

## GENERAL CONDITIONS OF SALE AND HIRE NEPTUNUS SARL

### **1. GENERAL**

- 1.1 These general terms of sale and hire shall apply to all orders entrusted to us, unless expressly agreed otherwise and so confirmed in writing by Neptunus.
- 1.2 The fact of placing an order implies full commitment, without reserves, by the buyer to these general conditions of sale and hire.  
Other terms – which may possibly be stated by clients to apply – shall be excluded, unless otherwise expressly agreed by Neptunus.
- 1.3 Where a departure in writing is made from any clause of these General Terms, the remaining clauses of the agreement shall continue to apply.

### **2. QUOTATIONS**

- 2.1 All offers are issued without commitment except express agreement to the contrary, the agreement being opposable only from the date of confirmation of the order by Neptunus.  
The prices stated in the quotation shall apply for 8 weeks. In the absence of any agreement to the contrary in the order confirmation, all prices quoted are exclusive of VAT, packaging and carriage costs and/or of taxes, duties or charges otherwise imposed on the goods and/or services.
- 2.3 Unless otherwise agreed in writing, all charges and expenses for the requisite energy and water shall be borne by the client, as shall any fees and/or duties imposed by the public authorities.
- 2.4 The prices in the quotations shall apply solely to the quantities and/or materials stated therein.
- 2.4 Neptunus shall be entitled to pass substantial increases in wages, transport and other charges and taxes on to the client, after the formation of the agreement but before complete delivery has taken place.

### **3. ORDERS**

- 3.1 The order is deemed to be definitive if, 8 days after its written confirmation by Neptunus, the client has not expressed any objection to Neptunus.
- 3.2 Items on which quotations are given will only be exclusively reserved for the client on receipt of the signed order confirmation, together with the first contractually agreed instalment of payment.
- 3.3 Changes to the order, once it has been issued, must be brought to Neptunus' attention in writing in good time. Changes made by word of mouth shall only apply once confirmed in writing by Neptunus. Any changes that cause costs higher than those on which the quoted prices were based will be charged for in addition.
- 3.4 Neptunus reserves the right to carry out extra work, whether or not specified in the order or order confirmation, and to charge same to the client, if such work is in the interests of the proper fulfilment of the order. Neptunus shall give the client prior notice of such extra work in writing unless the urgent nature thereof prevents this.

#### **4. FULFILMENT OF THE ORDER**

- 4.1 All delivery times given by Neptunus are always approximate and non-binding, unless it expressly appears in the order confirmation that the agreed delivery time and date are an irrevocable deadline.
- The delivery time shall commence as soon as the order confirmation is sent and the client has provided Neptunus with all the data, drawings and materials that the latter judges necessary for the installation of the delivered or hired product.
- In no event shall an over-run on the delivery time relieve the client of his obligations under the agreement and neither shall it entitle the client to cancel the agreement and/or claim compensation.
- 4.2 The client must ensure that Neptunus has sufficient material conditions to fulfil the contract. The client must also ensure that third parties carrying out work on his instructions do not cause any delay to Neptunus' work. If, however, delay arises for the aforementioned reason, the cost thereof will be charged to the client.
- 4.3 If it appears, during fulfilment of an order accepted by Neptunus, that through force majeure or circumstances unknown to Neptunus, the order cannot be honoured, Neptunus shall be entitled to demand that the order be changed in such a way as fulfilment becomes possible. Neptunus shall be entitled, without consultation or notification, to outsource the order or part thereof or to have the same fulfilled by a third party, if this is, in Neptunus' opinion, conducive to the proper and efficient fulfilment of the order.
- 4.4 If the client does not comply strictly with any obligation on him arising from the agreement with Neptunus, Neptunus shall at all times be entitled to suspend this agreement and to cancel it, wholly or in part, without any requirement for a notice of default and/or judicial intervention, all such without prejudice to Neptunus' right to compensation.
- 4.5 In the event of force majeure (which shall be deemed to include: war, mobilisation, riot, extreme weather conditions, in particular strong winds, hold-up due to frost, traffic jam, conflagration, breakdown of machinery, strike, non-delivery of requisite materials and semi-finished goods to Neptunus by third parties and other unforeseen circumstances that disrupt the normal course of business and delay or render unreasonable performance of the order), Neptunus shall be relieved of its obligation to comply without the client thereby having any claim to compensation for expenses, loss or interest. Should force majeure arise, Neptunus shall immediately notify the client thereof, Within five days of receipt of said notice, the client shall have the possibility of cancelling the order in writing, committed to paying Neptunus for the part of the order already fulfilled.

#### **5. CLIENT'S OBLIGATIONS**

- 5.1 The client must ensure that the places to which the goods are to be delivered is accessible from the public highway, completely free of obstructions and levelled so that Neptunus may be able to begin placing the infrastructure without further work. Should the site be inaccessible, for example because of weather conditions, the client must provide a replacement site.
- The client must ensure that the ground is easily accessible (if need be, with the help of rolling plates) for lorries, cranes, forklift trucks and other site equipment. Neptunus will not be liable for damage caused to the land or road surfaces.
- 5.2 The client must provide a clear drawing showing where the equipment is to be positioned. He must be present at the commencement of the erection work and indicate the exact location.

- 5.3 The client must, prior to the execution of the work by Neptunus, become informed from persons, competent authorities or bodies of the place of installation of the rented infrastructure, about all of the declarations and/or the authorizations necessary for the work to be carried out. The client must inform the persons, official bodies or competent authorities about the intended work for the installation of the rented infrastructure and, if necessary, to make, all declarations and obtain all the necessary authorizations at his own expense.
- 5.4 Anchorage must be possible on the site, using either ground anchors of up to 100 cm, or else concrete blocks or concrete floors.
- The client, when the location of the rented infrastructure is located in France, must therefore, in accordance with the provisions of the Decree of 14th October 1991 or any regulations which would be substituted, obtain information from the town hall of the place of establishment of the infrastructure about the existence of underground, overhead or underwater structures, (gas, water, electricity, heating, and communications), such as cables or pipes.
- On the basis of the answers obtained from the town hall, the client must send to each of the operators concerned a request for information, in the written form and in the regulatory forms, to obtain the precise and accurate plans of the structures.
- The client must provide Neptunus with plans indicating the location of all structures present on the ground, and this prior to starting work.
- The client must also, in accordance with the provisions of the Decree of 14th October 1991 or any other regulations that would be substituted, make a declaration of intent for beginning work in the forms and deadlines required from each operator concerned. The client must keep Neptunus informed of possible answers made by the operators. As it is said in article 4.3 above, if the command cannot be fulfilled under the conditions laid down, Neptunus has the right to require that the order should be amended in such a way as to allow fulfilment.
- For the purposes of this article, Neptunus gives power of attorney to the client, which he expressly accepts, to proceed with all requests for information, all declarations and authorization requests that are made by the law, the regulation or any other applicable provisions in the place of the leased infrastructure, at the charge of Neptunus, as the contractor of the work.
- 5.5 The Client is responsible for the damage caused on the structures present on the ground as well as in the basement by Neptunus by lack of information from the client.
- The Client shall accordingly guarantee Neptunus against all claims or claims of third parties in relation or having as origin his obligations of information. For this purpose, the customer undertakes to intervene voluntarily in any proceedings against Neptunus and guarantee it for any sentence that may be pronounced against it in relation or having as origin its obligations of information.
- 5.6 Should it be necessary to inspect the buildings, the technical inspection must be done in the presence of a representative of Neptunus. Neptunus shall, if necessary, make structural calculations available. The client, being aware that such calculations incorporate patented information, is bound to secrecy and must ensure that the calculations are used exclusively for the purposes of the technical inspection.
- 5.7 He must also take care to install and maintain the fire and evacuation of premises warning devices as well as all other equipment of fire prevention (fire extinguishers, emergency lighting and exit panels) at his own expense.

- 5.8 The client must ensure that, during fulfilment of the order, the site is properly enclosed and has security against theft and malicious damage.
- 5.9 The client must make space available in the proximity of the said place for the storage of packaging material.
- 5.10 The client must provide the necessary connections for electricity and water supply and drainage. The client must also provide (temporary) toilet facilities during performance of the work by Neptunus.
- 5.11 The client must inform Neptunus of the specific provisions on Health, Safety and the Environment applicable to the site.
- 5.12 In a general way, the Client shall guarantee Neptunus against all claims or claims of third parties in the context of installing the infrastructure in relation or having as origin his obligations under the present article.  
The client shall for this purpose undertake to intervene voluntarily in any proceedings against him having for origin his obligations under the present.

## **6. WARRANTY**

- 6.1 Any apparent fault must be reported in writing at delivery. In the absence of reserves, any subsequent claims will be considered late and will no longer be accepted. It follows that it may not base any action against Neptunus.
- 6.2 If the client finds a fault of the item on delivery, Neptunus will have the choice either to proceed free of charge with a new delivery, or offer the client a price reduction, the one and the other in consultation with the client.  
To establish a defect, the client shall assist Neptunus and arrange access when required to provide the opportunity to organise, or have organised by a third party, an on-site investigation of the quality of the goods and services supplied.
- 6.3 Neptunus disclaims any liability for faults caused or caused by the intervention of a third party, by the client himself, or by all causes external to Neptunus.

## **7. LIABILITY**

- 7.1 Neptunus' liability shall be limited to no more than the amount of the goods and or services it supplies. In no event shall Neptunus be liable for direct or indirect damage that may arise from non-fulfilment of the order or the incorrect or untimely fulfilment thereof.
- 7.2 Complaints concerning particular work or goods supplied shall not suspend the client's obligation to pay.
- 7.3 Neptunus and its subordinates are in no way responsible for damages of any nature, whatever the causes, other than those which are the result of their intervention or their proven serious misconduct.
- 7.4 The Client is bound to compensate Neptunus and ensure against any claim that third parties could make in respect of Neptunus for any damage attributable to the delivered goods.

## **8. HIRE**

- 8.1 The above-mentioned Articles also apply in the case of hire of furnishing, unless it is expressly agreed otherwise. In such an event the client shall be the hirer and Neptunus the supplier.
- 8.2 In any event Neptunus shall remain the sole owner of the goods made available to the hirer.
- 8.3 Hire period shall mean the period from the date on which the materials are delivered to the last date of removal of the equipment inclusive.

- 8.4 Period of use shall mean the period from the date on which Neptunus hands over the equipment to the hirer until the date on which dismantling of the equipment begins, inclusive.
- 8.5 The hirer shall use the hired goods for their intended purpose and declares that he receives them in good condition, will keep them in that condition and, hence, will return them on expiry of the period of use in the same condition as that in which he received them. The hirer may not carry off or cause to be carried off the hired property without the written consent of the supplier. The hirer must provide access to the hired property at all times. Sub renting, making available for use by another and giving in use to a third party shall be possible only with Neptunus' written consent.
- 8.6 The hirer must inform Neptunus without delay if the hirer's goods or real property or the property that is the object of this agreement are seized, or if Neptunus' proprietary rights are otherwise endangered, and also in the event of the hirer being made judicially insolvent, applies for a suspension of payments, goes into receivership or relocates his business. The lessee is required to inform the curator, administrator or bailiff immediately, and give him the content of this contract.
- 8.7 The hired equipment will be insured by Neptunus against the risks of fire, storm, damage by aircraft and lightning. Fixtures and goods that are not Neptunus' property and are on or in the equipment are not included in this cover and are at the hirer's risk and expense. During the hire period as specified in clause 8.3, the hirer shall bear the risk of vandalism, theft, embezzlement or loss.
- 8.8 The hirer shall be liable for all damage to the hired property, however it may be described or caused, notwithstanding whether it is the result or fault of the hirer, of a third party or of force majeure. The hirer must report any damage to or defect in the hired property to Neptunus immediately. The hirer may not make repairs without Neptunus' prior authorization. If the defect in or damage to the hired property arose without any fault on the part of the hirer, the hirer shall – if possible– be entitled to replacement of the goods concerned for the remaining term of the agreement.
- 8.9 Neptunus shall not in any event be liable for any environmental damage (including soil contamination arising from fuel-powered hired goods such as heating, generator sets, etc.).
- 8.10 The hirer is not permitted to cover up or remove the brand names, (picture) marks and logos on the equipment or parts thereof without the consent of the supplier.
- 8.11 If, at the end of the period of use, the hirer does not make the equipment available to Neptunus promptly, the latter shall be entitled, for every day or part day for which the property is not delivered up to it, to charge the hirer the agreed daily rental by way of compensation, together with any expenses incurred. If it appears that the returned goods show defects, are damaged, incomplete, and/or are not or not properly cleaned, Neptunus has the right to charge the lessee for related costs. In all cases, the costs of cleaning generated by the removal of the elements applied on the things leased by the lessee and difficult to remove (paint, adhesive or stickers, etc.) will be invoiced to the lessee. When parts are missing, the counting in the warehouse performed by Neptunus is opposable to the lessee.

## **9. RESERVATION OF TITLE**

- 9.1 In the event of sale, hire purchase or financial leasing, Neptunus shall retain title to the goods supplied until such time as the client has met all his obligations under the agreement, and has paid any compensation owed in relation to the supply in question.

## **10. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT**

- 10.1 Neptunus shall retain the copyright to any designs, drawings, sketches and calculations designed or accomplished, as the case may be, even where done on the client's instructions.
- 10.2 The client undertakes to use the designs, drawings, sketches and calculations only for his own purposes, and not to make them available in any manner whatsoever to any third party, for reward or otherwise.

## **11. PAYMENT**

- 11.1 All payments shall be made on the terms specified by the agreement, net and without any deduction.
- 11.2 If the fulfilment of an order extends over a period of more than a month or if, in Neptunus' opinion, the sum involved is such as to require it, Neptunus may demand payment in advance or in instalments.
- 11.3 Whatever the agreed terms of payment, Neptunus is allowed to claim a guarantee of payment throughout the fulfilment of the order.
- 11.4 Any delay in payment leads rightfully, from the day following the date of payment on the invoice, to the application of penalties of an amount equal to 3 times the percentage of legal interest per month or part of a month of delay.
- 11.5 All legal and extra-legal expenses that Neptunus may incur in asserting its rights shall be charged to the client. These expenses shall be deemed to amount to at least 15% of the sum due, subject to a minimum of € 100.00.
- 11.6 If the client is in default of his obligation to pay, Neptunus reserves the right to suspend work, which means that Neptunus will recommence its operations only when the client has met his obligations, without prejudice to Neptunus' right to compensation should the client remain in default. If the delay in the work is caused by non-payment by the client, Neptunus cannot be held liable for it.
- 11.7 If the client does not pay despite repeated reminders, Neptunus reserves the right to resort to cancellation of the agreement and to repossess whatever has already been done, whereupon the client shall be held liable for all loss arising from failure to comply or comply promptly with the agreements on payment.

## **12. NOTICE AND CANCELLATION OF THE AGREEMENT**

- 12.1 If the Client fails to fulfil one or more of the obligations arising for him of this contract in favour of Neptunus, the latter has the right to terminate all or part of the contract with immediate effect by registered letter with acknowledgement of receipt, subject to its right to claim damages in compensation for the prejudice suffered.
- 12.2 Neptunus shall have the power to cancel the agreement with immediate effect if the client applies for a suspension of payments, is declared judicially insolvent or decides to shut down or transfer his business, wholly or in part.
- 12.3 In the event of dissolution of the agreement as described in 12.1 and 12.2, Neptunus shall be entitled to start dismantling and carrying off the equipment at once.
- 12.4 The Client is allowed to cancel the contract by registered letter before the date of delivery. The client shall thereby become liable to a cancellation charge equal to a percentage of the price agreed in the order confirmation, which percentage shall be determined as follows:
- on cancellation more than 120 days before delivery: 20 %
  - on cancellation 120 – 61 days before delivery: 40 %
  - on cancellation 60 – 31 days before delivery: 60 %
  - on cancellation 30 days or less before delivery: 80 %

In addition, the client is obliged to compensate Neptunus for the work already carried out by Neptunus and/or its subcontractors and for the investments made and/or investment obligations entered into by Neptunus.

- 12.5 The payments referred to in Article 12.4 also apply in the event of cancellation, postponement, interruption or premature termination of an event in connection with an epidemic, pandemic or contagious disease (both national and international) and/or in connection with measures to be taken/adopted (by the responsible authorities) to prevent the spread of the diseases referred to above. This applies irrespective of the degree of foreseeability of the outbreak of the diseases referred to above.

### **13. APPLICABLE LAW AND DISPUTES**

- 13.1 Only French Law shall apply to agreements and transactions by Neptunus.
- 13.2 All disputes, however described, shall be subject to the judgement of a competent French court (Commercial Court Bobigny), to the exclusion of all other arbitral and/or judicial bodies.

