

**General Terms and Conditions
of
"GID Milieutechniek B.V."**

P.O. Box 18, 5330 AA Kerckdriel, The Netherlands
Filed at the offices of the Clerk of the District Court of Dordrecht on 24 March 2003 under number AL 10/2003
© Copyright De Koning, Law office in Dordrecht, The Netherlands

Once filed, the present general terms and conditions, hereinafter to be referred to as "the General Terms" replace all former general terms and conditions and shall exclusively be applicable to any and all Agreements (and form an integral part of it) between GID Milieutechniek B.V., having its seat at Velddriel of the Netherlands and registered under no 11025870 at the Chamber of Commerce at Tiel of the Netherlands, hereinafter to be referred to as "the Seller" and any and all Buyers as defined below.

OPERATIVE PROVISIONS

1. DEFINITIONS

Unless the context requires otherwise, the following expressions within this general terms (hereinafter to be referred to as General Terms) and all Contracts, as defined per below, shall have the meaning hereby assigned to them.

- 1.1 **"The Buyer"** means each party which will receive or received or agreed a Contract from/with the Seller.
- 1.2 **"The Contract"** means all offers of the Seller to a Buyer and all agreements between them, concerning the sale of Goods by the Seller to the Buyer. The General Terms and any modifications or amendments as may be agreed upon by the parties and any and all related agreements (shall) form an integral part of the Contract.
- 1.3 **"Default"** means any non - and/or faulty - fulfilment of an obligation, reasonably attributable to a party, not resulting from force majeure or from default by the other party.
- 1.4 **"Goods"** means Trisoplast (whether or not pre-mixed), Tools and Equipment and all other goods and services which are sold and/or offered to a Buyer.
- 1.5 **"Intellectual Property Rights"** means patents, semi-conductor product rights (mask-works), copyrights, (design) patent rights, trade marks, trade names, designs, technical information relating to Trisoplast and which might reasonably be of commercial interest for the manufacturing or supply of Trisoplast either/or substitute related products; all these rights concern (future) granted rights as well as (future) pending applications.
- 1.6 **"Patent(s)"** means
 - the patents and applications which relate to Trisoplast or (a) part(s) thereof;
 - all patent applications that may hereafter be filed anywhere in the world by or on behalf of Trisoplast International B.V. or its legal successors which either are based on or claim priority from any of the foregoing patents and applications or which are in respect of any Improvements to which either party is exclusively entitled.
 - all patents which may be granted pursuant to any of the foregoing patent applications.
- 1.7 **"Poor Quality of Goods"** means Goods with defects and/or deviations from the agreed quality, so badly that the desired result is unfeasible. The foregoing to be concluded by an independent expert to be nominated with approval of the Licensor.
- 1.8.0 **"Protocols"** means the specifications concerning the components of Trisoplast as well as its manufacturing and use.
- 1.9 **"The Seller"** means the company with liability limited by shares GID Milieutechniek B.V., having its seat in Velddriel, the Netherlands.
- 1.10 **"Technical Information"** means such know-how, experience, Protocols, specifications, drawings, circuit diagrams, computer programs and all other (technical) information relating to Trisoplast and which might reasonably be of commercial interest for the manufacturing, sales, supply, use or application of Trisoplast.
- 1.11 **"Tools and Equipment"** means tools and equipment for manufacturing and/or application and/or use of Trisoplast.
- 1.12 **"Trisoplast"** means the material, including the way of manufacturing of Trisoplast, as per Annex I of the Contract and any materials based on or similar to Trisoplast.
- 1.13 Except where the context requires otherwise, words denoting the singular include the plural and vice versa, words denoting any gender include all genders, words denoting persons include corporations and vice versa.
- 1.14 Unless otherwise stated, a reference to a Clause, sub-Clause or Annex is a reference to a Clause or a sub-Clause of, or an Annex to the Contract.
- 1.15 Clause headings are for ease of reference only and do not in any way affect the construction of the Contract.
- 1.16 The terms and conditions of the Contract, including the General Terms, constitute the entire agreement between the parties. They supersede any and all previous communications or commitments, whether verbal or written, between the parties.
- 1.17 Any addition, deletion, modification or change to the Contract during its term shall only become effective if it is made in the form of a written document signed by the parties concerned.
- 1.18 If any provision of the Contract is found or held invalid or unenforceable, the validity of all the other provisions of the Contract, including the General Terms, shall not be affected thereby and the parties agree to meet to review the matter and if any valid or enforceable means is reasonably available to achieve the same objective as the invalid or unenforceable provision, to adopt such means by way of a change of the Contract.
- 1.19 No variation or amendment of the Contract shall bind either party unless made in writing in the English language and agreed to in writing by duly authorised officers of the parties.
- 1.20 A failure by either party hereto to exercise or enforce any rights conferred upon it by the Contract shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time.
- 1.21 Stipulations of the Contract and stipulations of the General Terms and/or stipulations of other general terms and conditions of the Licensor may be mutually supplementary. In case of contradictions between stipulations of the Contract and stipulations of the General Terms the stipulations of the Contract shall prevail. In case of contradictions between general stipulations and specific stipulations, the latter shall prevail.
- 1.22 In case a Buyer has been licensed by the Seller or affiliated company of the Seller in order to promote, offer, sell and apply Trisoplast, and provisions of the license agreement are in contradiction with provisions of these General Terms, the provisions of the license agreement will prevail.

2. Offers

2.1 All offers of the Seller shall be not binding and without engagement unless expressly otherwise stated in writing in the offer.

3. Price and payment

3.1 All prices shall be ex factory Velddriel (inco terms 2000) and exclusive of sales tax (VAT) and any other levies imposed by the authorities.

3.2 In all cases the Seller shall be entitled, by giving notice in writing to the Buyer, to adjust the agreed prices and rates whether or not for any performance to take place, at a time at least three months from the date of such notice.

3.3 If the Buyer is unwilling to accept such adjustment of prices and rates declared by the Seller as is referred to in Article 3.2, the Buyer shall be entitled within seven work-days from the notice referred to in the said Articles either to give notice in writing to terminate the Contract with effect from the date stated in Seller's notice on which the adjustment of prices or rates would become effective, or to rescind the same.

3.4 All invoices shall be paid by the Buyer in accordance with the terms of payment set forth on the invoice. Failing any specific terms, the Buyer shall pay within 5 days of the date of the invoice.

3.5 In the event that Buyer fails to pay the amounts due within the agreed period, legal interest shall be due by the Buyer on the outstanding amount without any notice of default being required. Should the Buyer, after notice of default, fail to settle the claim, the same may be placed out of hand, in which case the Buyer shall be liable to pay in full, in addition to the total amount then due, any legal and non-legal expenses including any fees charged by external experts in addition to the costs assessed in court, relating to the collection of this claim or other enforcement of rights, the amount of which is fixed at 15% at least of the total amount.

4. Confidential information.

4.1 Each of the parties guarantees that all information of a confidential nature received from the other party before and after the conclusion of the Contract shall remain confidential. Information shall in any event be considered confidential if so designated by either of the parties.

5. Retention of title and rights

5.1 Title to all objects supplied to the Buyer shall continue to be held by the Seller until all amounts payable by the Buyer in respect of the Goods supplied or to be supplied under the Contract, or the work done or to be done thereunder, as well as the amounts referred to in Article 3 including interest and expenses of collection or recovery have been paid in full to the Seller.

5.2 No rights shall ever be granted or, as the case arises, transferred to the Buyer except on condition that the agreed considerations are paid in time and in full by the same.

6. Risk

6.1 The risk of loss of or damage to the Goods forming the subject of the Contract shall pass to Buyer at the moment when such Goods are delivered as stipulated in the Contract.

7. Intellectual Property rights

7.1 All Intellectual Property rights to the Goods provided under the Contract, including analyses, documentation, reports and any preparatory material belonging thereto, shall solely be held by the Seller and/or its licensees. The Buyer shall exclusively acquire such rights of use and powers as are explicitly granted hereunder or otherwise and furthermore the Buyer shall not multiply the Technical Information or make any copies thereof.

7.2 The Buyer is aware that documentation supplied with the Goods may contain confidential information and trade secrets of the Seller and/or his licensees. Without prejudice to the provisions of Article 4 the Buyer undertakes to keep such information secret and not to make third parties acquainted with them or grant their use to the same, and to use them only for the purpose for which they were placed at his disposal.

The expression 'third parties' includes any such persons working in the Buyer's organization as do not necessarily have to use the software, equipment and/or other materials.

7.3 The Buyer will not be permitted to remove from or change any designation concerning copyrights, trademarks, trade names or other Intellectual Property rights, including any indications concerning the confidential nature and secrecy of such information.

8. Advisors

8.1 In case the Seller has agreed to monitor or supervise any work to be performed by the Buyer or to advise and/or train the Buyer's personnel (whether or not by learning on the job) the Seller shall use its best efforts to perform these service(s) with due care, in accordance, if required, with the arrangements and procedures laid down in writing with the Buyer. However, all these services shall in any case be considered to be not-binding advises to Buyer's personnel which has to carry out the works. The Seller does not accept any liability for the completeness and/or correctness of these services.

8.2 Unless explicitly agreed in writing, the Seller shall not be bound during performance of the above services to follow any instructions given responsibly and in time by the Buyer. The Seller will be under no obligation to follow any instructions modifying the substance or extent of the agreed service(s); however, should such instructions be followed, the extra or modified services shall be paid for by the Buyer.

8.3 If the Contract for the provision of service(s) was entered into with a view to performance by some particular person, the Seller shall always be entitled to replace such person by one or more other persons with the same qualifications.

9. Termination

9.1 Neither of the parties shall be entitled to terminate the Contract unless the other party, after giving proper notice of default in writing, specifying as many details as possible and stating a reasonable period within which to remedy the failure, fails to meet, and can be blamed for not meeting, any essential obligations arising from the Contract.

9.2 If any Contract which by its nature and content will not terminate by completion has been entered into for an indefinite period, such Contract may be terminated in writing by either party with 6 months notice. The parties shall never be liable in any damages by reason of such termination.

9.3 The Seller may forthwith terminate the Contract either in whole or in part by giving notice in writing, without notice of default and without judicial intervention, if the Buyer is granted an official moratorium, whether provisional or not; if with regard to the Buyer a bankruptcy petition is presented or winding-up proceedings are instituted; or if his enterprise is wound up or closed down otherwise than for the purpose of reconstruction or amalgamation of enterprises. The Seller shall never be liable for any damages by reason of such termination.

9.4 Any amounts invoiced by Seller before the rescission in connection with any Goods whether or not delivered by the same in execution of the Contract shall remain fully due subject as provided in the preceding sentence and shall become immediately payable upon rescission.

- 9.5 Termination of the Contract for any reason shall not bring to an end:
- the secrecy obligations on the parties hereto;
 - the Buyer's obligations to pay the price or other sums, which have accrued due or which will become due under the Contract;
 - the stipulations as per Clauses 2, 3, 4, 5, 7, 8, 9, 10 and 13 of the General Terms;
 - the Seller's limitations and/or exclusions of liability under the Contract.

10. Liability of the Seller; indemnity

- 10.1 The Seller accepts liability to pay damages to the extent as shown by this Article 10.
- 10.2 Seller's total liability in respect of such failure to perform the Contract, including Poor Quality of the Goods, as is imputable to the same shall be limited to making compensation for any direct loss up to the amount of the agreed price (not including VAT) for the Goods concerned. In no event, however, shall the total compensation for cost and damage exceed € 1,000,000.- (one million Euros). By 'cost and damage' shall exclusively be understood:
- a. the reasonable expenses which the Buyer would have to incur to have the Seller's performance fulfil the Contract. However, such cost and damage shall not be compensated if the Buyer has rescinded the Contract;
 - b. reasonable expenses incurred in determining the cause and extent of the loss insofar as such determination relates to any cost and damage within the meaning of these General Terms;
 - c. reasonable expenses incurred in preventing or reducing cost and damage insofar as the Buyer proves that such expenses have resulted in a reduction of cost and damage within the meaning of these General Terms.
- 10.3 In no event shall the Seller's total liability for any loss by death or bodily injury or for any material damage to property exceed € 2,500,000.- (two and a half million Euros) per event, a series of connected events being considered a single event.
- 10.4 The Seller's liability for cost and/or damage as a result of faulty or insufficient services as per above Article 8, will not in any case exceed the agreed price for these services with a maximum of 5% of the price of the Goods concerned.
- 10.5 The Seller's liability for indirect damage, including consequential damage, loss of profits, lost savings and loss caused by interruption of operations is excluded.
- 10.6 Apart from the cases mentioned in Article 10.2, Article 10.3 and Article 10.4 no liability in any damages shall attach to the Seller irrespective of the ground on which any action for damages would be based. However, the maximum amounts specified in Article 10.2 and/or Article 10.3 and/or 10.4 shall cease to apply if and insofar as the loss is due to the Seller's wilful intent or gross negligence.
- 10.7 The Seller's liability in respect of such failure to perform an Contract as is imputable to the same shall not arise unless the Buyer forthwith and properly declares the Seller in Default in writing, stating a reasonable period in which to remedy the failure, and the Seller continues, and can be blamed for continuing, to fail in the fulfilment of its obligations even after such period. The Notice of Default must specify the failure in as much detail as possible, so that the Seller will be able to react adequately.
- 10.8 No right to cost and/or damages shall ever arise unless the Buyer reports the loss to the Seller in writing as soon as possible after it has arisen.
- 10.9 The Buyer shall indemnify the Seller against all claims of third parties in respect of product liability as a consequence of any defect in a product or system which was supplied to a third party by the Buyer and partly consisted of services, goods and/or equipment supplied by the Seller.

11. Force majeure

- 11.1 Neither party shall be bound to meet any obligation if prevented from doing so as a consequence of force majeure. For the purpose of the Contract "force majeure" shall be deemed to be any cause effecting the performance of the Contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party to perform and without limiting the generality thereof shall include the following:
- strikes, lock-outs or other industrial action;
 - civil commotion, riot, invasion, outbreak or threat of hostilities, war threat or preparation for war;
 - fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster;
 - impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
 - political interference with the normal operations of any party;
 - unforeseen and strongly increased price of, or lack or shortage of, (a) fuel, (b) polymers, (c) energy or (d) other materials, which are necessary to manufacture and/or use Trisoplast;
 - damage, loss or damage of Goods and/or materials during transport and/or storage and delay during transport of Goods and/or materials for whatever reason;
 - any failure of any suppliers of the Seller not due to their fault.
- 11.2 If a situation of force majeure has lasted for more than ninety days, the parties shall be entitled to terminate the Contract by rescinding it in writing. In that case any performance which has already taken place pursuant to the Contract shall be settled proportionately without either party being thereafter indebted to the other in any other amount.

12. Export

- 12.1 In case of export/import of any Goods, equipment or parts the Buyer shall apply the relevant export and import regulations. The Buyer shall indemnify the Seller against all claims of third parties relating to any breaches of the applicable export/import regulations for which the Buyer can be held liable.

13. Governing law and disputes

- 13.1 The Contracts between Seller and Buyer shall be governed by Dutch law.
- 13.2 Any disputes that might arise between the Seller and the Buyer in connection with any Contract concluded with the Buyer by the Seller or in connection with any further agreements that might result therefrom, shall exclusively be resolved by the competent court of The Netherlands in Tiel or Arnhem.