due to illness.
- 14.3 In such case as the fulfillment (of agreement) shall be delayed due to force majeure for a period of time of longer than 1 month then each of the parties shall be authorized, with the exclusion of further rights, to dissolve the agreement consistent with the law, without the requirement for the HES to pay any compensation for damages suffered by the other party or third parties.
- 14.4 HES also has the right to take recourse to force majeure in such case as the circumstance which shall hinder the (further) fulfillment shall commence after the HES should have fulfilled his obligation.

#### **Article 15. Arbitration of disputes**

In deviation from the legal stipulations for the authority of the Civil Court, each and every dispute between the other party and the HES, in such case as the Court shall be authorised, shall be arbitrated by the Court at Zwolle. HES, however, retains the authority to present such dispute to such Court as is authorised in accordance with law or applicable international treaties.

#### **Article 16. Jurisdiction**

The laws of the Netherlands apply to each and every agreement between the HES and the other party.

#### **Article 17. Conversion**

In such case and for insofar as no recourse can be taken, on grounds of reasonableness and equity, or an unreasonably burdensome character, to any specification in these General Conditions, then such specification in terms of content and application shall be converted to a form as close as possible to its original meaning in such a way that recourse can indeed be taken to such specification.

#### **Article 18. Dutch text takes precedence**

The Dutch version of these General Conditions shall take precedence over any translations thereof.

