

**General sale and delivery conditions**  
of the private company with limited liability

# FAAY VIANEN B.V.

established and having its principal place of business at Mijlweg 3, 4131 PJ Vianen.

Registered at the Chamber of Commerce in Utrecht under number 169.518

## Article 1: Definitions

In these general sale and delivery conditions the following definitions apply:

- "Faay": Faay Vianen B.V., established and having its principal place of business at Mijlweg 3, 4131 PJ Vianen the Netherlands Telephone (+31 347 376624 Fax (+31) 347 377940
- "customer": The person who lends an assignment to Faay, or places an order with Faay, or the person who enters into a contract with Faay.
- "goods": Goods and/or systems delivered by Faay.

## Article 2: Applicability

- 2.1 All quotations, offers and/or contracts with Faay concerning the delivery of goods and/or the rendering of services are exclusively applicable to the present general sale and delivery conditions of Faay, hereafter to be referred to as: "the conditions".
- 2.2 Conditions used by customer, of whichever nature, whether or not contained in the general conditions used by customer, are only applicable if these conditions are expressly and simultaneously accepted by Faay in writing as a part of the assignment.
- 2.3 The customer's mentioning of or referral to his own buying, tender or other (general) conditions is not accepted by Faay and does not make these buying/tender or other (general) conditions applicable to the present contract.
- 2.4 Offers that Faay includes in its quotations, circular letters, notifications, catalogues, advice, brochures, documentation, etc., for its goods and their application area are general and never apply to a certain or specific application. Customer is therefore himself responsible for specific applications of the goods for a certain sort of application, unless it has been expressly agreed upon otherwise in writing.

## Article 3: Quotations and realization of the contract

- 3.1 All quotations of Faay are an invitation to customer to provide an assignment, unless Faay expressly states otherwise in the quotation and without prejudice to the stipulation in article 3.2.
- 3.2 In case in deviation from article 3.1 it expressly appears that there is question of a concrete quotation of Faay, this quotation is informal, while in deviation from article 6:219 subclause 2 C.C. Faay is only bound, if customer has accepted within the term referred to in the quotation and insofar as the acceptance is attached in writing, or if the contract effected by quotation and acceptance has actually been carried out by Faay.
- 3.3 Times of delivery stated by Faay always apply as an approximation and are never fatal, unless it has expressly been agreed upon otherwise in writing.
- 3.4 All images, drawings, data concerning weight, dimensions, coloursetc. and/or (incidentally) advice, whether or not included in official lists, documentation, circular letters, etc., only apply as an approximation and informal, unless Faay expressly confirms otherwise in writing, concerning a certain quotation or order.
- 3.5 Oral promises by and agreements with personnel of Faay, do not bind it except after and insofar as these have been confirmed by it in writing.

## Article 4: Instructions customer

- 4.1 In the event that an agreement must be carried out according to designs, drawings or other instructions of customer, in deviation from standard documentation, Faay will charge to customer a separate price further agreed upon to this aim, unless expressly agreed upon otherwise in writing.
- 4.2 In the event of processing of semi-finished products of Faay by customer or by third parties engaged by customer, this is always done with observance of the intellectual property rights of Faay and/or third parties. Customer vouches for the observance of this commitment by himself, or by third parties he has engaged.
- 4.3 Customer indemnifies Faay against any claims from third parties ensuing from aforementioned processing of the semi-finished goods and the consequences of application of semi-finished products that have been processed in such a manner.

## Article 5: Descriptions, models and resources.

- 5.1 Quotations issued by Faay, as well as drawings, calculations, descriptions, models, tools, designs, material lists produced or provided by Faay, (test) products, (test) equipment or (test) software made available by Faay remain the property of Faay irrespective of whether any costs have been charged for them.
- 5.2 Faay retains the copyright as well as all other intellectual property rights of all quotations, drawings, calculations,

- 5.3 images, models, material lists, etc. produced or provided to customer by Faay, whether or not by order of customer. The goods mentioned sub 5.1 and 5.2 may neither entirely nor partly be multiplied or made public, or shown or made available to third parties without Faay's permission, nor be made available to third parties, sold, or encumbered by customer under whatever title and in whatever form, except with the express permission of Faay.
- 5.4 The information that lies contained in the goods mentioned sub 5.1 and 5.2, or at the basis of the manufacture – and construction methods of Faay, as well as the goods of Faay, remains exclusively reserved to Faay, even if costs have been charged for this to the customer.

## Article 6: Prices

- 6.1 Prices quoted by Faay are in Euros, including packaging costs, but exclusive of turnover tax, export and import duties, seal, station and clearance charges, taxes, etc.
- 6.2 The prices mentioned in article 6.1 apply for delivery by Faay within the Netherlands ex works. With regard to deliveries by Faay outside the Netherlands the prices apply as indicated in the pricelists or quotations that apply for that country.
- 6.3 Unless agreed upon otherwise in writing, Faay retains the right with regard to goods that have not yet been delivered, to change the sale conditions without preceding notice, and the prices, rebates and sale conditions that apply on the day of delivery are applicable.
- 6.4 In case of a change pursuant to article 6.3 customer has the right to dissolve the agreement entered into between parties, insofar as it has not yet been actually carried out, through a registered letter addressed to Faay within eight days after notification of these changes, unless the changes are to his advantage.
- 6.5 If by some government measure cost price increasing taxes, levies or import duties are introduced or changed, or otherwise after the conclusion of the contract government measures are effected pursuant to which the cost price of the goods that Faay is to deliver and/or services Faay is to render to the customer is raised, Faay has the right to charge on these rises or changes in price, even if it had been agreed upon that the price would be fixed.

## Article 7: Payment

- 7.1 Unless agreed upon otherwise, the payment must be effected in the manner Faay has indicated on the invoice and within thirty days of date of invoice.
- 7.2 All payments must be effected without any deduction or settlement on the side of customer at the office of Faay or into a (bank) account of Faay's indication.
- 7.3 In case customer does not pay within the agreed term, he is in default by operation of law and as from the expiry date he owes the legal interest, but at least 1% per month over the claimable amount, in which a part of a month applies as a full month as well as all the legal and extrajudicial expenses that apply to the collection of the claim.
- 7.4 The extrajudicial costs mentioned sub 7.3 are fixed at a minimum of 10% of the owed amount.
- 7.5 Faay is always authorized for the observance of payment obligations to require a security to be given and/or to exclusively ship C.O.D., as well as to suspend the observance of the contract until aforementioned security has been met to the satisfaction of Faay.
- 7.6 Upon refusal of the customer to provide such security, Faay is authorized to dissolve the contract with immediate effect, or to suspend the contract, without prejudice to the right to full compensation.
- 7.7 Payments made by customer are always for the settlement of the owed interest and costs and then of claimable invoices that have been outstanding longest, even if the customer states that the payment pertains to a later invoice.

## Article 8: Term of delivery

- 8.1 A term of delivery expressly agreed upon between parties in writing in deviation from article 3.3 commences on the date of, or as mentioned in, the written order confirmation.
- 8.2 The term of delivery is based on the working conditions that are applicable at the time when the contract is concluded and on a timely delivery of materials ordered for the execution of the assignment. If a delay arises through no fault of Faay's, as a result of a change of the working conditions referred to or non-timely delivery of ordered materials, the term of delivery is extended insofar as necessary.
- 8.3 The term of delivery is also extended by the duration of the delay that has arisen on the side of Faay because customer has not met any obligation pursuant to the contract or failed to grant any cooperation that is to be requested with regard to the execution of the agreement.

- 8.4 At non-timely delivery pursuant to article 8.2 or 8.3 Faay will inform customer of this as soon as possible, in which Faay will also give a non-committal indication concerning the anticipated time of delivery.
- 8.5 An exceeding of the term of delivery as mentioned before – by whichever cause, to the conclusion of the abovementioned, never gives customer the right, except for intention or gross negligence on the side of Faay, to dissolve the contract wholly or partly, nor to a compensation of any damages, nor to execute or have executed any activities in the execution of the agreement without legal authorization, nor to make use of any suspension right with regard to the observance of his (payment)obligations, without prejudice to the stipulation in article 18.

## Article 9: Delivery

- 9.1 Without prejudice to the stipulation in article 10 the goods with regard to the term of delivery are considered to have been delivered as from the moment when Faay has notified customer in writing that the goods are ready for shipping, or as from the moment when the goods have been loaded into the means of transport with the agreed destination by or because of Faay.
- 9.2 Per the moment of delivery the risk for the goods is transferred to customer.
- 9.3 Customer, insofar as this can be reasonably demanded from him, is obliged to take possession of the goods under all circumstances; and to see to the timely availability of the required personnel and resources for the unloading.
- 9.4 All costs which arise for Faay from the non-, non-proper or non-timely observance of the obligations mentioned in article 9.2 are at the expenses of customer.

## Article 10: Retention of title

- 10.1 The property of the goods is only transferred to the customer when all that which customer owes to Faay arising from deliveries or activities, including interest and costs, has been fully settled to Faay.
- 10.2 Customer is not authorized to sell the goods, transfer the ownership, encumber and/or otherwise in whatever form and under whatever title actually make them available to third parties outside the regular conduct of business before the time mentioned in article 10.1.
- 10.3 In case customer does not meet any commitment pursuant to article 10.1 Faay has the right to take back the things on which the retention of title rests, without further notice of default or judicial intervention, and if necessary to detach them to this aim, if they are attached to other movable or immovable properties. Customer commits himself to grant complete cooperation to all this, as well as to return the goods to Faay at the first warning to this effect.
- 10.4 In case the retention of title is void, or Faay can not make a claim to it, customer already now for then establishes a nonpossessory pledge on the goods for the benefit of Faay.
- 10.5 If at application of the goods a specification, confusion or accession in the sense of the articles 5.13 to 16 C.C., or otherwise loss of property occurs, in such manner that customer becomes owner of the new good (goods), and customer already now for then establishes a possessory pledge on the present goods for the benefit of Faay. At the moment of the actual availability to customer of the goods referred to above, or a third party of his indication, customer establishes a nonpossessory pledge on those goods for the benefit of Faay for the replacement of aforementioned possessory pledge.
- 10.6 Customer establishes an undisclosed pledge for the benefit of Faay on all the claims of customer that exist or will be directly obtained from legal relations between customer and third parties, concerning the manufacture, transport, service etc. of Faay for the benefit of, or to customer, respectively, at the time when the contract comes about between customer and Faay.

## Article 11: Right of claim

- 11.1 In case customer does not, not properly or not in time meet his payment obligation, Faay is authorized to reclaim the goods within 6 weeks after the expiry of the payment period and within 60 days after they have been stored with customer or with a person of his indication, through a written statement and to dissolve the contract with immediate effect, whether or not subject to loss of profit and/or damages. Customer will immediately return the goods to Faay upon first written warning as referred to above at his expenses.
- 11.2 In case of partial payment Faay has the right to either reclaim the unpaid part or a proportional part of the goods or under repayment of what is already paid, to claim return of the goods under compensation of the costs, damages and interests caused to Faay by this non-observance,

without prejudice to the other legal rights belonging to Faay. Customer will immediately lend his cooperation to such written claims.

#### Article 12: Transport

- 12.1 Unless expressly agreed upon otherwise in writing, the goods are (ordered to be) transported by Faay to the address mentioned in the order confirmation, without prejudice to the stipulations in article 6.2 and 6.3.
- 12.2 In the event of unforeseen circumstances Faay is at all times authorized to deliver the goods at another address than the one mentioned in the order confirmation. Concerning this change of address Faay shall in all reasonableness take the interests of customer into consideration insofar as possible.

#### Article 13: Acceptance, Claim and Approval

- 13.1 Claims concerning visible defects must be made within eight days after the goods have been unloaded at customer's through a registered letter addressed to Faay. If this term is exceeded, any liability of Faay in this respect expires, except for intention or gross negligence on the side of Faay.
- 13.2 Claims concerning invisible faults must be made within eight days after customer has discovered, or could reasonably have discovered the defect, through a registered letter addressed to Faay, in excess of which term any liability of Faay in this respect expires, except for intention or gross negligence on the side of Faay.
- 13.3 In the absence of a timely claim the delivery is considered to have been accepted by customer and customer loses all rights, except for intention or gross negligence on the side of Faay.
- 13.4 Claims pursuant to article 13.1 and 13.2 must be brought before the court within 3 months after the timely claim on penalty of expiry.
- 13.5 At a claim customer is obliged to store the goods involved as much as possible in the state of receipt and to send Faay evidence of the validity of his complaint as soon as possible, to which aim a sample of the consignment involved must have been sent to Faay at any rate within 8 days after the dispatch of the letter in accordance with article 13.1 or 13.2. Faay has the right to have the goods inspected locally and/or to have samples taken from them in the 4 weeks after receipt of the claim.
- 13.6 Complaints do not give the customer the right to refuse to pay, unless expressly agreed upon otherwise in writing.
- 13.7 If at alleged complaints customer refuses to grant cooperation in the unloading of the goods and/or returns them, and if the complaints appear to be groundless in the opinion of Faay, or if the refusal to grant cooperation in the unloading and returning are not in proportion with the nature and/or extent of the alleged defects of the goods on which the complaints are based, all the costs, damages and interests Faay has incurred in this respect are at the customer's expenses.
- 13.8 In case of insignificant shortcomings, especially those that do not or hardly influence the agreed or anticipated use of the goods, the goods shall be considered to have been accepted. Faay will yet remedy such shortcomings as soon as possible or at its discretion reimburse or credit a proportional part of the purchase price for them.
- 13.9 Faay is authorized to demand from customer that he inspects the goods in the presence of an expert at a place and time of Faay's indication, in default of which the goods shall be considered to have been accepted.

#### Article 14: Guarantee

- 14.1 Faay guarantees that the goods it delivers have been manufactured of sound materials and in good workmanship. Should nevertheless defects arise in the goods delivered by Faay as a result of manufacturing and/or material defects, Faay will have these defects repaired or make the parts required for restoration available, replace the goods involved as a whole or at most compensate the invoice value of the goods, all this at its exclusive discretion. This guarantee applies for 6 months after delivery, unless expressly agreed upon otherwise in writing.
- 14.2 Claims pursuant to this guarantee must be reported to Faay by registered letter within 8 days after a defect arises. In the absence of a timely claim any claim against Faay expires. Legal claims in this respect must be brought before the court within 3 months after timely claim on penalty of expiry.
- 14.3 Outside the guarantee at any rate fall defects that occur in, or are wholly or partly the result of:
- not observing directions for use, operating instructions, etc., or by use that is different from the anticipated regular use;
  - usual wear and tear;
  - assembly/installation or repairs by third parties or customer, without preceding written permission of Faay;
  - the application of any government regulation concerning the nature or quality of applied materials;
  - goods produced to size and delivered in accordance with article 4 of these conditions to the design, drawing or other instruction of customer, unless expressly agreed upon otherwise;
  - materials or goods that customer has supplied to Faay to be processed or for the execution of an assignment, unless expressly agreed upon otherwise;
  - materials and/or goods used in consultation with customer;

- parts Faay has obtained from third parties, insofar as these third parties have not provided any guarantee to Faay;
  - advice provided by Faay, unless expressly agreed upon otherwise;
  - the processing of the goods by customer, unless Faay expressly states a certain manner of processing in its documentation, brochures etc., or has permitted this without any reservation in writing.
- 14.4 In case customer does not, not properly or not timely meet any commitment, that arises for him from the contract he has entered into with Faay or from a contract that is connected with it, Faay is not held to any guarantee or damages with regard to the agreements – by whichever name.
- 14.5 Any claim arising from this article will become null and void, if customer proceeds or has third parties other than Faay proceed to repair, disassemble or take other actions concerning the goods without the preceding written permission of Faay.
- 14.6 In case Faay replaces parts or goods to meet its guarantee obligations, the replaced goods or parts shall become its property.
- 14.7 The alleged non-observation by Faay of its guarantee obligations does not discharge customer from the obligations that arise for him from any contract entered into with Faay, nor does this give him the right to use any right to suspend performance.

#### Article 15: Liability

- 15.1 The liability of Faay is limited to observance of the guarantee obligations described in article 14.
- 15.2 Except for intention or gross negligence on the side of Faay, any liability of Faay for direct or indirect damage is excluded, which includes, but is not restricted to: business damage, as well as damage resulting from liability towards third parties.
- 15.3 Faay is not liable for:
- infringement of patents, licences and/or other rights of third parties as a result of the use of data provided by, or because of customer;
  - damage or loss, by whichever cause, of raw materials, semi-finished products, models, tools, etc. made available by the customer.
- 15.4 Customer is obliged to indemnify Faay and hold it harmless concerning any claims of third parties for compensation of damage, for which the liability of Faay in this Contract in the relation with customer is excluded.
- 15.5 Customer indemnifies Faay against any liability pursuant to product liability legislation (article 6:185 to 6:193 C.C.), or liability pursuant to similar foreign legislation whether or not based on the EC-directives concerning product liability of products with defects (PbEG, 7.10.85, no. L 210/29), unless it has been decided in a nonappealable final judgment that in this respect there is question of gross negligence or intention on the side of Faay Vianen, in which case the recourse arrangement of article 6:102 C.C. applies.

#### Article 16: Advising

- 16.1 All advice, calculations, notifications and specifications about qualities / capacities / results of goods to be delivered and/or activities to be executed by Faay, provided by Faay are entirely informal and are provided by Faay as information without binding force. Faay does not grant any guarantee in this respect.
- 16.2 For any direct or indirect damage, in whichever form and from whichever cause, pursuant to the provision of information / advice mentioned in article 16.1 Faay does not accept any liability. Customer indemnifies Faay against any claims of third parties hereby, except for intention or gross negligence on the side of Faay.

#### Article 17: Intellectual property / secrecy

- 17.1 In case Faay manufactures any means and/or products for customer going by drawings, models or other instructions, in the widest sense of the word, customer guarantees Faay that such a means and/or product does not make an infringement on any trademark rights, patent right, model, copyright or any other (intellectual property) right belonging to any third party. Customer indemnifies Faay against any claims from third parties ensuing from this.
- 17.2 Customer is obliged to secrecy with regard to all aspects of the operational management of Faay, including production methods and technical details/specifications, which bear a confidential character or of which a confidential character can be suspected by customer.
- 17.3 Customer is obliged to return to Faay all documents, objects and data of Faay that are in his possession and that are related to the operational management of Faay, as referred to in article 17.2, at once after termination of a contract with Faay.
- 17.4 After the termination of a contract with Faay, based on whichever cause, the customer is forbidden to use any data in any way, directly or indirectly, that Faay has provided to customer in the framework of a contract, such in the widest sense of the word.
- 17.5 At an infringement of one or more obligations resting on customer based on this article, customer forfeits, for the benefit of Faay, a directly claimable fine of € 50.000.- per time and per day that he acts in violation of the obligations referred to, without prejudice to the claim of Faay of additional damages.

#### Article 18: Suspense, Observance, Dissolution

- 18.1 In deviation from the stipulations in the articles 6:265 and 277 C.C., in case of Force Majeure on the side of Faay and other circumstances of such a nature that entire or partial observance of a contract can not be demanded of Faay in all reasonableness and fairness, the execution of the agreement will be entirely or partly postponed and Faay has the right to either suspend the execution of the agreement for at most 6 months, or to dissolve the contract entirely or partly. After termination of the period of 6 months Faay is obliged to choose for execution or entire or partial dissolution of the contract.
- 18.2 Both in case of suspense and of dissolution Faay is authorized to demand immediate payment for the raw materials, materials, parts and other things that he has reserved, taken into processing and manufactured for the execution of the agreement, such at the rate that is assigned to them in all reasonableness. At a partial observance by Faay customer owes a proportional part of the total price.
- 18.3 Force Majeure includes but is not limited to war, threat of war and riot, strike, exclusion of labourers, transport difficulties, prohibitions of import, export or transit, fire and other serious disturbances in the company of Faay or its suppliers, reduction of the production, a lack of raw materials, auxiliary materials and packaging materials, as well as any obstructing circumstance, that does not exclusively depend on the will of Faay's, such as non-delivery or non-timely delivery of goods or services that have been ordered in time and in the proper manner.
- 18.4 In case customer does not, not properly or not timely meet any commitment arising from the contract concluded with Faay, or from a contract that is connected to the same, or if there is a good ground to fear that customer is not or will not be able to meet his obligations towards Faay, either in case of a moratorium of payment, bankruptcy, halting, winding-up or partial transfer – whether or not as a security – of the company of customer, Faay is authorized without further notice of default or judicial intervention to suspend its obligations arising from aforementioned agreement(s) or to its discretion to dissolve it wholly or partly without Faay being held to settle any damages or guarantee, without prejudice to any other rights that legally belong to him.
- 18.5 In case of suspense by virtue of article 18.4 the agreed price becomes immediately claimable, under deduction of payments that have already been made and of costs that Faay has saved as a result of the suspense. This applies mutatis mutandis in case of dissolution by virtue of article 18.4 which has not been preceded by any suspense, in which at a partial dissolution a proportional part of the agreed price will be owed. Any payments by customer pursuant to this subclause have no effect on the other rights that belong to Faay, including the right to complete compensation.

#### Article 19: General stipulations/applicability

- 19.1 Customer is not authorized to transfer the rights and obligations ensuing from any contracts to which these conditions are applicable wholly or partly to third parties, without the preceding written permission of Faay.
- 19.2 Indications of articles in the contract closed between parties and the present general conditions are only included for the purpose of reference and will in no way determine, limit or extend the content or interpretation of these conditions.
- 19.3 In case one or more stipulations of these general conditions should appear to be null and void, or no observance of these can be claimed for whatever reason, the other stipulations of these general conditions remain in full force and parties will consult with each other concerning the void stipulation, or the stipulation of which no observance can be demanded, about the manner in which the essence of the stipulation involved can be executed best.
- 19.4 Any disputes arising from or further to the quotations and/or offers made by Faay and/or agreements entered into with Faay, are in the first instance exclusively put before the District Court in Utrecht, except for cases in which the Subdistrict Court has competence; all this unless parties decide to choose for arbitration by experts in mutual consultation. If they should then be unable to reach an agreement about the appointment of the expert(s) referred to, they will leave this appointment to the chairman of the Dutch Arbitration institute in Rotterdam. The expert will determine his judgement under application of the regulations of the NAI by way of a binding advice or arbitration.

Vianen, March 2003