

# General terms and conditions of Mennens

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## 1 Definitions

- 1.1 Customer: natural persons, legal entities and persons acting in the course of their business or profession and acting as counter-parties in offers, quotations, communications and agreements.
- 1.2 Consumer purchase: a purchase with regard to a movable item concluded between the Supplier and a Customer, a natural person not acting in the course of a profession or business.
- 1.3 Supplier: the user of these General Terms and Conditions who supplies goods and services, i.e. Mennens AxLoad Group B.V. or one of its affiliates.
- 1.4 Agreement(s): a contractual relationship or relationships as part of which the Supplier supplies goods, provides services, carries out assignments or creates works.

## 2 Applicability of the general terms and conditions

- 2.1 Excluding all other general terms and conditions, these general terms and conditions apply to all Agreements, offers and the acceptance thereof, quotations, communications, contractual relationships and acceptance of orders by the Supplier, irrespective of any (previous) reference by the Customer to his own or other general terms and conditions. The Supplier explicitly rejects the general terms and conditions declared applicable by the Customer and is deemed to have never accepted these. Deviations from these general terms and conditions must be explicitly agreed with the Supplier in writing.
- 2.2 These general terms and conditions also apply to any further or follow-up agreements between the parties.

## 3 Offer and acceptance

- 3.1 All offers/quotations made by the Supplier are without obligation and are valid for a period to be specified by the Supplier. Even after timely and complete acceptance of the offer, it can still be revoked by the Supplier for a period of twelve (12) full working days after receipt of the acceptance.
- 3.2 Taking into account paragraph 1, the Agreement is concluded as soon as the acceptance of the offer has reached the Supplier or once the Supplier has started performing the Agreement without prior written acceptance.
- 3.3 If reservations or changes are made in the acceptance in relation to the offer, the agreement, contrary to the provisions of the previous paragraphs, will only come into effect if the Supplier has notified the Customer in writing that it agrees with these deviations from the offer.
- 3.4 If acceptance by the Customer deviates from the offer of the Supplier, it will be regarded as a new offer from the Customer and a rejection of the entire offer of the Supplier, even if the offer from the Customer deviates on minor points.
- 3.5 If the Customer makes an offer to the Supplier, the Supplier will only have accepted in the event of written acceptance or if the Supplier has started performing the Agreement.
- 3.6 All price lists, brochures and other data provided with an offer are described as accurately as possible and can therefore not be seen as any guarantee. These only bind the Supplier subject to the explicit written confirmation of the Supplier.
- 3.7 The Supplier concludes each agreement under the suspensive condition that the Customer, at the exclusive discretion of the Supplier, appears to be sufficiently creditworthy for the financial performance of the agreement.
- 3.8 The invoice for work in relation to which no offers or confirmation of assignment is submitted on account of its nature and scope will also be regarded as confirmation of the assignment and is deemed to reflect the agreement correctly and in full. The administration of the Supplier is decisive in this regard.

## **4** Changes

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- 4.1 Any additional agreements or changes to the Agreement or these general terms and conditions made later, as well as (verbal) agreements and/or commitments made by staff of the Supplier or made on behalf of the Supplier by sellers, agents, representatives or other intermediaries of the Supplier, only bind the Supplier if they have been confirmed by the Supplier in writing.

## **5** Delivery and delivery time

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- 5.1 Delivery will be ex-works/warehouse Supplier, unless otherwise agreed. The time of delivery is the moment at which the goods leave the company/warehouse of the Supplier, which is when the risk of the goods transfers to the Customer. Delivery carriage paid takes place only if and insofar as explicitly indicated by the Supplier in writing, on the invoice or otherwise.
- 5.2 The Customer is obliged to immediately inspect the goods and/or packaging upon delivery and check for any shortages and/or damage or arrange for this inspection to be carried out immediately after receiving a notification from the Supplier that the goods are at the disposal of the Customer.
- 5.3 Any shortages of or damage to the goods and/or the packaging upon delivery must be noted by the Customer (or someone on his behalf) on the packaging slip, the invoice and/or transport documents immediately upon delivery, failing which the Customer is deemed to have approved the goods delivered. In that case, any complaints in this respect will no longer be accepted and the Customer will have waived his right to complain about this.
- 5.4 The Supplier is entitled to deliver in parts (partial deliveries), which it can invoice separately. In that case, the customer is obliged to pay in accordance with the provisions of Article 9 of these terms and conditions.
- 5.5 Specified delivery times are by approximation only and can never be regarded as final deadlines, unless explicitly agreed otherwise. The delivery time being exceeded, for whatever reason, does not entitle the Customer to compensation or to terminate the agreement.
- 5.6 If no delivery time has been agreed/stated, a period of 6 weeks from the confirmation of assignment applies. In the event that the delivery time is exceeded, the Customer is merely entitled to notify the Supplier of this default by registered letter and he must allow the Supplier an ultimate delivery period of at least 10 working days, commencing upon receipt of the relevant notice of default.
- 5.7 If the Customer fails to take delivery of the goods after the delivery term has expired, they will be made available to him through storage at his expense and risk. After a period of 4 weeks, the Supplier will be entitled to sell these items (by private auction). Any deficit revenue and costs will be payable by the Customer, without prejudice to all other rights of the Supplier.
- 5.8 The Customer is obliged to pay the Supplier the storage costs at the rate applicable at the Supplier and, in the absence thereof, at the rate that is customary in the sector, from the moment the goods are ready for dispatch or if later, from the moment of the delivery date agreed in the Agreement.

## **6** Packaging and dispatch

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- 6.1 If no further instructions have been provided by the Customer to the Supplier, the method of transport, dispatch, packaging, etc. will be at the expense and risk of the Customer, without the Supplier bearing any liability for this.
- 6.2 The Supplier chooses the method of transport, dispatch, packaging, etc. unless the Agreement stipulates otherwise. Any specific wishes of the Customer in terms of transport/dispatch are met only if the Customer has declared in writing to pay for the additional costs thereof. If the carrier demands that the consignment notes, transport addresses, etc. state that all transport damage will be at the expense and risk of the sender, the Supplier will sign the documents on behalf of the Customer.
- 6.3 The Customer must organise the permits, permissions and/or exemptions required for the transport. The costs involved in this will be payable by the Customer.
- 6.4 The goods will be delivered by the Supplier ex-works Supplier or be dispatched for delivery to the agreed location or locations in the manner specified in the order or subsequently agreed.
- 6.5 If the Supplier has made reels, pallets, packages, crates, containers, etc. available for packaging and transport or has had this made available through a third party, subject to payment of a deposit, a security deposit or otherwise, the Customer will be obliged to return these reels, etc. within a maximum of three months to the address as specified by the Supplier (unless it concerns single-use packaging). If the Customer fails to do so, he will owe the Supplier compensation without further notice of default being required.

## **7** Transfer of ownership and risk

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- 7.1 Subject to the provisions of paragraphs 2 of this article, the ownership and risk of the goods will transfer to the Customer upon delivery ex-works Supplier.
- 7.2 As long as the Customer has not paid the full amount of the purchase price and any additional costs or as long as the Customer has not furnished any security in that respect, the goods remain the property of the Supplier. In that case, ownership will only be transferred to the Customer as soon as the Customer has fulfilled all his obligations under or in connection with Agreements for the delivery of goods or the provision of services to the Supplier. The retention of title also applies to current and future claims of the Supplier against the Customer on account of the Customer failing to fulfil one or more of his obligations towards the Supplier under the Agreement or otherwise. If the Customer fails to pay any debt in time or if the Customer fails to provide adequate security for the fulfilment of the debt arising from or in connection with an Agreement or otherwise, the Supplier will be entitled to take back the goods that still belong to the Supplier and he will not be obliged to compensate for any damage.
- 7.3 The Customer is obliged to store the goods delivered under retention of title with the necessary care and as the recognisable property of the Supplier. The Customer is obliged to insure the goods throughout the term of the retention of title and to keep them insured against damage caused by fire, explosion, water and theft and to submit the relevant insurance policies to the Supplier for inspection, on demand. As soon as the Supplier makes this known, all claims from the Customer against the insurers of the goods by virtue of the stated insurances will be pledged by the Customer to the Supplier as explained in Section 3:237 or 3:239 of the Dutch Civil Code (which is at the discretion of the Supplier) in order to provide increased security of claims of the Supplier against the Customer.

## **8** Prices

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- 8.1 Unless explicitly agreed otherwise, the prices are: - based on the purchase prices, wages, wage costs, special and government charges, freights, insurance premiums and other costs as applicable in the offer or on the order date;  
- based on delivery ex-works Supplier, warehouse or other storage location; exclusive of VAT, other taxes, levies and duties;  
- exclusive of costs of transport and insurance;  
- stated in Euros.
- 8.2 Unless stated otherwise, all quotations are subject to price changes. In the event of an increase in one or more of the cost factors not foreseen upon conclusion of the Agreement, the Supplier is entitled to pass on these higher costs to the Customer. If the price increase is more than 10%, the Customer has the option of dissolving the Agreement by registered letter, within five working days after the announcement of the price increase.
- 8.3 The prices for the provision of services or the execution of works are based on the performance of the Agreement during normal working hours and normal working days as applicable at the Supplier, unless explicitly agreed otherwise. If work must be performed by the Supplier outside normal working hours or normal working days as applicable at the Supplier, the Supplier will be entitled to pass on the additional costs associated with this to the Customer.

## **9** Payment

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- 9.1 Insofar as a separate agreement in this regard is absent, payment will be made in Euros, in the manner as indicated by the Supplier.
- 9.2 Payment must be made no later than fourteen (14) calendar days after the invoice date, which will be sent after the performance of the Agreement or, when executing in parts, after the performance of a part of the Agreement, unless the invoice states otherwise.
- 9.3 The Supplier may demand compensation from the Customer for the costs that the Supplier is charged in connection with a payment made by the Customer to the Supplier.
- 9.4 If the Supplier so wishes, he is entitled to demand payment in advance or payment cash on delivery upon or after entering into the Agreement, in deviation from the agreed payment arrangement. The Customer, upon demand of the Supplier and to his satisfaction, must provide a reliable guarantee that he will meet his payment obligations, as well as his other obligations, within a term to be set by the Supplier.
- 9.5 In the event the Customer refuses to pay or provide said security, the Supplier, at his discretion, will be entitled to suspend or terminate the performance of the Agreement, without prejudice to his other rights and without the Customer being entitled to any compensation.
- 9.6 In the event of more than one Customer, all Customers will be jointly and severally liable towards the Supplier. Even when two or more (legal) persons legally succeed the Customers and their debts, these (legal) persons too will be jointly and severally liable towards the Supplier.

- 9.7 The payment obligation of the Customer will not be suspended if due to circumstances attributable to the Customer, the Agreement cannot be performed within the agreed period or periods. The Customer remains obliged to pay at the agreed time.
- 9.8 In the event of late payment, the Customer, due to the mere fact that the payment term is exceeded, will be liable to pay interest, which is equal to the statutory interest plus 2% from the date of the payment until the date of full payment. When calculating the interest due, part of a month will be deemed a full month.
- 9.9 The customer expressly waives his right to set-off or suspension of payments.
- 9.10 If the Customer is served with a writ of attachment, or if a petition is filed by or against the Customer ordering his bankruptcy (at the Customer's request or otherwise) or if the Customer himself submits a petition to the court seeking a (provisional) suspension of payment or applicability of the Debt Restructuring (Natural Persons) Act, all his debts to the Supplier become immediately due and payable.
- 9.11 The judicial or extrajudicial costs of measures incurred by the Supplier in connection with any shortcomings of the Customer in the fulfilment of his obligations towards the Supplier are entirely at the Customer's expense. This means, among other things, that the Customer must fully reimburse the judicial and extrajudicial costs. The extrajudicial costs amount to 15% of the amount to be collected, subject to a minimum of € 500.
- 9.12 Payments made by the Customer will first be applied to settle all interest and costs owed and subsequently to settle claims by virtue of the Agreement that have been outstanding longest.
- 9.13 Goods which the Supplier has in his possession for processing or repair, need not be returned by the Supplier to the Customer until the Customer has paid the Supplier all that he owes the Supplier for whatever reason.
- 9.14 If the goods are stored within the meaning of Article 5.7, the Customer continues to be obliged to pay the purchase price at the time stated in paragraph 2.

## **10** Complaints

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- 10.1 Complaints about the performance of the Agreement other than the shortages and damage referred to in Article 5.3 must be submitted in writing to the Supplier within fourteen (14) calendar days after the Customer has or could have discovered the defects, fully and clearly described, on the understanding that complaints must, in any case, be submitted within two (2) months after the date of performance of the Agreement. Failure to submit the complaint in time will cause the Customer to lose his relevant rights.
- 10.2 If complaints about the performance of the Agreement are caused by what is deemed normal wear and tear, incorrect operation or improper handling, misuse, use in violation of the instructions, negligence, accidents, non-compliance with the maintenance instructions and/or normal maintenance care, or if a product is modified or repaired without written permission from the Supplier, no guarantee or other obligation of the Supplier applies.
- 10.3 Complaints do not release the Customer from his payment obligations towards the Supplier.
- 10.4 Complaints with regard to goods delivered which do meet the quality requirements, but which prove to be unsuitable for the purpose for which the Customer wishes to use them, are not accepted.
- 10.5 Complaints with regard to invoices must be submitted in writing as well, within 8 (eight) days of the date when the invoices were sent.
- 10.6 If the complaint is upheld by the Supplier, he will only be obliged to repair or replace the defective items, or to refund them, all this at the Supplier's discretion, without the Customer being able to assert any rights to whatever compensation.
- 10.7 Goods can only be returned following the prior written approval from the Supplier, carriage paid. Goods are returned at the risk of the Customer.
- 10.8 The time periods stated in this article apply in full. The terms specified in the "European Directive on certain aspects of the sale of consumer goods and associated guarantees" and the legislation based thereon do not apply to our agreements with the Customer if it does not concern a consumer purchase.

## **11** Force majeure

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- 11.1 The Supplier is not obliged to fulfil any obligation if he is not or no longer able to perform the Agreement, if this is a result of circumstances, foreseeable or otherwise, that are beyond the control of the Supplier. Circumstances beyond the control of the Supplier, in any case, include war or a similar situation, mobilization, riots, strikes, excessive sickness absence of personnel of the Supplier, factory occupations, blockades, boycotts, illness, non-culpable fire or loss of the supply of electricity, gas or water, non-timely performance of suppliers or auxiliary persons, government measures, etc.
- 11.2 In the event of a situation as referred to in the previous paragraph occurring, the Supplier will report this to the Customer. The parties will consult each other on a possible adjustment of the Agreement. If the Parties fail to reach an agreement and the performance of the Agreement remains impossible, either Party may dissolve the Agreement, insofar as it has not been performed yet. Permanent impossibility of performance is deemed to exist when the performance of the Agreement has not been factually or legally possible for more than sixty (60) consecutive days, or when it is clearly foreseeable that the performance of the Agreement will not be possible during the said period, factually or legally.
- 11.3 If the force majeure occurs while the Agreement has already been partially performed and the remaining delivery is delayed by more than two months, the Customer will be entitled to either retain the part of the goods already delivered and pay the purchase price due for it, or to deem the Agreement terminated as regards to performed part as well, under the obligation to return what has already been delivered to the Supplier at the expense and risk of the Customer. The latter is only possible if the Customer can demonstrate that (i) the part of the goods already delivered can no longer be used effectively by the Customer as a result of the non-delivery of the remaining goods and (ii) the goods already delivered form part of the Supplier's usual trading stock.

## **12** Termination

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- 12.1 If the Customer fails to meet one or more of his obligations under the Agreement, or if he fails to do so in time or fully, the Supplier, without further notice of default and judicial intervention and without being obliged to pay any compensation, will be entitled to suspend the delivery of the products and/or to dissolve the relevant Agreement with immediate effect, all this without prejudice to all other rights vested in the Supplier.
- 12.2 The Supplier, in addition to the other rights vested in the Supplier, may at all times and with immediate effect dissolve the Agreement with the Customer, without further notice of default and without any liability for compensation towards the Customer, if the latter is unable to meet or pay his debts that are due and payable, if he becomes insolvent, if a petition for bankruptcy is filed against the Customer (at the Customer's request or otherwise), if (provisional) suspension of payment is applied for, if a request is submitted with regard to the Customer for application of the Debt Restructuring (Natural Persons) Act, upon the death of the Customer or if the Customer discontinues his business and/or is served with a writ of attachment that has not been lifted within 30 days after the date of the attachment or in the event of force majeure or equivalent circumstances.

## **13** Intellectual property

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- 13.1 The rights with regard to all (intellectual) products used by the Supplier under the Agreement including but not limited to analyses, models, overviews, software, techniques, etc., or which are the result of work performed by the Supplier pursuant to the assignment, including advice, reports, accounts, plans, etc., are exclusively vested in the Supplier, insofar as those rights do not (also) accrue to third parties, other than the Customer.
- 13.2 All intellectual property rights including in particular but explicitly not limited to copyrights on advice, reports, etc. issued with regard to what has (partly) been achieved by the Agreement, are vested in the Supplier.
- 13.3 Without prior written permission from the Supplier, the Customer is not authorised to disclose or multiply the products referred to in paragraphs 1 and 2, to use them for a different purpose or to make them available to persons other than those for whom the relevant products are intended. This prohibition includes the explicit or tacit permission of the aforementioned acts.
- 13.4 The Supplier is not liable for claims and/or demands of third parties on account of a violation of their copyrights, patent rights, licensing rights, trademark rights, design rights and other rights, by whatever name, in connection with the Services provided by the Supplier, should he have infringed those rights by making use of data (carriers), documents or objects that have been provided to the Supplier by or on behalf of the Customer for the fulfilment of the Agreement. The Customer fully indemnifies the Supplier against the aforesaid claims and/or demands.

## **14** Liability/warranty

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- 14.1 The Supplier is not liable for damage or loss suffered by the Customer for whatever reason, including all direct and indirect damage or loss, such as consequential or direct trading loss, unless this damage or loss has been caused by intent or wilful recklessness on the part of the Supplier. In the event that the Supplier does bear any liability, the Supplier will only compensate damage or loss for which the Customer demonstrates that it is a direct consequence of the event for which the Supplier is legally liable, if and insofar as this damage or loss is covered by the insurance contract concluded by the Supplier.
- 14.2 The compensation to be paid by the Supplier to the Customer will, in any case, be limited to the amount paid out in the relevant case under the insurance referred to in paragraph 1.
- 14.3 The Supplier is never liable for damage or loss caused by intent or wilful recklessness if the Supplier has sold and delivered goods or has provided services which, according to the state of knowledge, at the time of the sale and delivery or the performance of the services, would not have led to liability within the meaning of paragraph 1 of this article.
- 14.4 The Supplier is not liable for damage resulting from errors or omissions on the part of third parties who, with the consent of the Customer, have been charged by the Supplier with the delivery of materials or with the provision of services and/or work. Nor is the Supplier liable for damage or loss that occurs as a result of goods supplied by third parties, unless the Supplier can recover the damage or loss from the relevant third parties.
- 14.5 The Supplier is never liable if the Customer and/or third parties have made changes to the goods delivered by the Supplier, including repairs by the Customer and/or third parties, or if the Customer fails or has failed to follow the advice of the Supplier.
- 14.6 The Customer is obliged to indemnify the Supplier against all third-party claims for compensation against the Supplier with regard to the performance of any Agreement entered into between the Supplier and the Customer and the follow-up of recommendations and/or advice furnished by the Supplier in his investigations, opinions and/or reports.
- 14.7 The Customer is liable for all costs arising from the indemnity referred to in paragraph 6.
- 14.8 A contractual guarantee is only provided if and insofar as indicated by the Supplier in writing and in accordance with the guarantee provided by the manufacturer. The fulfilment of our contractual warranty obligations/claims serves as only and full compensation.
- 14.9 The Supplier explicitly excludes the applicability of the “European Directive on certain aspects of the sale of consumer goods and associated guarantees” and the legislation based thereon on his agreements with the customer. The liability of the Supplier does not extend beyond the provisions of this article.
- 14.10 The Supplier does not accept any liability, for whatever reason, for advice provided by the Supplier without an Agreement explicitly aimed at providing advice in place.
- 14.11 The Supplier accepts no responsibility or liability, for whatever reason, for drawings, designs, calculations, instructions, equipment, etc. provided by the Customer to the Supplier for the performance of the Agreement.

## **15** Ineffectiveness

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If one or multiple provisions of these general terms and conditions prove to be non-binding, the other provisions remain in full force. In the event that a provision is non-binding, the Customer and the Supplier will consult each other to replace that provision with a binding provision that approximates the legal effect of the non-binding provision as closely as possible.

## **16** Applicable law and competent court

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- 16.1 This Agreement is governed by Dutch law.
- 16.2 In the event of disputes about or in connection with the Agreement that are outside the jurisdiction of the sub-district court, only the court within whose jurisdiction the Supplier has his principal place of business will take cognizance.

## **17** Deviating provisions in the event of consumer purchases only

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- 17.1 In the event of a Consumer Purchase, the mandatory legal provisions of Title 1 of Book 7 of the Dutch Civil Code take precedence over the provisions in these general terms and conditions, insofar as they deviate from the mandatory legal provisions.