

# General terms & conditions of Supply of Van Beest B.V.

Version: 1 January 2019

## Article 1 Definitions

In these general conditions of sale, the following definitions have the following meaning:

- Van Beest the private limited liability company Van Beest B.V. (having its registered office and place of business in Sliedrecht, the Netherlands, listed in the Chamber of Commerce under number 23009317) and its affiliates;
- Client legal entity who has contact with Van Beest in connection with the (possible) conclusion of an agreement with Van Beest;
- Order every order for the supply of Products issued to Van Beest by the Client;
- Agreement the agreement concluded between Van Beest and the Client with regard to the supply of Products;
- Product(s) product(s) Van Beest has sold and delivered to the Client;
- Parties Van Beest and the Client combined;
- Terms & Conditions the present general terms & conditions of supply

## Article 2 General

- 2.1 These Terms & Conditions apply to all legal relations in which Van Beest acts as (potential) seller and/or supplier of the Products, including all offers made by Van Beest with regard to the Products, Orders and the acceptance of Orders by Van Beest.
- 2.2 The applicability of the Client's own general terms and conditions is hereby explicitly excluded and rejected by Van Beest.
- 2.3 If there is a conflict between the content of the Agreement and the Terms & Conditions, the provisions of the Agreement prevail.
- 2.4 If a provision of the Terms & Conditions is void or voided or cannot be invoked by the Parties for any other reasons, Van Beest may replace that provision by a provision that is valid and enforceable, and of which the object and purport resembles the original provisions as closely as possible. The other provisions shall remain in full force and effect in that event.
- 2.5 The Client is not allowed to transfer the Agreement or any rights or obligations ensuing from it to any third party without the express, prior and written consent from Van Beest. Van Beest is allowed to transfer its rights and obligations ensuing from the Agreement to a third party. The Client hereby grants his consent thereto, now and in future.

## Article 3 Offers and concluding the Agreement

- 3.1 All offers, in any form whatsoever, made by or on behalf of Van Beest are free of engagement and are based on data, drawings et cetera provided by the Client, if any. The offers do not bind Van Beest and are only deemed to be an invitation to place an Order.
- 3.2 If the offer provides a term for acceptance, the offer can only be accepted within that term.
- 3.3 An Agreement is not concluded until the Client has accepted the offer in writing or by email and Van Beest has confirmed the acceptance of the Client in writing or by email, or when Van Beest has commenced the execution thereof.
- 3.4 All drawings, calculations, plans, systems, stamps and moulds, methods and other data will remain the property of Van Beest and may not be disclosed to third parties by the Client without the prior written permission of Van Beest.
- 3.5 The prices stated by Van Beest are based on the price determining factors valid at the time of the quotation, including government levies and wages, calculated according to the usual working times adhered to by Van Beest. If one or more of these cost price factor changes before the offer is accepted, - including changes due to fluctuations in the exchange rate of foreign currency - even if this is a result of foreseeable circumstances, Van Beest is entitled to modify the price quoted accordingly. Van Beest will inform the Client accordingly in that case.
- 3.6 Van Beest is entitled to refuse (an) Order(s) or to attach certain conditions to the supply of the Products. The fact that Van Beest has supplied Products to the Client on any regular basis in the past whatsoever will not lead to the creation of an agreement concluded for a specific duration, of any nature whatsoever, between Parties or will not mean that Van Beest is obliged to accept (a) new Order(s).
- 3.7 Any additional agreements or arrangements made at a later point in time, as well as any (oral) agreements and/or promises made by staff employed by Van Beest or made on behalf of Van Beest by any sales person, agent, representative or any other intermediary will only bind Van Beest if and insofar as these have been confirmed in writing by individuals authorized by Van Beest to do so.

## **Article 4 Prices and Payment**

- 4.1 Unless expressly otherwise agreed in writing, all prices issued by Van Beest or agreed with Van Beest are quoted in Euro's and exclusive of VAT and/or any other government duties, transport costs, packaging, insurance and the like.
- 4.2 The prices quoted by Van Beest in catalogues, price lists, et cetera are only indicative and thus without obligation and may be modified without prior notification.
- 4.3 The prices of the Products are the prices as mentioned in the offer or the Order, unless exceptional circumstances occur after concluding the Agreement that lead to a change in the prices. Price increases caused by production activities being delayed through no fault of Van Beest or as a result of an increase in one or more cost price factors, even if such increase has occurred due to foreseeable circumstances, or as a result of government regulations coming into force, will be for the account of the Client.
- 4.4 In no event shall a change in prices form ground for dissolving an Agreement.
- 4.5 All amounts due are payable within 30 days of the date of the invoice, unless agreed otherwise. The Client is to issue payment exclusively in the manner(s) indicated by Van Beest and into a bank account assigned by Van Beest. Payments are to be issued in Euro's, unless expressly agreed otherwise in writing. Any costs in connection with effecting payments via banks, conversion of currency, credit costs, etc. are at all times for the account of the Client.
- 4.6 In the event of late payment the Client owes interest, as from the due date of the invoice, equal to 3 points above the percentage of the current statutory interest in the Netherlands as referred to in Sections 6:119a and 6:120 Paragraph 2 of the Dutch Civil Code, while Van Beest will be entitled to suspend the fulfilment of its obligations by the amount of time by which the payment has been delayed.
- 4.7 If the term of payment is exceeded the Client shall additionally owe Company all extra judicial costs, including the costs incurred in drawing up and sending reminders, in carrying on negotiations with regard to a possible settlement and in carrying out any other actions in preparation of a possible legal procedure, as well as all legal expenses reasonably incurred by Van Beest.
- 4.8 Van Beest's claim for payment shall be immediately due and payable if:
- a term of payment is exceeded;
  - the Client is declared bankrupt, or a petition for its bankruptcy is filed, or it files for a moratorium;
  - any of the Client's assets or receivables are seized;
  - the Client is dissolved or liquidated.
- 4.9 Any payments issued by the Client will first be used to settle any legal and non-legal expenses incurred by Van Beest and thereafter any possible interest owed or any possible damages incurred by Van Beest and will only then be deducted for the oldest invoice outstanding that was sent to the Client, regardless of whether that invoice pertains to another agreement concluded between Parties.
- 4.10 The Client is not allowed to suspend its payment obligations or to set off any claims of Van Beest.

## **Article 5 Delivery**

- 5.1 Deliveries of Products are made ex works (EXW, Incoterms current on the date of the offer).
- 5.2 The agreed delivery time commences as from the latest of the following dates:
- a. the day on which Van Beest has sent the Client the written order confirmation;
  - b. the date of receipt of the instalment due under the Agreement;
  - c. the date of receipt of the technical data, documents and/or securities to be provided to Van Beest by the Client.
- 5.3 If Van Beest is unable to carry out the Agreement, be it partially or in full, within the agreed term, Van Beest commits to informing the Client in writing of said fact as soon as possible.
- 5.4 Van Beest has the right to make partial deliveries as well as to invoice any partial deliveries it has carried out by separate invoice.
- 5.5 Exceeding the agreed delivery time does not entitle the Client to claim compensation nor give it the right to terminate or annul the Agreement or to suspend fulfilment of its own obligations.
- 5.6 The Client warrants that the agreed delivery address is accurate and complete and that the Products may actually be delivered at that address. If it turns out to be impossible to deliver (unload) the Products, Van Beest may deliver the Products, for the risk of the Client, at the most suitable location in the immediate vicinity of the agreed delivery address, such to the discretion of Van Beest and/or its haulier, or take the Products back, store it elsewhere and/or deliver it at a later date for the account and risk of the Client.

## **Article 6 Risk and Retention of Title**

- 6.1 The risk with regard to damage, theft, loss, etc. of the Products passes to the Client at the moment when the Products are delivered at the Client.
- 6.2 The ownership of the Products delivered to the Client will be transferred to the Client once he has paid all that Van Beest is owed in respect of deliveries or services under the Agreement, Order(s) or other similar agreements, including loss, penalties, interests and costs, or once he has provided satisfactory security for the fulfilment of his obligations. Van Beest has the right to retrieve Products or to have them retrieved immediately at the location where they are being held if the Client fails to fulfil its obligations as referred to in this article. The Client will fully cooperate in this instance. The Client hereby grants Van Beest the authorization to enter the premises used by or on behalf of

the Client, now and in future, for this purpose. All costs incurred in retrieving the Products will be charged to the Client. Van Beest is also entitled to recover any possible damages from the Client or to invoice the Client for any reductions in Product value.

- 6.3 During the period referred to in paragraph 2 above, the Client is prohibited from transferring, pawning or otherwise mortgaging the Products or to rent said Products out, lend them or release them for his control in any way whatsoever, barring instances within the framework of the Client's standard business practice. The Client is furthermore obliged to ensure that the Products are adequately insured during this period.
- 6.4 If a third party or third parties assert(s) any rights to Products supplied by Van Beest and subject to a restriction of right of ownership or if the Client is aware that a third party or third parties is/are planning to assert rights to the aforementioned Products, the Client will inform Van Beest of this fact immediately and in writing.

### **Article 7 Security**

- 7.1 Notwithstanding the agreed conditions of payment, Van Beest will be entitled at all times to demand security from the Client for the fulfilment of his obligations before commencing delivery or before continuing a delivery that has already commenced. If the Client fails to provide sufficient security for payment within the stipulated period, the Client shall be automatically be in default.

### **Article 8 Inspection and Complaints**

- 8.1 The Client is obliged to inspect the Products delivered - or have them inspected - immediately upon arrival in order to verify that they meet the agreed quantities and that they are undamaged.
- 8.2 The Client is obliged to mention any shortage of or damage to Products and/or packaging materials that are or can be detected on the delivery note, the invoice and/or the transport documents, in the absence of which Van Beest will not consider any complaints on the matter. Van Beest's administrative records will be decisive in this respect.
- 8.3 In the case of mass production by Van Beest or its suppliers of Products which deviate from the standard products in the production range, Van Beest will be entitled to maintain a margin in respect of the delivered Products of 5% above or below the number of Products ordered. Deviations within this range do not qualify as defaults.
- 8.4 All complaints regarding visible defaults (quality or quantity, or other deviations and/or damage) must be submitted by the Client in detail to Van Beest within 3 days of receipt of the Products, in writing or by email. Complaints will no longer be accepted once the Client has processed the delivered Products or has them delivered to third parties.
- 8.5 All complaints with regard to hidden defaults upon delivery that have not been discovered during the inspection as mentioned in paragraph 1 above, and which were discovered during the warranty period as mentioned in article 9.1, should be confirmed within a maximum of 8 days following the moment they were discovered or could reasonably have been discovered. Notifications are to be sent to Van Beest in writing, providing a clear description of the nature and scope of the default(s).
- 8.6 The decision whether the complaints reported by the Client are justified is solely to the discretion of Van Beest, which shall act in this regard as a reasonably acting supplier. Upon request, the Client shall provide Van Beest with all information that is necessary in its judgment. A default shall only exist if the Product does not fully satisfy the warranties mentioned in article 9.1.
- 8.7 Complaints with regard to invoices are to be confirmed to Van Beest within 8 days from date of invoice.
- 8.8 Once the aforementioned terms have expired, the Products will be deemed to have been received in good condition by the Client. Client's right to complain will moreover expire and complaints on the matter will no longer be considered by Van Beest.
- 8.9 The Client's right will also expire and complaints on the matter will no longer be considered by Van Beest if:
- a. The Client does not cooperate fully in the investigation of Van Beest of whether the complaint is justified; and/or
  - b. The Client did not treat, use or store the Products in a way which is generally viewed as reasonable.
- 8.10 Any complaints in respect of a specific Product, which was delivered amongst other Products, shall in no event entitle the Client to rescind the Agreement entirely or partially.

### **Article 9 Warranty**

- 9.1 Van Beest solely guarantees that the Products meet the agreed specifications (as stated in the Van Beest catalogue, or expressly agreed in writing) and are suitable for the purpose for which they are developed and produced by Van Beest. The guarantee will in no event be valid for more than three months as from the date of delivery to the Client.
- 9.2 Defects caused by normal wear and tear, inappropriate and/or improper use, or insufficient maintenance, will in no event be covered by the guarantee.
- 9.3 If the Client has complained within the terms as mentioned in article 8 above, and Van Beest decided that the complaint was well-founded and the warranty period as mentioned in paragraph 1 above did not pass, Van Beest will, at its discretion:
- a. repair the default(s) of the Product concerned at its own costs;
  - b. replace the Product(s), after receipt of the faulty Product(s);
  - c. refund the purchase price/credit the invoice and rescind – without judicial intervention – of the Agreement. Both as far as the purchase price, the invoice and the Agreement relate to the faulty Product(s).

Van Beest will in no event be obliged to compensate any consequential loss or other (in)direct damage suffered by the Client, howsoever named.

- 9.4 Any claim the Client has in respect of a default will lapse if the Client has made any alterations and/or repairs to the Product(s) without the prior written consent of Van Beest.
- 9.5 The Client may only invoke the warranty if it has fulfilled all of its obligations towards Van Beest.
- 9.6 Van Beest can supply third party test certificates at additional costs.

#### **Article 10 Liability**

- 10.1 Without prejudice to the content of articles 8 and 9, Van Beest is solely liable for any loss the Client suffers in the event of willful misconduct or gross negligence on the part of Van Beest or its directors.
- 10.2 Van Beest is not liable for any damage caused by its subordinates or by third parties engaged in the execution of the Agreement.
- 10.3 Van Beest is not liable for any loss the Client incurs towards third parties due to or in connection with the nature of or defaults in the supplied Products of due to delayed delivery. The Client will indemnify Van Beest against all third-party claims in connection with Products supplied to the Client by Van Beest.
- 10.4 Van Beest is in no event liable for consequential loss or any indirect damages suffered by the Client. Consequential loss is understood to include damages caused by faulty Products, loss of profit, losses suffered and costs incurred, as well as loss of business opportunities and savings not realized, loss caused by interruption, delay in delivery or standstill in the production or operations.
- 10.5 In the event Van Beest is liable, Van Beest's liability shall in all instances be limited to the amount for which it is insured and payment is made under the terms of said insurance cover. Van Beest is not obliged to exercise its rights under the terms of its insurance when held responsible by the Client.
- 10.6 Van Beest accepts no liability whatsoever for any advice it provides without express agreement.
- 10.7 All claims for compensation will lapse after 6 months, as from the date when the Client has become aware of the loss.
- 10.8 Van Beest reserves the right to all legal and contractual means of defense it can invoke to fend off its own liability towards the Client, also on behalf of its subordinates and any non-subordinates, whose actions they would be considered responsible for pursuant to the law.
- 10.9 Van Beest may engage the services of third parties in the execution of the Agreement and is at all times entitled to invoke any limitations of liability invoked by these third parties against Van Beest against the Client.
- 10.10 The foregoing is without prejudice to the liability of Van Beest under mandatory statutory provisions.

#### **Article 11 Force Majeure**

- 11.1 Where the non-fulfilment of an Agreement by Van Beest is caused by circumstances beyond the control of Van Beest - even though such circumstances could have been foreseen at the time when the Agreement was concluded - such as (but not limited) war / danger of war, (threat of) terrorism, civil war, riot, revolution, and kindred risks, fire, water damage, flooding, government measures, import and export restrictions, defects to machinery, strikes, sit-ins, restrictions in transport due to weather conditions and traffic congestion, suppliers and/or subcontractors of Van Beest failing to timely fulfil their obligations, and disruptions in the supply of power and water in the business of Van Beest, the consequences will not be attributable to Van Beest.
- 11.2 Van Beest may suspend the fulfilment of its obligations in the event and for the duration of a force majeure situation. The Agreement may be rescinded by either Party in case the force majeure situation did not end within three months.

#### **Article 12 Cancellation**

- 12.1 Should the Client wish to cancel an Agreement, giving reasons, he will be obliged to purchase all Products ordered and/or already wholly or partially processed by Van Beest, at the agreed price and to pay Van Beest a compensation equal to 15% of the amount of the Order, plus exchange loss, if any, on the part of Van Beest.

#### **Article 13 Suspension and rescission**

- 13.1 Without prejudice to Van Beest's remaining rights and without any proof of default or any obligation to compensation, Van Beest has the right to rescind the Agreement and/or the Order, partially or entirely, or to suspend the (subsequent) execution of the Agreement if:
  - a. the Client does not fulfil or does not sufficiently fulfil its obligations under the terms of the Agreement towards Van Beest or does not fulfil these in a timely manner, even if this fact cannot be attributed to it;
  - b. certain facts have come to the notice of Van Beest, giving Van Beest good reasons to fear that the Client will not fulfil its obligations, will not fulfil them in a timely manner or will not fulfil them in their entirety;
  - c. the Client goes bankrupt, applies for a moratorium of payment, has gone into receivership or a request of that nature has been made or if the Client's company is dissolved, is on strike or has gone into liquidation;
- 13.2 In the event of any of the instances mentioned in paragraph 1, sub-paragraphs a. up to and including c. above, Van Beest will have the right to claim immediate settlement of all it is entitled to.

#### **Article 14 Taxes**

- 14.1 All taxes and duties imposed on Van Beest in the case of export, including import duties, are for the account of the Client.

#### **Article 15 Intellectual Property Rights**

- 15.1 Unless otherwise agreed in writing, Van Beest reserves all intellectual property rights in all of its offers, order confirmations, submitted designs, illustrations, drawings, models and delivered Products and the like, regardless of whether the Client has been charged any costs for preparing these. These data and objects may not be reproduced, used, or disclosed to third parties without the prior written permission of Van Beest.
- 15.2 The Client will indemnify Van Beest against all third-party claims arising from the alleged violation of any intellectual property rights these third parties are entitled to.
- 15.3 The Client is not allowed to use the trade name(s) of Van Beest and the brands or designations such as "Green Pin®", "Green Pin Tycan®" and/or "EXCEL®" for its own business activities or to associate these with other than "Green Pin®", "Green Pin Tycan®" and/or "EXCEL®" products, without the prior written permission of Van Beest. Furthermore the Client undertakes to inform Van Beest immediately of any infringement by third parties of the trade name(s) or brands of Van Beest.
- 15.4 The Client is not allowed to remove or modify any designation of copyrights, trademarks, trade names or any other intellectual or industrial property right from the items referred to in paragraph 1 above.
- 15.5 The Client is obligated to pay a penalty of € 100.000,- (one hundred thousand euro's) for any violation of what is stipulated in this article 15. This penalty will be increased with an amount of € 25.000,- (twenty-five thousand euro's) for each day that the violation persists, to a maximum of € 500.000,- (five hundred thousand euro's), without prejudice to the remaining rights of Van Beest. The Client also owes legal interest on the fine in question from the day on which the violation has occurred.

#### **Article 16 European Sanctions Regulation**

- 16.1 The Client guarantees to comply with any EU restrictive measures following from the European Sanctions Regulation. If the Products are placed on the prohibited list of the European Authority or any other competent authority and/or the intended buyer is established in a prohibited country such as countries subjected by EU restrictive measures and/or countries as laid down in the denied parties under the European Sanctions Regulation, the Client shall not import/deliver any Products to such buyer. In case an import- or export authorization, issued by the relevant authority in the country in which the importer or exporter is established, is required according to aforementioned regulations, the Client guarantees not to import/deliver Products without such authorization.
- 16.2 The Client is obligated to inform Van Beest if the Client intends to deliver Products to a buyer established in a country to which the restrictions referred to in aforementioned paragraph 16.1 and 16.2 apply. In such case, at first request of Van Beest, the Client is obliged to inform and provide all the relevant documents to Van Beest concerning the details of such a(n) (intended) customer or other buyer.
- 16.3 The Client guarantees that all relevant legal provisions are being complied with within its area of responsibility and in particular regarding third parties involved in the performance of the Agreement. With due consideration of the stipulations in the European Sanctions Regulation the Client is obliged to impose its obligations and restrictions according to this article under an agreement with its customer(s) by way of a third party clause.
- 16.4 The Client shall indemnify and hold harmless Van Beest against any and all fines and penalties imposed on Van Beest and any and all claims, judgments, liabilities, losses, actions, debts or rights of action, of whatever kind, and all costs and expenses, including full and reasonable legal fees, arising out of any breach of the European Sanctions regulations by the Client and/or or any breach of the obligations as enacted in this article 16.

#### **Article 17 Applicable Law; Disputes**

- 17.1 All legal relationships between Van Beest and the Client, regardless of their nature, are governed exclusively by the laws of the Netherlands. The Vienna Sales Convention (C.I.S.G.) is not applicable, nor is any other international regulation the exclusion of which is allowed.
- 17.2 The competent court in Rotterdam, the Netherlands, has exclusive jurisdiction to take cognisance of any and all disputes between Van Beest and the Client, unless this is contrary to mandatory law. Van Beest may deviate from this rule of jurisdiction and apply the statutory rules of jurisdiction.