

GENERAL DELIVERY CONDITIONS "sw-ART Collection"

I. DEFINITIONS

1. By "sw-ART" is understood in these Delivery Conditions: the private company sw-ART Collection, established and having its office in 's-Hertogenbosch, the Netherlands.
2. By "buyer" is understood in these Delivery Conditions each person/legal person having concluded an agreement with sw-ART or desiring to conclude an agreement with sw-ART respectively and also his/its representative(s), attorney(s) and successor(s) in rights.

II. GENERAL

1. These Conditions will apply to all offers, (purchase) agreements, deliveries and activities of sw-ART, unless parties have expressly agreed otherwise in writing.
2. Additions to and/or deviations from these Conditions will only apply if they have been agreed to sw-ART and the buyer in writing.

III. OFFERS/CONCLUDING OF AGREEMENT

1. All offers of sw-ART will be free of engagement and will therefore not bind sw-ART.
2. An agreement will not be effected but until the moment when sw-ART confirms the order of the buyer in writing or the moment when sw-ART starts executing the order.

IV. DELIVERY

1. Deliveries will take place in approximately two to three weeks after ordering, unless expressly agreed otherwise in writing.
2. Delivery dates will be stated approximately and will not bind sw-ART.
3. Any delay in delivery dates will not entitle the buyer to claim any compensation whatsoever, to refuse the delivery or to entirely cancel the agreement or entirely or partly suspend the fulfilment of any obligation of the buyer under the agreement, unless the buyer is entitled thereto on the basis of legal stipulations.
4. sw-ART will have fulfilled its duty to deliver by offering the goods once. The receipt signed by the buyer or by a person representing the buyer will form the full proof of delivery. In case of refusal to take delivery the costs of transport, storage and other expenses will be at the expense of the buyer.
5. If the data required to execute the delivery order have not been submitted to sw-ART in time by the buyer, the dates of delivery will be delayed at any rate by the term during which sw-ART had to wait for such information.

V. PACKAGING

1. The packaging and labelling of products to be delivered will be established by sw-ART as good entrepreneur in conformity with the applicable legal standards in this respect.
2. The buyer himself will be responsible for the storage c.q. processing of empty/used packaging materials in conformity with the applicable legal stipulations.

VI. PRICES

1. All prices will be exclusive of VAT, transport and packaging expenses, unless expressly agreed otherwise in writing.
2. All prices are based on the prices of materials, wages, transport costs and rates of exchange applicable at the time of the offer.
3. If these costs have risen as a result of an increase in price after the time of the offer, sw-ART will be entitled to increase the prices correspondingly. This also applies if this increase was to be expected at the time of the offer.
4. sw-ART will immediately inform the buyer in writing of the increase in price.
5. However, if the increase in cost price as meant in paragraph 3 is more than 15%, the buyer will be entitled to cancel the order within 3 working-days after the moment when he has taken notice thereof.
6. Taxes, which did not exist at the time of the offer, may be charged, as well as any increase in taxes. In this case the stipulations of paragraph 5 will not apply.

VII. RESERVATION OF OWNERSHIP

1. sw-ART will reserve the ownership of the goods sold until the time when the buyer has paid everything he owes to sw-ART on the basis of any agreement, also in the event that the delivery takes place in parts.
2. In the event that the buyer does not pay in time, sw-ART will be entitled to take the goods sold back without any summons, declaring in default or judicial intervention, such without prejudice to sw-ART's other rights in connection with late payment. The buyer will put the goods sold at the disposal of sw-ART and will grant sw-ART access to all rooms where areas of sw-ART are present, if necessary.

VIII. PAYMENT

1. All payments shall be made before production of the order, within fourteen days after the ordering by buyer without any deduction, settlement of debts or discount.
2. If after a written summons to pay the buyer remains in default to proceed to the full payment of the amount mentioned within the term established in the summons, this shall - without prejudice to any other right to which sw-ART is entitled - have as a result that:
 - a. sw-ART will be entitled to charge a default interest on the amount mentioned in the summons as from the invoice date, to the extent of the then valid legal interest, but with a minimum of 1% per month, in which case the time will be calculated in full months;
 - b. all expenses to be incurred by sw-ART, both judicial and extrajudicial, including 15% collecting costs calculated on the outstanding amount of the invoice (with a minimum of € 250,--), will be at the expense of the buyer, whereas it does not have to be proved that these expenses have been incurred.

IX. CANCELLATION/TERMINATION OF AGREEMENT

1. sw-ART reserves the right to terminate the agreement(s) with the buyer immediately without judicial intervention, if the buyer: a. is declared in state of bankruptcy, applies for suspension of payment c.q. bankruptcy, or is put under legal restraint. b. should not, not properly or not in time meet any obligation (of payment) under the agreement; c. takes a decision to liquidate and/or to close down the enterprise of the buyer; d. loses the free control on its capital, or, if the buyer is a natural person, is put under legal restraint or dies.
2. All claims which sw-ART may have on the buyer at the time of existence of one or more of the circumstances mentioned under paragraph 1, will be immediately fully claimable, without prejudice to sw-ART's right to claim a full compensation of damages, c.q. loss of profit and any compensation of legal assistance in or out of judicature.
3. The loss of profit will amount to at least 15% of the price agreed on, with a minimum of € 250,-- (exclusive of VAT) except for counterproof.

X. FORCE MAJEURE

1. By force majeure will also be understood the situation that because of extraordinary circumstances, like restrictive government measures of whatever nature, mobilisation, war, revolution, traffic obstructions or transport problems and any circumstances that sw-ART could not foresee and that are out of sw-ART's control and on the basis of which it, should such circumstance have been known to it at the time the agreement was concluded, would not have concluded the agreement or not under the same conditions.
2. If it cannot reasonably be expected from sw-ART to fulfil one or more of its obligations in connection with one of the above mentioned circumstances, it has the right to entirely or partly cancel the agreement by registered letter without judicial intervention or to entirely or partly delay the execution thereof, without being obliged to any compensation. sw-ART will be entitled, within reason and fairness, to invoice the goods delivered so far to the buyer in proportion.
3. If, however, an entire or partial delay as meant under 2. would change the meaning of the later performance of sw-ART for the buyer in such a way, that the acceptance thereof by the latter can no longer be expected, the buyer will be discharged from his obligation to take delivery and the obligation of payment of the buyer with regard to the undelivered goods will lapse.

XI. CANCELLATION

1. If the buyer entirely or partly cancels an order, sw-ART will be entitled to charge to the buyer cancellation costs at 30% of the purchase price, with a minimum amount of € 250,--.
2. The request for cancellation of the entire order or a part thereof after a partial execution cannot be met because the product to be delivered is especially produced for the buyer.
3. Cancellation shall take place in writing by registered letter. The date of receipt of the letter will be the date of cancellation.

XII. LIABILITY AND ADVERTISING

1. sw-ART's liability as a result of no, late or improper delivery will never exceed the nett sales amount c.q. the nett invoice amount of the relevant goods. Moreover the liability for damages, caused by defects of goods and packaging, is limited to the direct damage to persons or goods.
2. Except for stipulations of imperative law with regard to (product) liability, sw-ART will not be liable for damages as a result of inexpert use c.q. processing of the goods delivered.
3. Within five working-days after receipt of the goods the buyer shall inform sw-ART in writing of any complaint with regard to the delivery. In order to restrict the damage the buyer will follow the instructions of sw-ART with regard to goods and packagings.
4. Information from or on behalf of sw-ART with regard to the quality, composition, treatment in the broadest sense, application possibilities, qualities etc. of the goods will not bind the sw-ART, unless presented in writing and expressly in the form of a guarantee.

XIII. RETURN SHIPMENTS

1. Return shipments without the prior written consent of sw-ART, in which event a return shipment number is supplied, will not be allowed.
2. If return shipments take place without consent, the costs thereof will be at the expense of the buyer. Furthermore sw-ART will be entitled to charge administration costs and be free to store the goods for the account and risk of the buyer (if necessary in the care of third parties) and to keep them at the disposal of the buyer.
3. Return shipments without the consent of sw-ART will not discharge the buyer in any respect from his obligations (of payment).
4. Return shipments vice versa, will always take place for the risk of the buyer.

XIV. APPLICABLE LAW AND DISPUTES

1. The agreements between sw-ART and the buyer will exclusively be governed by Dutch law.
2. Any disputes which may arise as a result of an agreement or which are connected therewith, will be judged by the competent judge in 's-Hertogenbosch, The Netherlands.
3. In the event of differences in interpretation of the text only the Dutch text will be decisive.

XV. FINAL STIPULATION

If sw-ART should not always require the strict observance of this text, this does not mean that these conditions should not apply or that sw-ART should lose the right to require in future, either or not similar, cases the strict observance of these conditions.

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