

## TERMS AND CONDITIONS Spectra BV (KBO-nr. 0735.588.909)

### Legal relationship

1. The price proposal and these terms and conditions govern the contractual relationship between Spectra and the customer ("Contract"). The Contract comes into existence from acceptance of the price proposal or the placing of an order (by letter, by e-mail and even by telephone) and the payment of the 'advance on order', if any, provided.
2. By such acceptance, the customer acknowledges having read, understood and accepted these general terms and conditions, as well as being sufficiently informed of their subject matter.
3. Any terms and conditions of the customer shall not apply under any circumstances, even when using customer order forms, including additional.

### Price quotes

4. Price quotations are valid for thirty (30) calendar days and are based on the then current values of materials. Subsequent price increases of parts of the materials will be passed on.
5. Price quotations are valid only for the order mentioned in the price proposal and not for any similar, future orders.
6. In the case of composite price quotations, there is no obligation to perform part of the order at the corresponding part of the total price.

### Delivery

7. Spectra undertakes to exercise due care in carrying out the assignments entrusted to it and is charged with an obligation of effort ("to the best of its ability") only.
8. Delivery dates are subject to unforeseeable and unaccountable circumstances and are indicative in nature. The Customer expressly confirms that the delivery period is not an essential provision of the Contract. Delay in delivery or execution can never give rise to any penalty, compensation or rescission of the Contract.
9. Customer shall at any stage of performance, timely provide Spectra with all information which Spectra deems necessary and useful for the performance of the Contract, failing which Spectra shall have the right to suspend delivery.
10. Spectra reserves the right to suspend performance if all prior and past due invoices have not been paid in full.

### Billing Terms

11. All invoices are payable within thirty (30) calendar days of invoice date, and an invoice will be sent electronically (by e-mail) with the customer's approval, if applicable.
12. Any invoice, the amount of which is not paid or not paid in full on the due date, shall automatically be increased by a fixed and irreducible indemnity equal to 10% of the amount due, with a minimum of €250.00 euros, without the need for a notice of default. In addition, a late payment interest equal to the legal interest rate in accordance with the Law of August 2, 2002 to combat late payment in commercial transactions shall be due ipso jure, without prior notice of default being required. Each month started is hereby considered a full month. Partial payments will first be used to cover costs, interest and damages and then deducted from the principal balances.
13. In the event of non-payment by the due date, all outstanding invoices shall become immediately due and payable and Spectra shall have the right to suspend the Contract by operation of law and without prior notice of default for the whole or the unexecuted portion.
14. Protests against invoices must be made by registered letter at the latest within eight (8) calendar days of the invoice date, under penalty of cancellation. The date and invoice number must be mentioned in the registered letter, failing which the protest will be considered non-existent.

### Lien, Retention of title, Risk

15. Spectra retains title to the materials until after full payment of the principal and, if applicable, interest due, damages. Accordingly, in case of non-payment, Spectra will be entitled to reclaim the materials.
16. All risks associated with the materials (including loss, theft and destruction or damage) shall pass to the customer upon delivery.

### Cancellation, Dissolution

17. In the event of cancellation of the Contract by the customer prior to the scheduled delivery date, the customer shall be liable for liquidated damages in the amount of 30% of the value of the price proposal with a minimum of 500.00 EURO when this occurs more than four (4) weeks before the scheduled delivery date and in the amount of 100% of the value of the price proposal when this occurs less than four (4) weeks before the scheduled delivery date, in each case without prejudice to Spectra's ability to prove and claim higher damages.
18. If there are objective reasons showing that the customer's solvency and/or liquidity position has been jeopardized (such as, for example, in case of bankruptcy, protested bills of exchange, apparent insolvency, overdue payments at Spectra or third parties, obtaining a collective debt settlement by the customer, ...), Spectra has the right to either require from the customer a prepayment or security deposit or to terminate the Contract by operation of law and without prior notice.

## **Complaints**

19. Any complaint must be addressed to Spectra by registered mail within eight (8) calendar days after the alleged fault or omission was discovered or could reasonably have been discovered, and in any event before any use, modification or repair is made, under penalty of forfeiture of all claims. Complaints about performance must always be fully and clearly described, with accompanying supporting documents.
20. A possible complaint or dispute is no reason to withhold payment; immediate payment may be demanded of what is owed in due course.
21. In case defects occur and have been timely reported, Spectra shall have the option of repairing the defects within a reasonable time or paying compensation for them.
22. For the customer, the damages to which Spectra may be liable under this agreement, whatever the cause, nature or object of the claim, shall not exceed 50% of the relevant invoice value (excluding VAT) of the order. For insurance reasons, any claim for damages must, under penalty of lapse, have been reported in writing in any event within one month of becoming aware of the occurrence or damage on which the claim is based, and the defects and damages must be proved in a contradictory manner. It is not permitted to withhold or postpone payment of outstanding invoices merely because of an (alleged) damage.
23. Any legal action must be brought by the customer, under penalty of forfeiture, no later than within six (6) months after determination, before the competent court.

## **Warranty**

24. Spectra offers the manufacturer's warranty on the materials.

## **No liability**

25. However, Spectra will not be liable for:

- damage or defects resulting from wear and tear, careless or improper use or acts of third parties;
- damage caused by a third-party installer engaged by the customer to install materials supplied by Spectra;
- consequential damages and/or any indirect damages, such as fire and disturbances of any kind, at the customer's premises where the materials were installed;
- damages due to reasons not attributable to Spectra, such as force majeure reasons, third-party interventions, etc..

## **Protection of personal data, Reference**

26. The parties undertake to comply with the applicable legislation in Belgium regarding the protection and processing of personal data (including the Privacy Act with respect to the processing of personal data and the GDPR) and their respective obligations under this legislation. For Spectra, this is further elaborated in Spectra's data protection policy.
27. Spectra is entitled to refer to its cooperation with the client in promotion as a reference.

## **Final Provisions**

28. The Contract contains the entire agreement regarding its subject matter, and supersedes and cancels all prior written or oral, express or implied communications, understandings and agreements between the parties.
29. If certain provisions of the Contract are held by a court to be invalid or unenforceable, in whole or in part, the Contract shall continue to exist for the remaining provisions and the remainder of the said provisions. The parties agree that in such case the invalid or unenforceable provision shall be deemed to be replaced by a valid and enforceable provision consistent with the original intent of the parties.
30. Any failure by Spectra to require performance of the provisions of the Contract shall not constitute a waiver or relinquishment of the application of this or any other provision.
31. In the event of a dispute regarding the formation, performance, compliance, validity or any other dispute within the framework of the Contract, only the Antwerp Commercial Court, Tongeren Division shall have jurisdiction. Only Belgian law is applicable, to the exclusion of the Vienna Sales Convention.

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## **Differing provisions for the customer who is a consumer:**

The foregoing also applies if the customer is a consumer, but then, in deviation from the foregoing, the following provisions apply:

32. A new article 'free withdrawal' is added

In case of a signing of the Contract at the consumer's home, the customer has a free right of withdrawal when the Contract concerns only the delivery of materials. The customer then has the right to notify Spectra to abandon the purchase of the materials, without payment of any penalty and without giving any reason within the fourteen (14) calendar days following the

receipt of the delivery of the materials or when the Contract also relates to an installation of the materials within the fourteen (14) calendar days following the signing of the price proposal.

If the customer wishes to exercise his right of withdrawal, the customer must notify Spectra by an unequivocal statement of his decision to withdraw from the Contract. The customer may use the model withdrawal form provided with the price offer for this purpose, if necessary. The customer bears the burden of proof regarding the exercise of the right of withdrawal.

The customer is liable for the depreciation of the materials resulting from their use beyond what is necessary to establish the nature, characteristics and functioning of the materials.

In the event of exercise of the right of withdrawal, the customer will return the materials to Spectra by all means and at its own risk and expense. At the express request of the customer, Spectra may come to pick up the materials, in which case transportation costs will be billed to the customer.

This right of withdrawal does not apply when the materials are specifically intended for the consumer.

33. Art. 7 does not apply.
34. Article 9 adds: If Spectra fails to perform its undertakings, the customer is also permitted to suspend the performance of its undertakings.
35. Art. 12 is replaced by this provision: On any invoice, the amount of which is not or not fully settled on the due date, after notice of default, default interest at the legal interest rate and liquidated damages in the amount of 10% of the invoice amount (with a minimum of 125.00 EURO and a maximum of 2,500.00 EURO per invoice) shall be due.
36. Art. 13 is replaced by this provision: In case of non-payment on the due date, Spectra has the right to suspend the Contract, after prior notice of default, for the whole or the unexecuted part. If Spectra fails to perform its commitments, the customer is also allowed to suspend the performance of its commitments.
37. The deadline in Art. 14 shall be replaced by thirty (30) calendar days (instead of eight).
38. The following provision is added to art. 17: If Spectra cancels the Contract (before performance has begun), it shall be liable to the customer for damages in accordance with art. 20/21.
39. Art. 18 does not apply.
40. Articles 19 through 22 are replaced by the following provisions:

The customer must report all complaints, if the defects are visible, to the Spectra by registered mail within two (2) months of delivery or installation, under penalty of forfeiture.

Spectra shall be liable to the customer for any defect that exists in the delivery/installation of the materials and manifests itself within a period of two (2) years from delivery/installation.

The customer must report all complaints, if the defects were latent, to Spectra by registered mail within two (2) months from the day on which the defect was discovered, under penalty of forfeiture. If the defect occurs after six (6) months after delivery/installation, the customer must prove that this defect already existed at the time of delivery/installation. After one year from the discovery of the defect, the customer's legal claim shall lapse, without this period expiring before the end of the two (2) year period.

If after investigation the complaint is found to be justified, the customer shall prefer a free repair or replacement. Should this not be possible, the customer is entitled to request an appropriate price reduction.

41. Art. 23 does not apply.
42. Art. 31 is replaced by this provision: Subject to the applicable provisions of consumer law to the contrary, any dispute arising out of or in connection with the Contract shall be dealt with exclusively by the Antwerp Commercial Court, Tongeren Division. Only Belgian law shall apply.

*Release May 2021.*