

# GENERAL CONDITIONS OF DELIVERY AND PAYMENT ARVINA LUBRICANTS B.V.

## Article 1. Definitions

**A.** In these general conditions: "Arvina" means: the private limited company with limited liability Arvina lubricants B.V., established in Heerlen

**B.** In these general conditions "buyer" means: the natural person or private legal person in private law as well as cooperations without legal entity on whose behalf, based on the conditions mentioned below, products are manufactured, installed and/or delivered or services are carried out by Arvina.

## Article 2. Applicability of these conditions

**A.** These conditions apply to all offers by Arvina, contracts for delivery and/or the manufacturing of products and/or supplying services, as well as the delivery and completion, unless explicitly agreed otherwise with Arvina. Reference by buyers to their own conditions is not acceptable to Arvina.

**B.** If the conditions have been applied once they also apply to all new contracts between parties without further explanation, unless explicitly excluded, and to all non-contractual relations between parties. If, at a later date these conditions are adapted, but their business content is not in essence changed, then the new conditions shall be applicable rather than the current conditions.

## Article 3. Quotations

**A.** All offers are completely free of commitment, irrespective of these being made in a special tender, in price lists, catalogues or stock announcements or elsewhere, unless otherwise explicitly agreed.

**B.** All contracts shall only be realised after they have been confirmed orally or in writing by Arvina or a person explicitly authorised by Arvina or carried out without preceding order confirmation, even when made by intermediaries employed or not employed by Arvina.

**C.** The written order confirmation shall be considered correct and agreed, unless Arvina receives objections in writing within 3 working days after dispatch.

## Article 4. Changes in the contract.

**A.** If changes in the execution of the order are requested after the order has been placed, Arvina must be informed in writing and in time. If mentioned changes are given by telephone or verbally the risk of an incorrect execution of the changes shall be for the buyer.

**B.** Arvina reserves the right to adjust prices in the event of changes to the order.

**C.** Changes in a given order can result in exceeding the agreed delivery time. Arvina is not responsible for such delays.

## Article 5. Execution of the contract

**A.** Arvina determines the manner in which the order shall be fulfilled. Arvina is obliged when asked to inform the buyer beforehand about the way in which the execution is carried out, unless this is in conflict with the nature of the order.

**B.** Arvina reserves the right to outsource the order, or parts of the order, or to have execution carried out by third parties not employed by Arvina, without the permission of the buyer, if Arvina believes that in doing so execution of the order shall be carried out correctly or efficiently, unless this is in conflict with the nature of the order.

## Article 6. Prices

**A.** Arvina's prices are exclusive of VAT and without reduction of discount, unless agreed otherwise.

**B.** Arvina's prices are ex works. If the buyer requests delivery elsewhere the additional related costs are for the buyer's account.

**C.** Price quotes are only given based on the prices valid at the time of signing the contract.

**D.** If prices of materials, raw materials or semi finished products, wage premiums of whatever nature, freights, taxes, currency rates and/or other factors which also determine the price of the products or services are changed, Arvina reserves the right to pass on the cost these changes to the buyer.

## Article 7. Delivery

**A.** Delivery times are free of commitment and are only approximate. If the delivery time is slightly exceeded and this is not caused deliberately or by negligence of Arvina, there can never be an entitlement to compensation for loss or damage.

**B.** From the moment of delivery of product to the buyer, risk and responsibility are for the account of the buyer.

**C.** Delivery is considered to have taken place at the moment the product is finished in the factory, or alternatively in Arvina's warehouse. Hereafter the goods are for the buyer's risk. If the goods then have to be transported to the buyer or to a third party this shall take place carriage paid by buyer and at buyer's risk, unless explicitly agreed otherwise. In that case buyer shall at all times cooperate with the actual delivery. The actual delivery is considered to have taken place by presenting the goods at the agreed place or at the point which is accessible for the chosen means of transport. Arvina is free to choose the means of transport. Buyer is responsible for the unloading, subject to conditions otherwise agreed.

**D.** When sold goods or services offered by Arvina to a buyer are not accepted by the buyer for whatever reason which are not a risk to Arvina, they shall be at the disposal of the buyer for three weeks. During this period the goods shall be stored for his account and at his own risk.

**E.** After the above mentioned period Arvina has the right - at Arvina's prerogative - either to demand compliance with the contract or to cancel without judicial interference, without prejudice to his right to compensation towards the buyer.

**F.** If a buyer places a call-off order this shall be bought and collected within the period set by the buyer and accepted by Arvina. If the buyer does not comply with the aforementioned terms within 8 days after the end of the call-off period then Arvina has the right to charge the buyer for the sold goods and to store these for the buyer's account and risk, or cancel the contract.

**G.** The waybill, delivery receipt or similar document presented on delivery is meant to accurately describe the quantity and quality, unless the buyer has objected to this in writing to Arvina, immediately on taking delivery.

## Article 8. Security of Payment

**A.** Arvina is always authorised entitled to demand from the buyer sufficient guarantee of compliance with the payment terms and conditions, before starting or continuing the activities and before delivery or continuation of delivery.

**B.** If proof of security of payment is not supplied, or is unsatisfactory or if the legal status of the buyer has been changed, Arvina reserves the right to cancel the contract wholly or partly without judicial interference and to retrieve the delivered goods and not yet processed goods without prejudice to Arvina's rights to payment of what was owed at the ending of the contract for work done and costs incurred for the deliveries already made.

## Article 9. Payment

**A.** Unless agreed otherwise payment shall be made within 30 days after invoice date. Buyer is not entitled to discount or compensation in any payment. Full or part payment in advance can be demanded in some cases. In this case payment shall take place immediately.

## Article 10. Default of Buyer

**A.** If the buyer has not on time, not properly or only partly complied with his obligation to pay or has not complied with any other clause of the contract, or his assets are seized, applies for a suspension of payment or if his bankruptcy is filed or makes use of debt restructuring (WSNP = Wet Schuldsanering Natuurlijke Personen. This law is applicable only in the Netherlands) the buyer is legally considered to be in default and the total sum owed to Arvina falls immediately due without an injunction or proof of default, irrespective of earlier made term contracts with regard to payment.

**B.** The sum mentioned in sub A shall be increased by the legal business interest rate based on article 6: 119a B.W. (Burgerlijk Wetboek, Civil law book in the Netherlands) calculated from the invoice date (part of a month is calculated as a whole month) over the gross invoice sum, up to the moment of full payment.

**C.** In the cases mentioned in sub A, Arvina is also entitled to suspend the implementation of current contracts, i.e. to cancel any contract with the buyer, fully or partly (at Arvina's discretion), without legal interference without any obligation on Arvina's part to any compensation whatsoever for the buyer insofar as this is justified by the default or the circumstances.

**D.** All costs arising due to extrajudicial collection of the claim are for the buyer's account. The extrajudicial costs are set at at least 15% of the amount due, with a minimum of €300.

## Article 11. Right of Retention

**A.** Arvina is entitled to retain the buyer's goods which Arvina keeps for the buyer until settlement of all costs which Arvina has made in order to execute orders for the aforementioned buyer, irrespective of the fact if these orders refer to the aforementioned or other goods of the buyer unless the buyer has set satisfactory guarantee for these costs.

## Article 12. Property Restriction

**A.** All goods delivered or to be delivered by Arvina remain the property of Arvina, for as long as the buyer has not paid the invoice regarding the goods delivered or to be delivered, the invoices regarding additional work as well as possible claims for failures in compliance with the contract. (including the interests owed and extrajudicial costs).

**B.** As long as the possession of the delivered, or to be delivered, goods is retained by Arvina, as intended in the specified item of sub A, the buyer, other than in the normal running of his company, is not entitled to transfer or to burden, to rent out, to pawn or to put at the disposal of a third party under whatever name

**C.** When buyer breaches the specified rule in sub B he shall be liable to Arvina for a fine with immediate effect to the amount of 1 times the net invoice value without prejudice to the right of Arvina as complementary compensation for damages.

**D.** In the case of a contract of purchase and sale with a buyer up until the moment of full payment the buyer is obliged either to have the delivered goods fully insured for his own account against damage by fire and theft, burglary, embezzlement, claims from third parties and own risk or he is liable Arvina for the full damage to these goods which may result from aforementioned circumstances.

## Article 13. Loan

**A.** Materials supplied on loan by Arvina remain the property of Arvina and can be recalled without the buyer's permission. Aforementioned goods may not be supplied to third parties in the broadest sense of the word without Arvina's permission.

## Article 14. Force Majeure

**A.** Arvina is not responsible for its orders which are not carried out, not correctly carried out or not carried out on time if these are the result of force majeure in the broadest sense of the word. The following are also considered and are contractually equated with force majeure: restrictive government measures of whatever nature, epidemics, insurgency, war, strikes, se-

questration, interruption of production, lack of raw materials/semi-finished products, auxiliary materials and/or energy, natural disasters, fire, other calamities, transport difficulties and full or partly default of a third party whose goods or services have to be received, in so far as these circumstances may have direct results on the correct execution of the order.

**B.** As soon as a circumstance mentioned in sub A occurs, Arvina shall notify the buyer.

**C.** If compliance by Arvina is temporarily impossible, Arvina is entitled to suspend the execution of the contract until the circumstance which caused the force majeure no longer exists.

**D.** If compliance by Arvina is permanently impossible, the buyer shall be entitled to cancel the contract provided this has been notified to Arvina within 8 days of cognisance and with the obligation of purchase and payment of the executed part of the order. The same applies when compliance by Arvina is only temporarily impossible but is expected to last for more than 3 months.

## Article 15. Liability

**A.** Subject to conditions of imperative law regarding (product) liability as well as compliance with the legal rules of public order and good faith, Arvina is not obliged to give the buyer any compensation for damages of whatever nature, directly or indirectly, including loss of profits, damage to personal or real estate, or to people.

**B.** In any eventuality Arvina's liability does not extend further than the total amount to which he is insured, or if he has not taken out an insurance to the amount for which an entrepreneur with a company such as Arvina tends to insure himself. In any case liability is limited to the invoice sum.

**C.** Arvina has the right at all times if and when possible to cancel the losses of the buyer.

**D.** Specifications with regard to composition percentages or mixture proportions of Arvina's products are only averages, which are established approximately. Arvina excludes any form of liability for deviations, as these are unavoidable within reasonable margins or error tolerances depending on individual cases, despite the required precision in the production and the determination of values. Arvina gives information about the use and application to the best of its knowledge, based on research and experience. Nevertheless all specifications and information regarding suitability and application of products are non-binding and do not release the buyer from his own trials and tests. Advice is free of commitment and without liability.

**E.** Buyer indemnifies Arvina against all third-party liabilities which are connected directly or indirectly with the fulfilment of the contract. Buyer indemnifies Arvina in particular against claims from third parties for damage caused by incorrect or insufficient information supplied by buyer and Arvina, unless the damage was caused by Arvina deliberately or through gross negligence.

## Article 16. Claims

**A.** Immediately after delivery the buyer is obliged to check for defects, shortcomings etc. The right to claim expires if a complaint to Arvina is not presented in writing at the shortest possible notice, but at the latest within 7 days. Defects, shortcomings and complaints which could not have reasonably been observed on inspection, shall on penalty of termination be notified in writing within 7 days at the latest after having been observed or within reason could have been observed according to criteria of a perceptive buyer.

**B.** Delivered goods can only be returned after previously given written permission from Arvina under conditions established by Arvina.

**C.** If the complaint appears to be well-founded Arvina shall guarantee the replacement of the goods or the work carried out or the restitution of the payments minus expenses.

**D.** Complaints regarding the invoice shall be lodged in writing within 5 days after the invoice date.

**E.** The conditions mentioned under sub A do not apply if there is only a small deviation in what has been agreed. When assessing if a delivery deviates from the permissible limits an average sample has to be taken from the delivered product. Rejection cannot take place based on a few items or units.

## Article 17. Limitation

**A.** All legal claims by the buyer based on this contract, subject to one of these conditions shall become prescribed subject to imperative law, after the course of one year, calculated from the day on which the goods were delivered or should have been delivered, or from the day that the work was completed or should have been completed.

## Article 18. Disputes

**A.** Dutch law applies to all contracts to which the conditions relate fully or partly.

**B.** In possible disputes between parties arising on account of these contracts, contracts resulting from these and/or from these general conditions, the Dutch court has exclusive authority.

**C.** In so far as the trial of aforementioned disputes falls under the jurisdiction of a Court of Law these shall be in the first instance exclusively tried by the empowered judge within the court district where Arvina is established.

The text of these general conditions of delivery and payment of Arvina lubricants B.V. is deposited with the Chamber of Commerce Limburg under number 59060409. On request these conditions shall be sent free of charge and they are published on website: <http://www.arvina-lubricants.com>.