

## **Terms and conditions**

### **GENERAL SALES AND DELIVERY CONDITIONS OF INDUS INTEGRATED BULK LOGISTICS B.V. (“Indus”)**

#### **1. General**

These conditions apply to all offers made by Indus and to all agreements relating to the sale and/or delivery by Indus of goods, services and/or advice. The customer accepts these general conditions by issuing an order to Indus, under the explicit exclusion of any and all other general terms and conditions. Indus and customer together also referred to as “the parties”.

#### **2. Offers and orders**

All offers are without establishing obligations, unless expressly stated otherwise by Indus and/or the parties in writing. Orders are confirmed in writing by Indus by means of the order confirmation or, in its absence, by the delivery and subsequent issuing of the invoice. Indus is bound to the agreement on the basis of its confirmation to the customer. Indus retains for the quality-, workmanship- and agreed use- of its products the standard industry tolerances for quantities and technical data such as measurements, weights, colour (fastness) etc.

#### **3. Prices**

All prices are Ex Works (Incoterms 2010), exclusive VAT and other possible costs, levies, taxes or charges, and exclusive packaging, unless agreed otherwise in writing. All prices are based on the cost factors, taxes, exchange rates etc. applicable at the time of the offer, respectively confirmation. Alterations to the confirmed order, as ordered by the customer, such before delivery is completed give Indus the right to pass on the charges related to the alterations to the customer and/or to cancel, or to declare the agreement wholly or partially dissolved, this all without judicial intervention or for Indus the liability to compensate any and all damages, costs and expenses.

#### **4. Delivery**

The delivery takes place at the time or during the period stated in the confirmation. In case the confirmation states “delivery on demand of customer”, all the goods as ordered will be delivered to or removed by the customer within 12 months from the date of confirmation. Indus has in this case the right to deliver in parts. Indus is in this case permitted to deliver and correspondingly calculate up to 10% more or less than stated in the order confirmation where this is usual. In case the customer has not accepted delivery or not removed the goods on the agreed date, the goods will be stored at the account and risk of the customer. In case the details needed for the implementation of the agreement are not in Indus's possession on time, in Indus's opinion, Indus is authorized, after

consultation with the customer, to arrange a new delivery date and to review the price or to declare the agreement dissolved. Exceeding the agreed delivery times by Indus does not entail a default, penalty or liquidated damages or give the customer any right to wholly or partially cancel or terminate the agreement and/or to claim compensation of damages suffered by him or by third parties. Delivery is Ex Works (Incoterms 2010), unless the confirmation states otherwise. Trade terms must be interpreted in accordance with the Incoterms (latest issue). The Incoterms prevail if and in as far as they differ from the confirmation.

## **5. Reservation of title**

All delivered and still to be delivered goods remain the exclusive property of Indus until all the claims that Indus has or shall have on the customer, for whatever account, have been paid in full. The customer may not pawn, transfer ownership of security or grant any other right to third parties, with the exception of that within the normal performance of his company, for as long as ownership of the goods has not yet transferred to the customer. The customer is obliged to store the goods delivered under reservation of title with the necessary care and as the recognizable property of Indus. If the customer defaults in complying with his payment obligations or finds himself in financial difficulties, Indus is authorized to take back the goods delivered under reservation of title. This does not diminish the other rights entitled to by Indus by the agreement or Law.

## **6. Complaints**

Complaints or claims about quantities and/or defects regarding the delivery that can be determined at date of delivery during normal careful control should be made known to Indus in writing within eight (8) days of delivery. Complaints about defects that cannot be determined at delivery during normal careful control should be made known to Indus in writing within eight (8) days of discovery. Every right to complain elapses if:

- Complaints have not been made in writing within the set period;
- Indus is not given the opportunity to fully investigate the complaint (have the complaint investigated) on site;
- The goods continue to be used;
- Delivery took place more than a year before. Return sending's will only be accepted by Indus after prior written approval of Indus. A complaint or claim will never give the customer the right to suspend payment of non-disputed parts of Indus's invoice or to appeal for compensation in respect to any claim. Excluded from any warranty or guarantee are complaints or claims that are caused by Force majeure, customer's or its customer's or a

third party wrongful use of the goods, not following the instructions for use, maintenance and operations of the goods and all causes that lay outside the reasonable control of Indus.

## **7. Liability**

Indus is not liable for the costs, damages, expenses and interests (including consequential and/or indirect damages, such as loss of production, loss of revenue, loss of profit, damage to good-will and loss of interest) which are the direct or indirect result of the delivery of the goods or the advice given by Indus, of performed work activities, of non-delivery or only the application or use of the goods. Indus is only liable for the direct damage resulting from defects in material and factory faults on the goods of Indus, up to the maximum sum of 10 % of the price (excl. VAT) paid and stipulated in the agreement, and excluding the FIBC. Direct damage is given to mean only:

- The reasonable cost of determining the cause and the scope of the damage, in as far as the determination relates to the direct damage stipulated to in these general conditions;
- The reasonable cost to the customer of making the inadequate performance by Indus fulfil the agreement, excluding the FIBC;
- Reasonable cost of preventing or limiting damage, for as far as customer can prove that these costs have led to limiting the direct damage as stipulated to in these general conditions. Indus is never liable for indirect damage, which includes, but is not limited to, consequential damage, lost income, missed savings and damage from business stagnation.

The customer cannot derive any rights from advice and information received from Indus if this has no direct relevance to an agreement drawn up between both parties. Indus is not liable for damage of any nature which results from incorrect and/or incomplete information received from the customer.

## **8. Intellectual Property Rights**

Indus retains the intellectual property rights, the copyright for and ownership of all quotations, software, drawings, specifications and other information provided by Indus, which may only be duplicated with Indus's written permission. The customer will treat all information received from Indus as strictly confidential and not pass on this information to third parties without written permission from Indus. Software, drawings, plate moulds, tools (even if manufactured in collaboration with or at the cost of the customer) and the products manufactured using the aforementioned may not be copied without written permission from Indus. Moulds and tools remain the exclusive property of Indus, even if the customer ordered the manufacture or paid the cost of manufacture. The customer will indemnify Indus from all claims by third parties on account of any infringement of intellectual property rights associated with the manufacture, delivery or the use of a

product or an implemented service, manufactured or performed in accordance with the customer's instructions.

## **9. Payment**

Payment must be made within 30 days of the invoice date, unless the confirmation states differently. Payments must be made without deductions or set-off. Payment has taken place when Indus has received notification that the amount has been received in one of its accounts. Indus has the right to charge 1.5% interest per month or part of a month for payments not made on time. All costs, legal as well as extrajudicial, the latter being fixed at a minimum of 15% of the invoice amount, made during the collection and recovery of late payments are for the account of the customer.

## **10. Suspension**

Indus is not obliged to continue to execute the agreement and may declare the agreement dissolved, without legal intervention and without prejudicing Indus's rights to claim compliance and/or the responsibility of the customer to compensate Indus, if the customer is in omission with any payment. The customer is obliged to stand security for the purchase price, freight and other costs to the satisfaction of Indus, even after the agreement has come about. Indus is not obliged to execute the agreement further for as long as this security remains forthcoming and Indus may declare the agreement dissolved, without prejudicing the responsibility of the customer to execute his part of the agreement or to compensate Indus.

## **11. Force majeure**

Indus has the right, after informing the customer of the circumstances, to cancel the offer, to suspend the execution of the agreement or to declare the agreement wholly or partially dissolved, without legal intervention and without Indus being obliged to any compensation of damage suffered by the customer and/or third party, in the case of war, unrest, fire and other calamities, lack of raw and auxiliary material, fuel, breakdown, industrial action, exclusion, governmental intervention, traffic disorder, also resulting from weather and other conditions occurring, immaterial of whether in Indus's own company or in companies or transport companies supplying Indus, and any other circumstance that cannot be prevented or avoided by Indus, as well as in the case of such a change in circumstances that (further) compliance with Indus's responsibilities will be so problematic for Indus, that it cannot in all fairness be expected from Indus. The customer will entirely indemnify Indus from all related claims from third parties.

**12. Applicable right and disputes**

Dutch law for customers outside the US and the Law of the State of New York for all US based customers is exclusively applicable to all offers and agreements. All related disputes relating to or resulting from offers or agreements made by Indus will be exclusively tried by the authorised court in Utrecht, The Netherlands / New York respectively , with the understanding that Indus may choose to set up a procedure with an authorized court elsewhere.

**13. Deviations**

Stipulations which differ from these general conditions are only valid if they are confirmed in writing by Indus. In such cases the other stipulations in these general conditions remain undiminished in force.