



## **General terms and conditions Morimura Bros. (Europe) B.V.**

### **Article 1. Definitions**

In these general terms and conditions ("Conditions") the following definitions apply:

1. *Supplier*: the private company with limited liability Morimura Bros. (Europe) B.V., having its registered office in Ankeveen and registered in the Commercial Register of the Dutch Chamber of Commerce under file number 32044630.
2. *Buyer*: the (legal) person, acting in the exercise of a profession or business, who purchases Products from the Supplier.
3. *Agreement*: any written agreement between the Buyer and the Supplier, consisting of the delivery of Products.
4. *Products*: all matters that are the subject of an Agreement.
5. *Parties*: the Supplier and the Buyer together.
6. *Order*: any order from the Buyer to the Supplier.

### **Article 2. Applicability**

1. These Terms and Conditions form part of every Agreement between the Supplier and the Buyer and all further Agreements resulting from or related to this. These Conditions also apply to all offers made, quotations issued, Products delivered and other actions taken by the Supplier, unless explicitly agreed otherwise.
2. All stipulations in these Conditions are not only made for the benefit of the Supplier, but also for the benefit of all persons working for the Supplier, all persons engaged by the Supplier in the performance of the Agreement and all persons for whose acts or omissions the Supplier could be legally liable.
3. The applicability of any general or specific conditions or stipulations of the Buyer is expressly rejected by the Supplier.
4. In case of conflict between these Conditions and the content of an Agreement, the provisions of the Agreement shall prevail.
5. The most recent version of the Supplier's Conditions is applicable. Supplier may at any time without prior notice and stating reasons amend and/or supplement these Conditions. These amendments and/or supplements shall bind the Buyer after they have been declared applicable in writing with the sending of the Conditions.
6. If one or more provisions in these Conditions are at any time wholly or partially void, declared void or annulled, the other provisions in these Conditions shall remain fully applicable. Parties will consult to agree on a new provision to replace the void or voided provision. The purpose and purport of the original provision will be taken into account as much as possible.
7. If the Supplier on his own initiative deviates from these Conditions in favor of the Buyer, the Buyer can never derive any rights from that.
8. The Dutch text of the Conditions is always binding and of decisive significance, if the Conditions have been applied between the Supplier and the Buyer in another language and there is any contradiction or lack of clarity in the Conditions.



### **Article 3. Offers and quotations**

1. All offers and/or quotations made by the Supplier are without obligation, unless an acceptance period has been expressly agreed upon.
2. The Buyer shall ensure that all data, which the Supplier indicates are necessary or which the Buyer should reasonably understand are necessary for the formation and performance of the Agreement, are provided to the Supplier in good time and in the desired form. If the Supplier's offer or quotation is based on information provided by the Buyer, the Buyer guarantees the accuracy and completeness of this information. If it appears that the information provided deviates from the prevailing circumstances, the Supplier has the right to adjust prices and other conditions concerned.
3. All statements by Supplier of numbers, sizes, weights and/or other indications of the Products have been made with care. However, the Supplier cannot guarantee that no deviations will occur in this respect. Samples, drawings or models shown or provided are only indications of the Products concerned and are intended to give a general picture of the Products offered. If Products delivered deviate from the Supplier's specifications or from the samples, drawings or models to such an extent that the Buyer can no longer reasonably be required to take delivery thereof, the Buyer shall be entitled to dissolve the Agreement, but only to the extent that such dissolution is reasonably necessary. In that case, the Supplier shall never be obliged to pay any compensation to the Buyer.
4. In the case of composite offers, the Supplier is not obliged to deliver part of it at a corresponding part of the offered price.
5. The Supplier cannot be held to offers and/or quotes if the Buyer understands or should have understood that the offer and/or quote, or a part thereof, contains an obvious mistake, slip, printer's error or typing error.
6. Offers do not automatically apply to repeat orders.

### **Article 4. Formation of the Agreement.**

1. The Agreement between the Supplier and the Buyer comes into effect after written order confirmation from the Supplier or if an Order is executed by the Supplier.
2. If the order confirmation deviates (whether or not on minor points) from the offer included in the quotation or the offer, the Supplier is not bound by it. The Agreement shall then not be concluded in accordance with this deviating acceptance, unless the Supplier agrees to the deviations in writing.
3. Agreements become binding on the Supplier by written order confirmation or as soon as the Supplier has commenced performance of the Agreement.

### **Article 5. Changes and cancellation**

1. The Buyer is entitled to make changes to the (execution of the) Order in writing after closing the Agreement. Any additional costs incurred as a result shall be borne entirely by the Buyer. Price increases as a result of changes in the Agreement can never be a reason for the Buyer to terminate the Agreement. Changes can only be made with the written consent of the Supplier.



2. Amendments to the Agreement may result in agreed delivery dates being affected, which shall be considered force majeure. The Supplier shall inform the Buyer of this as soon as possible, but shall not be liable for this in any way.

3. If the Buyer cancels the Agreement in full or in part, the Supplier has the right to pass on any cancellation costs of suppliers or manufacturers to the Buyer. In addition, the Supplier has the right to charge (dis)costs incurred as a result of the cancellation. The Buyer is obliged to pay these costs to the Supplier.

#### **Article 6. Delivery and Risk**

1. Delivery of Products takes place at a destination specified by the Buyer or at the Supplier's warehouse.

2. Packaging and transport of the Products shall take place in a manner to be determined by the Supplier but at the expense of the Buyer, unless free delivery has been agreed upon. The Supplier shall never be liable for any damage of whatever nature - whether or not to the Products themselves - related to transport.

3. The Buyer is obliged to cooperate fully with the delivery of the Products. If the Buyer collects the Products from the Supplier at the Supplier's first request, or if delivery at a destination specified by the Buyer has been agreed and the Buyer refuses to take delivery of the Products, the Buyer shall be in default by operation of law without further notice of default being required. Any damage resulting from the Buyer's default shall be at the Buyer's expense and risk.

4. If the Buyer refuses receipt of the Products or fails to provide information or instructions necessary for delivery, the Supplier shall be entitled to store the Products at the expense and risk of the Buyer.

5. The Supplier reserves the right to demand security from the Buyer for the fulfilment of its payment obligations before delivering the Products.

6. The delivery times given by the Supplier are indicative (target times) and do not apply as deadlines. Exceeding a delivery time specified by the Supplier does not give the Buyer the right to refuse receipt of the Products, does not oblige the Supplier to compensate any damage and does not give the Buyer the right to dissolve the Agreement in whole or in part.

7. Each delivery of Products is made subject to retention of title until the Buyer has paid all that it is obliged to pay under any Agreement, including interest and costs.

#### **Article 7. Delivery terms**

1. A delivery period specified by the Supplier shall be based on the circumstances applicable to the Supplier at the time of the conclusion of the Agreement and, to the extent that it depends on the performance of third parties, on the information provided to the Supplier by such third parties. Any terms agreed upon in the Agreement within which the Products shall be delivered shall only be indicative and shall never be regarded as deadlines. However, the Supplier shall observe specified periods as much as possible.

2. Exceeding a delivery term does not entitle the Buyer to any compensation, nor is it a ground for the Buyer to dissolve the Agreement. In delivery, the Supplier is dependent on the performance and delivery times of third parties, such as suppliers and manufacturers.



3. If the Supplier depends on certain actions of the Buyer for the performance of the Agreement, such as, inter alia, the provision of information and/or data, a delivery period shall commence after the Buyer has provided the Supplier with such information and/or data and/or performed other actions on behalf of the Supplier. In that case, the Supplier shall be entitled to suspend performance of the Agreement, until the Buyer has fulfilled its obligations under the Agreement, without becoming liable for compensation as a result.
4. The Supplier shall at all times have the right to deliver Products in parts.
5. The Buyer shall ensure that nothing shall stand in the way of meeting certain agreed deadlines, including delivery deadlines and purchase times.

#### **Article 8. Pricing**

1. The prices stated in an offer or quotation are excluding sales tax and other government levies and excluding any costs to be incurred in the context of the Agreement, including but not limited to import and export duties and excise duties, shipping, transport and/or administration costs.
2. The prices are based on the circumstances applicable to the Supplier at the time the Agreement was concluded, such as, among other things, exchange rates, purchase prices, freight rates, import and export duties, excise duties, levies and taxes levied directly or indirectly on the Supplier or charged to the Supplier by third parties. If these circumstances change after the conclusion of the Agreement but before delivery, the Supplier has the right to pass on the resulting costs to the Buyer. The Buyer is obliged to pay these additional costs.
3. The currency value and exchange rate at the time of the invoice date shall at all times be decisive.

#### **Article 9. Payment and collection**

1. Unless expressly agreed otherwise, the Buyer shall pay the invoice within 30 days of the invoice date, in a manner to be indicated by the Supplier and in the currency in which it was invoiced.
2. In the event of partial deliveries, the invoice shall be invoiced per part, with the exception of costs incurred for the entire delivery, unless otherwise agreed.
3. The Supplier reserves at all times the right to require interim or (full) advance payment from the Buyer.
4. Payment shall be made without deduction, set-off or suspension on any account whatsoever.
5. Objections to the invoice do not suspend the Buyer's payment obligation. The Buyer must notify the Supplier in writing of any suspicion of substantive inaccuracies in an invoice sent by the Supplier within 8 days of receipt.
6. In the event of late payment, the Supplier reserves the right to suspend performance of the Agreement with immediate effect or to dissolve it by written declaration. In the event of suspension, the Supplier is entitled to cease further delivery to the Buyer until the Buyer has fulfilled all his obligations under all Agreements concluded with the Supplier in full.
7. In the event of late payment the Buyer shall be in default by operation of law and the Buyer shall be entitled, without further notice of default being required, to charge the Buyer



interest of 2% per month from the due date until the date of payment in full, subject to the Supplier's right to charge statutory interest.

8. In the event of late or incomplete payment by the Buyer, the Supplier shall be entitled to charge the Buyer, without further notice of default being required, (extra)judicial collection costs of 15% of the principal sum with a minimum of € 250, also insofar as the actual costs exceed the court order for procedural costs. The latter applies insofar as mandatory statutory provisions do not dictate otherwise.

9. The payments made by the Buyer shall first be deducted by the Supplier from all interest and costs due and subsequently from the longest outstanding payable invoices. 10. If the order is given by more than one Buyer, all Buyers shall be jointly and severally liable for the performance of the financial obligations, regardless of the name on the invoice.

#### **Article 10. Inability to pay**

1. The Supplier is entitled to dissolve the Agreement in writing without further notice of default and without judicial intervention at the time when the Buyer;

- is declared bankrupt or files for bankruptcy;
- applies for (temporary) suspension of payment;
- is the subject of an attachment under execution;
- is placed under guardianship or administration;
- otherwise loses the power of disposition or legal capacity with respect to all or part of its assets.

#### **Article 11. Dissolution**

1. The Supplier has the right to suspend the fulfilment of its obligations, until such time as all due and payable claims against the Buyer have been paid in full, if (1) the Buyer fails to fulfil the obligations under the Agreement or fails to fulfil them in full, or (2) if the Supplier has become aware of circumstances that give it good reason to fear that the Buyer will not be able to fulfil its obligations (properly), or (3) if the Buyer has been requested to provide security for the fulfilment of its obligations under the Agreement at the time of entering into the Agreement and such security is not provided.

2. The Supplier is also authorized to dissolve the Agreement or have it dissolved in the situations referred to in paragraph 1 of this article, or if other circumstances arise which are of such a nature that performance of the Agreement is impossible or can no longer be required according to standards of reasonableness and fairness.

3. Dissolution shall take place by written notice and without judicial intervention.

4. If the Agreement is dissolved, the Supplier's claims against the Buyer immediately become due and payable.

5. The Supplier reserves the right to claim damages and is not liable for any damages or costs incurred by the Buyer and/or third parties.

#### **Article 12. Retention of title**

1. All Products delivered by the Supplier shall remain the property of the Supplier until the Buyer has fully satisfied all its payment obligations towards the Supplier under any



Agreement concluded with the Supplier for the delivery of Products, including claims relating to failure to perform such Agreement.

2. As long as the Buyer is not yet the owner of the Products, the Buyer shall not be entitled to rent out or give in use, pledge or otherwise encumber the Products. The Buyer shall only be entitled to sell or deliver the Products of which the Supplier is the owner to third parties to the extent necessary in the context of the Buyer's normal business operations.

3. If and as long as the Supplier is the owner of the Products, the Buyer shall store the Products in such a way that it is clear at all times that they belong to the Supplier. The Buyer shall notify the Supplier immediately if the Products are (or threaten to be) attached or otherwise claimed to (any part of) the Products. Furthermore, the Buyer shall inform the Supplier at first request where the Products, of which the Supplier is the owner, are located.

4. In the event that the Supplier wishes to exercise its property rights, the Buyer already now gives the Supplier irrevocable authorization to enter the places where the Supplier's property is located and to collect those goods (or have them collected).

5. In the event of attachment, (provisional) suspension of payment or bankruptcy, the Buyer shall immediately inform the attaching bailiff, administrator or receiver of the Supplier's (ownership) rights. The Buyer guarantees that an attachment of the Products will be lifted immediately.

### **Article 13. Inspection and complaints**

1. The Buyer shall be obliged to carefully inspect the Products or have them inspected immediately after arrival at the place of destination or after receipt by the Buyer or by a third party acting on its instructions. Complaints about delivered Products must be reported to the Supplier in writing within 8 days after arrival of the Products at the latest. If the Buyer has not complained in writing within this period, it shall be deemed to have accepted the delivery.

2. Defects, which could not reasonably have been detected within the period set in paragraph 1, must be reported to the Supplier in writing immediately after detection and at the latest within 12 months after the invoice date.

3. If the Buyer has taken the delivered goods into use, processed, treated or redelivered them, he is deemed to have accepted the delivered goods and filing a complaint is no longer possible.

4. After the discovery of any defect, the Buyer is obliged to immediately cease the use, treatment, processing and/or installation of the Products in question and furthermore to do everything reasonably possible to prevent (further) damage.

5. Submitted complaints do not suspend the Buyer's payment obligation.

6. The Buyer shall provide all cooperation necessary for the investigation of the complaint, including by giving the Supplier the opportunity to investigate the circumstances of use, treatment, processing and/or installation.

7. If the Buyer does not cooperate or an investigation is otherwise not or no longer possible, the complaint shall not be dealt with and the Buyer shall have no claims in this respect.

8. The Buyer is not free to return the Products before the Supplier has agreed to this. Only if a timely, correct and justified complaint is made shall the reasonable costs of returning the Products be borne by the Supplier. If it is established that a complaint is unfounded, the





costs incurred by the Supplier as a result, including but not limited to investigation costs, shall be entirely at the expense of the Buyer.

9. If the Buyer complains about defects in a Product in a timely, correct and justified manner, the Supplier's resulting liability shall be limited to the obligations described in Article 14.3, subject to the other provisions of Article 14.

#### **Article 14. Warranty**

1. The Supplier warrants to the Buyer that, upon delivery, the Products comply with what has been agreed upon in this respect, provided that they are used normally and carefully and that all instructions given for the use of the Products and other warranty regulations included in the Agreement, the Terms and Conditions or in the warranty certificate are strictly and fully complied with.

2. If the Supplier delivers Products to the Buyer that the Supplier has obtained from its suppliers, the Supplier shall never be bound to any further guarantee or liability vis-à-vis the Buyer than the Supplier can lay claim to vis-à-vis its supplier. The Supplier gives no guarantees of his own with regard to delivered Products.

3. If a complaint has been made in time, correctly and in accordance with the provisions of article 13, and it has been sufficiently demonstrated that the Products do not comply with what has been agreed upon in this respect, the Supplier shall have the choice of either redelivering the defective Products free of charge in exchange for the return of the Products found to be defective, or of repairing the Products concerned in a sound manner, or of granting the Buyer a discount on the purchase price to be determined by mutual agreement. By fulfilling one of the aforementioned performances, the Supplier shall be fully discharged of its obligations in this respect and the Supplier shall not be obliged to pay any further (compensation).

4. The Supplier is not liable for and does not provide any guarantee on the repairs carried out or to be carried out by (on the instructions of) the Supplier with the exception of those referred to in Article 12.3 of these Conditions.

#### **Article 15. Force Majeure**

1. If performance of the Agreement becomes impossible due to a cause that cannot be attributed to the Supplier or as a result of which performance of its obligations cannot reasonably be required of the Supplier, the Supplier shall be entitled to suspend performance of the Agreement - and therefore delivery.

2. In these General Terms and Conditions, force majeure shall mean a circumstance which cannot be attributed to the fault of the Supplier and which cannot be attributed to the Supplier by virtue of the law, legal act or generally accepted practice. In addition to this interpretation of force majeure by virtue of the law and jurisprudence, force majeure shall also include: all external causes, foreseen or unforeseen, over which the Supplier cannot exercise any control, but as a result of which the Supplier is unable to comply with the obligations. Such circumstances shall also include: strikes and lock-outs, stagnation or other problems in the production by the Supplier or its suppliers and/or in the Supplier's own transport or that provided by third parties and/or measures taken by any government agency, as well as the absence of any government permit.



3. Circumstances arising from rights and/or obligations under international and European as well as national laws and regulations can never result in any liability of the Supplier.
4. If the force majeure situation occurs at the time that the Supplier's obligations have been partially fulfilled or will be able to be fulfilled, the Supplier is entitled to invoice the part already fulfilled or to be fulfilled. The Buyer is obliged to pay this invoice as if it were a separate Agreement.
5. From the moment that the force majeure situation has lasted at least two months, both parties may dissolve (part of) the Agreement in writing.
6. In a force majeure situation, the Supplier shall not owe any (compensation), even if it enjoys any advantage as a result of the force majeure situation.

#### **Article 16. Liability**

1. If the Supplier can be held liable under the Agreement, liability shall be limited to the amount paid out by any liability insurance taken out, plus the amount of any applicable deductible. In the absence of (full) payment by a liability insurance, liability shall be limited to the amount of the invoice for the delivery to which the liability relates.
2. Supplier shall only be liable for direct damage. Direct damage shall be understood to mean exclusively:
  - The reasonable costs for determining the cause and extent of the damage, insofar as the determination relates to damage in the sense of these terms and conditions;
  - any reasonable costs incurred to make the Supplier's faulty performance conform to the Agreement, to the extent that they can be attributed to the Supplier;
  - reasonable costs incurred to prevent or limit damage, to the extent that the Buyer demonstrates that these costs led to a limitation of direct damage as referred to in this article.
3. The Supplier shall never be liable for indirect damage, including consequential damage, loss of profit, missed savings and damage due to business interruption.
4. The Supplier is not liable for damage, of whatever nature, caused by the fact that the Supplier relied on incorrect and/or incomplete information and/or data provided by or on behalf of the Buyer.
5. The Supplier is not liable for damage, of whatever nature, caused by the Buyer's failure to follow the Supplier's advice and/or instructions.
6. The Supplier is not liable for damage, of whatever nature, due to exceeding of (delivery) terms within the Agreement.
7. Subject to the warranty provisions in Article 14 of these Conditions, the Supplier is not liable for visible or invisible defects to the Product. The manufacturer shall in all cases be liable if the quality of the Products does not comply with International, European and national laws and regulations. The Supplier cannot be held liable in this case in accordance with reasonableness and fairness.
8. The Supplier shall not be liable for damage of any kind arising from a force majeure situation as referred to in Article 15 of these Conditions.
9. The Supplier is not liable for losses, of whatever nature, arising from errors and/or shortcomings of engaged third parties, including but not limited to manufacturers and suppliers.





10. The Supplier is not liable for any violation of intellectual property rights or privacy rights due to third parties gaining unauthorized access to information and/or data of the Supplier or the Buyer.

11. The Buyer shall indemnify and hold the Supplier, its employees and subcontractors harmless from and against all claims by third parties relating to the Products or arising from the use of the Products, including but not limited to compensation for damages, costs or interest.

12. All claims under the Agreement and/or against the Supplier shall lapse by the mere expiry of twelve months.

13. The provisions of this article shall apply except in the case of intentional or gross negligence on the part of the Supplier and its manager and in the event of mandatory provisions to the contrary.

#### **Article 17. Intellectual property**

1. The Buyer does not acquire by the Agreement any right of intellectual property regarding the Products delivered.

2. The Buyer is not permitted to change or remove any brand or identifying marks affixed to the Products or their packaging or to change or imitate the Products or any part thereof.

3. The Supplier declares that to the best of its knowledge the Products do not infringe any intellectual property rights of third parties applicable in the Netherlands. In the event of claims by third parties regarding an infringement of intellectual property rights, the Supplier may, if necessary, replace or modify the Product concerned or dissolve the Agreement in whole or in part. The Buyer shall only be entitled to rescind the Agreement from the Supplier to the extent that it cannot reasonably be required to maintain the Agreement. In the event of dissolution, the Supplier shall not owe the Buyer any compensation.

4. The Buyer shall immediately notify the Supplier of any claim by a third party regarding an infringement of intellectual property rights with respect to the Products. In the event of such a claim, only the Supplier shall be entitled to put up a defense against it, also on behalf of the Buyer, or to take legal measures against that third party. The Buyer shall refrain from all such measures, insofar as this can reasonably be required of it. In all cases the Buyer shall cooperate with the Supplier.

5. The Buyer guarantees that the information and/or data provided by him within the framework of the Agreement are free of intellectual property rights of third parties. The Buyer indemnifies the Supplier against all third party claims related to the Products delivered by the Supplier.

6. After the end of the Agreement, neither the Buyer nor the Supplier have any retention obligation towards each other with regard to the information and/or data used, subject to the statutory retention obligation.

#### **Article 18. Confidentiality**

1. When parties become aware of information of the other party of which they can reasonably know that it is of a confidential nature, they will not disclose this information to third parties in any way. An exception to this applies when laws and regulations or



professional obligations require or necessitate disclosure or if this is necessary for the performance of the Agreement.

2. The data and information provided by the Buyer to the Supplier shall be carefully stored by the Supplier in accordance with the General Data Protection Regulation as well as the Personal Data Protection Act.

**Article 19. Applicable law and competent court**

1. All legal relationships between the Supplier and the Buyer to which these General Terms and Conditions apply shall be governed exclusively by Dutch law.

2. The applicability of the Vienna Sales Convention or other applicable International laws and regulations is explicitly excluded.

3. The Supplier is allowed to transfer the rights arising from any Agreement to third parties. The Buyer is only authorized to do so with the prior written consent of the Supplier.

4. Any disputes between the Parties shall - subject to mandatory statutory provisions - be settled by the competent court in the district where the Supplier is established, unless the Parties agree on another form of dispute settlement.