

## **GENERAL TERMS AND PAYMENT CONDITIONS OF PENTAS MOULDING B.V. in ALMELO**

### **I Applicability of the general terms and conditions**

#### **Article 1:**

These terms and conditions shall apply for all offers and agreements concerning the sale and the delivery of goods and concerning the execution of activities. These terms and conditions (which apply to orders and projects) are considered acknowledged and accepted which additionally suspend the applicability of the terms and conditions of the client, which only are applicable for the agreement as far as we have confirmed it in writing.

### **II Offers**

#### **Article 2:**

Offers, irrespective of the form, are non-committal until the resulting order has become binding in the way described in article 7.

#### **Article 3:**

We are not liable for any damages caused by inaccuracies in advice given by us and in data regarding products to be delivered, or as result of or with the use of the product by the client or a third party, except in case of gross negligence and intent.

#### **Article 4:**

All drawings, sketches, diagrams, samples, models, etc., developed by us, within the framework of the order remain our property even after the completion of the agreement. The drawings etc. may neither, without our written permission, be entirely or partly be duplicated nor shown or made available to third parties for any purpose whatsoever. The Client is liable towards us for any damages resulting from the fact that third parties have seen or had access to the drawings. The drawings etc. shall immediately be returned to us on our first request.

#### **Article 5:**

We are not accountable for inaccuracies in data, drawings etc. or advice provided to us by or in behalf of the client for use in the execution of the agreement. We are not obliged to test the informa-

tion or documentation of the clients or through him obtained from third parties, and shall rely on its accuracy. The client shall indemnify us with respect of the above from any claims of third parties resulting from inaccuracies as referred to.

#### **Article 6:**

All quoted prices concern delivery ex warehouse/factory; exclude packaging and VAT, unless otherwise agreed on. The goods leaving the warehouse or the factory are for the account and risk of our client, who for that risk should be sufficiently insured. We are free in the choice of appropriate packaging and shipping.

The packaging of our products intended for repeated use shall remain our property. The purchaser shall keep this packaging at our disposal. The purchaser shall be liable for damage or loss.

If after the acceptance of an order circumstances arises which affects the cost prices, such as freight costs, import and export duties, stations-, storage-, monitoring-, in and out clearings costs, changes, shall be charged to our Client, as well as the consequences of changes in exchange rates, unless explicitly otherwise agreed on.

We shall reserve the right, without further notice, to charge the actual prices in force at the time of delivery, irrespective of prior confirmation, for goods to be delivered at buyer's call and for goods which are not or only partly in stock upon receipt of the order and which we book for delivery as soon as possible.

### **III Order / projects and other appointments**

#### **Article 7:**

An order/project is only binding for us when it, unreservedly, is accepted by us in writing. The foregoing also applies for any further agreements and to any amendments in existing agreements.

#### **Article 8:**

If after acceptance of an order or sale circumstances occur that affect the cost price, such as changes in the prices of raw materials or goods to be delivered, in wages, exchange rates, import duties, etc., we are entitled to pass on the price changes to our client. The client will be properly informed.

Article 9:

If after the acceptance of an order changes are made by our Client, with changes we can't agree too, or when the order is entirely or partly cancelled,

all costs that already incurred as well as our loss of profit and losses from idle plant time shall be of the account of our Client. Cancellation is only possible after written permission from us.

If there is a reasonable suspicion to the financial position of the Client, we are at all times entitled to have the client provide security for the payment of our costs incurred and yet to be incurred, by means of issuing a bank guarantee to us, or by payment of the agreed ultimate owed amount.

We are entitled to suspend the execution of the order until this security is received. If within 1 month after the request to provide security this has not been complied, our client shall be in default without any notice of default being necessary and the agreement can be dissolved in writing by us without any judicial intervention. The client shall be liable for all costs, damages and loss of profit resulting from the order and its premature termination.

Article 10:

We are free to engage third parties for the execution of this order.

#### IV Provisions concerning the product

Article 11:

Color deviation tolerances are possible due to a number of factors including but not limited to climatic changes, UV-radiation and normal variances in oven temperatures. The color of any actual production may vary slightly when compared with approved samples. Pentas Moulding shall not be held responsible for any such deviation tolerances and/or minor variations in color from approved samples resulting from the factors set forth above.

Article 12:

We are considered to have complied with our obligations concerning the quantity of products to be supplied, even if the amount delivered is 10% higher or lower than the ordered quantity. This is explicitly not considered a failure on our part.

Article 13:

At the specified wall or plate thicknesses or weights our tolerance of 10 % upwards or downwards is allowed.

Article 14:

Any components to be made available to us by, or on behalf of, our client for incorporation in any way into the product that is to be manufactured by us, shall be delivered to us in the amounts required plus an excess of 10%, on time and free of any charges, to our factory. The client shall be liable for the components or other goods thus made available to us and for their proper functioning. We will assume without any examination that these components etc. can be readily incorporated or processed into the product that we have been ordered to manufacture, unless different arrangements have been agreed upon writing.

If such components as mentioned above are delivered late or are not capable of being used, which should result in idle production time, the client shall be liable for all damages resulting from this idle plant time.

Article 15:

We take the product into production only after the test samples are approved by the client and he has either notified us in writing, or we have confirmed his approval in writing. We are entitled to, within eight days as the samples are provided by us, if the client has not responded in written, to consider it as a (tacit) approval.

#### V Guarantee

Artikel 16:

With reference to what has been stipulated elsewhere in these terms and conditions, we guarantee the reliability of the products delivered by us and the quality of the material used and/or built for these according to the specification which has been defined in advance. In case of delivery, within the framework of trade, of complete products manufactured by third parties, we only guarantee that the goods delivered comply with the specification and materials as agreed between parties.

We are not bound to pay any compensation for damage, whether direct or indirect, suffered by our client or by any third party. As for the use of the moulds produced by us in our factory,

there is either a two-year guarantee period, or the explicitly agreed number of plastics products to be manufactured.

The guarantee given by us does not apply:

- a. to defects resulting from faults in materials and/or parts made available by the client or ordered by the client; to defects resulting from injudicious use or neglect on the part of the client or his personnel;
- b. to defects due to normal wear and tear, inexperienced treatment, over-loading or the use of unsuitable means and corrosive chemicals; if moulds are changed, without our order, executed by third parties

## VI Moulds

### Artikel 17:

Moulds, forms, tools and suchlike manufactured by us, wholly or partly on our instructions and for which our Client has paid the costs agreed upon, becomes the Client's property on the moment they are taken into service by us for the manufacture of the product.

These moulds, forms, tools, etc. will however be kept and maintained by us for our client. These will not be returned earlier than after expiration of two years, starting from the moment of realization of the contract and their manufacture, or if the order to manufacture as referred to the above is followed by one or multiple orders to the client at his request of the aforementioned moulds, products forms, tools etc. after expiration of two years following by delivery of the latest product order of the Client manufactured with these mould, forms and tools etc.

Under no circumstance is the buyer/client allowed to resell any mould, tools, or similar items, produced by Pentas, nor may any information concerning aforementioned moulds, tools and similar items, be spreaded by the buyer/client within the period as referred to in the previous articles.

Breaching this agreement will result in a default penalty of €4,500.00 for each foul identified by us without an immediate judicial intervention and/or formal notice. This penalty is due on the mere finding of the violation on our part. All this does not affect our right for compensation for any suffered damage.

When no written request is submitted by our client for the restitution of the mould, shapes or tools within the period as mentioned above, our return obligation will be invalidated and therefor allowing

us to after one month of written notice to dispose or destroy the moulds etc., without us being bound to compensate the client financially.

The client is obliged, if he wants to order products fabricated with the aforementioned moulds, forms, tools, etc., to place this order in a time frame of at least two years, counting from the agreed time of completion of this moulds, forms, tools, etc.

### Article 18:

In case our client supplies the moulds etc. they shall be returned at his request, however only, after all our claims, from whatever cause, have been satisfied.

### Article 19:

We are not liable for the loss, absence or damage to the moulds, except in case of intent or gross negligence. We are not liable for intent or gross negligence of servants or subcontractors. If we are liable, the moulds etc., will be repaired or replaced depending on our choice. We are not liable for any further obligations or pay of damages. We are not obliged to insure against damage caused by our moulds etc. whatsoever the cause may be.

### Article 20:

Insofar as our offer or order confirmation specifies the number of shots or products for which a mould etc., can be normally used, the mould etc., will be after that quantity, or after production of that quantity, considered to be no longer suitable for further production. In the absence of such a specification in the offer or order confirmation, as soon as we have ascertained that a mould etc. is no longer suitable for proper production, we shall notify the client. In this case, we shall also inform him of the costs for repair or replacement.

In assessing proper production, we shall also consider technological advances and adaptation of the factory to this, both with respect to volume and labour intensity.

As long as a mould etc. in conformity with the standards written above is still suitable for production and is in our care, and when there are regular follow-up orders, its costs of maintenance shall be at our costs during a period of one year after its first use.

## VII Delivery

### Article 21:

Delivery times are only stated approximately and form no deadline. We are not liable for the consequences of exceeding the specified time of delivery. Exceeding the time of delivery because of any reason whatsoever, shall not entitle the client to receive compensation, nor shall it be held responsible for failing to meet any obligation attached to him in this case.

Termination by the client is possible under conditions for cancellation as provided in Art. 9.

We are entitled to deliver an order wholly or in consecutively parts. In the latter case we are free to invoice our client for each separate delivery and to demand payment for it.

If and insofar as a partial shipment is not paid by the client and/or the client does not comply with other obligations resulting from the said agreement or former agreements, we shall not be obliged to deliver a next partial shipment and we will be entitled to dissolve the agreement for the part which has not yet been completed, without an immediately judicial intervention and/or formal notice of the client and we shall keep our right to compensation and except the Client from any right to compensation or otherwise.

## VIII Retention of title

We shall maintain ownership of goods delivered to the client, even after delivery, wherever these goods may be. The client shall be deemed to keep these goods for us, as long as the client has not fully complied with his obligations to pay us, resulting from whatever agreement. The buyer has the right to re-sell or process the products bought from us, provided this takes place within the framework of the usual conduct of his business.

As long as full payment has not taken place, the goods may not in any way be used as a security for debts to any third party. In case of non-payment of any claimable sum of money. Or in case the client fails to meet an obligation within any agreement relating to the execution of work or sales of goods with us, and in case of petition for suspension of payment in case of bankruptcy or liquidation of the client, we shall have the right to annul the agreement or the part of it that has not yet been completed as well as any other existing agreements we may have with the client, immediately and without

any judicial interference, by mean of a registered letter sent to our client.

The client, in advance, declares that he shall agree with this annulment in which case the buyer already now allows us to enter his sites and premises and we shall have the right to possess the goods that have not yet been paid for without prejudice to our right to claim compensation for damages, cost, interest and loss of profit which may have resulted from this.

In the above cases any claim that may have on the client shall be claimable completely or directly. The client shall be obliged to inform us immediately of the fact that any third parties lay claims to good which we claim the ownership, by virtue of this article.

## IX Force Majeure

### Article 23:

If we face a situation of force majeure, as in cases of disturbances in the company, or in the supply of products, components, materials or additives, and in circumstances making delivery unreasonable onerous and/or disproportionate difficult for us, we shall be entitled either to suspend delivery during a reasonable term to be established by us, or - after expiration of the said reasonable term or immediately - to dissolve the agreement, without a judicial interference, by means of a written reasoned statement, to that effect that the client cannot make any claim to compensation for damages suffered or to be suffered because of it. If then we partly execute an order, the client shall be liable to us for our costs and/or a proportional part of the total price. We are not liable for any direct or indirect damages, by whatever name it may be called, to the client or third parties because of suspension or cancellation as a result of above mentioned cases of force majeure.

## X Rights of intellectual property cq industrial property

### Article 24:

All rights of intellectual and industrial property pursuant to the agreement, the developed machinery, products and / or other materials such as analyses, designs, documentation, reports, offers , as well as preparatory material, rest exclusively in us.

The client can merely obtain the right of use respectively any sub-licences granted upon agreement and/or expressly granted by applicable

law. Any other or further rights of the other party to reproduce the developed equipment, products and/ or any other materials are ruled out. The right of use respectively right of license is non-exclusive and non-transferable to third parties.

In case of deviation with paragraph a, we are willing to commit to a transfer of right of intellectual and industrial property. Such a commitment can only be undertaken explicit and in writing. Provided that both parties agree explicit and in writing on the transfer of rights to the client of intellectual and industrial property with regard to equipment, products and/or other materials designed specifically for the client, this agreement won't change our authorization to use and exploit parts, general principles, ideas, designs, documentation, and so on, underlying the developments for the client, without any restrictions, to other purposes for ourselves or third parties.

Neither does the transfer of rights of intellectual and industrial property affect our right to use and exploit developments similar to those provided to the client, for our benefits or those of other third parties.

The client is not allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, trade names or other intellectual or industrial property from the equipment, products and / or other materials.

The client is liable for damages caused by infringement of our intellectual property rights, committed by means of goods delivered by us to him. The client shall promptly notify, inform us as soon as he is aware of infringement of our rights.

In the case of manufactured products in accordance with drawings, samples, models or other instructions in the widest sense of the word, received by us from our client or through him from third parties, the client shall guarantee that the manufacture and/or delivery of those articles does not infringe any rights of patent, brand or application, trade models or any other right of a third party, and our client shall safeguard us from any ensuing liabilities. If a third party should raise objections to the manufacture and/or delivery on the basis of any alleged right, we are certainly and exclusively for this reason entitled to stop the manufacture and/or delivery immediately, and to claim compensation from our client for costs already incurred, without prejudice to our claims for any further compensation, and we shall not have any

We are obliged to immediately inform the client when third parties object to the manufacture and / or supply of goods intended for him.

## XI Complaints

### Artikel25:

The client is obliged to verify on receipt of the goods if the quantity of the products delivered is correct. Complaints about the quantity delivered must reach us immediately after which the client reasonably could have checked the quantity, but at least within 5 working days from time of delivery. In default of timely complaints the quantity as stated in the consignment note or some such similar document is deemed to have been accepted as correct by the client. All complaints concerning any possible improper execution of orders, or concerning the quality of the delivered products, must be lodged by registered letter within eight days after delivery.

In case of defects in the sense of art. 16, the client must notify us by registered letter within 48 hours after he thinks he has established a defect.

After these fixed times, the client is considered to have accepted the delivered goods completely. We shall not be obliged to entertain claims or complaints received after the above times. If a claim has been submitted in time and after it has been established that the goods are defective, we shall, in our option, either make the necessary repairs or repeat the delivery wholly or partly, without any cost to the client. In case of delivery, within the framework of trade, of complete products manufactured by third parties, we shall, in our option, either repeat the delivery wholly or partly, without any cost to the client, or we shall take the goods back and credit the client.

We shall not be liable for any further compensation, particularly not for compensation of damage. We shall not be liable for any costs, damages and interest that might arise for the client or for third parties as a direct or indirect result of actions or acts of negligence of our employees or of defects of goods that have been delivered to the client by us.

Our only commitment shall be to make delivery in accordance with the specifications agreed upon when the order was placed. We shall not assume any responsibility for non-functioning of products delivered by us for purposes meant by the client or any other different purposes, deviating from the specifications. No claims shall be entertained if the client is in default in any way with respect to any obligation towards us, arising from any agreement.

The client shall safeguard us from any claims for the compensation of any damage, from third parties, which may result from this agreement.

## XII Payment

### Article 26:

Payment should be made within the agreed period. Should this term be exceeded, the buyer shall be in default in justice by the mere termination of the said term of payment, without any declaration to that effect.

In such cases, the execution of all orders accepted for the client shall be suspended until complete payment has either actually taken place or will be made during a term to be established by us. Should this term be exceeded, we shall be entitled not to execute the orders in question and to claim compensation. If the invoice has not been paid by the due date, an interest of 2% of the invoice amount is due for each month or part of a month with which the due date is exceeded.

Payments shall be made, either cash at our office or into our bank account.

The buyer shall be in default without any declaration to that effect by the mere expiration of the due date, and in the cases of (petition for) bankruptcy or suspension of payment, trusteeship and the winding up of business.

All costs, in particular extra-judicial, and judicial costs we make in order to collect our claims, that are connected with any overdue payment, shall be chargeable to the client in default. The extra-judicial costs will amount to 15% of the amount due. We shall have the right to establish from which debts payments are to be deducted, but in any case these will first be deducted from our interest and costs.

At all times shall we have the right to demand further security for the payment from the client. The client shall be liable for all our costs and damage resulting from the order and its premature termination.

We shall be entitled to demand that our principal signs an act of cession which transfers his claims on his purchaser, to which the client binds himself, should we so require, so that we shall have a security for the payment of any debt(s) the client may owe us.

## XIII Applicable law

### Article 27:

All our agreements, to which these terms and conditions apply, shall be governed by Dutch law.

## XIV Filing and effective date

### Article 28:

These conditions have been filed with the court in Almelo dated December 1st, 2013.