

## Standard Sales and Delivery Terms Cups4you B.V.

### 1. Definitions

- 1.1 "Contract" means these Standard Sales and Delivery Terms, the Order Confirmation and Supply Contract.
- 1.2 "Order Confirmation" means Cups4you B.V.'s written acceptance of the Customer's purchase order.
- 1.3 "Quotation" means the product price quotation produced by Cups4you B.V. for the Customer.
- 1.4 "Supply Contract" means the Agreement between Cups4you B.V. and the Customer under which Cups4you B.V. holds stock (between specified maximum and minimum levels) on the Customer's behalf, which the Customer shall be invoiced for and/or take delivery of periodically.
- 1.5 "Technical Data Sheet" means the Cups4you B.V. product specification sheet as varied from time to time.

### 2. Application Conditions

- 2.1 These terms and conditions shall:
  - 2.1.1 apply to and be incorporated into the Contract; and
  - 2.1.2 subject to the provisions of clause 3.1, prevail over any inconsistent terms or conditions contained, or referred to in the Customer's purchase order, or implied by law, trade, custom, practice or course of dealing.
- 2.2 The Customer's purchase order constitutes an offer by the Customer to purchase the products specified in it upon these terms and conditions. No offer placed by the Customer shall be accepted by Cups4you B.V. other than by order confirmation.
- 2.3 Each party acknowledges that, in entering into this Contract, it does not rely on any representation warranty or other provisions except as provided in this Contract, but nothing in this Contract shall affect the liability of either party for fraudulent misrepresentation.

### 3. Quotation and order Confirmation

- 3.1 If the Standard Sales and Delivery Terms are applied in connection with Supply Contracts, the wording of the Supply Contract takes precedence over the Standard Sales and Delivery Terms.
- 3.2 If the Standard Sales and Delivery Terms are applied in connection with Order Confirmations, the wording of the Order Confirmation takes precedence over the Standard Sales and Delivery Terms.
- 3.3 Quotations issued by Cups4you B.V. are valid for thirty (30) calendar days from the date of the quotation.
- 3.4 Deviations from the Standard Sales and Delivery Terms are valid only if in writing and signed by a director of Cups4you B.V.

### 4. Brochures, data sheets, samples etc.

- 4.1 Specifications on the web-site, in catalogues, brochures, price lists and similar are indicative only.
- 4.2 The quality and specifications of product samples (as set out in the Technical Data Sheet) are only indicative of the look of the product.
- 4.3 The Technical Data Sheets to which reference is made in the Supply Contract or the Order Confirmation contain the specification of the product. The data sheets may vary from time to time at the sole discretion of Cups4you B.V. As part of Cups4you B.V. product development the data sheet may change. Changes to the Data Sheets – if any – overrule the specifications agreed to in the Supply Contract or the Order Confirmation.

### 5. Intended use of the product.

- 5.1 It is the sole responsibility of the Customer that the packaging supplied is suitable for the intended use.

### 6. Prices

- 6.1 Prices quoted are Ex Works (Incoterms 2000), exclusive of VAT, which Cups4you B.V. shall add to its invoices at the appropriate rate.
- 6.2 However, Cups4you B.V. maintains the right to pass on to the Customers various cost surcharges such as road taxes, oil surcharges and similar additional costs to which Cups4you B.V. becomes liable when fulfilling the contract. Such charges shall be invoiced to the Customer as soon as reasonably practical following Cups4you B.V. incurring the same.
- 6.3 The prices quoted are based on the volumes indicated by the Customer. Should the actual volume deviate from the quantum upon which the price was based Cups4you B.V. maintains the right to adjust the pricing.

### 7. Payment

- 7.1 Cups4you B.V. is entitled to invoice for deliveries or part-deliveries at the time of delivery. If the delivery is postponed owing to events within the customer's control, Cups4you B.V. may elect to invoice at the agreed time of delivery for the delivery/partial delivery.
- 7.2 The invoiced amount must be made available in cleared funds in the invoiced currency to Cups4you B.V., no later than thirty (30) calendar days after the invoice date at a bank account selected by Cups4you B.V.
- 7.3 If payment is received late pursuant to clause 7.2 above, Cups4you B.V. reserves the right to levy interest at the rate of one and a half per cent (1½%) per month or part thereof on the balance outstanding as from due date. An additional reminder fee amounting to fifty Euros (€ 50) may be charged for each of the first two reminders rising to one hundred Euros (€ 100) for the third and subsequent reminders. The cost of collection, legal fees etc. – if any – are on account of the Customer.
- 7.4 If a payment is late Cups4you B.V. retains the right to stop further deliveries until the balance due has been settled in full.
- 7.5 If – in the opinion of Cups4you B.V. – the Customer's creditworthiness is deteriorating Cups4you B.V. is entitled to alter the payment terms immediately upon giving written notice, including the right to demand payment in advance of the start of production or delivery and/or cancel the contract with a written notice of one month.

### 8. Right of title

- 8.1 Cups4you B.V. shall retain ownership of the products ("Retained Products") until payment has been received from the Customer in full to Cups4you B.V. subject to the terms of this clause.
- 8.2 The Retained Products shall be at the Customer's risk from the time of delivery.
- 8.3 Notwithstanding that the Retained Goods remain the property of Cups4you B.V., the Customer may use them in the ordinary course of the Customer's business.
- 8.4 The products of Cups4you B.V. are protected by intellectual property rights (including but not limited to trade marks) and the Customer is not entitled to register or assign rights in any way whatsoever if the consequence is that the intellectual property rights of Cups4you B.V. are in any way infringed or violated or the enforcement thereof is obstructed.
- 8.5 Cups4you B.V. retains the intellectual property rights to each and every product even in cases where the products are developed together with the Customer. For the avoidance of doubt, all intellectual property rights in products developed by Cups4you B.V. jointly with the Customer shall vest solely in Cups4you B.V. and the Customer hereby irrevocably assigns all such intellectual property rights to Cups4you B.V.

### 9. Transport wrapping

- 9.1 The delivery is packed according to Cups4you B.V.'s general wrapping methods. Should a customer require alternative packing, Cups4you B.V. must be advised at the time of order. The extra charge of the alternative wrapping arrangement is accountable by the customer.

### 10. Deficiencies (errors and defects)

- 10.1 Variation in the colour of the print that lies within the spectrum considered acceptable by the trade but is usual is not to be construed as a defect.

### 11. Force Majeure and Cups4you B.V.'s responsibility for Errors and Defects

- 11.1 Neither party shall be in breach of contract if there is a total or partial failure of performance by it of its duties and obligations under this Contract occasioned by any act of fire, act of government or state or civil commotion, insurrection, embargo, industrial action, acts of terrorism and/or any other reason beyond the control of the other party.
- 11.2 If either party is unable to perform its duties and obligations under this Contract as a direct result of the effect of one of the reasons set out at clause 11.1 above, that party shall give written notice to the other of the inability and which sets out the full reasons therefore and shall use all reasonable endeavours to prevent, avoid, overcome or mitigate the events of such event of force majeure and shall resume the performance of its obligations so far as possible as quickly as possible.
- 11.3 If the event of force majeure remains unresolved after sixty (60) days from when it first occurred, then either party may be entitled to terminate this contract immediately upon written notice to the other.
- 11.4 Cups4you B.V. specifically excludes liability for any operational loss, loss of production time, loss of profit or similar indirect loss.
- 11.5 Cups4you B.V. cannot be held liable for any loss exceeding the purchase price as set out in the Order Confirmation.

- 11.6 If a delivery or part thereof contains defective goods, Cups4you B.V. may in its sole opinion decide either to reimburse the Customer the invoiced amount; or redeliver.
- 11.7 Goods that Cups4you B.V. has acknowledged as defective may be returned only at the instigation of Cups4you B.V. and for its account.
- 11.8 If Cups4you B.V. deliver defective goods the liability of Cups4you B.V. is in any event limited in accordance with clause 11.5 above.
- 11.9 Any responsibility for defective products lapses at the latest one year after the delivery.

### 12. Customer's obligation to examine goods delivered

- 12.1 Immediately upon delivery, or at the latest when the goods delivered have arrived at customer's business address, the customer is obliged to perform an examination of the delivery in accordance with good local practice.
- 12.2 If the customer has not presented a complaint in writing regarding errors and defects found or should have been found at the examination as stated under item 12.1 within a time limit of seven (7) working days, any subsequent claim by the customer is rendered void.

### 13. Cups4you's liability for delayed deliveries

- 13.1 Cups4you B.V. is not liable for delays that are outside the control of Cups4you B.V. or could not have been foreseen due to force majeure acts detailed at clause 11.1 above.
- 13.2 In no event is Cups4you B.V. responsible for operational loss, loss of production time, loss of profit or other indirect loss.
- 13.3 If Cups4you B.V. is responsible for the delay the customer may claim compensation for its documented loss, subject however, to the wording of 13.2 above. In no event the compensation shall exceed the contract price for the actual delivery or ten thousand Euros (€ 10,000) per delivery or series of deliveries, whichever is the highest.
- 13.4 In case of delay the Customer has no rights to compensation beyond the conditions stated under 13.3 above.

### 14. Product liability

- 14.1 Cups4you B.V. is liable for professional property damage if the damage is proven to have been caused by the error or negligence of Cups4you B.V. or by a party for which Cups4you B.V. is liable. However, the liability is limited to two hundred and fifty thousand Euros (€ 250,000) per incident, delivery or series of deliveries.
- 14.2 Cups4you B.V. is never liable for operational loss, loss of production time, loss of profit or similar indirect loss.
- 14.3 The limitation in Cups4you B.V. liability as stated 14.1 and 14.2 above is waived if Cups4you B.V. commits gross negligence.
- 14.4 The Customer must keep Cups4you B.V. free from any third party claims exceeding what follows from 14.1 to 14.3 above. If a third party raises claims against any of the parties, the other party must be informed without undue delay.
- 14.5 It is the responsibility of the Customer to ensure that the artwork of the product contains all such warnings and cautions which under the circumstances are required and considered adequate guidance of the public. The Customer shall hold Cups4you B.V. harmless for any and all claims that may be raised against the Customer and/or Cups4you B.V. as a consequence of insufficient guidance on the proper handling and/or use of the product.

### 15. Confidentiality

- 15.1 The Customer shall not without the written consent of Cups4you B.V. make use for its own purposes or disclose to any person (except as may be required by law or to its professional advisors for the purposes of this Contract) any information which is obtained regarding the business of Cups4you B.V., or any other confidential or secret or proprietary information therein, or any information therein or any material provided by Cups4you B.V., all of which information shall be deemed to be confidential.
- 15.2 The duties of confidentiality shall not apply to information which is:
  - 15.2.1 prior to or at the time of disclosure or subsequently in the public domain.
  - 15.2.2 lawfully in the possession of the Customer, its employees or agents prior to disclosure by the other.
  - 15.2.3 required to be disclosed by law or legal process.

### 16. Transfer of rights and obligations

- 16.1 Cups4you B.V. is free to assign or transfer its rights under the contractual agreement to a third party. Cups4you B.V. may assign or transfer its obligations under the contractual agreement to a parent company, subsidiary, Sister Company or an associated company. The customer may resist such an assignment under the contract only if the customer may beyond reasonable doubt, demonstrate that the assignment of the contract might jeopardise the successful observation of the contract.
- 16.2 The customer may not assign its rights or obligations in relation to the entered agreement to any third party without prior written consent of Cups4you B.V. Cups4you B.V. cannot withhold such consent unreasonably.

### 17. Special conditions re. In-Mould-Labelled Packaging (IML) and decorated products

- 17.1 Repro material/design (art work)
  - 17.1.1 The customer will supply Cups4you B.V. the repro material for labels/decoration, inclusive of drawings and other supporting specifications required for the production of IML packaging. Cups4you B.V. shall inspect this repro material and within twenty-one (21) days of delivery shall notify the Customer of any defects whereupon the Customer shall immediately supply replacement repro material to Cups4you B.V. If Cups4you B.V. do not notify the Customer of any defect pursuant to this clause 17.1.1 then the repro material shall be presumed to be adequate for the purposes of producing the IML packaging so far as regards any defect or damage which would be apparent on a reasonable examination of the materials and Cups4you B.V. shall be deemed to have accepted such materials. Cups4you B.V. is entitled to invoice the customer all costs originating from the production of artwork and plates.
  - 17.1.2 Based on the repro material provided, Cups4you B.V. will prepare the film and plates to be used for the production of products.
  - 17.1.3 Printing proofs will be forwarded either physically or electronically for the approval of the design (art work) by the customer. Only when the customer has confirmed the design orders will be placed. If there is no confirmation the agreed delivery date will not be accepted.
  - 17.1.4 Cups4you B.V. shall be entitled to destroy the Customer's art work/plates etc. when not a minimum of two (2) years has passed since the material was last used, and the customer has requested delivery of the art work / plates in writing within four (4) weeks after Cups4you B.V.'s enquiry regarding the future use of the material.

### 18. Supply of IML products

- 18.1 Cups4you B.V. will confirm a final delivery date, based on the time when Cups4you B.V. is in receipt of the labels from its subcontractor.
- 18.2 Prices
  - 18.2.1 Costs for design (art work) will be invoiced separately.
  - 18.2.2 Cups4you B.V. may invoice purchased labels separately at the time of purchase hereof. If labels are paid on a current basis via the supplied products, waste and any remaining stock of labels will be invoiced no later than three (3) months after purchase of the concerned labels.
- 18.3 Storage of labels
  - 18.3.1 All labels are stored by Cups4you B.V. in compliance with good trade standards and are used in conjunction with the manufacture of IML products for the customer.
  - 18.3.2 Waste and any remaining stock of labels will be destroyed no later than four (4) weeks after invoicing, unless the customer has before then entered into agreement with Cups4you B.V. regarding the handling of this remaining stock.
  - 18.4 Retention of title to repro material and labels
  - 18.4.1 The customer retains title to the repro material that the customer has placed at the disposal of Cups4you B.V. with a view to manufacture the IML products.
  - 18.4.2 Notwithstanding risk shall fall to the Customer upon delivery title to the film, plates and labels pass to the customer upon payment in full of the costs for the film, plates and labels as invoiced by Cups4you B.V..
  - 18.4.3 Provided that the Customer has reserved the right to get the repro material, prepaid labels, films and plates to be used for the manufacture of IML products returned, Cups4you B.V. shall, at the request of the Customer and without undue delay, return these items to the Customer.

### 19. Law and jurisdiction

- 19.1 The Contract shall be governed by and construed in accordance with Dutch law and the courts of The Netherlands shall have competent jurisdiction.

