

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY  
THEGRA TRACOMEX B.V. AND ITS SUCCESSORS IN TITLE**

*filed at the Chamber of Commerce and Industry for Breda under number 20058791*

**1. APPLICATION**

- 1.1 These General Terms and Conditions of Sale and Delivery of Thegra Tracomex B.V. (the "**Conditions**") govern the relationship between the seller Thegra Tracomex B.V. ("**Thegra Tracomex**") and the buyer with respect to any contract of sale ("**Contract**" or "**Contracts**") in which – or during the formation of which – the Conditions were declared applicable, and with respect to all services supplied by Thegra Tracomex for the purpose of performing this Contract.
- 1.2 These Conditions shall be supplemented by the standard contract applicable to the relevant Contract.
- 1.3 In the event of inconsistency between these Conditions and the standard contract referred to in Article 1.2, these Conditions shall prevail.
- 1.4 These Conditions override any terms, conditions or warranties that vary from these Conditions or from the standard contract referred to in Article 1.2 and to which the buyer makes reference in any way, which are mentioned in any correspondence or in any other connection, or which are in general use in the sector of industry.

**2. FORMATION OF CONTRACTS**

- 2.1 All offers or quotations made by Thegra Tracomex are without commitment.
- 2.2 Contracts are concluded orally or in writing and, if so desired, are confirmed in writing; where a Contract is confirmed in writing, such confirmation shall constitute the sole proof of conclusion of the Contract.
- 2.3 If Thegra Tracomex has failed to make confirmation in writing, the mere fact that the goods have been supplied and taken in receipt constitutes adequate proof of the existence of a Contract, which is governed by these Conditions.

**3. PRICES**

- 3.1 The selling price are exclusive of value added tax.
- 3.2 Thegra Tracomex reserves the right to increase the prices with immediate effect to reflect any government measure as a result of which unforeseen costs are incurred. Government measures may include:
- (A) the imposition of or changes made to taxes, import duties, charges, levies and other costs imposed by national, international and/or Community authorities, such imposition or changes being unforeseen at the formation of the Contract;
  - (B) the imposition of or changes made to taxes, import duties, charges, levies and other costs in relation to the raw materials from which the contracted goods have been obtained or of which they are composed.

Any price increases are for the buyer's account.

- 3.3 In the event of sale of goods for immediate shipment, steaming or for delivery subject to the condition free on truck (domestic), the price shall be based on the rates and tariffs for transshipment and transportation current at the time of conclusion of the Contract. Any increases of or supplements to these rates and tariffs between the day of the sale and the day of delivery shall be for the buyer's account.
- 3.4 In the event of sale of goods for immediate shipment, steaming or on delivery, the price shall be calculated on the basis of normal water level, normal waterway and normal shipping rates. Any increases of or surcharges to the freight between the day of the sale and the day of delivery and any additional costs resulting from changes to the price of crude oil shall be for the buyer's account.
- 3.5 If due to any cause whatsoever the sea-going vessel has to divert to a port other than the original port of destination, any additional costs incurred by Thegra Tracomex shall be for the buyer's account.
- 3.6 Unless otherwise agreed, the goods supplied to the buyer shall be calculated at the prices current on the date of delivery.
- 3.7 Unless otherwise agreed between Thegra Tracomex and the buyer, all prices shall be in euro.

#### 4. **PAYMENT**

- 4.1 Unless otherwise agreed in writing, the buyer shall effect payment of invoices sent by Thegra Tracomex with respect to goods supplied to the buyer without any rebate, set-off, deduction or suspension within 7 (seven) days from the date of the invoice. All payments must be made at Thegra Tracomex's offices in the Netherlands or by way of deposit into an account designated by Thegra Tracomex.
- 4.2 If the parties agreed on payment by letter of credit, all costs incidental thereto shall be borne by the buyer.
- 4.3 From the due date of payment until the date of payment in full the buyer owes Thegra Tracomex, without any letter of demand or notice of default being required, interest on the amount outstanding, such interest equalling the statutory interest rate plus 4% (four percent).
- 4.4 If the buyer fails to comply with Thegra Tracomex terms of payment or if at Thegra Tracomex's request no alternative and/or supplementary security is provided, Thegra Tracomex reserves the right at all times to suspend the provision of any goods and/or services under the Contract.
- 4.5 Thegra Tracomex shall at all times be entitled to set off its debts to the buyer against debts the buyer has to Thegra Tracomex.
- 4.6 Thegra Tracomex shall be entitled to recover from the buyer all costs incurred by Thegra Tracomex as a result of the buyer's failure to pay or late payment, including legal and extrajudicial costs of collection. The extrajudicial costs of collection amount to 15% (fifteen percent) of the amount payable if the debt is owed by a Dutch buyer and to 20% (twenty percent) of the amount payable if the debt is owed by a foreign buyer, the costs to be recovered being not less than EUR 500.

#### 5. **DELIVERY**

- 5.1 Unless otherwise agreed in writing, delivery shall be effected at a place, at a time and by means of a method of Thegra Tracomex's choice.

- 5.2 If sale on arrival/delivery has been agreed, Thegra Tracomex will determine the moment at which a choice is made between the two alternatives.
- (A) In the event of sale and delivery subject to the condition "free on board" (FOB), "free on truck" (FOT), "cost, insurance, freight" (CIF) or CPT, delivery will be deemed effected at the place where the goods are loaded.
  - (B) In the event of sale and delivery subject to the condition "carriage paid", delivery will be deemed effected at the designated place of destination.
  - (C) In the event of sale of loaded or lying goods, delivery will be deemed effected at the time of the conclusion of the Contract.
- 5.3 All Contracts providing for delivery in the winter months include what is known as the ice clause. The ice clause prescribes that the buyer is required, on demand, to take receipt of the goods purchased that are carried by water in any other port without being entitled to compensation for dead freight; it furthermore entails that if the buyer does not pick up the goods immediately at the alternative port of discharge, all additional costs incurred may be charged to the buyer.
- 5.4 The buyer shall ensure and guarantee that proper reception equipment and proper storage units are available.
- 5.5 If the buyer does not take receipt of the goods in time, Thegra Tracomex is entitled to store the goods at a location to be determined by Thegra Tracomex for the account and risk of the buyer.
- 5.6 If the buyer fails to take receipt of the goods for fourteen (14) days or longer, Thegra Tracomex is entitled to terminate the contract without further notice of default and without prejudice to Thegra Tracomex's right to recover damages.

## 6. **QUANTITIES**

- 6.1 In the event of the sale or delivery of pellets, flakes, chips or chunks, broken pellets, flakes, chips, chunks and/or meal shall be received and paid as pellets, flakes, chips or chunks.
- (A) If the sale has been effected subject to the condition "free on board" (FOB), "free on truck" (FOT), "cost, insurance, freight" (CIF), CPT or carriage paid, the delivered weight as determined by Thegra Tracomex, the supplying plant or the silo company shall be final and definitive.
  - (B) However, if pursuant to the contract of purchase Thegra Tracomex is compelled to accept a weight determination method other than the usual method, the buyer will also be required to accept this weight determination as final and definitive.
  - (C) If the sale comprises the takeover of a lighter or a silo, the quantity of the loaded or stored goods shall be final and definitive.

## 7. **RETENTION OF TITLE**

- 7.1 Documents and/or goods supplied under a Contract shall remain the property of Thegra Tracomex until such moment as the buyer has fulfilled all obligations arising out of or in connection with the Contracts under which Thegra Tracomex undertakes to effect delivery. Until that moment, the buyer shall hold the goods supplied by Thegra Tracomex separated from other goods and properly identifiable as property of Thegra Tracomex.

7.2 As long as he has not acquired title to the documents and/or goods, the buyer is not authorised to pledge or otherwise encumber for the benefit of third parties the documents and/or goods.

## 8. **BUYER'S INABILITY TO PAY**

8.1 If the buyer fails to effect timely payment of his debts or compounds with his creditors, or if the buyer is subject to measures which can be taken under the applicable law in relation to debtors who are unable or unwilling to pay all their debts, or if the buyer were to fail to perform his payment obligations under any agreement with Thegra Tracomex, Thegra Tracomex will be authorised to terminate, by simple oral or written notice, with retroactive effect any and all of the Contracts with the buyer, without prejudice to any of Thegra Tracomex's remaining rights under any contract with the buyer.

8.2 If a circumstance as described in the preceding paragraph should occur, Thegra Tracomex will also be entitled to reclaim the documents with immediate effect or to take back the good forthwith and set off the revenue from the sale of these documents and/or goods against the buyer's debt. Any costs incidental thereto will be for the buyer's account.

## 9. **LIABILITY**

9.1 Raw feed material may be used only as raw material for compound feeds.

9.2 Thegra Tracomex shall not be liable for damage suffered by the buyer, unless such damage is the result or consequence of intent or gross negligence on the part of Thegra Tracomex. The burden of proving intent or gross negligence rests on the buyer.

9.3 Thegra Tracomex's total liability shall not exceed the invoice price, exclusive of value added tax, paid by the buyer for the goods and/or services supplied.

9.4 Thegra Tracomex shall not be liable for any consequential loss sustained by the buyer or by third parties, including but not limited to consequential damage, nonmaterial damage/losses, trading loss or environmental damage and loss of profits.

## 10. **FORCE MAJEURE**

10.1 Thegra Tracomex shall not be liable to the buyer for any damage or loss the buyer may sustain if the performance of any obligation arising out of or in connection with the Contract on the part of Thegra Tracomex is prevented, impaired, delayed or reasonably impracticable as a result of events of force majeure, and their consequences, that are beyond the control of Thegra Tracomex, irrespective of whether such event could have been foreseen at the formation of the Contract.

10.2 Events which may be deemed to constitute force majeure as referred to in Article 10.1 shall include, but not be limited to: fire, strike, war, blockades, perils of the sea, storm, lock-out, stagnation of production at Thegra Tracomex's plant or of production at Thegra Tracomex's suppliers and/or in the transportation provided by Thegra Tracomex or third parties on Thegra Tracomex's instructions, and/or government orders or regulations, both in the Netherlands and elsewhere.

10.3 The term for shipment or delivery or arrival, as the case may be, can be extended for the duration of the time that navigation on rivers and canals is impeded by ice.

10.4 Thegra Tracomex shall also be allowed to rely on the strike, force majeure or prohibition clauses in its purchase contract, including any extensions stipulated thereunder, as events of force majeure.

- 10.5 If sale on arrival/delivery has been agreed, Thegra Tracomex shall at all times be entitled to opt for the associated shipment period and to rely on the strike, force majeure or prohibition clauses in its purchase contract.
- 10.6 If the event of force majeure has lasted thirty (30) days, Thegra Tracomex will be entitled to cancel the Contract without being liable to pay any compensation.

11. **APPLICABLE LAW AND JURISDICTION**

- 11.1 All Contracts within the meaning of these Conditions shall be governed by the laws of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) (as published in the Dutch *Tractatenblad* 1081, 184) shall not be applicable.
- 11.2 If these Conditions are supplemented by the standard contract referred to in Article 1.2, any dispute between the parties will be settled in accordance with the disputes and arbitration clauses laid down in the standard contract. In the event of any dispute and/or arbitration, all Contracts concluded subject to the condition “free on truck” (FOT) will be considered to have been concluded subject to the condition FOB Rotterdam-Europoort/Amsterdam and/or any other ports.
- 11.3 Without prejudice to the provisions of Article 11.2, any dispute between the parties will be settled by submitting the dispute to the exclusive jurisdiction of the court having competency in the place where Thegra Tracomex has its registered office or any other place, at Thegra Tracomex's option.

12. **VARIANCE**

- 12.1 To be valid, stipulations varying from any of these Conditions must be agreed upon in writing.