



## **GENERAL CONDITIONS**

### **General Conditions of Sale and Delivery of CoalesSense B.V.**

#### **1. GENERAL STIPULATIONS**

- 1.1 These conditions apply to all our offers and agreements.
- 1.2 'The Other Party' means the party who by signing the document or in another manner has accepted the validity of the General Conditions.  
'Products' means the material objects capable of human control.
- 1.3 Additional and/or deviating conditions of another Party, including the Other Party's purchasing conditions, are not binding on us unless they have been accepted by us in writing.

#### **2. SECRECY**

- 2.1 The Other Party is obliged not to disclose any information of a confidential nature which could be received from us in the context of the agreement. The Other Party may only use such confidential information if and in so far as required for the execution of the agreement. Information provided by us must be returned by the Other Party on our first demand.

#### **3. OFFER AND AGREEMENT**

- 3.1 All our offers, also as regards prices, are always without obligation.
- 3.2 Descriptions in offers, such as illustrations, catalogues, drawings or statements concerning weight, construction, finishing, colours, etc. are as accurate as possible, but are not binding on us. We reserve the right to make alterations of a technical nature.

#### **4. DELIVERY AND DELIVERY TIME**

- 4.1 All our delivery periods are set to the best of our knowledge and will be observed as far as possible, taking account of our processing capability and our stocks. Except for gross negligence on our part, exceeding the delivery times does not entitle the Other Party to dissolve all or part of the agreement, nor to any compensation.
- 4.2 Delivery is ex warehouse in the Netherlands, including packaging. An administrative charge is made for deliveries below a specified minimum.

- 4.3 The Other Party is not entitled to turn down or refuse delivery or acceptance of Products on the mere ground that minor defects occur which do not stand in the way of the normal use of the Products in accordance with the agreement.

## **5. PRICES**

- 5.1 The prices stated by us are without obligation and depend on price changes made by our suppliers, exchange rate fluctuations and/or other factors determining prices.
- 5.2 Our price lists and other price indications do not constitute an offer. We explicitly reserve the right to alter our price lists and other price indications, as well as the categories of the products in them, if the market gives us reason to do so.

## **6. COMPLAINTS AND RETURNS**

- 6.1 The Other Party is obliged to inspect the Products immediately on arrival in the carrier's presence. Complaints about missing or unordered Products or damage caused in transit must be reported to the carrier immediately, with due observance of the carrier's applicable instructions. If the Other Party does not do this, it will be deemed to have accepted the Products and claims against us relating to missing or unordered Products or damage caused in transit will lapse.  
The Other Party must inform us in writing, giving proper reasons, of complaints about visible defects to the Products or complaints about work carried out by us within 8 working days of the delivery of these Products or of the end of the work, as the case may be. If this period is exceeded any claim against us with respect to visible defects in the Products or work carried out by us will lapse.
- 6.2 The Other Party must enable us to investigate the complaint. In the event that a complaint about Products supplied by us is declared well-founded, we will be entitled to repair the Products concerned, to replace them with similar Products, or to refund the purchase price as referred to in Article 11.2.
- 6.3 Submitting a complaint does not postpone the Other Party's payment obligation with respect to the disputed deliveries or work and the Other Party will not be entitled to dissolve this agreement.

## **7. PAYMENT**

- 7.1 If there is no written complaint about the contents of our invoices within three working days of the invoice date, the invoices will be deemed to be completely in order and to contain a correct description of the Products, services, prices and other conditions agreed on, subject to proof to the contrary by the Other Party.
- 7.2 Our invoices must be paid in full not later than 30 days after the invoice date, unless

explicitly agreed otherwise. From the 30th or another day agreed on, interest will be charged on the outstanding part of the invoice without notice of default being required which on an annual basis is equal to the statutory interest plus 2%, in which respect part of a month is counted as a whole month, as well as the legal and other collection costs if we are obliged to instruct a third party to effect collection. The extra judicial collection costs will be charged in accordance with the degressive collection rate of the Netherlands Bar Association.

- 7.3 Payments made by the Other Party will first be applied to settle all interest payable and (legal and/or other) costs and subsequently those invoice amounts which have been outstanding for the longest period, even though the Other Party has stated that the payment relates to other invoices.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 All intellectual property rights, including patent rights, copyrights and trademark rights in offers, drawings, diagrams, designs, lists of materials, equipment or other means of production and Products supplied or made available by us to the Other Party will be vested exclusively in us or our licensors.
- 8.2 Payments by the Other Party relating to the Products as referred to in Article 8.1 may not be regarded as an assignment of an intellectual property right or as licensing such a right.

## **9. LIABILITY AND INDEMNIFICATION**

- 9.1. In the event of an attributable shortcoming in the fulfilment of the agreement we will not be liable for loss incurred by the Other Party, without prejudice to the provisions of Articles 6 and 10, unless this loss is due to an intentional act or gross negligence. The burden of proof with respect to this intentional act or gross negligence lies with the Other Party.
- 9.2 The compensation paid by us for an attributable shortcoming in the fulfilment of the agreement will in no case exceed 100% of the amounts invoiced by us to the Other Party to the agreement (exclusive of turnover tax).
- 9.3 In the event of an unlawful act by us or our employees or subordinates for which we can be held liable in law, we will only be liable for compensation for loss caused by death or bodily injury or for other loss, the latter in so far as caused by an intentional act or gross negligence. The burden of proof relating to this intentional act or gross negligence lies with the Other Party. In these cases the compensation will in no case exceed 1 million euros per loss-causing occurrence, whereby a series of connected incidents will count as one incident.

- 9.4 Liability for us for loss due to an unlawful act other than as referred to in Article 9.3 is explicitly excluded. If and to the extent that this cannot be relied on, the compensation per occurrence, whereby a series of connected incidents will count as one incident, will in no case exceed the price (exclusive of turnover tax) stipulated in the agreement between the parties in the context of which the incident occurred at the time of the inception of the agreement, but will never exceed 1 million euros.
- 9.5. If the Other Party with due observance of the provisions of Articles 6 and 10 resells the Products to third parties, the Other Party will indemnify us against all loss which we could incur as a result of claims made by third parties relating to Products supplied by us, including defects in the Products, except in the event of an intentional act or gross negligence on our part.
- 9.6 The Other Party instructing us to produce Products in conformity with drawings, models, samples and suchlike provided by the Other Party will indemnify us against all claims by third parties which could arise because this production violates intellectual property rights of third parties.

## **10. WARRANTIES**

- 10.1 We provide a 12-month warranty, but exclusively for invisible defects in the Products supplied by us, with due observance of the arrangement in Article 6 for visible defects in Products supplied by us. Our warranty obligation implies that if the claim under the warranty by the Other Party is found correct by us, we will either replace the Products supplied free of charge or credit the amounts paid for these Products, at our discretion.
- 10.2 The claim under the warranty as referred to in Article 10.1 must be submitted to us immediately on discovery, but in any event within the warranty period applicable to the Other Party, together with a written, specified statement and if possible simultaneously with the Products to an address to be determined by us. It is up to us to decide whether Products qualify for replacement or compensation. Replacing the Products as referred to in Article 10.1 can only mean the replacement of the defective parts and bringing them in conformity with our standard specifications, taking account of the applicable tolerances.
- 10.3 If the warranty period is exceeded, any claim against us with respect to the defects concerned will lapse. Legal action in this respect must be brought within 1 year of the complaint being made in good time, at the risk of such a claim lapsing.
- 10.4 The warranty does not cover defects which are completely or partially the result of:
- a. not observing the operating and maintenance instructions or use other than the anticipated normal use;
  - b. normal wear and tear, normal life (kits);



- c. repairs or installations of Products by third parties, including the Other Party and/or end user.
- d. supply by third parties;
- e. observance of rules of the government or semi government.

10.5 The alleged non-fulfilment by us of our warranty obligations does not discharge the Other Party from the obligations arising for it from one of the agreements concluded by us.

10.6 If the Products infringe a third party's intellectual property rights we will only be obliged, at our discretion, either to obtain the right for the Other Party to continue to make use of the Products or to alter the Products in such a way that they no longer infringe these intellectual property rights.

## **11. RETENTION OF TITLE**

- 11.1 All Products supplied to the Other Party remain our property until all amounts payable by this Other Party for the Products supplied or to be supplied under the agreement or work carried out or to be carried out, as well as the amounts referred to in Article 7.2 and the other costs and/or compensation, have been paid to us in full.
- 11.2 If payment of an amount payable is not made on time, in the event of the application for a moratorium on payment, bankruptcy or involuntary liquidation or winding up of the Other Party or its company, the Other Party's death, the dissolution or termination of the Other Party's company and if the Other Party gives us good reason to fear that it will not fulfil its obligations towards us, we will be entitled to dissolve the agreement wholly or partially without notice of default being required and without judicial intervention and/or to claim all the Products subject to our retention of title as our property and for this purpose remove these Products from the Other Party's premises at its expense. The Other Party is obliged to cooperate in this at any time by allowing us unhindered access to the Products. In these cases any claim we have against the Other Party will be due and payable immediately.
- 11.3 If we claim the Products subject to our retention of title as our property pursuant to Article 11.2 and for this purpose remove these Products from the Other Party's premises, our claim for payment of the total amount payable to us by the Other Party for the Products supplied or work carried out under the agreement plus the amounts referred to in Article 7.3 and the other costs and/or compensation will be set off against the market value of the Products which have been repossessed at the time of removal. This market value will be equated with the sales proceeds after a private or public sale of the repossessed Products.

## **12. APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- 12.1 All our offers and agreements are exclusively governed by Dutch law.
- 12.2 Disputes between us and the Other Party will be submitted to the Court of Amsterdam, in so far as statutory provisions do not oppose this.
- 12.3 The fact that any clause in the present General Conditions is nullified or otherwise loses its validity does not affect the validity of the other clauses.

## **13. ALTERATIONS**

We reserve the right to alter all or certain parts of these General Conditions for specified Products of Other Parties. This version was drafted in 2005 and filed with the Chamber of



Commerce Haaglanden, The Hague, The Netherlands