

## GENERAL CONDITIONS OF SALE AND DELIVERY OF KONINKLIJKE TEXTIELFABRIEKEN J.A. RAYMAKERS&CO BV

### 1. Application

- 1.1 These conditions apply to every offer and every agreement made between Koninklijke Textielfabrieken J.A. Raymakers & CO BV, hereinafter called **J.A.R.**, and a customer, hereinafter called **the Purchaser**. The parties exclude the application of general conditions of the Purchaser.
- 1.2 Deviations from these conditions are only valid if and in so far as expressly agreed in writing by the parties.
- 1.3 Invalidity of one or more terms of these conditions do not affect the validity of the other terms. The parties hereby agree to replace each invalid term with a new term which is not invalid and as far as possible has the same intention and effect as the invalid term. The provisions set forth in this paragraph apply mutatis mutandis to partial invalidity of a term.

### 2. Offers, orders and contracts

- 2.1 The offers of J.A.R. are without obligations, unless indicated otherwise therein. Orders and acceptances of offers by the Purchaser are irrevocable.
- 2.2 J.A.R. is only bound if the acceptance of an offer is confirmed in writing by J.A.R. or if J.A.R. has initiated execution of an order. Only the order confirmation composed on J.A.R.'s paper and signed by him, may be regarded as such confirmation.
- 2.3 Statements about quantity, quality, performance and other characteristics relating to the products are made by J.A.R. with much care. J.A.R. cannot guarantee however that no inaccuracies occur. Therefore these statements are approximate only and non-binding. Inaccuracies in the order confirmation must be reported to J.A.R. no later than two business days, in the absence of which the order confirmation is bound to be an accurate and full overview of the agreement to which the Purchaser is bound.

### 3. Price and payment

- 3.1 All prices are exclusive of sales tax (VAT) and, unless agreed otherwise, exclusive of the costs of transport, insurance, import/export- and excise duties, and other taxes or duties imposed on the products and/or the transport thereof.
- 3.2 J.A.R. may charge price increases as a consequence of changes in its cost price. If the price increase amounts to more than five per cent of the original amount, the Purchaser is entitled to terminate the agreement, by sending a registered letter to J.A.R. within eight days after the announcement by J.A.R.
- 3.3 The full purchase price should be paid by the Purchaser and have been received by J.A.R. within the agreed period or on the agreed date. If no payment period is agreed a payment period of 30 days will apply. The Purchaser may not make any adjustments, suspensions, set-offs or deductions.
- 3.4 The expiry date of the period for payment is to be regarded as a strict deadline. In the event of failure to make full payment within the agreed period or on the agreed date, the Purchaser is in default. When the Purchaser is in default all outstanding invoices are immediately due in full.
- 3.5 Without prejudice to J.A.R.'s other (statutory) rights, from the moment when the default occurs until payment has been made in full, interest equal to the statutory commercial interest rate (as described in 6:119a Dutch Civil Code) plus two per cent on a monthly basis is payable by the Purchaser on the due amount. A part of a month will qualify as a whole month.
- 3.6 If the Purchaser remains in default after written notice by J.A.R., J.A.R. will be entitled to claim extrajudicial collection costs amounting to 15 per cent of the outstanding invoice with a minimum of EUR 150,-.
- 3.7 In the event of non-payment, J.A.R. is entitled, at its own discretion, to suspend deliveries fully or partially, to deliver against cash with order or cash on delivery, or to terminate the agreement.
- 3.8 J.A.R. is entitled to invoice partial deliveries separately.
- 3.9 On request, the Purchaser is obliged to provide an irrevocable bank guarantee for everything payable directly or otherwise by him to J.A.R., without delay (within twenty-four hours) or to pay the products in advance.
- 3.10 Payments made by the Purchaser will first be applied to settle all (legal and other) costs, secondly interest payable and subsequently those invoice amounts which have been outstanding for the longest period, even though the Purchaser has stated that the payment relates to other invoices.

### 4. Delivery and time/date of delivery

- 4.1 An agreed delivery time or date of delivery is a target time or target date and shall never be regarded as a strict deadline. An agreed delivery time begins on the day on which J.A.R. confirms the order. If and so far the working conditions alter, the goods needed for timely delivery are missing or the Purchaser is in non-observance of any of his obligations the delivery date may be extended accordingly.
- 4.2 In the event of the agreed delivery time or date being exceeded, J.A.R. shall never be obliged to pay damages for that reason nor will the Purchaser be entitled to suspend his obligations.
- 4.3 In the event referred to under 4.2. the Purchaser is entitled to terminate the agreement, but only after he has declared J.A.R. in default in writing and moreover has still granted J.A.R. a period of at least the initial delivery time to comply.

### 5. Risk

- 5.1 The risk in the respect of the goods passes to the Purchaser at the moment of delivery even when the property has not been transferred.
- 5.2 The goods are deemed to have been delivered at the moment when they are loaded on to the first means of transport (FCA).
- 5.3 J.A.R. is entitled to make part-deliveries and to invoice accordingly, un-

less otherwise agreed.

5.4 In the event of non-prompt acceptance, J.A.R. is not obliged to store the goods. If J.A.R. nonetheless does store the goods for the Purchaser, this shall be done as a service, entirely at the Purchaser's risk, and all the costs thereof shall be for the account of the Purchaser.

5.5 J.A.R. is entitled to deliver at most ten per cent more or less than the ordered quantity.

## **6. Defects and complaints**

6.1 J.A.R. guarantees that all Products comply with Dutch legislation and regulation and the specifications given by J.A.R. on the order confirmation. In case of defects to the delivered goods, J.A.R., irrespective of whether there is any question of its liability under the agreement or by law, shall have no obligation other than, and such at its own discretion:

a. the repair of the delivered goods free of charge;

b. to take back (in full or in part) the delivered goods and to deliver free of charge a sufficient quantity of goods which comply with the terms of agreement;

c. to take back (in full or in part) the delivered goods and to terminate (in full or in part) the agreement, without the Purchaser being entitled to damages;

d. the payment of a sum which, however, shall never exceed the contractual price, referred to in 3.1, of the delivered goods.

This guarantee applies for a period of two months after delivery.

6.2 The guarantee does not cover damage caused by normal wear and tear of the Products, incompetent use or storage by the Purchaser, and customized orders.

6.3 The Purchaser shall check the purchased goods, or have them checked, on receipt. He should moreover examine whether the delivered goods comply with the agreement, i.e.: - whether the correct goods have been supplied;

- whether the correct quantity has been supplied;

- whether the goods comply with any agreed specifications or with the requirements which may be set for normal use and/or commercial purposes at the risk of forfeiting all rights to complaint and/or under this guarantee. If a complaint relating to the delivered quantities is not noted directly on the delivery note, the quantities mentioned on the delivery note will constitute conclusive evidence that the correct quantities were delivered.

6.4 In the event of visible defects or shortcomings, the Purchaser shall notify J.A.R. of them in writing within fourteen days after receipt of the goods at the risk of forfeiting all rights to complain.

6.5 The Purchaser shall notify J.A.R. in writing of non-visible defects within fourteen days after they have been discovered or their existence could reasonably have become apparent, but at the latest within the time of the payment terms at the risk of forfeiting all rights to complaint. Six months after delivery no claims regarding non-visible defects can be made against J.A.R.

6.6 In case of a complaint the Purchaser shall give J.A.R. the opportunity to inspect the goods in order to identify if the complaint is correct. J.A.R. will not take any claim into consideration on goods already being cut, manipulated or worked up in any way, or being used, soiled or damaged by the Purchaser. Nor is J.A.R. liable for minor deviations in quality, size, colour, design or repeat, weight or finish, not even in the event of sale by sample.

6.7 J.A.R. will not accept any return consignment for which it has not given permission expressly in writing. The risk of return consignments will remain with the Purchaser. The costs of transport will be borne by the Purchaser until a shortcoming of J.A.R. is proven. The purchaser shall return the goods in the original packaging.

6.8 J.A.R. will not take any responsibility for any extra cost exceeding the amount on the invoice.

6.9 A complaint with regard to a part of a delivery, will not entitle the Purchaser to decline the order as a whole.

6.10 Complaints do not suspend any payment obligations of the Purchaser.

## **7. Liability**

7.1 Notwithstanding article 6 and irrespective of the grounds of its liability in the event of non-performance, non-timely performance or non-proper performance, the Purchaser does not have any claim against J.A.R. on grounds of faults in or relating to the goods delivered. Therefore neither J.A.R. nor its employees are liable for direct loss nor for loss of profit or indirect loss, except for willful misconduct or gross negligence. In all cases in which J.A.R. is obliged to pay compensation, this compensation will never be higher than the amount paid by the insurer of J.A.R. or the invoice value of the goods delivered that have caused damage.

7.2 J.A.R. shall in no case be liable for damage or loss resulting from:

- natural wear and tear or inexpert or incorrect treatment;

- use for a purpose other than that for which the goods have been developed and/or sold;

- infringement of the rights of third parties, including industrial property rights.

7.3 The Purchaser indemnifies J.A.R. against claims by third parties in connection with the agreement and/or the performance thereof.

7.4 Any claim against J.A.R. will lapse after 12 months after the Purchaser became aware of the claim.

## **8. Force majeure**

8.1 If proper performance by J.A.R. is partially or completely impossible, either temporarily or permanently, as a result of one or more circumstances which are not imputable to J.A.R., including the circumstances stated in the following paragraph, then J.A.R. shall be entitled to suspend her obligations and or terminate the agreement partially or in full. Such circumstances do not suspend the obligations of the Purchaser. J.A.R. cannot be held to any delivery time and the Purchaser does not have any right to claim damages, costs or interests.

8.2 Circumstances which in any case are not imputable to J.A.R. include but are not limited to behavior, except for deliberate acts or gross negligence, of persons who J.A.R. employs for the performance of the contract; industrial action, lockouts, sickness, import, export and/or transit prohibitions, transport problems, failure of subcontractors to meet obligations, breakdowns in production, natural and/or atomic disasters and war and/or threat of war.

## **9. Intellectual property**

9.1 All intellectual and industrial property relating to the products and the design thereof belong to J.A.R. The Purchaser shall not alter or remove any marks on the Products relating to the intellectual property of J.A.R.

9.2 J.A.R. guarantees that the Products do not infringe any Dutch intellectual property right of others. If however, a final and binding judgment of a Dutch court claims otherwise J.A.R. will either replace those Products with a non-infringing product or return the Products and repay the purchase price. In that case J.A.R. is not liable to pay damages or obliged to indemnify the Purchaser in and out of court.

9.3 If a Product is made by a design or under directions provided by the Purchaser, the Purchaser guarantees that the design or directions do not infringe any intellectual or industrial property of others. The Purchaser indemnifies J.A.R. for any claims of others relating to the infringement of intellectual or industrial properties.

## **10. Reservation of title to goods**

10.1 All goods delivered and to be delivered remain the property of J.A.R. until the Purchaser has met all the undermentioned obligations resulting from all the purchase agreements concluded with J.A.R.:

- the quid pro quo with regard to the actual goods which may have been delivered or are to be delivered;
- the quid pro quo with regard to any service which may have been rendered or may be rendered by J.A.R. under the terms of the purchase agreement(s);
- any claims by reason of non-compliance by the Purchaser with one or more purchase agreements.

10.2 Goods which fall under the reservation of title of J.A.R. may only be re-sold by the Purchaser within the scope of his normal business activities.

10.3 The Purchaser undertakes, when first requested to do so by J.A.R., to pledge to J.A.R., in the manner laid down by law, the claims he has against his customers for the resale of goods supplied by J.A.R. under reservation of title.

10.4 The Purchaser shall keep the goods supplied by J.A.R. under reservation of title with all due care and to mark them as the recognizable property of J.A.R.

10.5 If the Purchaser does not meet his obligations or there are valid reasons for believing that he will not do so, then J.A.R. shall be entitled to remove the goods if delivered under reservation of title or have them removed. The Purchaser is required to give J.A.R. full assistance in this. J.A.R. will credit the Purchaser for the goods removed when exercising this right at the market value of these goods on the day they were repossessed.

10.6 The Purchaser will not have a right of retention in respect of the goods delivered by J.A.R.

10.7 J.A.R. has a right of retention in respect of all goods, documents and funds by whatever name and for whatever reason J.A.R. possesses, in favor of any claim J.A.R. has or will have against the Purchaser.

## **11. Default**

11.1 Without prejudice to paragraph 3.4 the Purchaser is in default in the event of non-observance, non-timely or non-proper observance of any of his obligations, as also in the event of attachment on any of the properties of the Purchaser, (submission of a petition for) his insolvency, suspension of payments, bankruptcy, guardianship order or if an arrangement in the framework of the statutory debt restructuring scheme for natural persons (Wet schuldsanering natuurlijke personen) is declared applicable, death, or when the Purchaser is being at the point of being wound up or is terminated. When one of these situations occur, the Purchaser shall notify J.A.R. promptly.

11.2 Without prejudice to the provisions of 3.4 and 3.5, J.A.R. is entitled to terminate the agreement forthwith in the event of default. J.A.R. can attach conditions to its willingness not to terminate the agreement forthwith. The terminations shall make the obligations of the Purchaser due and demandable forthwith.

11.3 In the event of default, J.A.R. can claim reimbursement of its loss from the Purchaser, including loss of profit.

11.4 If J.A.R. in the event of default, takes extrajudicial measures to exercise its rights, then the costs thereof shall be chargeable to the Purchaser. These costs shall amount to not less than fifteen per cent of the total sum to be claimed by J.A.R.

## **12. Applicable law and court of competent jurisdiction**

12.1 The agreement, its performance and the interpretation of these conditions shall be governed by Dutch law.

12.2 All disputes in connection with the agreement and/or its performance shall be submitted to the court of law having jurisdiction at Eindhoven, without prejudice to the right of J.A.R. to submit the dispute to another court of competent jurisdiction.

**These conditions have been filed with the Chamber of Commerce at Eindhoven**