

General conditions of sale

CLAUSE 1. APPLICABILITY

- 1.1 These General Conditions shall apply to all inquiries, offers and Agreements in which one or more of the subsidiaries and/or participations of Brink Towing Systems B.V. (hereinafter called "Brink") act or acts as a seller of goods.
- 1.2 Variations to these General Conditions may only be agreed upon in writing.
- 1.3 Any other general conditions, irrespective of the name given thereto, of the contracting party of Brink (hereinafter called "the Other Party") shall not apply.

CLAUSE 2. OFFERS

- 2.1 Offers by Brink, as well as other information contained in price lists and other documentation materials, such as prices, dimensions, colours and other specifications, shall be without engagement and shall be subject to changes, unless the contrary shows from the relative documents.
- 2.2 In the event that the Other Party does not accept an offer of Brink, it shall forthwith return to Brink the offer and all accompanying documentation.
- 2.3 Brink shall be entitled to charge to the Other Party the expenses involved with (the making of) an offer, provided that Brink has notified the Other Party thereof in writing in advance.

CLAUSE 3. AGREEMENTS

- 3.1 If the Other Party on the basis of an irrevocable offer of Brink places a written order, the Agreement shall be concluded at the moment the order is received by Brink.
- 3.2 In the event that a written order by the Other Party is not preceded by an offer of Brink, or follows an offer of Brink that is without engagement, then the Agreement is concluded at the moment that either the written confirmation of order is sent by Brink, or Brink commences the performance of the Agreement.
- 3.3 If and in so far as the procedure as referred to in the paragraphs 1 and 2 of this Clause takes place by means of EDI (Electronic Data Interchange) or fax, the EDI and fax messages shall be deemed equal to written documents.
- 3.4 When agreement is reached as described in the subclause above, this implies that the other party waives any right to apply its own terms and conditions.

CLAUSE 4. PRICES

- 4.1 The prices shall be stated in Euro's, exclusive of VAT, and shall be based on the delivery condition laid down in Clause 5 paragraph 2 hereof.
- 4.2 If there is an increase of one or more factors that determine the price, such as purchase prices, prices of materials or parts, labour costs,

charges, taxes, currency exchange rates and the like after the conclusion of the Agreement but before delivery, Brink shall be entitled to adapt the sales prices accordingly.

- 4.3 Brink shall notify the Other Party as soon as possible in writing of the prices adapted pursuant to paragraph 2 of this Clause.
- 4.4 If the increase in price amounts to more than 10% of the original price, the Other Party shall be entitled to terminate the Agreement in writing within seven days after receipt of the aforementioned notification, unless this would be obviously unreasonable in view of the circumstances. Termination of the Agreement pursuant to this Clause shall give none of the parties the right to claim reimbursement of any damage suffered.

CLAUSE 5. DELIVERY

- 5.1 The interpretation of the delivery conditions shall be governed by the "Incoterms", 1990 edition, as issued by the International Chamber of Commerce in Paris.
- 5.2 Delivery shall be made ex works, unless otherwise agreed.
- 5.3 The agreed periods of delivery shall under no circumstances be considered as being of the essence to the Agreement.
- 5.4 Brink shall do all that is reasonably possible to realize the delivery within the agreed term of delivery. As soon as Brink has knowledge of facts and/or circumstances that render the delivery within the agreed term impossible, it shall as soon as possible notify the Other Party thereof while stating the prospective new term of delivery.
- 5.5 If the obstruction of the performance as referred to in the previous paragraph continues for a period longer than three months after the term of delivery originally agreed, the Other Party shall be entitled to terminate the Agreement by means of a registered letter, without the parties being held toward each other to pay any damages.
- 5.6 If Brink for the purposes of execution of the Agreement needs information and/or documentation of the Other Party and/or third parties, or if certain formalities are to be fulfilled, the term of delivery shall start to run at the moment that all information and/or documentation is in the possession of Brink and/or all formalities have been fulfilled.
- 5.7 Brink shall have the right to make deliveries in parts.
- 5.8 If the Other Party fails to receive the goods at the time agreed, the risk with respect to the goods shall devolve from Brink upon the Other Party at the moment that the Other Party is in default, and Brink shall store and insure the goods for a reasonable period thereafter, all this at the expense and at the risk of the Other Party.

CLAUSE 6. OWNERSHIP

- 6.1 The ownership of the goods shall devolve from Brink upon the Other Party only after the Other Party shall have paid to Brink the purchase price and all that the Other Party shall be due to Brink under any purchase Agreement, as well as pursuant to claims (if any) resulting from its failure to perform its obligations under such Agreement(s).
- 6.2 The Other Party shall not be allowed to alienate, encumber, or establish any restricted right on the goods delivered to it under the retention of ownership, nor shall it in any other way dispose thereof in violation of the ownership retention, other than within the framework of its normal conduct of business.
- 6.3 In the event that the Other Party fails to perform its obligations under the Agreement, it shall by force of law be in default, and Brink shall - without prejudice to the provisions laid down in Clause 14 - be entitled without any further notification of default being required, to take back all goods on which an ownership retention rests. The Other Party shall give Brink the opportunity to do the same, and shall grant Brink access to the place(s) where the goods are located.

CLAUSE 7. PAYMENT

- 7.1 Payment shall at the option of Brink either be made cash on delivery, or within 30 days after delivery.
- 7.2 The payments made by the Other Party shall in the first place be used to pay any expenses and interests due, and secondly to pay the outstanding invoices that are overdue the longest (if any), even in the event that the Other Party states that the payment relates to an invoice of a later date.
- 7.3 In the event that the Other Party fails to pay in time, it shall by force of law be in default without any further notification of default being required, and it shall be held to pay the statutory interest increased with 2 % over the amount due for the duration of the default.
- 7.4 All in and out of court expenses that Brink has to make in order to recover its claim(s) on the Other Party shall completely be at the expense of the Other Party. The out of court expenses shall be established at 15 % of the outstanding amount with a minimum of Euro 250.--.
- 7.5 Brink shall be entitled in cases to be determined in its discretion, by way of security for the performance of the obligations of the Other Party under the Agreement:
 - to deliver the goods cash on delivery exclusively;
 - to demand advance payment in full or in part;
 - to demand that the Other Party shall arrange that a credit institution that is acceptable for Brink grants an irrevocable and unconditional bank guarantee.

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- 7.6 The expenses to be made in respect of the provisions laid down in paragraph 5 of this Clause shall be borne by the Other Party.
- 7.7 The Other Party shall not be allowed to set off claims it has on Brink with claims Brink has on the Other Party and/or to suspend payment obligations.

CLAUSE 8. ANCILLARY MATERIALS

- 8.1 The estimates, catalogues, pictures, drawings, specifications and other documents given at the disposal of the Other Party by Brink, as well as all models, moulds, matrices, stamps, tools and other ancillary materials used by Brink in carrying out the Agreement, including the ancillary materials that are bought or manufactured by Brink especially on behalf of the delivery to the Other Party, shall at all times remain the property of Brink.
- 8.2 The Other Party shall with respect to the documents and ancillary materials given at its disposal be obliged at its own expense:
- to mark them the same as the recognizable property of Brink;
 - to keep them in a good condition;
 - to insure them against all risks as long as it shall act as the custodian of the said ancillary materials;
 - to give them at the disposal of Brink at its first request.
- 8.3 The Other Party shall refrain from multiplying or copying the aforementioned documents or ancillary materials, from giving them at the disposal of third parties for inspection purposes, from handing the same over to third parties, from using them or having them used by or on behalf of and from transferring them to third parties, whether or not as a security, except with the previous consent in writing of Brink.

CLAUSE 9. TRANSFER OF RIGHTS AND OBLIGATIONS

Brink reserves the right to contract out to third parties the performance of its obligations under the Agreement entirely or in part.

CLAUSE 10. INDUSTRIAL AND INTELLECTUAL PROPERTY

- 10.1 If the Other Party has prescribed a specific construction, kind of material or working method, the Other Party shall indemnify Brink from and against any rights of third parties with respect to such construction, kind of material or working method, and it shall reimburse the damage suffered by Brink and/or third parties as a result thereof.
- 10.2 Brink herewith reserves all intellectual and industrial property rights with respect to the delivered goods - also in the event that these have been developed in cooperation with the Other Party - as well as with respect to the documents and ancillary materials described in Clause 8 paragraph 1.
- 10.3 At the first request of Brink, the Other Party shall provide its cooperation with respect to formalities that are required to establish

and/or to confirm the property rights referred to in the previous paragraph.

CLAUSE 11. SECRECY

- 11.1 The Other Party guarantees that it shall keep secret towards third parties all business information coming from Brink, that in any way whatsoever has come or has been brought to its knowledge.
- 11.2 The business agreement reached as a result of combined developments by Brink and the other party may not, without written permission by Brink, be used for the purposes of any third party.

CLAUSE 12. GUARANTEE

- 12.1 Brink guarantees that the delivered goods or parts thereof shall for the duration of a period of 12 months after delivery be free from defects that are the direct result of faulty materials, faulty construction or of manufacturing errors.
- 12.2 In contravention to the provisions laid down in paragraph 1 of the present Clause, the guarantee for goods bought by Brink from third parties or that were developed and/or manufactured by third parties as ordered by Brink, shall be limited to the guarantee that Brink shall be able to realize with these third parties.
- 12.3 An invocation of the guarantee shall only be considered by Brink if this is submitted to Brink in writing either within 14 days after the defect has been detected, or within 14 days after the defect could reasonably have been detected.
- 12.4 All claims with respect to guarantees shall lapse if:
- the Other Party without the prior consent of Brink makes alterations to or repairs the delivered goods or lets third parties do the same;
 - the delivered goods are injudiciously used and/or used for other purposes than the original, normal purposes;
 - the user manual, or the mounting or assembly instructions have not strictly been adhered to;
 - with the mounting or assembly other parts than the original (and delivered) Brink parts have been used;
 - the defect is the result of other causes than faulty materials, faulty construction or manufacturing errors;
 - delivery of used (second hand) materials, parts or goods has been agreed;
 - the Other Party fails to perform obligations arising from the Agreement;
 - there are prescribed constructions, materials or working methods that have been provided for or prescribed by the Other Party;
 - there is insufficient or incorrect maintenance, or no maintenance at all;
 - the defect is caused by normal wear.

- 12.5 Minor deviations as to measure, colour, weight or number shall constitute no reason for an invocation of guarantee.
- 12.6 The expenses with respect to repairs to the delivered goods carried out without the prior consent of Brink by the Other Party itself or carried out by third parties at the order of the Other Party, shall under no circumstances be borne by Brink.
- 12.7 Brink under its obligations of guarantee shall only be held to repair or replace at its expense the goods delivered by it or parts thereof within The Netherlands. Brink reserves the right to charge any additional costs, such as travelling and lodging expenses, labour costs, shipment expenses and (dis)assembly costs to the Other Party.
- 12.8 If Brink for the purposes of performing its guarantee obligation delivers goods or parts thereof anew, the replaced goods or parts shall become the property of Brink at the moment of replacement.
- 12.9 Returned shipments shall exclusively be accepted after the prior consent in writing by Brink. The returning of shipments shall take place at the expense and risk of the Other Party.

CLAUSE 13. LIABILITY

- 13.1 Brink shall exclusively be liable for damage on the part of the Other Party and/or third parties if and in so far as the damage is the direct and immediate consequence of the execution of the Agreement by Brink.
- 13.2 Brink shall in no way whatsoever be liable towards the Other Party and/or third parties for any form of indirect damage, including (without limitation) loss of profits or income, the suffering of losses including loss of production, expenses of stagnation or delay, penalties or deductions and all payments to third parties.
- 13.3 The liability of Brink pursuant to the present Clause shall be limited to the amount for which Brink has covered its liability by insurances at the most, unless the Other Party proves that the damage is the result of gross culpability, gross negligence, or malice on the part of Brink.
- 13.4 Brink is in no respect liable for products that are directly or indirectly sold and/or used in the United States and/or Canada.
- 13.5 The Other Party shall indemnify Brink from and against all claims of third parties for reimbursement of damages for which Brink is not liable under the preceding paragraphs of the present Clause.
- 13.6 The Other Party shall inform Brink as soon as possible in writing of claims for damages as described in the present Clause.

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- 13.7 Brink is not responsible for damages directly or indirectly resulting from incorrect assembly, which is understood to mean the use of inappropriate tools, methods of assembly other than those prescribed and the incorrect interpretation of the assembly instructions provided.

CLAUSE 14. CANCELLATION

- 14.1 In the event of a failure on the part of the Other Party to perform its obligations arising from the Agreement or from any Agreements arising therefrom, as well as in the event of its bankruptcy, if it is granted a suspension of payments (or if it has lodged an application thereto), and in the event of closing down, liquidation or take over of, or any comparable circumstance with respect to the enterprise of the Other Party, it shall be in default by force of the law. In that event Brink shall have the right unilaterally and completely or partially to cancel the Agreement without any notification of default being required and without interference of the court, by means of a registered letter to the Other Party, and/or to suspend its obligations under the Agreement, without Brink being held to pay any damages, and without prejudice to any further rights accruing to Brink, including the right of Brink on full reimbursement of damages suffered.
- 14.2 All claims that Brink in these events may have on the Other Party or may have on the Other Party in the future shall immediately and completely be due en payable.

CLAUSE 15. GOVERNING LAW, DISPUTES

- 15.1 The Agreement and any further Agreements arising therefrom shall exclusively be governed by the laws of The Netherlands. The United Nations Convention on Contracts for the International Sale of Goods (the so-called Vienna Sales Convention of 1980) shall not apply to the aforementioned Agreements.
- 15.2 Any disputes (including such that are considered to be disputes by one of the parties only) arising in connection with this Agreement or the Agreements arising therefrom between the parties shall at the option of Brink either be submitted for settlement to arbitrators, appointed and giving awards in compliance with the Arbitration Rules of The Netherlands Arbitration Institute (Reglement van het Nederlands Arbitrage Instituut (N.A.I.)) in Rotterdam (The Netherlands), or be submitted for settlement to the competent court in the District of Zwolle (The Netherlands).
- 15.3 Arbitration shall take place subject to the following provisions.
- The arbitral tribunal shall consist of three arbitrators.
 - The arbitration shall take place in Zwolle (The Netherlands).
 - The proceedings shall be conducted in the Dutch language.

CLAUSE 16. FINAL PROVISIONS

- 16.1 If and in so far as the Agreement (also) includes the performance of installation or mounting activities by Brink, the General Conditions for Installation Companies (Algemene Voorwaarden Installerende Bedrijven (ALIB '92)) shall apply, with the exclusion of the present General Conditions.
- 16.2 The present General Conditions originally were drawn up in the Dutch language. In the event of any unclarities or differences in interpretation and/or explanation of a translated version of these General Conditions, the Dutch text shall at all times prevail.

These general terms of sale, delivery and payment have been filed at the Chamber of Commerce and Industry in Zwolle in July 2000.