

# MELSPRING INTERNATIONAL B.V., VELP

## General Conditions of Sale and Delivery

### 1. *General*

1.1 These General Conditions apply to all offers and agreements whereby Melspring supplies goods of any nature whatsoever to the buyer, unless the parties have expressly agreed otherwise in writing.  
Any purchasing conditions or other conditions of the buyer do not apply, unless Melspring has explicitly accepted such in writing.

### 2. *Offer and making an agreement*

2.1 All offers are without commitment, unless the contrary is explicitly set out in Melspring's written offer. The agreement between Melspring and the buyer will first be deemed made after Melspring has confirmed it in writing, or, if there is no written confirmation, Melspring has commenced performance thereof.

2.2 If part delivery or unloading has been agreed, the parties will be deemed to have made a separate agreement for each individual delivery or unloading.

### 3. *Prices and payment*

3.1 All prices applied by Melspring are based on the circumstances that determined the costs at the time the agreement was made. If such circumstances change after the agreement is made, Melspring has the right, without prejudice to the provisions of Clause 3.2, to increase or decrease the agreed purchase price by the amount by which Melspring's costs have increased or decreased, upon presentation of the related costs changes, unless Melspring explicitly informs the buyer in writing that it has waived this right.

3.2 In addition to the agreed purchase price, packing costs, shipping costs, costs in connection with days of demurrage, delayed unloading and low tide, costs of transshipment, sorting, calibration, analysis and all levies, taxes, import duties and excise duties imposed or levied in respect of the goods and the transport thereof and all other costs connected with the individualisation, testing and transporting of the goods are at the buyer's expense, unless otherwise agreed in writing.

3.3 Payment by the buyer of the purchase price and any other amount invoiced to him must, unless explicitly otherwise agreed in writing, take the form of an irrevocable, confirmed cash letter of credit accepted by Melspring, in accordance with standard commercial practice. With regard to his payment obligations the buyer has no entitlement to withholding, deduction or set-off, under any heading whatsoever, nor does the buyer have the right to suspend his payment obligations.

3.4 If the amount owing is not paid (in full) on the latest payment date, the buyer will be in default without the need for notice of default and as of that day will owe interest over the outstanding amount which is equal to the quote on an annual basis on the London Interbank Market for deposits in the same currency as that of the purchase price as published in the Financial Times, increased by a mark-up of 4%, while in such case the buyer is, moreover, obliged to compensate Melspring for all extrajudicial collection costs and judicial costs, including the costs of legal assistance and advice. The extrajudicial costs to be compensated by the buyer are at least 10% of the amount left unpaid.

### 4. *Delivery date*

4.1 The term of delivery/time of unloading indicated by Melspring is based on the circumstances prevailing at the time the agreement is made and, insofar as dependent on actions of third parties, on the information which such third parties furnish to Melspring.

Melspring will take account of the term of delivery/time of unloading as much as possible, but time is never to be deemed of the essence. In the event a term/date is exceeded, Melspring will, if possible, inform the buyer of the new delivery term. The buyer is not entitled to any compensation or dissolution (in whole or in part) of the agreement or to dissolution on his part in respect of any obligation he has vis-à-vis Melspring.

### 5. *Delivery*

5.1 Delivery is ex factory (EXW, in accordance with the most recent version of the ICC Incoterms), unless the contrary is explicitly agreed in writing, in which case alignment will be sought with the ICC Incoterms (most recent version) used in (international) trade.

5.2 If the buyer does not take receipt of the goods or the documents issued in respect of the goods on the agreed date or any other date specified by Melspring in connection with exceeding of the delivery term/date as referred to in Clause 4, all costs ensuing there from are at the buyer's expense and Melspring is entitled to store the goods at the expense and risk of the buyer or to sell them to a third party. The buyer will then continue to owe the purchase price (by way of compensation), decreased by the net proceeds of the sale to such third party.

### 6. *Transfer of title*

6.1 The title to the goods delivered will only pass to the buyer when he has performed his payment obligations on the basis of the agreement on which the delivery is based, on the basis of goods delivered or to be delivered under any other agreement, including any compensation, costs, interest and penalty and any work carried out on behalf of the buyer pursuant to such agreement(s).

6.2 The buyer is bound to treat the goods delivered subject to retention of title with due care and to store them recognisably marked as the property of Melspring.

6.3 As long as the suspensive condition referred to in Clause 6.1 has not occurred, the buyer is not entitled to process or alienate the goods other than in the normal course of business. In the event of sale on credit, the buyer is obliged to impose retention of title on his customers in accordance with the provisions of this clause.

6.4 The buyer undertakes not to assign or grant a pledge to third parties in respect of claims which he acquires in respect of his customers without the prior written consent of Melspring. The buyer undertakes to assign such claims to Melspring upon Melspring's first request or, at Melspring's option, to grant a pledge in respect thereof.

6.5 If the buyer remains in default with regard to the payment of any sum due, Melspring is entitled to take back all goods which have not been paid for, insofar as they have been delivered to the buyer. The buyer authorises Melspring to instruct the return of such goods at the buyer's expense. The buyer hereby gives Melspring and the representatives to be appointed by it permission to enter his business premises, warehouses, factories and construction sites for such purpose.

### 7. *Complaints*

7.1 The buyer has the right to be present or represented in the event of separation of the goods, weighing, counting, measurement or the taking of samples. If the buyer wants to make use of this right, he must inform Melspring hereof at latest within three days after receipt of the sales confirmation so that Melspring can advise him in due time. If the buyer does not make use of this right, he will be deemed to have agreed to the method of separation, weighing, counting, measuring and sample taking and to have accepted the results hereof. In such case, complaints in this respect are excluded.

7.2 The buyer is obliged to carefully inspect the goods immediately after receipt by the buyer, or after receipt by a third party acting on the buyer's instructions. The buyer must notify Melspring in writing of any defects in the goods, and any discrepancies in quantity, weight, composition and/or quality between the goods delivered and the description thereof set out on the order confirmation or invoice immediately and in any event within 24 hours after receipt of the goods, or, if such is earlier, within 24 hours after inspection of the goods by or on behalf of the buyer. In addition, any defects must be noted on the transfer or receipt note.

- 7.3 If the buyer does not report the complaint in writing in due time, any claims of the buyer on Melspring will lapse in this respect. In the event written notice is given in time, the obligations ensuing there from for Melspring are limited to the liability as described in Clause 8 and the buyer will have no further claims on Melspring.
- 7.4 The buyer is not entitled to return the goods as long as Melspring, after review of the complaint, has not held the complaint to be well founded in writing or has otherwise agreed to the return of the goods.  
Return of goods is always at the expense and risk of the buyer.
- 7.5 Defects relating to an individual batch of goods which forms part of a delivery consisting of several batches will never give the buyer the right to demand dissolution of the entire agreement.
- 7.6 The buyer has no right to compensation in respect of goods which have been used or processed in whole or in part, have been resold by the buyer or which Melspring can no longer inspect for any reason whatsoever.
- 7.7 If Melspring supplies 5% more or less than was agreed, this will not be grounds for a complaint. In such case the buyer has the right or obligation to pay proportionally more or less.
8. *Guarantee*
- 8.1 Melspring guarantees that the quantity, weight, composition and quality of the goods correspond with what the parties agreed, in accordance with the margin differences common in the industry. Insofar as Melspring sells goods to the buyer on the basis of a quality description supplied by Melspring's supplier, Melspring is not bound to any other specifications than those laid down in such quality description.
- 8.2 Melspring explicitly does not guarantee that goods supplied by it are suitable for other purposes than those explicitly agreed between the buyer and Melspring.
- 8.3 Melspring's liability under the heading of this guarantee obligation is limited under all circumstances to the amount of the purchase price of the goods in question.
9. *Liability*
- 9.1 Melspring is not liable for damage on the grounds of default or wrongful act, except insofar as there has been intent or wilful misconduct on the part of Melspring which cannot be legally excluded.
- 9.2 Melspring is not liable for damage caused by its personnel or other persons engaged for the performance of the agreement with the buyer. This exclusion also encompasses intent and wilful misconduct, insofar as these persons are not charged with the management of the performance.
- 9.3 Melspring is not liable for damage resulting from liability of the buyer vis-à-vis third parties on any grounds whatsoever.
- 9.4 The exclusion of liability as referred to in Clauses 9.1, 9.2 and 9.3 above applies in respect of any form of damage, including direct and indirect damage, operating damage, lost profit and any other form of consequential damage.
- 9.5 Without prejudice to the provisions of Clause 8.3, Melspring's liability is at all times limited to EUR 250.000 per damage incident. With regard to goods which Melspring purchases from third parties, its liability never extends beyond the liability of the third party vis-à-vis Melspring.
- 9.6 The buyer in any event indemnifies Melspring against claims of third parties for compensation of damage for which Melspring has excluded its liability vis-à-vis the buyer.
10. *Force majeure*
- 10.1 If Melspring is prevented by force majeure from performing the agreement in whole or in part, it has the right, without the need for judicial intervention, to suspend performance of the agreement or to deem the agreement dissolved in whole or in part, at its option, without being bound to pay any compensation.
- 10.2 Force majeure means, inter alia: strike, fire, machine breakdown and other disruptions in operations, either at Melspring or its suppliers of goods and services, transport disruptions and other events beyond the control of Melspring, such as war, blockade, riot, epidemic, flooding and storms, and delay or lack of delivery by suppliers, failure to obtain permits prescribed by the government.
11. *Dissolution*
- 11.1 If the buyer does not perform any obligation ensuing for him from the agreement or does not perform such in time or properly, and in the event of bankruptcy, (provisional) moratorium, cessation or liquidation of the buyer's business, he will be deemed to be legally in default and Melspring is entitled, without the need for notice of default or judicial intervention, to suspend the agreement or to dissolve the agreement in whole or in part, at its option, without Melspring being bound to pay any compensation, but without prejudice to any other rights it is entitled to, in particular the right to compensation of the damage.
- 11.2 In those cases, any claim that Melspring has on the buyer will become immediately payable in full. Melspring is entitled to set off such claim against all claims that the buyer has on Melspring, whether or not they are already payable.
- 11.3 In the cases referred to in Paragraph 1, the buyer is obliged upon Melspring's first request to make the unpaid goods still in his possession available to Melspring. In such case Melspring is entitled to take control of such goods, regardless of where they are located and if necessary to enter the buildings and grounds of the buyer.
12. *Applicable law and competent court*
- 12.1 The agreement with the buyer and these General Conditions are governed by Dutch law.
- 12.2 The applicability of the Vienna Convention on International Sales of Goods 1980 is excluded.
- 12.3 All disputes arising in respect of the agreement with the buyer and/or these General Conditions will be brought before the competent court in Arnhem, on the understanding that Melspring has the right to bring claims against the buyer before other judicial institutions, which have jurisdiction on the basis of national or international rules of law or treaties.
13. *Registration of the General Conditions*
- 13.1 These General Conditions were registered with the Chamber of Commerce in Arnhem on 08-01-2004.