

# General Terms & Conditions of Supply of Van Beest France SAS

Version: January 2019

## Article 1 - Definitions

In these general terms and conditions of supply, the following definitions have the following meaning:

- Van Beest: the company Van Beest France, a *société par actions simplifiée* with a share capital of 37,000 euros, having its registered office Route de Chanier - 63250 Celles sur Durolle, France, registered in the Register of Commerce and Companies of Clermont-Ferrand under number 504 308 198;
- Client: legal entity who has contact with Van Beest in connection with the (possible) conclusion of a sale and purchase agreement with Van Beest;
- Purchase Order: every purchase order for the supply of Products placed by the Client;
- Agreement: the agreement concluded between Van Beest and the Client with regard to the supply of Products following the issuance of a Purchase Order by the Client confirmed by Van Beest;
- Product(s): product(s) and associated service(s) included in each Purchase Order sold by Van Beest and purchased by the Client;
- Parties: Van Beest and the Client;
- Terms & Conditions: these general terms & conditions of supply;

## Article 2 - General

- 2.1 The Terms & Conditions apply to all legal relations in which Van Beest acts as (potential) seller and/or supplier of Products including following Purchase Orders placed by Clients and the acceptance by Van Beest of the same.
- 2.2 The applicability of the Client's own general terms and conditions is hereby explicitly excluded and rejected by Van Beest.
- 2.3 If there is a conflict between the content of the Agreement and the Terms & Conditions, the provisions of the Agreement shall prevail.
- 2.4 If a provision of the Terms & Conditions is void or voided or cannot be invoked by the Parties for any other reasons, Van Beest may replace that provision by a provision that is valid and enforceable, and of which the purpose and purport resembles the original provisions as closely as possible. The other provisions shall remain in full force and effect in that event.
- 2.5 The Client is not allowed to transfer the Agreement or any rights or obligations ensuing from it to any third party without the express, prior and written consent from Van Beest. Van Beest is allowed to transfer its rights and obligations ensuing from the Agreement to a third party. The Client hereby grants its consent thereto, now and in future.

## Article 3 - Purchase Orders - Agreement - Confirmation - Cancellation

- 3.1 An Agreement is not concluded until the Client has placed a Purchase Order in writing by email or fax and Van Beest has confirmed within two (2) business days the acceptance of the Client's Purchase Order in writing by email or fax, and, if applicable, after payment of the instalment requested by Van Beest.
- 3.2 Purchase Orders for Products placed by Clients shall include the following indications: delivery days and times, references, quantities, and prices (as communicated by Van Beest to the Client) of the Products as well as the place and date of delivery requested.
- 3.3 Van Beest's written confirmation shall indicate the references, quantities, prices, terms of payment of the Products, the applicable Incoterm as well as the transportation costs, if any, the place and expected date of dispatch. Any errors or omissions contained in Van Beest's written confirmation shall be notified immediately by the Client to Van Beest

in writing by email or fax. Failing this, the Purchase Order confirmed by Van Beest shall be considered final and the Agreement shall be deemed concluded by the Parties as from the date of the Purchase Order confirmation (and, for Purchase Orders which require an advance payment, on the date of payment thereof by the Client).

- 3.4 Van Beest is entitled to request payment of all or part of the Purchase Order at the time of its confirmation notably when (i) a Purchase Order is placed by a new Client, (ii) for Purchase Orders which related to non-stored Products or of a very specific nature or, (iii) for mass production Purchase Orders.
- 3.5 Any changes to be made to a Purchase Order confirmed by Van Beest shall be notified in writing by the Client to Van Beest and shall be taken into account at the sole discretion of Van Beest.
- 3.6 In the case of a partial or total cancellation notified in writing by the Client to Van Beest, Van Beest shall be entitled at its sole discretion either to:
  - a. accept such cancellation request and, in case an advance payment has been paid or any other amount paid by the Client prior to the said cancellation, to keep, as compensation for the damage suffered from such cancellation, such amount(s), or
  - b. reject such cancellation and invoice (i) all Products ordered and/or already wholly or partially processed by Van Beest at the agreed price and, (ii) a compensation equal to 15% of the amount of the Purchase Order and exchange loss, if any for the damage suffered from such cancellation, unless the cancellation is due to the occurrence of an event of force majeure accepted by Van Beest.
- 3.7 A Purchase Order accepted by Van Beest may be canceled by Van Beest in the following cases without compensation of any kind: occurrence of an event of force majeure, lack of availability of the Products and modification of the Client's financial or legal situation in which case any payments made by the Client on the cancellation date shall be fully reimbursed.
- 3.8 Van Beest's prices as they appear in its price lists communicated from time to time to its Clients are based on the price determining factors valid at the time of the quotation, including government levies and wages, calculated according to the usual working times adhered to by Van Beest. If one or more of these cost price factor changes before the Purchase Order is confirmed, - including changes due to fluctuations in the exchange rate of foreign currency - even if this is a result of foreseeable circumstances, Van Beest is entitled to modify its prices accordingly.
- 3.9 Van Beest is entitled to refuse (a) Purchase Order(s) or to attach certain conditions to the supply of the Products. In particular, Van Beest shall be entitled to refuse Purchase Orders which amount to less than one hundred (100) euros (VAT and any other service, including carriage costs, excluded).
- 3.10 The fact that Van Beest has supplied Products to the Client on any regular basis in the past whatsoever will not lead to the creation of an agreement concluded for a specific duration, of any nature whatsoever, between Parties or will not mean that Van Beest is obliged to accept (a) new Purchase Order(s). In particular, Van Beest may, upon prior written notice, refuse a Purchase Order placed by a Client which has not complied with the minimum annual turnover for the coming year indicated in writing by Van Beest.
- 3.11 Any additional agreements or arrangements made at a later point in time, as well as any oral agreements and/or promises made by staff employed by Van Beest or made on behalf of Van Beest by any sales person, agent, representative or any other intermediary will only bind Van Beest if and insofar as these have been confirmed in writing by Van Beest.

#### **Article 4 Prices and Payment**

- 4.1 Unless expressly otherwise agreed in writing, all prices issued by Van Beest or agreed with Van Beest are quoted in Euros and exclusive of VAT and/or any other government duties, transport costs, packaging, insurance and the like.
- 4.2 The prices indicated by Van Beest in quotations, price lists, et cetera are only indicative and thus without obligation and may be modified without prior notification.
- 4.3 The prices of the Products are the prices as mentioned in Van Beest's written Purchase Order confirmation, unless exceptional circumstances occur thereafter that lead to a change in the prices. Price increases caused by production activities being delayed through no fault of Van Beest or as a result of an increase in one or more cost price factors, even if such increase has occurred due to foreseeable circumstances, or as a result of government regulations coming into force, will be for the account of the Client. In no event shall a change in prices form ground for dissolving an Agreement
- 4.4 Unless a shorter period has been agreed between the parties, all amounts due are payable within a period of 60 days of the date of the invoice. The Client is to issue payment exclusively in the manner(s) indicated by Van

Beest and to bank account indicated by Van Beest. Payments are to be issued in Euros, unless expressly agreed otherwise in writing. Any costs in connection with effecting payments via banks, conversion of currency, credit costs, etc. are at all times for the account of the Client.

- 4.5 Late payment penalties amounting to three times the statutory interest rate will be automatically applied without any formal warning until full payment of the amount due. In addition, a lump sum indemnity for recovery costs of forty (40) euros will be due automatically and without prior notification.
- 4.6 If the term of payment is exceeded the Client shall additionally owe Company all extra judicial costs, including the costs incurred in drawing up and sending reminders, in carrying on negotiations with regard to a possible settlement and in carrying out any other actions in preparation of a possible legal procedure, as well as all legal expenses reasonably incurred by Van Beest.
- 4.7 Any amount unpaid by a Client to Van Beest shall be immediately due and payable if (a) a term of payment is exceeded, (b) the Client is declared bankrupt, or a petition for its bankruptcy is filed, or it files for a moratorium, to the extent permitted under applicable laws, (c) any of the Client's assets or receivables are seized or (d) the Client is dissolved or liquidated, in accordance with applicable rules and regulations.
- 4.8 Any payments made by the Client will first be used to settle any legal and non-legal expenses incurred by Van Beest and thereafter any possible interest owed or any possible damages incurred by Van Beest and will only then be deducted for the oldest invoice outstanding that was sent to the Client, regardless of whether that invoice pertains to another agreement concluded between Parties.
- 4.9 The Client is not allowed to suspend its payment obligations or to set off any claims made by Van Beest.

## **Article 5 Delivery**

- 5.1 Deliveries of Products shall be made in accordance with the Incoterm indicated in the Purchase Order Confirmation.
- 5.2 The agreed delivery time commences as from the latest of the following dates:
  - a. the day on which Van Beest has sent the Client the written Purchase Order confirmation;
  - b. the date of receipt of the advance payment due under the Agreement;
  - c. the date of receipt of the technical data, documents and/or securities to be provided to Van Beest by the Client.

However, if a Client has not paid previous due and payable invoices, Van Beest may hold back the delivery of Products ordered until these invoices have been dully paid in full.
- 5.3 If Van Beest is unable to carry out the Agreement, be it partially or in full, within the agreed term, Van Beest commits to informing the Client in writing of said fact as soon as possible.
- 5.4 Van Beest has the right to make partial deliveries as well as to invoice any partial deliveries it has carried out by separate invoice.
- 5.5 Exceeding the agreed delivery time does not entitle the Client to claim compensation nor give it the right to terminate or annul the Agreement or to suspend fulfilment of its own obligations.
- 5.6 The Client warrants that the agreed delivery address is accurate and complete and that the Products may actually be delivered at said address. If it turns out to be impossible to deliver (unload) the Products at the address indicated, Van Beest may deliver the Products, at the most suitable location in the immediate vicinity of the agreed delivery address, at its sole discretion and/or of its hauler/carrier, or ship the Products back, store them elsewhere and/or deliver them at a later date, it being acknowledged that the risk to the Products shall have passed to the Client upon the date of first attempted delivery and any additional costs shall be borne by the Client.

## **Article 6 - Risk and Retention of Title**

- 6.1 When the deliveries are EXW Sliedrecht, the risk with regard to damage, theft, loss, etc. of the Products passes to the Client at the time the Products leave Van Beest's group facility located in Sliedrecht, the Netherlands.
- 6.2 The ownership of the Products delivered to the Client will be transferred to the Client once it has paid in full the amounts due to Van Beest in respect of deliveries or services rendered under the Agreement, Purchase

Order(s) or other similar agreements, including loss, penalties, interests and costs, or once he has provided satisfactory security for the fulfilment of his obligations. Van Beest has the right to retrieve Products or to have them retrieved immediately at the location where they are being held if the Client fails to fulfil its payment obligations. The Client will fully cooperate in this instance. The Client hereby grants Van Beest the authorization to enter the premises used by or on behalf of the Client, now and in future, for this purpose. All costs incurred in retrieving the Products will be charged to the Client. Van Beest is also entitled to recover any possible damages from the Client or to invoice the Client for any reductions in Product value.

- 6.3 During the period referred to in article 6.2 above, the Client is prohibited from transferring, pawning or otherwise mortgaging the Products or to rent said Products out, lend them or release them for its control in any way whatsoever, other than in accordance with Client's standard business practices.

The Client is furthermore obliged to ensure that the Products are adequately insured during this period.

- 6.4 If a third party or third parties assert(s) any rights to Products supplied by Van Beest and subject to a restriction of right of ownership or if the Client is aware that a third party or third parties is/are planning to assert rights to the aforementioned Products, the Client will inform Van Beest of this fact immediately and in writing.

## **Article 7 Security**

Notwithstanding the agreed conditions of payment, Van Beest will be entitled at all times to demand security from the Client for the fulfilment of his obligations before commencing delivery or before continuing a delivery that has already commenced. If the Client fails to provide sufficient security for payment within the stipulated period, the Client shall be automatically be in default.

## **Article 8 - Inspection and Claims**

- 8.1 The Client is obliged to inspect the Products delivered - or have them inspected - immediately upon arrival in order to verify that they meet the agreed quantities and that they are undamaged.
- 8.2 The Client is obliged to mention any shortage of or damage to Products and/or packaging materials that are or can be detected on the delivery note, the invoice and/or the transport documents, in the absence of which Van Beest will not consider any claims on the matter. Van Beest's administrative records will be decisive in this respect.
- 8.3 In the case of mass production by Van Beest or its suppliers of Products, Van Beest will be entitled to maintain a margin in respect of the delivered Products of 5% above or below the quantity of Products ordered. Deviations within this 5% threshold shall not qualify as defaults.
- 8.4 All claims regarding visible defaults (quality or quantity, or other deviations and/or damage) must be submitted by the Client in detail to Van Beest within 3 days of receipt of the Products, in writing by email post or fax. Claims will no longer be accepted once the Client has processed the delivered Products or has them delivered to third parties.
- 8.5 All claims relating to hidden defaults upon delivery that have not been discovered during the inspection as mentioned in article 8.1 above, and which were discovered during the warranty period as mentioned in article 9.1 below, should be confirmed within a maximum of 8 days following the moment they were discovered or could reasonably have been discovered. Notifications are to be sent to Van Beest in writing, providing a clear description of the nature and scope of the default(s).
- 8.6 The decision on whether a claim reported by the Client is justified is solely to the discretion of Van Beest, which shall act in this regard as a reasonably acting supplier. Upon request, the Client shall provide Van Beest with all information that is necessary in its judgment. A default shall only exist if the Product does not fully satisfy the warranties mentioned in article 9.1 below.
- 8.7 Claims with regard to invoices are to be notified to Van Beest in writing within 8 days from date of invoice.
- 8.8 Once the aforementioned terms have expired, the Products will be deemed to have been received in good condition by the Client. Client's right to file a claim will expire on such date and complaints on the matter will no longer be examined by Van Beest.
- 8.9 The Client's right to file a claim will also expire and claims on the matter will no longer be examined by Van Beest if:

- a. The Client does not cooperate fully in the investigation made by Van Beest to determine whether the claim is justified; and/or
  - b. The Client did not treat, use or store the Products in a way which is generally viewed as reasonable.
- 8.10 Any claims made in respect of a specific Product, which was delivered amongst other Products, shall in no event entitle the Client to rescind the Agreement entirely or partially.

## **Article 9 - Warranty**

- 9.1 Van Beest solely guarantees that the Products meet the agreed specifications (as stated in the Van Beest catalogue, or expressly agreed in writing) and are suitable for the purpose for which they are developed and manufactured by Van Beest. The guarantee will in no event be valid for more than three months as from the date of delivery to the Client.

Defects caused by normal wear and tear, inappropriate and/or improper use or insufficient maintenance will, in no event, be covered by the guarantee.

- 9.2 If the Client has filed a claim in accordance with article 8 above and Van Beest considers that the claim is well-founded and the warranty period as mentioned in article 9.1 has not expired, Van Beest will, at its sole discretion:

- a. repair the default(s) of the Product concerned at its own costs; or
- b. replace the Product(s), after receipt of the defective Product(s); or
- c. refund the purchase price/credit the invoice and rescind – without court intervention – the Agreement. Both as far as the purchase price, the invoice and the Agreement relate to the defective Product(s).

Van Beest will in no event be obliged to compensate any consequential loss or other damage suffered by the Client, howsoever named.

- 9.3 Any claim the Client has made in respect of a default will terminate if the Client has made any alterations and/or repairs to the Product(s) without the prior written consent of Van Beest.
- 9.4 The Client may only invoke the warranty if it has fulfilled all of its obligations towards Van Beest.
- 9.5 Van Beest can supply third party test certificates at additional cost.

## **Article 10 - Liability**

- 10.1 Without prejudice to the content of articles 8 and 9, Van Beest is solely liable for any loss the Client suffers in the event of willful misconduct or gross negligence on the part of Van Beest, its directors and employees.
- 10.2 Van Beest is not liable for any damage caused by third parties engaged in the execution of the Agreement.
- 10.3 Van Beest is not liable for any loss the Client incurs towards third parties due to or in connection with the nature of or defects in the supplied Products or to late delivery. The Client will indemnify Van Beest against all third-party claims in connection with Products supplied to the Client by Van Beest.
- 10.4 Van Beest is in no event liable for consequential loss or any indirect damages suffered by the Client. Consequential loss is understood to include damages caused by defective Products, loss of profit, losses suffered and costs incurred, as well as loss of business opportunities and savings not realized, loss caused by interruption, delay in delivery or standstill in the production or operations.
- 10.5 Van Beest's liability shall in all instances be limited to the amount for which it is insured and payment is made under the terms of said insurance coverage. Van Beest is not obliged to exercise its rights under the terms of its insurance when its liability has been upheld.
- 10.6 Van Beest accepts no liability whatsoever for any advice it provides without express agreement.
- 10.7 Claims for compensation shall expire at the end of a six-month period following the date on which the Client became aware of the loss.

- 10.8 Van Beest reserves the right to all legal and contractual means of defense it can invoke to limit or exclude its liability towards the Client.
- 10.9 Van Beest may engage the services of third parties in the execution of the Agreement and is at all times entitled to invoke any limitations of liability invoked by these third parties against Van Beest against the Client.
- 10.10 The foregoing is without prejudice to the liability of Van Beest under mandatory statutory provisions.

### **Article 11 - Force Majeure**

- 11.1 Where the non-fulfilment of an Agreement by Van Beest is caused by circumstances beyond the control of Van Beest - even though such circumstances could have been foreseen at the time when the Agreement was concluded - such as (but not limited) war / danger of war, (threat of) terrorism, civil war, riot, severe weather conditions, revolution, and kindred risks, fire, water damage, flooding, government measures, import and export restrictions, defects to machinery, strikes, sit-ins, restrictions in transport due to weather conditions and traffic congestion, suppliers and/or subcontractors of Van Beest failing to timely fulfil their obligations, and disruptions in the supply of power and water in the business of Van Beest, the consequences will not be attributable to Van Beest.
- 11.2 Van Beest may suspend the fulfilment of its obligations in the event and for the duration of a force majeure situation. The Agreement may be rescinded by either Party in case the force majeure situation did not end within three months.

### **Article 12 - Suspension and rescission**

Without prejudice to Van Beest's remaining rights (in particular set forth in article 4.8 above), Van Beest shall be entitled to rescind the Agreement and/or the Purchase Order, partially or entirely, or to suspend the (subsequent) execution of the Agreement, without any obligation to compensate the Client, if:

- a. the Client does not fulfil or does not sufficiently fulfil its obligations under the terms of the Agreement towards Van Beest or does not fulfil these in a timely manner, even if this fact cannot be attributed to it; or
- b. certain facts have come to the notice of Van Beest, giving Van Beest good reasons to fear that the Client will not fulfil its obligations, will not fulfil them in a timely manner or will not fulfil them in their entirety; or
- c. the Client goes bankrupt, applies for a moratorium of payment, has gone into receivership or a request of that nature has been made or if the Client's company is dissolved, is on strike or has gone into liquidation, in accordance with applicable rules and regulations.

### **Article 13 - Taxes**

All taxes and duties imposed on Van Beest in the case of export, including import duties, are for the account of the Client.

### **Article 14 - Intellectual Property Rights**

- 14.1 Unless otherwise agreed in writing, Van Beest reserves all intellectual property rights in all of its offers, Purchase Order confirmations, submitted designs, illustrations, drawings, models and delivered Products and the like, regardless of whether the Client has been charged any costs for preparing these. These data and objects may not be reproduced, used, or disclosed to third parties without the prior written permission of Van Beest.
- 14.2 The Client will indemnify Van Beest against all third-party claims arising from the alleged violation of any intellectual property rights these third parties are entitled to.
- 14.3 The Client is not allowed to use the trade name(s) of Van Beest and the brands or designations such as "Green Pin®", "Green Pin Tycan®" and/or "EXCEL®" for its own business activities or to associate these with other than "Green Pin®", "Green Pin Tycan®" and/or "EXCEL®" products, without the prior written permission of Van Beest. Furthermore the Client undertakes to inform Van Beest immediately of any infringement by third parties of the trade name(s) or brands of Van Beest.
- 14.4 The Client is not allowed to remove or modify any designation of copyrights, trademarks, trade names or any other intellectual or industrial property right from the items referred to in paragraph 1 above.

- 14.5 The Client is obligated to pay a penalty of € 100.000,- (one hundred thousand euro's) for any violation of what is stipulated in this article 14. This penalty will be increased with an amount of € 25.000,- (twenty-five thousand euro's) for each day that the violation persists, to a maximum of € 500.000,- (five hundred thousand euro's), without prejudice to the remaining rights of Van Beest. The Client also owes legal interest on the aforementioned penalty from the day on which the violation has occurred.

## **Article 15 - Economic and financial sanctions**

- 15.1 The Client shall comply with any restrictive measures contained in any of the lists of products, persons, groups or entities subject to economic or financial sanctions by the United Nations, the European Union and France (the "**Lists of Economic and Financial Sanctions**") made available on the following websites (without this list being exhaustive):

- <https://www.un.org/sc/suborg/>
- [http://eeas.europa.eu/cfsp/sanctions/consol-list\\_en.html](http://eeas.europa.eu/cfsp/sanctions/consol-list_en.html)
- [http://www.tresor.economie.gouv.fr/4248\\_Dispositif-National-de-Gel-Terroriste](http://www.tresor.economie.gouv.fr/4248_Dispositif-National-de-Gel-Terroriste)

- 15.2 If the Products are registered on one of the Lists of Economic and Financial Sanctions and/or the Client's intended buyer is established in a country registered on one of the Lists of Economic and Financial Sanctions, the Client shall not import/deliver any Products to such buyer. In case an import or export authorization, issued by the relevant authority in the country in which the importer or exporter is established, is required by the United Nations, the European Union or France with regard to regulations relating to the fight against money laundering, corruption and terrorist financing (the "**Regulations on Economic and Financial Sanctions**"), the Client guarantees not to import/deliver Products without such authorization.

- 15.3 The Client shall inform Van Beest if it intends to deliver Products to a buyer established in a country to which the restrictions referred to in aforementioned paragraph 15.1 and 15.2 apply. In such case, at first request of Van Beest, the Client is obliged to inform and provide all the relevant documents to Van Beest concerning the details of such an intended customer or buyer.

- 15.4 The Client declares and guarantees to Van Beest that the funds used by him to purchase the Products are not of illicit origin under French law, as defined in Article L. 561-15 of the French Monetary and Financial Code, and in particular are not related to any organized criminal activity, any illegal trafficking of any kind, any fraud or scam, any offence referred to in Articles 432-11, 433-1, 433-2 and 445-1 and seq. of the French Criminal Code or any terrorist financing act, without this list being exhaustive.

- 15.5 The Client declares and guarantees that Regulations on Economic and Financial Sanctions are being complied with within its area of responsibility and in particular regarding third parties involved in the performance of the Agreement. With due consideration of Regulations on Economic and Financial Sanctions, the Client is obliged to impose its obligations and restrictions according to this article under an agreement with its customer(s) by way of a third party clause.

- 15.6 The Client shall indemnify and hold harmless Van Beest against any and all fines and penalties imposed on Van Beest and any and all claims, judgments, liabilities, losses, actions, debts or rights of action, of whatever kind, and all costs and expenses, including full and reasonable legal fees, arising out of any breach of Regulations on Economic and Financial Sanctions by the Client and/or any breach of the obligations as enacted in this article 15.

## **Article 16 - Applicable Law - Disputes**

- 16.1 All legal relationships between the Parties, regardless of their nature, shall be governed and interpreted exclusively according to the laws of France, specifically excluding the application the provisions of the UN Convention on the International Sales of Goods of April 1980 (Vienna Convention).

- 16.2 All disputes between the parties between Van Beest and its Client, which cannot be settled amicably within thirty (30) days (or such longer period as mutually agreed upon) from the date that either party informs the other in writing that such a dispute exists, shall be finally submitted to the Commercial Court of Paris, France to which the Parties hereby attribute full and exclusive jurisdiction for the purpose hereof.

## **Article 17 - Language**

The French translation of these Terms & Conditions is attached for information purposes only; the English version remains the sole binding version.