

**GENERAL TERMS AND CONDITIONS OF “SALE & DELIVERY”.****DEFINITIONS**

1. In these General Terms and Conditions of “Sale & Delivery” (“Terms and Conditions”):
  - (I) “The Company” means **WillCo Wells B.V.** (a limited company to the laws of The Netherlands) WG plein 287 (1054 SE), Amsterdam.
  - (II) “The Buyer” means the purchaser of goods from the Company.
  - (III) “Goods” means the articles or goods to which this document relates.
  - (IV) “Trade-mark” means any word, name or symbol, or device or any combination thereof adopted and used by the Company to identify his goods and distinguish them from those manufactured or sold by others.
  - (V) “Trade-name” is the designation used by the Company to denominate all goods and services which have acquired a special significance under the name of the Company and applies to all its products and goodwill.

**GENERAL**

2. All orders are accepted and all contracts are made subject to the following “Terms and Conditions” provided that any special conditions of the Company in any quotation or contract shall prevail to the extent that they are inconsistent with the following “Terms and Conditions”.
3. A quotation of the Company does not constitute an offer by the Company to sell or supply goods and every acceptance of any quotation of the Company and every order by the Buyer is and shall be deemed to be an offer by the Buyer to the Company and does not and shall not bind the Company unless and until the Company gives its written acknowledgement of the order. If the Company's “Terms and Conditions” (whether special or general) are at or appear to be at variance or inconsistent with any conditions of the Buyer then the Company's “Terms and Conditions” shall and shall be deemed to prevail and be effective.
4. No variation or purported variation of a term of this or any contract shall bind the Company unless first agreed in writing and signed by the President of the Company. After an order has been acknowledged by the Company the Buyer may not cancel the order or any part thereof without the prior written consent of the Company. The Company shall be entitled to invoice the Buyer for all and any loss occasioned by cancellation including administrative and other expenses.

**TECHNICAL SPECIFICATIONS**

5. All descriptive and technical specifications drawings illustrations photographs catalogues particulars of weights, dimensions finish and general literature relating to the Goods are subject to Copyright of the Company, unless it is expressly stated or agreed in writing and signed on behalf of the Company by the President of the Company, these are intended only to present a general guide and shall not be incorporated in or form part of this or any contract.  
All Trade-marks, Trade-names adopted and used by the Company, and consisting of either word, symbol, pattern, device or design are and remain the exclusive property of the Company and may not be used unless expressly stated or agreed in writing and signed on behalf of the Company by the President of the Company.

**PRICE**

6. The Company reserves the right to alter the contract price in respect of the Goods by reference to the price ruling at the date of dispatch of the Goods if any variations in the costs of materials and/or labour and/or any other factor shall in the opinion of the Company make such alterations necessary or expedient. Unless otherwise expressly so stated all prices are exclusive of value added tax which shall be applied in accordance with the legislation in force at the tax point date and EX WORKS; exclusive of insurance cost, transport cost, Customs taxes and Customs fees, im- & export taxes, and exclusive of all other applicable costs which are customer responsibility only.

**DELIVERY**

7. (a) Any dates or periods for the delivery of the Goods or any of them are best estimates and approximate only. Whilst the Company will where possible attempt to comply with such dates or periods any such dates or periods shall not take effect as a term of the contract or constitute an obligation binding on the Company and in any event but without prejudice to the foregoing time shall not be of the essence for such delivery.



**(b)**Where the Buyer is to collect goods from the Company, the Company reserves the right to charge for storage if such goods are not collected within seven days after notifying the Buyer that such goods are available for collection. If the goods are not collected by the Buyer within 21 days of such notification the Company shall be entitled to suspend further performance of the contract and to treat the contract as being wrongfully repudiated by the Buyer and forthwith terminate the contract or treat the contract as terminated without liability for any loss whether direct or indirect suffered by the Buyer by reason of such termination but without prejudice to any right or remedy available to it.

**(c)**If the Company is prevented from delivering goods at the time provided for delivery by reason of any cause outside its reasonable control (including but not so as to limit the generality of the foregoing fire, explosion, plant breakdown, interference by labour strikes or lock outs or non-availability of transport or materials) then the period for delivery shall be deemed extended accordingly and the Buyer shall have no right to terminate the Agreement or contract, which is most appropriate, by reason of such delay. If the delivery date has been exceeded by sixteen weeks then the Buyer may give notice to the Company to terminate the unfulfilled part of the contract but the Company shall have no liability to the Buyer for any loss or damage arising therefrom or consequential thereon.

**(d)**The Company shall be entitled to cancel any accepted order or withhold delivery of any goods if the Buyer is in breach of any obligation to the Company whether contractual or otherwise.

**(e)** The Buyer shall not refuse prevent or hinder delivery and failure by the Company to effect delivery by reason of any of the aforesaid shall not affect the obligation of the Buyer to pay the full invoice price.

**(f)**The Company shall be entitled to re-sell all or any goods in respect of which delivery is refused prevented hindered or cancelled and in the event that the reason for refusing preventing hindering or cancelling delivery subsequently ceases to apply the Company shall only be bound to re-deliver goods subject to the availability of the original or replacement goods and without prejudice to any other right or remedy available to it.

**(g)**No claim for short delivery of goods or goods damaged in transit can be entertained unless either a receipt is given to the carrier detailing the shortage or damage at the time of delivery or alternatively notification of the shortage or damage is given to the Company within seven days of the date of delivery of the goods to the Buyer.

**(h)**All deliveries according to Condition 16.

## **TERMS OF PAYMENT**

8. All goods and services shall be paid for (together with value added tax thereon) and received in the Bank account number of the Company in full, within 30 days of the date on which they were invoiced by the Company, and at all times fully paid before delivery, and without regard to any equity, set-off or counterclaim. If any discount is offered by the Company then the same shall be applicable only if the goods are paid for within the said period and on no account shall discount be deductible from value added tax, insurance, custom fees, transport costs, import taxes and any other charge to the customer. The Company shall be entitled to interest from the date upon which payment falls due. In such cases interest shall accrue from day to day at the rate of 2 % per month, unless otherwise agreed by the parties and specified in writing.

9. **(a)**Non-compliance with the above terms of payment does and shall constitute default without reminder. In the event that the Buyer fails to fulfil the terms of payment in respect of any invoice the Company may at its sole discretion demand payment of all or any outstanding liabilities whether or not due and/or cancel all or any outstanding orders and/or decline to make further deliveries except upon receipt of cash or satisfactory security or such other terms as the Company shall decide.

**(b)** All payments according to Condition 16.

## **PASSING OF RISK**

10. Risk of loss and/or damage to the Goods shall pass to the Buyer:

**(a)**On delivery to the Buyer or to a third party or carrier nominated by the Buyer to take or accept delivery, or:

**(b)**Where the Company gives notice to the Buyer that the Goods are available for collection on the expiry of seven days from the date of such notice or on the expiry of the time agreed for collection following service of such notice (if any) whichever is the later or:

**(c)**If the Buyer or a third party appointed by the Buyer to accept or take delivery of the Goods on the Company tendering delivery of the Goods and the Company shall not subsequently be liable for the safety of the Goods.



## WARRANTIES AND CLAIMS

11. (a) The Buyer should satisfy itself, whether by testing samples or otherwise, as to the merchantability, quality, fitness to purpose and compliance with descriptions and/or samples of all goods ordered by it from and/or supplied to it by the Company and shall be deemed and conclusively presumed to have done so. If goods delivered differ materially from their description or from samples supplied or are by reason of faulty material workmanship or packing by the Company unmerchantable the Company undertakes (at the option of the Company) to re-process or replace such goods or credit the account of the Buyer with an amount equal to or refund the purchase price therefor. This undertaking by the Company is subject to and conditional upon the following provisions:

(I) Claims must be made as soon as such faults are capable of discovery and in any event within 21 days of the delivery of the Goods.

(II) All claims must be made in writing.

(III) The Buyer must afford to the Company the opportunity to examine any goods which are the subject of a claim before such goods have been further handled, processed, cut, sewn or otherwise dealt with in any way and (for the avoidance of doubt) the Company shall not be required or obliged to consider any claim by the Buyer after the goods the subject of the claim have been further processed, cut, sewn or otherwise dealt with by the Buyer.

(IV) The Company will not be liable for any damage to or deterioration of any goods which may occur after delivery whether the same occurs due to unsuitable storage conditions, inappropriate use, neglect, alteration or accident or to any other cause whatsoever.

(V) Subject to condition 11(b) the undertaking of the Company to reprocess the goods or refund or credit the Buyer shall be the absolute limit of the Company's liability to the Buyer in respect of any such claim. The undertaking is in substitution for any condition or warranty (except as to title) implied by statute, common law or otherwise in respect of the goods which are hereby expressly excluded.

(b) In the event of any claim on any ground being made by the Buyer against the Company in respect of the Goods or any of them or any matter arising from or relating to the Goods or this contract (including without prejudice to the generality of the foregoing any claim for non-delivery of or relating to any defects in or damage to the Goods, or in respect of any breach of any term, condition or warranty relating to the performance merchantability quality quantity fitness or purpose description or freedom from latent or patent defects the Goods) or otherwise howsoever the liability of the Company to the Buyer shall be and is hereby limited (in respect of each claim) to the invoice value of the Goods as the case may be and under no circumstances shall the Company be in any way further liable to the Buyer whether for loss or profit or for any other direct or consequential loss howsoever arising.

(c) Nothing in these conditions shall operate or be construed as operating to exclude or restrict or attempting to exclude or restrict any liability of the Company for death or personal injury caused by the negligence of the Company or its employees.

## RESERVATION OF PROPERTY AND RIGHT OF DISPOSAL

12. (a) Notwithstanding delivery and/or the passing of risk in the Goods, or any other provisions of the contract between the Buyer and the Customer in respect of the Goods, until payment by the Buyer in full of (1) the price of the Goods and (2) any other monies payable to the Company in respect of all goods agreed to be sold by the Company to the Buyer:

(I) The property in the Goods shall remain in the Company and the Buyer shall hold the same as bailee for the Company.

(II) The Buyer shall insure the Goods against all normal commercial risks to their full replacement value with an insurance company of repute for the benefit of the Company and the Company shall be entitled to inspect and take copies of such insurance policy and the premium receipts for it upon giving the Buyer not less than seven days notice:

(III) The Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored and protected and shall ensure that they are at all times identifiable as the Company's property:

(b) Until such time as the property in the Goods passes to the Buyer, the Buyer shall be entitled to use or otherwise deal with the Goods in the ordinary course of its business provided that any monies received by the Buyer in respect of the Goods shall be held by the Buyer in a fiduciary capacity on behalf of the Company and, if the Company shall by notice so require, the Buyer shall keep such monies in a separate account but without prejudice to the Company's right to trace the same if the Buyer fails to keep such proceeds separate as aforesaid. The Company shall be entitled to inspect and take copies of the statements and other documents relating to any such account upon giving the Buyer not less than seven days notice.

(c) Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold or otherwise disposed of by the Buyer) the Company shall be



entitled by notice to the Buyer served on or at any time after the occurrence of any of the events specified in Condition 13 below forthwith to terminate the Buyer's power to use, resell or otherwise deal with the Goods.

(d) At any time after such termination the Company shall be entitled to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and take possession of any Goods in which the property remains in the Company and remove and dispose of them as the Company thinks fit.

(e) In the event of any dispute as to whether any particular goods have been paid for by the Buyer the Buyer shall be deemed not to have paid the Company for goods in possession of the Buyer at any time unless the Buyer can prove to the satisfaction of the Company that payment for such goods has been received by the Company.

#### **BREACH**

13. If the Buyer:

(a) Makes default or commits any breach of its obligations to the Company hereunder, or

(b) Is involved in any legal proceedings in which its solvency is in question, or

(c) Being a company presents a petition presented for its winding-up or convenes a meeting to pass a resolution for voluntary winding-up or an encumbrancer takes possession of or a receiver or administrative receiver is appointed of all or any part of its assets or undertaking an Administration Order is made in respect of it or it calls a meeting of or enters into any composition or arrangement with its creditors or applies for an interim under the Insolvency Act 1986, or

(d) Ceases or threatens to cease to trade then in any such case the Company shall immediately become entitled (without prejudice to its other claims and rights under the contract or the Distribution Agreement whichever is most appropriate) to suspend further performance of the contract for such time as it shall in its absolute discretion think fit or (whether or not notice of such suspension shall have been given) to treat the contract as wrongfully repudiated by the Buyer and forthwith terminate the contract or treat the contract as terminated.

#### **NOTICES**

14. Any notice required to be given hereunder may be served by pre-paid first class letter, fax or telex addressed to the last known place of business of the party upon whom service is being effected and such notice shall be deemed to have been served 48 hours after despatch.

#### **CONSTRUCTION**

15. The sub-headings do not form part of these "Terms and Conditions".

#### **GOVERNING LAW**

16. This contract shall be governed by and construed in accordance with Netherlands law and the parties hereby irrevocably submit to the non-exclusive jurisdiction of The Netherlands court the Arrondissementsrechtbank in Amsterdam.

#### **DISTRIBUTION AGREEMENTS**

17. These "Terms and Conditions" are deposited at the Amsterdam Chamber of Commerce and are available upon request, and are attached, as EXHIBIT "1", and forming an integral part in part and in whole, to the **WillCo Wells B.V.** "DISTRIBUTION AGREEMENT".

#### **DISTRIBUTOR'S ACKNOWLEDGEMENT**

18. Any DISTRIBUTOR under the Agreement mentioned in article 17 above, shall have received a copy of these "Terms and Conditions" and expressly acknowledges reception of such a copy upon the signing of a **WillCo Wells B.V.** "DISTRIBUTION AGREEMENT" and his/her signature under this Agreement is proof and acknowledgement of reception.

July 01<sup>st</sup>, 1999

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