

## **GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT (BUSINESS TO BUSINESS)**

### Clause 1. Definitions

- 1.1 These General Terms and Conditions apply to all offers made by and agreements entered into with a Capi-Lux or (Tracks) Multitronics company belonging to the Capi-Lux Group, whose holding company is Capi-Lux Holding B.V. which has its registered office in Amsterdam (the Netherlands), or any of such company's legal successors or any juridical persons affiliated with them (hereinafter referred to jointly and severally as: the "Company"), relating to the supply of goods by the Company to the party to whom the offer is made or the other party to the agreement, respectively (hereinafter: the "Customer").
- 1.2 The applicability of the Customer's general terms and conditions is hereby expressly rejected.
- 1.3 Any provisions that vary from these General Terms and Conditions will only apply if and in so far as they are accepted by the Company in writing.

### Clause 2. Offer

All offers made by the Company are without commitment even if the offer includes a term for acceptance, unless the contrary is expressly provided in writing.

### Clause 3. Agreement

- 3.1 An agreement, which in this clause is understood to include any changes or additions made to the agreement, only becomes binding after it has been agreed in writing unless the Company has already commenced performance before that time.
- 3.2 An agreement is concluded in writing when the contract has been signed by the Company's Board of Management and by the Customer, or on the date on which the Company (by post or telefax) sends the written order confirmation, which must be signed by the Board of Management, or the invoice. Any promises made by or arrangements made with Company employees will not bind the Company unless they have been confirmed in writing by the Company's Board of Management.
- 3.3 The contract is a full and accurate representation of the agreement drawn up between the parties. The Company's order confirmation or invoice is considered to be an accurate reflection of the contents of the agreement unless the Customer objects to these contents immediately in writing, stating the reasons.
- 3.4 Minor variations within the customary bounds shall be permitted in the performance of the agreement.
- 3.5 Unilateral termination of the agreement by the Customer is invalid unless the Company agrees to such termination in writing.

### Clause 4. Notices, data, statements, samples

Notices, data, statements and samples made or provided by the Company, in whatever form or of whatever nature, are only indicative and shall never bind the Company unless the agreement expressly provides the contrary.

## Clause 5. Confidentiality

The Supplier shall maintain the confidentiality of any business information which relates to the Company and not disclose it to any third party; business information is to be interpreted in the broadest sense and includes any information which is disclosed to the Supplier by the Company or which comes to the Supplier's knowledge in the context of the agreement.

## Clause 6. Prices

- 6.1 The prices quoted and/or agreed upon by the Company shall be exclusive of taxes – including Value Added Tax (“B.T.W.”, Dutch VAT) – and levies, and shall be based on the terms and conditions (of delivery) stated in the following clauses.
- 6.2 If no Value Added Tax or other taxes or levies are due because the goods are destined for delivery within the European market, these taxes will nevertheless be charged, but will be credited if the Customer proves that a delivery of the sort referred to here has indeed taken place.
- 6.3 When the stated and/or agreed prices are based on the weight of the goods, the weight shall be determined by the weighing which the Company carries out before the delivery using calibrated weighing equipment. The Customer may, at its own initiative, witness the weighing as long as this does not delay the delivery.
- 6.4 The Company has the right to increase the quoted or agreed prices in the event of an increase in the price of items, raw materials or parts obtained from third parties or an increase in wages, national insurance contributions, freight, insurance premiums or other cost components (including fluctuations in foreign exchange rates) and charges (including import and transit duties).  
If a price increase takes place within three months after the conclusion of the agreement, a Customer who is also a consumer shall be entitled to dissolve the agreement.
- 6.5 If the quoted or agreed prices are (partly) based on the refunding of levies and/or subsidies and these are not obtained for whatever reason, the Company may adjust its prices accordingly.

## Clause 7. Delivery; term of delivery

- 7.1 Unless expressly otherwise agreed, delivery shall be made “Free CARRIER” (FCA) from the premises of the Company. The interpretation of the terms and conditions of delivery shall be governed by the edition of the Incoterms issued by the International Chamber of Commerce that was the most recent at the time the agreement was entered into.
- 7.2 The delivery period shall commence on the latest of the following dates:
  - the date on which the agreement is entered into;
  - the date on which the Company has at its disposal all the documents, information, permits, exemptions, approvals, allocations, etc., required for the supply of the goods;
  - the date on which the Company receives an advance payment or security deposit to which it is entitled under the agreement.
- 7.3 The delivery period shall be based on the circumstances that apply at the time the agreement is concluded and on the timely delivery of the materials and goods ordered by the Company for the execution of the agreement. If any delay arises as a result of changes in these circumstances or because materials and/or goods which have been ordered in time for the

execution of the agreement are not delivered in time, the delivery period shall be extended by a reasonable period taking all the circumstances into consideration.

- 7.4 The delivery date of the goods shall be the time at which the goods, disregarding minor items, are ready for shipment and the Company has informed the Customer accordingly, or the time at which the goods have left the premises of the Company to be forwarded to the Customer.
- 7.5 The Company shall at all times be entitled to make partial deliveries unless expressly agreed otherwise.
- 7.6 The delivery date is not of the essence unless expressly agreed otherwise. In the event of late delivery due to the fault of the Company, notice of default shall always be required. The Customer cannot derive any rights from late delivery due to the Company's fault if the delay does not exceed a period of three (3) months.
- 7.7 If the Company is in default with regard to the delivery date, the Customer's only remedy is to dissolve the agreement. In this case, advance payments will be refunded, however, without any compensation of interest.

#### Clause 8. Transportation

- 8.1 In all cases, irrespective of the terms and conditions of delivery agreed, the Company shall be entitled to transport the goods or cause them to be transported at the expense and risk of the Customer, including unloading, in a manner to be determined by the Company and using a mode of transport chosen by the Company.
- 8.2 The Company shall not be responsible for documents (or their use by the Customer) which are provided by the Company for the transport of the goods to the destination.
- 8.3 At the request of the Company, the Customer shall immediately provide all the necessary security for the documents which are required for the transport of the goods to the destination.
- 8.4 In the event that circumstances beyond the Company's control occur which make transport to or delivery at the agreed place impossible, or if the Customer does not take delivery of the goods, the Company shall have the right – at its option – to take the goods back or to store them or cause them to be stored at the expense and risk of the Customer. The costs of return shipment and storage shall be payable by the Customer, and the Customer shall furthermore be obliged to fulfil its obligations to the Company as if delivery has taken place. The Company and the Customer shall determine the costs referred to here in advance with a minimum of 15 per cent of the agreed price, without prejudice to the Company's right to compensation of the actual costs should these be higher.

#### Clause 9. Packaging

- 9.1 The Company will not take back single-use packaging. It is at the Company's discretion whether to take back multi-use packaging or not.
- 9.2 The Company is entitled to make a separate charge for multi-use packaging on the Customer invoice for the goods supplied.
- 9.3 In the case referred to in 9.2, the Company shall, soon after the Customer has returned the packaging at its expense, send the Customer a credit note for the invoiced amount, unless the returned packaging is in a worse condition than it was in at the time the Customer received it, in which case the credited amount will be reduced proportionately.
- 9.4 The Customer may not deduct the amount invoiced for the returned packaging – up to the credited amount – from the total amount that the Customer owes the Company unless and

until the Customer has received the credit note.

- 9.5 Damage to goods caused by destruction of or damage to the packaging shall at all times be at the Customer's risk.

Clause 10. Risk; transfer of property

- 10.1 The Customer shall bear the risk of any direct or indirect damage that may be caused to the goods from the time they are deemed to have been delivered.
- 10.2 The Company shall retain ownership of all the goods delivered until the Customer has made full payment of everything it owes the Company for goods delivered or to be delivered to it by the Company under an agreement, or for failure to fulfil such an agreement.
- 10.3 The Customer shall store goods which are delivered under retention of title with due care and ensure that they are identifiable as the Company's property. The Customer shall also insure the goods against damage or loss from whatever cause during the period in which the Company retains title to the goods; the insurance policy must designate the Company as a (co-)insured having an independent right of action against the insurer(s), and the Customer must make the policy(ies) available for inspection to the Company upon request. At the Company's request, all claims of the Customer against the insurers pursuant to these insurances shall be assigned to the Company or a right of pledge be granted to the Company.
- 10.4 If the Customer fails to meet its obligations, the Company shall be entitled forthwith without prior notice of default being required, to repossess goods which have been delivered under retention of title and which are still at the Customer's premises. In so far as necessary, the Customer irrevocably authorises the Company to exercise this right of repossession.
- 10.5 In the event, and to the extent to which the Company has exercised the right of repossession referred to in the preceding sub-clause, the agreement shall be dissolved in whole or for a proportionate part without judicial intervention being required, and without prejudice to the Company's right to compensation of damage and costs. The Customer shall in this case be credited with the market value (which on no account can be higher than the original purchase price), reduced by the damage and costs incurred by the Company.
- 10.6 A Customer acting in a professional or business capacity shall, in the course of its business operations, be entitled to sell and deliver the goods delivered to it to third parties under retention of title. For sales such as these, the amount payable by the Customer to the Company for the goods resold by the Customer shall, if it is not already due and payable, become due and payable in full immediately.
- 10.7 The Customer shall always inform third parties of the Company's retention of title. The Customer is also obliged, at the Company's request, to inform the Company of the location of the goods and, if applicable, to whom they were sold.

Clause 11. Payment and set-off

- 11.1 Unless expressly agreed upon otherwise in writing, payment of the agreed price shall be made at the time the agreement is entered into.
- 11.2 All payments shall be made without any deduction or set-off in the currency stated on the invoice.
- If the Customer believes it has a rightful claim on the Company with regard to the performance of the agreement, this will not release the Customer from its obligation to pay in the agreed

manner.

- 11.3 If the Company has good reason to believe that the Customer will not fulfil its obligations, the Company shall have the right to require the Customer to provide an amount as security for its payment obligations which the Company deems sufficient, before the Company commences or continues performance of the agreement.  
The Company has the right to suspend performance of its obligations until the Customer has given such security.
- 11.4 If the Customer has not paid at the time or within the period specified in 11.1, it shall be in default by operation of law without prior notice of default being required, and shall owe statutory interest on the amount due and payable from the latest date on which payment should have been made, without prejudice to any other rights of the Company (including, specifically, the right to compensation of foreign exchange losses).
- 11.5 The Company has the right to offset any amounts which the Customer or any company affiliated with the Customer owes the Company (or any party affiliated with the Company), by any amounts which the Company owes the Customer or any company affiliated with it, regardless of whether these payments are due or not.
- 11.6 The Customer shall compensate the Company for any judicial or extrajudicial costs, including extrajudicial collection costs and costs of legal assistance which the Company incurs as a result of the Customer's non-fulfilment or late or inadequate fulfilment of its obligations. The Company and the Customer shall agree in advance that the costs of extrajudicial collection will be 15 per cent of the principal sum due, without prejudice to the right of the Company to compensation of the actual costs should these be higher.

#### Clause 12. Return shipments

It is not permitted to return goods supplied by the Company without the Company's prior written consent. Any return shipments shall always be at the expense and risk of the shipper.

#### Clause 13. Samples

The Customer has the right to request the Company to make samples of the goods available to it before delivery takes place. If the Customer does not do this, it shall be considered to have agreed to the quality and condition of the goods beforehand.

#### Clause 14. Returns and warranty

- 14.1 The Company will only accept claims for return that relate to the quantity, weight or specifications of the goods, or if the goods do not conform to the sample(s) made available by the Company.
- 14.2 The Customer must inspect the goods immediately upon delivery.
- 14.3 Claims for return concerning relevant defects that are apparent during the inspection of the goods, and claims for return in connection with the quantity, weight or specifications must be made in writing within twenty-four (24) hours of the delivery and include a full description of the alleged defects, in default of which any right to make a claim in these respects will lapse.
- 14.4 Claims for return relating to other relevant defects must be made in writing within 24 hours of their discovery and include a full description of the alleged defects. No claims in this respect can be made when three (3) months have passed after delivery.
- 14.5 Any claim made by the Customer with regard to delivered goods shall also be extinguished if:

- a. the agreement concerns the delivery of used or damaged goods;
  - b. the goods have been processed or for some other reason are (no longer) identifiable as originating from the Company;
  - c. the defects were (partly) caused by normal wear and tear or by improper or incorrect handling, use, storage or maintenance of the goods;
  - d. the Customer has not immediately given the Company the opportunity to investigate the claim for return and to fulfil its obligations;
  - e. the Customer has failed to comply with an obligation resting upon it or has failed to comply with it properly or in time.
- 14.6 In respect of parts or goods obtained from third parties that have not been processed by the Company, the Customer can only enforce rights against the Company to the extent to which the Company can, in turn, enforce rights against its supplier. In any such case, the Company will be discharged with respect to the Customer by assigning to the Customer the rights it has its against its supplier.
- 14.7 The Customer may not enforce any rights relating to defects against the Company if it can also enforce rights relating to these defects directly against the manufacturer.
- 14.8 Without prejudice to the provisions of the preceding sub-clauses, in the event of a timely and justified claim for return, the Company shall only be obliged, at its option, to repair the goods, to replace them or to credit the Customer for the defective goods. These General Terms and Conditions shall apply in full to replacements.
- 14.9 The technical specifications of the relevant brand of goods, and the catalogues, lists, dimensions and other information relating to the goods provided and/or used by the Company and the Company's suppliers have been drawn up by the Company and its suppliers in good faith, but nonetheless are only approximations or estimates.
- 14.10 The Company gives the Customer the same warranties in respect of the goods as are given by the Company's suppliers.
- 14.11 In respect of the "MiTone" brand, the Company gives the Customer the warranty stated on the [www.capi.com](http://www.capi.com) and [www.mitone.eu](http://www.mitone.eu) websites, or the warranty certificate provided with the goods in question.
- 14.12 If the Customer fails to meet or is late in meeting any of its obligations under the agreement, the Customer shall no longer be entitled to any warranty on the goods concerned.

#### Clause 15. Marketing materials

- 15.1 At the Customer's request, the Company may provide the Customer with marketing materials of the Company which, for the avoidance of any doubt, may include materials relating to MiTone.  
If the Company distributes such marketing materials to the Customer, the Customer shall in all events act in accordance with this clause 15. In particular:
- (i) The Customer shall adhere to all the instructions given by the Company with regard to the marketing materials;
  - (ii) At the Company's written request, the Customer shall immediately cease the use of the marketing materials;
  - (iii) The Customer shall use the marketing materials solely for its own use and not allow any third party to use the materials;
  - (iv) The Customer is not entitled to make copies of the marketing materials unless with the prior consent of the Company.
- 15.2 If the Customer uses the marketing materials in accordance with the terms of this clause 15 for

a certain length of time, the Customer and the Company will discuss entering into a franchise agreement under which the Customer may become a franchisee of the Company. If such a franchise relationship is created, a franchise agreement shall be drawn up.

#### Clause 16. Liability

- 16.1 The Company's liability under the agreement shall be limited to the fulfilment of the obligations described in the agreement, in particular, the obligations described in the preceding clause.
- 16.2 The Company shall never be liable for trading loss, consequential loss or any other indirect loss.
- 16.3 Except in case of gross negligence or intent on its part, the Company shall never be liable for direct or indirect loss including trading loss which results from the infringement of any intellectual or industrial property right, licence or any other right of third parties.
- 16.4 If the Company is held liable by a third party for a loss for which the Company is not liable under these General Terms and Conditions or otherwise, then the Customer shall be obliged to indemnify the Company against such loss and liability and to compensate it for all damages, interest and costs incurred by the Company on this account.
- 16.5 The limitations and exclusions of liability and the indemnity stipulated by the Company for itself in the sub-clauses above are also stipulated for and on behalf of its employees, any other parties used by it in the context of the agreement, and for any parties from whom the Company obtains goods or parts supplied under the agreement.

#### Clause 17. Force majeure

- 17.1 In these terms and conditions, force majeure means any circumstance beyond the Company's control, even it was foreseeable when the agreement was entered into, which permanently or temporarily prevents fulfilment of the contract, including war, threat of war, civil war, riot, strike, lockout, transport restrictions, fire, weather conditions that prevent working and any other interruption of the operations of the Company or its suppliers, and default of the Company's suppliers.
- 17.2 If performance of the agreement is impeded due to force majeure, the Company shall have the right without judicial intervention either to suspend the execution of the agreement for a maximum of three (3) months or to wholly or partially dissolve the agreement, without the Company being obliged to pay any compensation.

#### Clause 18. (Anticipatory) breach

In the cases provided for by law, or in the event of the Customer's non-performance, defective performance or delay in performance of one or more of its obligations under the agreement, including the provisions of these General Terms and Conditions, or if there is serious doubt as to whether the Customer will be able to comply with its contractual obligations to the Company, or in the event of the Customer's insolvency, suspension of payments, complete or partial stoppage of work, liquidation or the transfer or encumbrance of its business, including the transfer or pledging of an important part of its accounts receivable, or if any items of property belonging to the Customer are seized by way of provisional seizure or in execution of judgment, the Company shall have the right, without notice of default or judicial intervention, either to suspend the execution of the agreement for a maximum of three (3) months or to

partially or wholly dissolve the agreement, such without the Company being liable to any compensation or guarantee, and without prejudice to any of its other rights.

#### Clause 19. Suspension and dissolution; consequences

- 19.1 In the event that the Company suspends fulfilment of its obligations, it shall have the right or, at the end of the suspension period, shall be obliged to decide whether to perform the agreement or to wholly or partially dissolve it.
- 19.2 In case of suspension or dissolution pursuant to the provisions of the preceding sub-clause, the agreed price shall be due and payable forthwith under deduction of the costs saved by the Company because of the suspension.  
In case of dissolution, the Customer shall furthermore be obliged, after payment of the amount that is due pursuant to the preceding sentence, to take possession of the goods to which the payment relates, failing which the Company shall have the right to cause the goods to be stored at the risk and expense of the Customer, or to sell them at the expense of the Customer.
- 19.3 In the event that the Customer returns the goods it has received from the Company after the agreement has been dissolved, the return shall at all times be at the risk and expense of the Customer until the Company has taken possession of the goods.

#### Clause 20. General

- 20.1 If any of the provisions of the agreement, including the provisions of these General Terms and Conditions, is null or proves to be legally invalid or unenforceable, this will not affect the validity of the other provisions of the agreement. Parties shall consult with each other about provisions that are null, invalid or unenforceable in order to make an alternative arrangement
- 20.2 If a competent authority determines that any provision of the agreement, including these General Terms and Conditions, violates any mandatory provision of law, the latter provision shall be deemed to have replaced it.

#### Clause 21. Disputes; applicable law

- 21.1 The agreement and any agreements arising out of, resulting from or relating to the agreement shall be governed by the laws of The Netherlands. The applicability of the provisions of the Vienna Sales Convention is excluded, as is the applicability of any other future international regulations on the purchase of movable and corporeal goods whose applicability may be excluded by parties.
- 21.2 Any disputes in connection with the agreement or any agreements arising out of, resulting from or relating to it shall, in the first instance, be submitted to the exclusive jurisdiction of the district court in Haarlem (The Netherlands) unless the Company expressly chooses the court in whose jurisdiction the Supplier has its residence or place of business to decide the matter.
- 21.3. If, however, the Customer is resident in or has its place of business in a country outside the EU with which the Netherlands have no convention for the enforcement of Dutch judgments, then, notwithstanding 21.2, all disputes relating to the agreement or any further agreements arising from it will be exclusively settled by arbitration in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (NAI). In such cases, arbitration will take place in Amsterdam and the proceedings will be conducted in the Dutch language. The arbitral tribunal will be composed of one or three arbitrators at the discretion of the Company.



