

# **GENERAL (PRODUCTION, SALES, AND DELIVERY) TERMS AND CONDITIONS**

**COMERCO B.V.**

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## 1. WORKING ENVIRONMENT

- 1.1. These General Terms and Conditions apply to all offers, quotations, order confirmations, orders, services, and (existing and future) agreements related to an order, whether concluded by written, oral, and/or electronic agreement.
- 1.2. The applicability of the general terms and conditions of the customer and/or a third party, under whatever name, does not apply and is expressly rejected. Any conflicting provision in the customer's general terms does not affect this, and the customer waives any general terms they may have by entering into an agreement or placing an order, so that only these General Terms and Conditions apply to all orders.
- 1.3. In the event that the General Terms and Conditions and an agreement contain conflicting provisions, the provision agreed upon in the agreement between the parties will prevail over the General Terms and Conditions.
- 1.4. If a provision of these General Terms and Conditions is deemed invalid or unenforceable, the remainder of the General Terms and Conditions shall remain in effect, provided that the remainder is not inseparably linked to the invalid or unenforceable provision. In such cases, the parties will make every effort to reach agreement on a new provision that aligns as closely as possible in content and purpose with the invalid or unenforceable provision.
- 1.5. Comerco has the right to modify these General Terms and Conditions at any time. The customer is deemed to have accepted any changes to the General Terms and Conditions if no written objection is made within thirty (30) days of Comerco's notification of the changes.
- 1.6. Deviations from or changes to these General Terms and Conditions bind Comerco only if and to the extent that they are explicitly confirmed in writing by Comerco..
- 1.7. If multiple (legal) persons or companies are referred to as the customer, they will be jointly and severally liable for the fulfillment of all obligations under the agreement with Comerco.

## 2. DEFINITIONS

### General Terms and Conditions:

These general terms and conditions of Comerco B.V., as filed with the Chamber of Commerce under number 66489563.

### Order:

Any request from a customer to Comerco to deliver products and/or services (in accordance with the customer's defined technical specifications), including a quotation from Comerco accepted by the customer.

### Services:

The production, sales, and delivery services offered by Comerco.

### Long-Term Agreement:

Any written, oral, or implied agreement (existing or future) between Comerco and a customer for the regular delivery of products and/or services over a specified period.

### Exclusivity:

Parties may agree in the agreement that the customer is not allowed to enter into a similar partnership with any business engaged in activities similar to those of Comerco during the period specified in the agreement, unless Comerco has granted prior written consent.

### Customer:

Any natural or legal person, partnership, limited partnership, cooperative, or limited liability company placing an order with Comerco or to whom Comerco makes an offer, or who enters into or has entered into any agreement with Comerco or is negotiating such an agreement.

### Comerco:

The limited liability company Comerco B.V. (Chamber of Commerce number: 66489563), with its registered office at 's-Gravendijkseweg 41a, 2201 CZ Noordwijk.

### Quotation:

Any written or oral offer (proposal or offer) made by Comerco to a customer to purchase products and/or services or to enter into an agreement.

Order:

The written, oral, or electronic instructions given by the customer to Comerco regarding an order.

Order Confirmation:

For each new order, Comerco and the customer will agree on the terms in writing in an order confirmation.

Agreement:

The (written) (framework) agreement (including but not limited to a quotation, offer, or order confirmation) between the customer and Comerco in which the specific terms and conditions for the execution of an order are established, including (but not limited to) long-term agreements and all (future) separate (sales) agreements.

Parties:

The customer and Comerco, individually or collectively.

Products:

The products to be assembled and delivered by Comerco in accordance with the customer's technical specifications and instructions.

### **3. OFFERS, PRICES, FORMATION OF AGREEMENT AND ORDERS**

- 3.1 Unless expressly agreed otherwise, all prices quoted by Comerco are in euros, excluding VAT, handling, packaging, shipping, and transport costs, as well as any taxes and/or other charges.
- 3.2 All quotations and listed prices (online and offline) are non-binding and may therefore be changed by Comerco at any time.
- 3.3 The prices agreed between the parties in the order confirmation are based, among other things, on the cost of salaries, social charges, materials, storage, and travel and accommodation costs, as they are at the time of the order confirmation. Comerco is entitled to adjust the prices in the order confirmation in the event of changes in one or more cost items and/or exchange rate changes, changes in the Consumer Price Index (CPI), etc. These adjustments will be rounded up to the nearest EUR 2.50.
- 3.4 Comerco is always entitled to refuse or not consider a customer's accepted offer, order confirmation, or order without providing any reason, including because Comerco may not always be able to supply all (parts) from its own stock and may depend on third parties for delivery.
- 3.5 Unless expressly agreed otherwise in writing, Comerco does not have a (continuing) delivery obligation towards the customer. A (continuing) delivery obligation does not arise simply because Comerco has previously processed or delivered orders from the customer over a period of time.
- 3.6 An agreement only comes into effect after Comerco has expressly accepted an order from the customer, even if that order is based on or made following an (informal) offer.
- 3.7 Once an order placed by the customer is accepted or processed by Comerco, it cannot be canceled or returned, and the customer is obligated to accept the order. If the customer refuses to accept the order, it does not relieve them of the obligation to pay for the ordered products and/or services.
- 3.8 In the event of termination of the agreement or a separate order, all obligations between the parties that by their nature should remain in effect after the termination of the agreement or separate order will remain in full force.
- 3.9 Oral promises only bind Comerco once they have been confirmed in writing.

### **4. INVOICING AND PAYMENT TERMS**

- 4.1 The invoicing method is agreed upon in the agreement.
- 4.2 Unless otherwise agreed, orders must be paid for before shipment, and invoices must be settled within thirty (30) days from the invoice date, failing which the customer will be in default without further notice, and the customer

will owe Comerco late payment interest equal to the statutory commercial interest under Article 6:119a of the Dutch Civil Code, plus an additional 2% interest surcharge.

- 4.3 The payment term(s) set out above and any other agreed deviations are always final deadlines, even if Comerco agrees to a (partial) late payment out of courtesy.
- 4.4 In case of non-payment (or late payment) of invoices, Comerco is entitled to transfer the invoice to an (external) collection agency, in which case the customer will be required to reimburse Comerco for all actual (extrajudicial collection, legal, and attorney) costs, with a minimum of EUR 500.00 (five hundred euros) excluding VAT, or – at Comerco's discretion – fifteen (15) percent of the outstanding invoice amount.
- 4.5 If Comerco can demonstrate that more costs were incurred due to the collection, the customer will owe Comerco the full amount of the (collection) costs incurred.
- 4.6 If the customer disputes the correctness of (a part of) an invoice, they are still obligated to pay the undisputed part of the invoice
- 4.7 Suspension of payment of invoices or offsetting by the customer is not allowed and is therefore explicitly excluded.
- 4.8 If the customer fails to make payment of any amounts due to Comerco or otherwise defaults on their obligations under the agreement, Comerco has the right to suspend performance of the agreement and/or the order until full payment of the outstanding amounts is made, without being liable for any damages.
- 4.9 In the case of a jointly placed order (by two or more customers), the customers are jointly and severally liable towards Comerco and, as such, are responsible for ensuring payment of the order.
- 4.10 Only payments made directly to Comerco will release the customer from their obligations.

## **5. DELIVERY, SPECIFICATIONS, AND WARRANTY AND USER TERMS**

- 5.1 The delivery times specified by Comerco (online or offline) are always indicative. Exceeding a delivery deadline does not entitle the customer to compensation, nor does it grant the right to cancel the order or terminate the agreement, except in cases where the delay is such that maintaining the agreement would be unreasonable or unacceptable according to standards of fairness and reasonableness. Comerco accepts no liability under any circumstances if a delivery deadline is exceeded
- 5.2 The products delivered by Comerco are developed according to the technical data/information defined by the customer. Comerco does not guarantee the accuracy of these specifications, nor does it verify their correctness, and therefore accepts no liability under any circumstances for the consequences of the (in)accuracy of these (technical) data/information and/or the resulting (defective) products delivered.
- 5.3 Information about the products delivered by Comerco (such as properties, quality, color, etc.) is provided to the best of Comerco's knowledge and with the utmost care, but it is indicative and never binding.
- 5.4 Any defects in part of the products delivered in an order do not entitle the customer to reject or refuse the remainder of the order.
- 5.5 Comerco is never obligated to provide a warranty to a customer beyond the warranty Comerco can claim from its suppliers or manufacturers.
- 5.6 Comerco provides the warranty and user terms associated with the product at the time of delivery. If the product is used by the customer or third parties in a manner not in accordance with the warranty and user terms, all liability of Comerco will be void.
- 5.7 The customer guarantees and ensures that its customers and/or users of the products are always informed about the applicable warranty and user terms.

- 5.8 De door Comerco geleverde prototypes (zijnde nog in ontwikkeling zijnde Producten) zijn nimmer geschikt om door te verkopen (aan consumenten).

## **6. OWNERSHIP RETENTION, RISK TRANSFER, AND TRANSPORT**

- 6.1 The products delivered by Comerco to the customer are delivered under suspensive conditions (as referred to in Article 3:92 of the Dutch Civil Code) of full payment by the customer of the purchase price, as well as any interest and costs that may be owed. The products delivered by Comerco therefore remain the property of Comerco until full payment of all amounts (also from previous orders) owed by the customer to Comerco, including any interest and costs.
- 6.2 As long as the ownership of the products delivered by Comerco has not passed to the customer, the customer may not pledge, transfer ownership of, or grant any (limited) rights to third parties over the products, except to the extent that the customer sells, processes, and/or delivers the products to third parties as part of their normal business activities. This provision has an effect under property law.
- 6.3 The customer hereby grants Comerco the irrevocable and unconditional right to enter any locations where the products delivered by Comerco may be located, in order to enable Comerco to exercise its ownership rights and reclaim the (partially) unpaid products. The retrieval of the products in this manner does not affect Comerco's right to demand compensation from the customer for any damage and/or costs incurred due to the customer's non-compliance.
- 6.4 Unless otherwise agreed, the customer is always responsible for transport, and the risk for the products passes to the customer once the products are physically in the transport vehicle. When Comerco arranges transport, the products will always be delivered based on the (latest version of the) Incoterms of the International Chamber of Commerce: 'EXW - Ex Works,' and the risk for the products passes to the customer at the moment the products are delivered to the customer or the agreed location (i.e., once the products are physically removed from the transport vehicle).

## **7. COMPLAINTS AND DUTY TO INSPECT**

- 7.1 The complaint period for invoices sent by Comerco is a maximum of five (5) working days from the date the customer receives the respective invoice. If the customer does not protest the invoice within this period (in writing and with reasoning) via [info@comerco.nl](mailto:info@comerco.nl), the transaction(s) with Comerco will be deemed to be correctly represented and approved by the customer.
- 7.2 Upon receiving the products, the customer has a duty to inspect and must always check whether the delivery corresponds to the order placed and if there is any visible damage or defect (including shortages).
- 7.3 Complaints must be reported by the customer as soon as possible and no later than five (5) working days after delivery, in a detailed and proper manner, via email to Comerco at [info@comerco.nl](mailto:info@comerco.nl). If the customer fails to do so, they can no longer claim any defects, and it is considered that the customer has received the products in a proper and undamaged condition, in accordance with the quantity indicated on the transport and freight documents.
- 7.4 The customer is not permitted to accept any delivery of products "subject to" (any right). By actually receiving the products (in practice), the customer irrevocably agrees to the provisions in the aforementioned articles.
- 7.5 The products that are the subject of complaints must remain available for inspection by Comerco in the condition they were in when the defects were discovered.
- 7.6 Any (claim) right of the customer against Comerco concerning errors in delivery or defects in the products delivered by Comerco will irrevocably expire once the complaint periods mentioned in the preceding articles have passed.
- 7.7 The foregoing also applies if the customer has made a timely complaint but fails to cooperate adequately with Comerco's investigation into the validity of the complaint.
- 7.8 The right to make a complaint – as well as any associated (claim) rights – will automatically expire if and as soon as the customer has taken the delivered products into use, has processed or modified them, or has allowed them to be used, processed, or modified, or has resold them to third parties, unless Comerco has explicitly granted written consent or if the products are durable goods with an applicable manufacturer's warranty.

7.9 When it is proven that the products do not comply with the agreement (non-conformity), Comerco always has the right to choose, either to replace the products with new ones after their return or to refund the invoice value (partially).

## **8. LIABILITY, PRESCRIPTION, AND FORCE MAJEURE**

8.1 The customer must at all times – including but not limited to during (internal) transport, storage, and the (third-party) use of products delivered by Comerco – act in accordance with the applicable laws and regulations and the warranty, use, and storage instructions for the products. Failure to do so will release Comerco from liability for (damage resulting from) defects in the products.

8.2 For products that are marked with an expiration date, Comerco is not liable for use after that expiration date. The customer must ensure that products with an expiration date are not processed or sold after that date. The customer explicitly indemnifies Comerco against any third-party claims arising from damage caused by the use of products delivered by Comerco if these have been processed, consumed, or sold by the customer after the expiration date.

8.3 Comerco will adequately insure itself for its potential liability towards the customer and third parties. Upon request from the customer, Comerco will promptly provide the relevant policy and terms.

8.4 The liability of Comerco towards the customer is in any case limited to the amount paid under Comerco's liability insurance for the respective case.

8.5 If Comerco's liability insurance does not provide compensation, Comerco's liability is limited to the invoiced amount charged to the customer under each individual order confirmation, with a maximum of EUR 250,000 per event or per series of events with the same cause.

8.6 Comerco's total liability for damage resulting in death or bodily injury shall never exceed EUR 250,000 (two hundred fifty thousand euros), where a series of related events is considered one event.

8.7 Comerco is never liable to the customer for indirect damage, including but not limited to consequential damage, lost profit/revenue, damage due to business interruption, and/or damage to third parties. Furthermore, Comerco is not liable to the customer for any other damage related to or arising from an agreement or its performance, unless there is intent or gross negligence on the part of Comerco.

8.8 Comerco is also not liable for damage caused by incorrect information provided by the customer. The customer indemnifies Comerco against any third-party claims arising from Comerco's reliance on the accuracy of the data provided by the customer and any actions taken based on that data.

8.9 Comerco is not liable for direct or indirect damage resulting from events over which Comerco had no influence or control.

8.10 Comerco is also not liable for consequential, business, or indirect damage suffered by the customer due to failure to perform, late performance, or inadequate performance by Comerco, its employees, third parties engaged by it, third-party products, and assistants.

8.11 Comerco is not obliged to compensate any damage if, at the time the damage-causing event occurs, the customer is in default of fulfilling any obligation towards Comerco, unless due to intent or gross negligence on the part of Comerco.

8.12 A condition for the right to compensation is that the customer reports the damage to Comerco as soon as possible, but no later than fourteen (14) days after becoming aware of it, in writing (via registered mail). If the customer fails to do so, Comerco's liability is automatically void.

8.13 Another condition for the right to compensation is that the customer does everything reasonably possible to prevent and/or limit the damage as much as possible.

8.14 Any claim for compensation against Comerco expires after twelve (12) months from the occurrence of that claim, but in any case, no later than twelve (12) months from the day the agreement or assignment relating to a specific order confirmation has ended.

8.15 The customer indemnifies Comerco against claims made by anyone that are brought against the customer and are directly or indirectly related to or arise from the assignment and/or service, including but not limited to claims under Articles 6:76 BW, 6:170 BW, 6:171 BW, 7:658 BW, and/or 7:611 BW, as well as claims resulting from a defect in a product.

8.16 For the purposes of this article, Comerco explicitly includes its (future) subsidiaries, affiliated companies, employees, and third parties engaged by it.

## **9. INTELLECTUAL PROPERTY, INDUSTRIAL PROPERTY, AND CONFIDENTIALITY**

9.1 Comerco has the exclusive right to further develop the products and to make their use available to third parties through licenses.

9.2 For all work carried out by Comerco, wherever and whenever, whether it concerns the delivery of an existing product or a product to be developed, all resulting intellectual property rights, industrial property rights, and other rights will remain with Comerco.

9.3 The customer acknowledges that all current and future intellectual property rights, industrial property rights, other rights, and the registration and/or application of those rights (or similar rights) will permanently belong to Comerco or will be transferred to Comerco worldwide for the entire term, including any extensions or renewals.

9.4 The customer is not allowed to remove or modify any indication concerning intellectual property rights, industrial property rights, other rights, trademarks, or trade names from the products, nor may they allow a third party to perform such actions.

9.5 Intellectual property rights, industrial property rights, and other rights to a product, or part of it, can only be transferred to the customer by written agreement, if Comerco holds those rights.

9.6 If Comerco, the customer, or third parties make functional improvements or other changes to the products, the intellectual property rights, industrial property rights, and other rights to the improved or modified products will remain with Comerco or the third-party rights holder.

9.7 If the aforementioned rights are not held by Comerco or a third-party rights holder, the customer will ensure the transfer of those rights to Comerco or the third-party rights holder, at no cost.

9.8 Comerco retains all intellectual property rights, industrial property rights, and other rights related to any documentation provided. The customer is explicitly not allowed to reproduce, assign, or lend it to third parties in any manner.

9.9 The customer must ensure that their employees and/or third parties comply with the obligations outlined above.

9.10 Comerco is entitled to use the customer's word and/or image trademark without prior consultation in publicity materials, including but not limited to advertisements, advertising campaigns, and online. Comerco is not obliged to pay any compensation for this.

9.11 The customer may not modify or alter the (labeling or packaging of the) products without Comerco's prior written consent.

9.12 Both parties are fully aware of and acknowledge the confidential nature of any business-sensitive information, data, and/or documents related to this order, including those pertaining to the development of the products, as well as to affiliated companies in the broadest sense, hereinafter referred to as the "Confidential Information."

9.13 Both parties shall not disclose, make public, or provide the Confidential Information to third parties, unless this is done i) to comply with a legal obligation, and/or ii) with the express prior written consent of the other party

9.14 Both parties will take all reasonable measures – or ensure that these measures are taken – to prevent individuals who are not entitled to knowledge of the Confidential Information from accessing it.

9.15 Both parties declare that, with regard to the Confidential Information, they have not made copies and/or recorded or reproduced the Confidential Information except in the normal execution of their duties.



## **10. THIRD-PARTY PRODUCTS**

- 10.1 Comerco is free to have (part of) the work carried out at its own risk and expense by third parties.
- 10.2 Comerco is also entitled to provide third-party products (hereinafter referred to as "Third-Party Products") or involve third-party products in fulfilling its obligations under the agreement. Comerco is not responsible and/or liable for (errors in/of) Third-Party Products, unless otherwise agreed in writing.
- 10.3 "Third-Party Products" refers to all products and services provided by Comerco, as well as any related facilities and services originating from third parties, for which the intellectual property rights, industrial property rights, and other rights generally do not belong to Comerco.
- 10.4 If Comerco provides Third-Party Products to the customer, in addition to the terms and conditions in these General Terms and Conditions, the third party's (general) terms and conditions (including but not limited to the third-party's delivery terms, license terms, warranty terms, and other conditions) also apply. In case of any conflict, the terms in these General Terms and Conditions prevail.
- 10.5 Comerco grants rights to Third-Party Products under the terms as described in the third party's general terms and conditions, which will be provided to the customer upon request.

## **11. OTHER PROVISIONS**

- 11.1 If Comerco does not invoke an applicable provision from these General Terms and Conditions in a particular case, this does not mean that Comerco will no longer be able to invoke this or any other provision in subsequent cases.
- 11.2 These General Terms and Conditions are available in both Dutch and, upon request, in English. In case of any dispute regarding the interpretation or explanation of any provision of these General Terms and Conditions, the Dutch version of the General Terms and Conditions will always prevail and be determinative for their interpretation.
- 11.3 The latest version of these General Terms and Conditions, whether handed over or sent, applies.

## **12. APPLICABLE LAW AND COMPETENT COURT**

- 12.1 Dutch law exclusively applies to these General Terms and Conditions and all existing and future agreements between the parties, as well as disputes and/or non-contractual obligations arising from or related to the agreement, assignments, order confirmations, and (additional) agreements concerning a service/assignment/order
- 12.2 All disputes between the customer and Comerco arising from or related to these General Terms and Conditions or any agreement and (additional) agreements regarding an order will be exclusively settled by the competent court in The Hague, in the first instance, excluding any other court.
- 12.3 The applicability of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Sales Convention of 1980, or CISG) with regard to these General Terms and Conditions and any agreements is explicitly excluded.

## **13. DATE AND LOCATION OF GENERAL TERMS AND CONDITIONS**

- 13.1 These General Terms and Conditions were established on October 23, 2024, and can be accessed and downloaded from: <https://flatpower.tech/algemene-voorwaarden/>.

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