

# HiFi Snij-Unie B.V. General Terms and Conditions of Sale 2015

## 1 GENERAL PROVISIONS

These general terms and conditions for the sale of Products ("GTC") shall apply to any Contract except as otherwise expressly agreed in such Contract. In case of conflicting provisions, the wording of the Contract shall prevail. Any general or special purchase conditions of Buyer are hereby explicitly and entirely rejected and shall not apply to any Contract even if referred to or printed on any Order or any other document or communication of Buyer.

## 2 DEFINITIONS

The following terms shall have the following meaning:

- 2.1 "Affiliate" means, in relation to a Party, any entity which at that time, directly or indirectly, controls or is controlled by or is under common control with such Party. "Control" means having the majority of the voting rights in the shareholders meeting of the entity.
- 2.2 "Business Day" means a day other than Saturday, Sunday or a public holiday in the country of either Party, or any day when major banks are open for general business.
- 2.3 "Buyer" means the legal entity specified in the relevant Contract as purchasing Party.
- 2.4 "Contract" means any agreement for the sale and purchase of Products (a) resulting from Buyer's Order and Seller's Order Confirmation or (b) executed by Seller and Buyer, or proposed by one Party and accepted by the other Party in writing including by exchange of correspondence or email or other forms of written communication.
- 2.5 "Force Majeure" means any unforeseen circumstance beyond the reasonable control of the affected Party, including but not limited to, acts of God, fire, flood, war, terrorism, piracy, accident, explosion, labour trouble, embargoes or other import or export restrictions, shortage or inability to obtain energy, equipment, transportation, raw materials or Product, breakdown or malfunctioning of any plant, or good faith compliance with any regulation, direction or request, whether valid or invalid, made by any governmental or other authority. Payment difficulty shall not constitute Force Majeure.
- 2.6 "Incoterms" refers to the 2010 version as issued by the International Chamber of Commerce, unless the Contract explicitly refers to the 2000 version.
- 2.7 "Off-spec Products" means Products not in conformity with the Specifications.
- 2.8 "Order" means the document issued by Buyer to order Products for purchase from Seller (including any call off orders under a term Contract).
- 2.9 "Order Confirmation" means the document or other written communication issued by Seller to Buyer accepting an Order.
- 2.10 "Party" shall mean each of Seller and Buyer and "Parties" shall mean Seller and Buyer.
- 2.11 "Processing for a Fee" shall mean processing by Snij-Unie of goods made available by or on behalf of Buyer.
- 2.12 "Product(s)" means the product(s) and/or services specified in the Contract.
- 2.13 "Seller" means the legal entity specified in the relevant Contract as selling Party. In the absence of such specification Seller shall be deemed HiFi Snij-Unie B.V.
- 2.14 "Specifications" means Seller's manufacturer's specifications for a Product in effect at the time of manufacture, or such other specifications as shall have been expressly agreed in writing by Buyer and Seller in the Contract or otherwise.

## 3 ORDERS

- 3.1 Orders issued by Buyer shall become binding on Seller only upon the issuance of an Order Confirmation, or upon delivery of the Products, whichever is earlier. Seller shall determine how an Order will be executed. Seller shall have the right to have the Order wholly or partially executed by a third party without any obligation on the part of Seller to notify Buyer thereof. No changes to an Order issued by Buyer shall be binding unless Seller issues a new Order Confirmation or upon delivery of the Products in accordance with such changes, whichever is earlier. Cancellation by Buyer of an Order already confirmed by Seller is always subject to Seller's written acceptance and may be subject to compensation.

- 3.2 Any Order by and delivery to Buyer is subject to, amongst others, general credit approval and a specific credit limit set by Seller for Buyer at its reasonable discretion. In the event that at any time Buyer places an Order to Seller which, as such or cumulated with the value of previous Orders for which payment is not yet received in full by Seller, exceeds the credit limit(s) set by Seller, Seller shall promptly inform Buyer and shall be entitled at its absolute discretion, at any time, thereby informing Buyer, to suspend or cancel such Order, or all or part of any delivery under such Order, including any Order for which an Order Confirmation has already been sent to Buyer and without any liability, for as long as such credit limit is exceeded or until Buyer provides security acceptable to Seller in respect of any amount in excess of the credit limit.

- 3.3 In case Buyer purchases 'make to order' Products from Seller on a continuous basis, Buyer shall send prior written notification to Seller in case Buyer decides to no longer order or phase out ordering of volumes of such special Products to be manufactured by Seller, failing which Buyer shall have the obligation to purchase any stock of such Product based on forecasted volumes. For the avoidance of doubt, this clause does not create an obligation for Seller to deliver such Products to Buyer and such obligation will only arise through an Order Confirmation.

## 4 DELIVERY

- 4.1 Seller shall deliver and Buyer shall take Products at the delivery point and in accordance with the delivery term specified in the Contract. Delivery may be made in instalments. If no delivery term is specified in the Contract, the applicable delivery term shall be EXW (Incoterms 2010).
- 4.2 A variation in quantity of delivered Product of up to 10% from the quantity specified in the Contract shall be deemed accepted by Buyer. The quantity recorded on Seller's officially calibrated weighing equipment at the point of loading shall be accepted by Parties as correct. In any event Buyer shall be invoiced and shall pay the quantity actually delivered.
- 4.3 Delivery dates indicated in Order Confirmations are estimates. However, Seller shall use commercially reasonable efforts to observe the estimated time and date or time window of delivery confirmed by Seller in the Order Confirmation. Seller shall in no event be liable for any loss or damage whatsoever incurred by Buyer due to a delay in delivery or non-delivery. If Buyer refuses to accept delivery of the Product or when such delivery is not possible due to circumstances that are attributable to or for the risk of Buyer, Seller may, without prejudice to its other rights and remedies, arrange for the storage of the Product at the expense and risk of Buyer.

## 5 PRICE, INVOICES AND PAYMENTS

- 5.1 The price of the Product and the currency of payment shall be as specified in the Order Confirmation or, if not so specified, by Seller's listed prices in effect at time of shipment.
- 5.2 All prices are for deliveries in accordance with the delivery term stated in the Contract or in these GTC and include standard packaging costs. All prices are exclusive of any taxes, levies and other charges, whether of a general or of a special nature, and shall be charged to and due and payable by Buyer. Buyer shall provide Seller with all information and documentation required to determine the VAT regime applicable to the sale and delivery of Products to Buyer (and when failing to do so it shall indemnify Seller against any cost and losses incurred by Seller as a result).
- 5.3 Seller shall be entitled, up to the time of shipment and with at least fifteen (15) days prior written notice, to increase the purchase price to be paid by Buyer for Products (including without limitation in the event of any increase in the cost of procuring raw materials, wage and non-wage labour costs, energy costs, import and export costs, taxes, duties or other levies and costs based on environmental regulations or a modification of rates of exchange), also in relation to individual Orders that have already been confirmed by an Order Confirmation and Buyer hereby (now for then) accepts such increases.
- 5.4 Seller shall be entitled at its discretion to issue invoices to Buyer in digital format via e-mail. Such e-invoices shall be deemed originals. Upon Seller's request, Buyer shall be responsible for providing a dedicated and secure e-mail address and will give Seller at least a five (5) days written notice before changing such e-mail address.
- 5.5 Payments shall be received on Seller's designated bank account ultimately within thirty (30) days of the invoice date. Seller shall be entitled to issue an

invoice to Buyer as of the date of loading of the Product. Payments due on any day which is not a Business Day shall be received on the last Business Day prior to such day. Seller may at all times assign its invoices to a factoring company in which case payments shall be made into the account mentioned on the invoice.

- 5.6 Without any notice of default being required to that effect, Buyer shall pay on demand interest on any amount not received by Seller on the due date from the due date up to and including the date of actual payment at the rate of the statutory interest for commercial transactions applicable in the country of Seller. Such interest may be invoiced separately by Seller. Buyer shall reimburse Seller for Seller's full costs of collection and related legal costs.

- 5.7 If Buyer fails to pay any amount and such amount is not received by Seller on the due date, upon Seller's written demand all other amounts owed by Buyer to Seller but not yet due, shall become immediately due and payable on the date indicated by Seller in its demand.

- 5.8 Payments shall be made without any deduction, withholding, set off or counterclaim of any amount, and regardless of any amount being disputed.

## 6 OWNERSHIP

- 6.1 Notwithstanding delivery, and without prejudice to the transfer to Buyer of the risk of loss or of damage to the Products according to the relevant Incoterm, title in the Products shall remain vested exclusively in Seller until Buyer has paid in full the price for such Products.

- 6.2 During the period in which title in the Products remains vested in Seller, Buyer holds the Products as bailee for Seller and Buyer shall identify and, insofar as the nature of the Products permits, store the Products separately or in a manner that they cannot be confused with other goods or, where this is not possible, specifically record the volume of Products belonging to Seller contained in any common storage. Buyer shall insure the Products against all risks at their full replacement value. Buyer may use or sell such Products in the ordinary course of business, subject to clause 6.3 and 6.4.

- 6.3 In the event Buyer sells the Products referred to in clause 6.2, any Buyer's claims towards third parties who purchase such Products and any and all proceeds from the sale of such Products are hereby assigned to Seller, who accepts such assignments. Seller may terminate the rights of Buyer to hold and use the Products by written notice in the event the payment of any invoice related to Products delivered to Buyer becomes overdue. Such rights shall automatically terminate in case of suspension of payments, controlled administration, insolvency, bankruptcy, liquidation, winding-up, (or the equivalent under any jurisdiction) involving Buyer, or Buyer enters into an arrangement with its creditors. Upon termination of such rights: (a) all sums owed by Buyer shall become immediately due and payable; (b) Seller shall be entitled to retake possession of the Products and for any such purposes shall be granted access to Buyer's premises.

- 6.4 In the event that Buyer uses the Products referred to in Article 6.2 and Products are processed or otherwise mixed with other goods to form a new product, upon manufacture of such new product title therein shall be vested in Seller pro-rata, on the basis of the value of the Products over the value of such new product and in respect of each such new product the provisions of this Article 6 shall apply *mutatis mutandis*. If the foregoing is not fully valid or enforceable under applicable law, the rights of Seller shall be valid and enforceable to the maximum extent possible.

## 7 WARRANTIES AND LIABILITIES

- 7.1 a) Seller warrants that at the time of delivery in accordance with the applicable Incoterm, it shall have good title to the Products and the Products shall be free of liens and encumbrances.

b) Seller further warrants that at the time of delivery in accordance with the applicable Incoterm, the Products shall conform to the Specifications. For avoidance of doubt, properties relating to Products contained in any product documentation do not constitute Specifications. This limited warranty is given only to Buyer and does not extend to any subsequent purchaser or transferee of Products.

c) In the event of Processing for a Fee, Seller shall only warrant the correctness and reliability of the services rendered for a period of three months, commencing on the date of processing of the respective goods. The reliability or suitability of the

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- goods so processed shall not be guaranteed. If Processing is performed free of charge, no warrantee shall apply.
- 7.2** Any representations and warranties in relation to Products delivered by Seller other than stated in clause 7.1 (including but not limited to any representations and warranties in relation to the composition, properties, quality, performance or freedom from any defects, whether known or unknown to Seller), statutory or otherwise, are hereby excluded, insofar as such exclusion is permitted by law and except for written limited warranties for specific sheet or film products. Warranties on merchantability and fitness for purpose are hereby explicitly excluded. No such warranties are to be implied from the name or description under which Products are sold or from the fact that a purpose is known or from any advice given by Seller, its employees or agents or Affiliates.
- 7.3** Any claims by Buyer shall be reported to Seller in writing within forty-eight (48) hours after Buyer becomes aware or should have become aware of the grounds of such claims, failing which Buyer shall no longer be entitled to raise and enforce such claim. With respect to any claim for breach of Seller's warranty set forth in clause 7.1, Buyer shall not be entitled to raise claims against Seller nor start legal proceedings after the date Products are processed, resold or otherwise disposed of, or after one hundred and eighty (180) days from the date of shipment, whichever comes first.
- 7.4** Should Seller be liable as a result of breach of the warranty in clause 7.1, Seller's total liability shall be limited to the replacement of the Off-spec Product with Product in compliance with the warranty or, if so agreed by the Parties, the reimbursement of the purchase price paid for Products related to which the warranty has been breached. This remedy is Buyer's exclusive remedy for breach of warranty and defects in the Products. Insofar as permitted by law, Seller's total liability to Buyer arising out or in relation to a Contract, whether in contract, tort (including negligence) or otherwise, for any loss or damage incurred by Buyer as a result of any breach of a Contract by Seller shall be limited to an amount equal to the purchase price of the Products related to which the claim is raised.
- 7.5** In no event shall Seller be liable for any indirect, consequential or special damages (which are agreed to include but not be limited to loss of profit or turnover, costs resulting from delays, damages to any products, installations and property).
- 7.6** Buyer agrees to indemnify, defend and hold Seller harmless from all losses, damages and costs (including reasonable legal costs) incurred in connection with any third party claims, including intellectual property infringement claims, resulting from the sale of Products to Buyer, the processing or sale by Buyer of Products or other goods manufactured using Products and for which Seller is not liable under these GTC.
- 8** **TECHNICAL ADVICE AND OTHER SERVICES**
- Buyer is responsible for the design, processing, testing and labelling of any product produced using Seller's Products. Seller does not control or influence the use, conversion, processing of Products by Buyer and manufacturing by Buyer. Buyer shall not rely on any representation or statement made by, or on behalf of, Seller with respect to the suitability of any Product for any purpose, or on any advice, recommendation or information obtained in Seller's product literature or web sites, including any design aid or other service made available by Seller. Buyer shall have full responsibility to test and investigate the Products sufficiently to form an independent judgment concerning their suitability for the use, conversion or processing intended by Buyer. Seller shall not be liable for advice, statements, information, services or recommendations given or made to Buyer.
- 9** **FORCE MAJEURE**
- 9.1** Neither of the Parties shall be liable for any breach, non-performance or delay in performance of a Contract caused by Force Majeure.
- 9.2** In the event of any Force Majeure, Seller shall have no obligation to procure Products from any third parties in order to comply with any obligations under a Contract nor shall Seller be required to make up for any quantities not supplied during the period of Force Majeure or to extend the period of any Contract to this effect.
- 10** **SUSPENSION AND TERMINATION**
- 10.1** If at any time (a) Buyer is in material breach of a Contract and where such breach is remediable, fails to remedy it within thirty (30) days from the date the breach occurs, (b) Buyer fails to pay any invoice when due, (c) the credit position of Buyer has significantly deteriorated, (d) the credit rating of Buyer or any parent company of Buyer by any credit agency is downgraded or is discontinued, (e) an attachment, sequestration or other similar process is enforced upon assets of Buyer and is not discharged within fourteen (14) days, (f) Buyer passes a resolution for winding up or if a court makes an order to that effect, (g) there is an application for or the initiation of any proceedings for the bankruptcy, insolvency, winding up, administration, liquidation of or other similar proceedings relating to Buyer other than where such proceedings are being contested in good faith and with due diligence and are discharged within fourteen (14) days of commencement of such proceedings, (h) a receiver, administrator, trustee or other similar official is appointed in relation to Buyer or to the whole or a part of its assets, (i) Buyer enters into any composition with creditors generally, or (j) any person acquires the Control of Buyer; then in each such case Seller shall be entitled to (1) suspend its obligations under the Contract(s), including but not limited to the supply of Products to Buyer, including under any accepted Orders and or any Products in transit, or suspend acceptance of any further Orders from Buyer, as Seller in its discretion may deem fit at that moment; and/or (2) require Buyer to provide Seller with a security acceptable to Seller or pay for any deliveries by cash in advance and/or (3) terminate any Contract immediately by written notice to Buyer without any liability of Seller for any such termination.
- 10.2** The termination of any Contract shall be without prejudice to any rights or obligations which accrued prior to such termination and shall not affect Articles 6 (*Ownership*), 7 (*Warranties and Liabilities*), 11 (*Confidentiality*) and 15 (*Applicable Law and Dispute Resolution*) which shall survive any such termination.
- 11** **CONFIDENTIALITY**
- The content of any Contract and/or any information received from Seller in connection with any Contract shall be held strictly confidential by Buyer and shall not be disclosed or made accessible by Buyer to any third parties without the prior written consent of Seller, provided that Buyer may, without such approval of Seller being required, disclose any such information to: (a) its employees or its Affiliates' employees to the extent reasonably necessary for the performance of the relevant Contract, provided that such employees are bound by confidentiality obligations not less stringent than contained in these GTC; or (b) to the extent required by any applicable laws, any governmental authority or court order. Buyer's obligations referred to in this clause shall not apply to any information, which Buyer can prove by written evidence: (a) is or through no breach of these GTC by Buyer becomes generally known or available to the public; (b) is known to Buyer at the time of disclosure; (c) is after disclosure by Seller disclosed to Buyer in good faith by a third party without breach of an obligation of secrecy to Seller; or (d) was developed by or on behalf of Buyer independently of the information received from Seller.
- 12** **INTELLECTUAL PROPERTY**
- Any sale of Products, or suggestions Seller makes about possible applications, designs or uses of Seller's Products shall not, by implication or otherwise, convey any license to or transfer of any intellectual property rights related to the Products and owned by or licensed to Seller and/or its Affiliate(s) nor are they a recommendation for use of such Products, applications or designs which may infringe any intellectual property right. Buyer assumes all risks of any intellectual property infringement claims resulting from the use, (re)sale or processing of the Products, whether singly or in combination with any other materials. In the event that Buyer receives any claim from a third party alleging that Products, as delivered to Buyer, infringe such third party's intellectual property rights, Buyer shall promptly inform Seller and, Buyer shall strictly follow Seller's instructions in any response to such claim. In such case, Seller shall have the right to defend Buyer and if necessary will either, at Seller's discretion, if possible replace such Products with non-infringing Products or, refund the purchase price of such Products. The foregoing sentence states the entire obligation of Seller for intellectual property infringement by any Product sold under the Contract.
- 13** **TRADE CONTROL AND HSE COMPLIANCE**
- 13.1** Buyer acknowledges that information, Products and material provided under any Contract may be subject to economic sanctions, export and import regulations, and any use or transfer of controlled information, Products and materials, and/or their direct products, must be authorized under those regulations of the government of the country or territory where the information and materials are being imported, exported, or re-exported. Buyer agrees that it will comply with all applicable economic sanctions, export and import regulations of the government of the country or territory where information, Products and materials are being imported, exported, or re-exported.
- 13.2** Buyer shall ensure that at any time (including without limitation during delivery or collection, handling, storage, treatment, transport, use and commercialisation of Products) itself, its contractors or any other party acting on its behalf, complies with all applicable laws and regulations related to health, safety and environment, the recommendations in the material safety data sheets (MSDS), all safety and other procedures in force at the relevant delivery point, and in any event in a manner consistent with the standards of a reasonable and prudent operator. Buyer will take all precautions as may be appropriate for hazards identified in the MSDS and properly manage and dispose of all wastes and residues resulting from its use of Products, including any disposable packaging, in accordance with applicable laws and regulations.
- 13.3** In the event of a breach of the provisions in this Article 13, Buyer shall fully indemnify, protect, defend and hold harmless Seller and its Affiliates, officers, directors, agents and employees from and against any and all claims, losses and liabilities attributable to any such breach. Without prejudice to any other express remedies referred to elsewhere in the Contract or any rights or remedies available at law, in the event of a breach of this Article 13 by Buyer, Seller shall have the right to take whatever action it deems appropriate including the right to terminate, and suspend performance under, any Contract with immediate effect and without any liability by Seller for any other loss or damage arising as a result of such termination or suspension.
- 14** **MISCELLANEOUS PROVISIONS**
- 14.1** No Contract is assignable or transferable by either Party to any other party without the prior written consent of the other Party, provided however that such written consent shall not be required in case of an assignment or transfer to any Affiliate of Seller.
- 14.2** Any delay or failure in the exercise of any right under a Contract and/or these GTC shall not represent a waiver or forbearance of such right and shall not prejudice the future exercise of such right.
- 14.3** If, at any time, any provision of these GTC is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the remaining provisions shall not in any way be affected or impaired thereby.
- 14.4** No modification of or deviation from these GTC and/or the Contract shall be effective between Buyer and Seller unless it is a written amendment, expressly stated as such, and duly signed on behalf of both Seller and Buyer.
- 15** **APPLICABLE LAW AND DISPUTE RESOLUTION**
- 15.1** These GTC and any Contract and all relationships arising out of or related thereto, shall be exclusively governed by the laws in the jurisdiction of the Seller, except Article 6 (*Ownership*) hereof which shall be governed by and enforced in accordance with the law of the country where the relevant Products or other goods are located at the time in question.
- 15.2** Any dispute arising in any manner out of or related to these GTC or any Contract shall be submitted to the exclusive jurisdiction of the courts in the jurisdiction of the Seller, Seller shall however be entitled at its discretion to resort to any competent court in any jurisdiction in the event of breach by Buyer of any payment obligation or to enforce any property rights set out in Article 6 (*Ownership*).