

General Terms of Sale and Delivery of Spirotech UK Ltd

1 Applicability of the general terms.

- 1.1 These terms apply to all offers, in accordance with the provisions of paragraph 2, of Spirotech UK Limited (hereinafter referred to as Spirotech) as well as to all agreements reached or to be reached between Spirotech as contractor and the client. Any reference by the client to his own terms of purchasing or terms of offer for sale by tender or any other terms is not accepted by the contractor.
- 1.2 Oral agreements with and/or promises by Spirotech personnel and/or representatives are only binding after written confirmation.

2 Offers and orders.

- 2.1 All offers by Spirotech are free of obligation and must be regarded as a whole. The prices and delivery periods stated in the price lists and offers are indications of the prices and delivery periods. They are stated in good faith and as precise as possible.
- 2.2 Spirotech is only bound by orders, also if accepted by sales representatives, commercial agents, resellers and other intermediaries, after these have been confirmed by Spirotech in writing. The risk of mistakes and/or incorrect information in the absence of any written confirmation, for instance in case of urgent deliveries, lies with the client.
- 2.3 Sketches, drawings, graphs, prospectuses, measurements and weight specifications and/or other illustrations and data provided by Spirotech are not binding, save and in so far as stated in the written order confirmation. The offer made by the contractor, as well as the drawings, calculations, software, descriptions, models, tools and the like made or provided by him,

continue to be his property, regardless of whether any fee has been charged for these. The contractor continues to be exclusively entitled to the information inherent in any of these or on which the manufacturing and construction methods, items and the like are based, even if a fee has been charged for these. The client warrants that said information will not be copied, shown to any third parties, disclosed or used, unless the contractor's written permission has been obtained, except in the performance of the agreement.

3 Delivery and transfer of risk

- 3.1 The items will be forwarded at the client's request or on the basis of the agreement. Items are at the RISK of the client from the time of delivery.
- 3.2 If the client does not take delivery of the items according to the agreed delivery time, Spirotech is entitled to separate the items and to store these at the expense and the risk of the client, such without prejudice to its right to claim payment of the sales price.
- 3.3 Items may only be sent back after written permission from Spirotech. In the event of failure to comply with this provision, the client is liable to pay compensation.
- 3.4 Return shipments are transported at the client's risk.
- 3.5 Return shipments of goods that are damaged by or because of the client, and return shipments of unmarketable goods, which is at Spirotech's discretion, may be refused by Spirotech.
- 3.6 If Spirotech takes receipt of any return shipment, this does not mean that it approves of the shipment or that it is in an undamaged condition. Spirotech will only send a credit invoice to the client, if this has been agreed explicitly between Spirotech

and the client.

- 3.7 Transport costs of return shipments and the repair costs of any defects exceeding the guarantee term are for the client's account, as is 25% of the market value of the return items for *handling* and registration.
- 3.8 Spirotech is entitled to make partial deliveries. Invoices pertaining to partial deliveries must be paid within the agreed period for payment. Article 7 of these terms applies to this *mutatis mutandis*.

4 Delivery periods

- 4.1 The delivery period begins after the agreement has been concluded, Spirotech has all data required for the performance in possession and payment has been made and security provided in so far as this has to be effected when the contract is concluded.
- 4.2 In the event the delivery period is exceeded – on any grounds whatsoever – the client waives his right to suspend the performance of his obligations under the agreement, and his right to compensation and the entire or partial rescission of the agreement. If the period is exceeded by more than four weeks, the client is entitled to rescind the agreement by written notification to Spirotech, without prejudice to any rights, including the right to claim compensation.
- 4.3 If Spirotech is unable to comply with the delivery period promised by it on account of force majeure, Article 5.2 applies *mutatis mutandis*.

5 Force majeure.

- 5.1 In these general terms and conditions, force majeure refers to: any circumstance beyond the control of Spirotech - even if it could be foreseen when the agreement was concluded - that prevents fulfilment of the agreement either permanently or temporarily, and additionally,

insofar as not already understood, war, threat of war, terrorism, civil war, revolt, limiting government measures of whatever nature, strikes or sit-downs, workers' exclusion, transport difficulties, lack of semi-finished products and auxiliary materials, full or partial default by a third party from which items and services must be received, fire, seizure, machine defects and other serious disruptions in the business of Spirotech or its suppliers.

- 5.2 In the event that performance of the agreement is impeded as a result of force majeure, Spirotech is entitled, without legal intervention, to either suspend performance of the agreement for a period not exceeding six months, or to rescind the agreement in full or in part, without being obliged to pay any form of compensation. During the suspension period, Spirotech will be entitled, and upon its termination Spirotech will be obliged, to either opt for fulfilment of the agreement, if possible, or to rescind the agreement in full or in part.
- 5.3 Both in the event of suspension and rescission under paragraph 1, Spirotech is entitled to require immediate payment for the raw materials, materials, parts and other items it has purchased, reserved, processed or manufactured for the performance of the agreement, for the value that can reasonably be assigned thereto. In the event of rescission by virtue of paragraph 1 the client is obliged, after payment of the amount owed by virtue of the previous sentence, to take receipt of the items mentioned therein. Should the client fail to do so, Spirotech will be entitled to store, sell or destroy these items at the client's risk and expense.
- 5.4 Should there be good grounds to assume that the client will not be in a position or not be prepared to fulfil its contractual obligations vis-à-vis Spirotech, and additionally in the event of bankruptcy, suspension of

payment, closing down, winding up or transfer of the business of the client, in full or in part, Spirotech is entitled to require suitable security with respect to all payable or non-payable contractual obligations of the client, and pending such security to suspend fulfilment of the agreement. Spirotech is entitled to rescind the agreement, in full or in part, should the client fail to provide such a security within a reasonable term set by Spirotech. Spirotech has these rights in addition to its other rights by virtue of the law, the agreement and these terms and conditions.

- 5.5 If the client fails to fulfil any of its obligations by virtue of the agreement concluded with Spirotech or any other agreement arising from this agreement, or to do so entirely, on time or adequately, Spirotech is also entitled to suspend the fulfilment of the agreement and/or to rescind the agreement.
- 5.6 In the event of suspension on grounds of paragraphs 3 or 4, Spirotech is entitled to store, at the client's risk and expense, the raw materials, materials, parts and other items it has purchased, reserved, processed or manufactured for the performance of the agreement. In the event of rescission on grounds of paragraphs 3 or 4, the previous sentence applies on the understanding that Spirotech can also choose to sell or destroy these items, at the client's risk and expense, instead of storage. Spirotech is entitled to full compensation for damages in the event of suspension or rescission on grounds of paragraphs 3 or 4, without being obliged to pay compensation itself.

6 Prices

- 6.1 The items delivered by Spirotech will be invoiced in accordance with the price confirmed by Spirotech in the

order confirmation.

Any interim increases in the prices of materials, wages, tax rates, freight rates, exchange rates or other cost price components will be passed on, unless explicitly agreed otherwise. All of Spirotech prices exclude VAT, unless stated otherwise.

- 6.2 The costs of special packaging will be charged to the client.

7 Payment

- 7.1 The client will be deemed to have acknowledged the invoices as correct and due, if he has not submitted a protest to these in writing within fourteen days after the invoice date, stating the nature of the protest and the objections.
- 7.2 All payments due from the client must have been received by Spirotech within thirty days after the invoice date, in legal Dutch tender, without any deductions or settlement, unless agreed otherwise in writing.
- 7.3 If the client fails to pay within any agreed period, he will be held in default by operation of law and Spirotech will be entitled from the due date onwards without any notice of default being required, to charge the Client interest at a rate of 3 points above the statutory interest rate applicable in the Netherlands, as meant in Section 6:119a and Section 6:120 paragraph 2 of the Dutch Civil Code, and additionally all the judicial and extrajudicial costs in connection with the collection of the claim.
- 7.4 If the client is in default as to the payment of one of the invoices, all other claims of Spirotech on the client become immediately due and payable. Furthermore, in that case Spirotech is entitled to immediately rescind all sales agreements with the client.

8 Rights of title and use

- 8.1. The title to the delivered items is retained by Spirotech. This title to the product only passes to the client after everything the client owes Spirotech on account of deliveries or work has been paid to Spirotech in full, including interest and costs.
- 8.2. The client is entitled to sell the items delivered to him, for which the title is retained by Spirotech, to any third party in a lawful manner or to process these in the normal performance of his business operations.
- 8.3. Spirotech continues to be (solely) entitled to use the data referred to in the first sentence of Article 2.3, regardless of whether any costs were charged for these data. They may not be copied in full or in part or made available to any third party for examination or otherwise, and must be returned upon the first request.
- 8.4. The title to templates, moulds, auxiliary equipment and other appliances made by Spirotech is retained by Spirotech, also if a separate amount has been charged for these.
- 8.5. The client is not entitled to pledge the items belonging to Spirotech or to hand these over to a third party on loan, safekeeping, on consignment or for inspection. The client is furthermore obliged to immediately inform Spirotech of any seizure and of any other infraction or threat of an infraction by any third party of the property rights or rights of sole use of Spirotech. In these cases, the client will point out both rights of Spirotech to such third parties.
- 8.6. If a client has payment difficulties or in another situation as referred to in paragraphs 5.4 and 5.5, Spirotech is entitled to take back the items delivered subject to retention of title. If items are taken back, the client will be credited the original purchase price, less any costs in connection

with the agreement, provided the items have been returned undamaged.

- 8.7. As long as the title to the items has not passed to the client, he is obliged to insure these against damage arising from fire, explosions or water, as well as against theft, at his own expense, but for the benefit of Spirotech.
- 8.8. If the same kind of items have been delivered for one or more unpaid invoices, the items at the client's location will be deemed to have been delivered for the unpaid invoices.

9 Intellectual property

- 9.1. All intellectual property rights with respect to the items and related materials to be delivered, reside with Spirotech. The trademarks and logos (hereinafter jointly: "trademarks") used by Spirotech in connection with the goods to be delivered, are registered trademarks of Spirotech. The client will respect the trademarks in question and maintain the trademarks of Spirotech affixed to the items and materials delivered by Spirotech, this both in the event of own use and in the event that these are resold.
- 9.2. The client is obliged to use the aforementioned trademarks, including any related graphical data, in his own advertisements or other advertising materials, of any nature whatsoever, in so far as said material pertains to items or materials of Spirotech. The indication of the trademarks may be by using the ® sign in combination with the trademark or by stating: "a registered trademark of Spirotech".
- 9.3. The client warrants that his clients will also in the same way give notice of the Spirotech's right to the trademarks on all copies of advertisements or other advertising materials to be published or used by them, in which the trademarks -

including any related graphical data of Spirotech - are stated.

10 Claims.

10.1 Claims with respect to externally visible defects and deviations must be reported in writing within 5 days after receipt, not including Saturdays, Sundays and generally accepted public holidays. If a claim is not made in time as stipulated above, Spirotech is entitled to reject each complaint and/or claim with respect to externally visible defects and deviations. Lodging of complaints arising from other defects must take place immediately after their discovery, but within 14 days after receipt of the goods and in writing..

11 Guarantee

11.1 Spirotech gives the following guarantee for the delivered products: Products finished in standard brass up to 110 °C are guaranteed for the economic life of the heating installation. The guarantee period does not, however, exceed 20 years after the date of delivery. A guarantee period of 5 years as of the date of delivery applies to all products finished in brass suitable for temperatures higher than 110 °C and to all steel units. For vacuum deaerators the guarantee period is two years as of the date of delivery.

11.2 This guarantee entails that Spirotech will, at its own discretion, replace or repair the delivered items, if it has become apparent within the guarantee period that the items are faulty on account of unsuitable construction or bad material, or do not comply with the agreement in any other respect. Replacement or repair on the basis of this guarantee clause entails that the items in question must be made available at the address designated by Spirotech for this purpose and after replacement or repair, these will again be made available to the client at the address designated by Spirotech. The costs of

transportation, disassembly and assembly are therefore explicitly not included in this guarantee.

11.3 Items replaced on the basis of the provisions of 11.2 will become Spirotech's property.

11.4 The guarantee only extends to the client who can prove to have purchased the product new and unused.

11.5 All of the client's rights ensuing from this article lapse, if the items have been repaired or altered or there have been attempts to repair or alter the items by the client or third parties on the instructions of the client, the items have been subjected to rough or unskilled treatment, assembly errors, incorrect operation, overload, excessive filthiness, or if the items have not been used in accordance with the purpose for which they are intended or if the use and the applied material have not been adjusted to each other, if the items were produced in accordance with mandatory government regulations and defects, if applicable, can be attributed to this or to the design of a product on the part of the client comprising items delivered by Spirotech or parts that were purchased by Spirotech elsewhere at the request of the client.

11.6 Contrary to the aforementioned, as regards items or components bought by Spirotech from (a) third party (parties), the guarantee does not go beyond the guarantee clauses of the third party (parties).

12 Liability

12.1 Spirotech's liability is limited to fulfilment of the guarantee obligations under Article 11 of these terms and conditions.

12.2 Save in the event of intent and/or conscious recklessness on the part of Spirotech staff employed in management positions and subject to the provisions of Article 12.1, all

liability of Spirotech for defects in delivered items and in connection with the delivery, for damage due to exceeding of the delivery time and non-delivery, damage arising from liability vis-à-vis third parties, loss of profits, consequential and indirect damage, and damage caused by actions or omissions on the part of the client or its employees is excluded.

12.3 For that reason, Spirotech is not liable for:

- violations of patents, licences or other rights held by third parties;
- damage or loss, resulting from whatever cause, of raw materials, semi-finished products, models, tools and other items made available by the client.

12.4 Spirotech accepts no responsibility or liability whatsoever for constructions and designs which have been manufactured by it at the client's special request, at variance with normal production by Spirotech, or for trial constructions, prototypes and the like which are built into the works of third parties or for advice in such matters. All this is fully for the risk of the client. In particular, Spirotech does not accept any liability for any loss of profit or product damage arising from this.

13 Indemnification

13.1 The client is bound to indemnify Spirotech with respect to all third-party claims for compensation for which Spirotech cannot be held liable under these terms and conditions in its relation to the client.

14 Confidentiality

14.1 The client is obliged to observe confidentiality vis-à-vis third parties with respect to business matters of Spirotech, including: any data concerning models, drawings, designs, diagrams and constructions, of which he has become aware on account of the delivery or offer.

15 Disputes

15.1 Save in the event the cantonal court has jurisdiction, the district court of 's Hertogenbosch has jurisdiction to hear any dispute.

16 Applicable law.

16.1 Dutch law applies exclusively to all agreements concluded subject to these terms.

16.2 The Vienna Sales Convention (the UN Vienna Convention for international sales contracts concerning movable property, of 11 April 1980) does not apply and is hereby explicitly excluded.

17 Final provisions.

17.1 In all cases in which a sales agreement concluded by Spirotech may be rescinded or cancelled pursuant to these general terms and conditions, this will be effected without court intervention.

17.2 If any provisions of these general terms and conditions were to be declared invalid or not binding by a decision of the court, the other provisions continue to stand in full.

17.3 Spirotech is at all times entitled to amend or revise these general terms.