

General terms and conditions

GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY OF SURGICUBE INTERNATIONAL B.V. FEBRUARY 2017

registered with the chamber of commerce in Rotterdam, the Netherlands,
no. 24404849

1 General

- 1.1 Any delivery of goods and services by SurgiCube International B.V. (the "Supplier") to another party, ("the Buyer") shall be subject to these General Terms and Conditions. The general conditions of the Buyer shall not apply.
- 1.2 These General Terms and Conditions shall also apply to any subsequent supplies and the supply of replacement parts, regardless of whether the Supplier has made any further reference thereto.
- 1.3 In the event any of the provisions of these General Terms and Conditions are held legally invalid or void, the remaining provisions hereof shall remain binding upon all parties.

2 Offer and confirmation

- 2.1 Purchase orders shall be binding upon the Supplier only if they have been confirmed in writing by the Supplier. Unless indicated otherwise, any offers and prices offered in quotes and/or special offers of the Supplier will be valid for maximum 7 days from the of issuance.

3 Prices and payment

- 3.1 The prices quoted in the order confirmation of the Supplier shall solely apply. Additional services shall be invoiced separately.
- 3.2 All prices are in Euro net and do not include value added tax, which shall be invoiced separately at the rate(s) stipulated by applicable law as of the respective date of invoice.
- 3.3 Unless expressly agreed otherwise, the prices are quoted ex works of the Supplier's business office. The Buyer shall bear all additional freight costs, packaging costs in excess of standard packaging, public fees and duties.
- 3.4 All sales and deliveries by the Supplier shall be on pre-paid basis. Invoices of the Supplier shall be paid in full within thirty (30) days from the date of invoice.

- 3.5 The Supplier shall have the right to suspend and refuse deliveries to the Buyer if the Buyer fails to pay its purchases within the agreed payment term.
- 3.6 If the Buyer fails to make any payment within the agreed time, it shall be immediately in default by law after expiry of said deadline without a further reminder or notice of default being required and, from that date, it shall be required to pay the legal commercial interest, on the amount invoiced until the date of full payment, such without prejudice to the Supplier's other rights. In such case, any delivery term agreed upon shall no longer be binding upon the Supplier.
- 3.7 The Buyer may only withhold or set off claims against the Supplier with prior written consent of the Supplier.

4 Delivery

- 4.1 Unless otherwise expressly agreed, the Supplier shall deliver FCA (Free Carrier) of the Supplier's business office using these Terms and Conditions and referring to international Incoterms.
- 4.2 Parties acknowledge that any delivery dates are approximate only and time shall not be of the essence.
- 4.3 Delivery periods shall begin on the date of the order confirmation by the Supplier, however in no case prior to settlement of all details relating to an order including the furnishing of any required official certificates.
- 4.4 The Supplier shall be entitled to suspend all its deliveries (i) if the Buyer fails to meet any of its obligations towards the Supplier after having been notified thereof by the Supplier in writing or (ii) in the event of suspected insolvency of the Buyer.
- 4.5 The Supplier may perform partial deliveries if such action would not unreasonably affect the Buyer.

5 Transfer of risk and transport insurance

- 5.1 Unless agreed upon otherwise, transfer of risk from the Supplier to the Buyer takes place no later than with dispatch or departure of the goods ex works.
- 5.2 On the Buyer's demand and costs consignment shall be adequately insured against damages out of breakage, transport, or fire.

6 Retention of title

- 6.1 All goods supplied shall remain the Supplier's property until each and every claim the Supplier has against the Buyer under the contract has been fully satisfied.

- 6.2 The Buyer is obliged to maintain all goods of the Supplier adequately and in good condition.
- 6.3 For the period of the retention of title, the Buyer may not pledge the goods or use them as security.
- 6.4 The Buyer may resell and/or process the goods in the ordinary course of business subject to the following additional provisions:
 - a. The retention of title shall extend to the full value of the products created by processing the goods or mingling or combining goods with other products; in this respect, the Supplier shall be deemed to be the manufacturer. If goods are processed, mingled, or combined with goods of any third parties and such third parties retain their rights of ownership, the Supplier shall acquire a pro-rata co-owner's interest based on the invoiced values of the processed, mingled, or combined goods. In all other respects, the resulting product shall be subject to the same provisions as the original goods.
 - b. The Buyer shall have the right to collect accounts receivable apart from the Supplier. The Supplier agrees not to collect any accounts receivable as long as the Buyer is not in default in payment, no petition to open insolvency proceedings is filed and no other defect in its ability to perform occurs. Otherwise, the Supplier may demand that the Buyer informs the Supplier about the assigned accounts receivable and their debtors, provides all information required for collection, hands over the related documents and informs the debtors (third parties) about the assignment.
- 6.5 In the case of continued failure of payment and following the expiry of a reasonable time set by the Supplier, the Supplier has the right to withdraw from the contract and to take the retained goods back. The Buyer shall be obliged to return to the Supplier any goods which payment has not been received at its own cost.

7 [Warranty](#)

- 7.1 The Buyer must notify the Supplier within fifteen (15) days of delivery or, if defects are not visible upon delivery, within fifteen (15) days of discovery, if any goods delivered by the Supplier is defective, failing which there shall be no further claim against the Supplier.
- 7.2 If so requested by the Supplier, the goods claimed to be defective shall be returned to the Supplier for examination in their original or equivalent packaging.
- 7.3 The Buyer shall give the Supplier the opportunity to remove defects within a reasonable period of time.

- 7.4 The Supplier shall remedy defects if the warranty claim is valid and made within the warranty period. It is at the Supplier discretion whether it remedies the defect by repair, replacement, or refund of (part of) the sales price.
- 7.5 The Supplier shall only bear the costs necessary to remedy the defect. It shall not bear supplementary expenses, including costs of transport, labor, and material to the extent such expenses are increased because the object of supply was subsequently brought to another location than the Buyer's branch office.
- 7.6 All claims for damages caused by natural wear and tear or for damages arising after the transfer of risk from faulty or negligent handling, or damages caused by improper use shall be excluded.
- 7.7 The limitation period for claims for defects shall be twenty-four (24) months from the date of delivery unless statutory law obligatorily prescribes a longer period.
- 7.8 Unless expressly agreed otherwise, the Buyer shall be entitled to rescind the contract for the sale of the relevant defective product in accordance with its statutory rights, however it shall only be entitled to do so if it has previously given the Supplier twice a reasonable period to remedy the defect that the Supplier failed to observe.

8 Liability

- 8.1 The Supplier is only liable for damage that is the direct and exclusive consequence of intent or gross negligence on the part of the Supplier and to the extent that it has been properly notified in writing of its default by the Buyer and the Supplier has been given a reasonable period of time to provide repair or replacement.
- 8.2 The Supplier does not accept in any case whatsoever liability for trading loss or other indirect damage within the broadest sense of that term incurred by the Buyer, including consequential loss, loss of profits and cost savings, regardless of cause.
- 8.3 The total liability of the Supplier shall not exceed in any case whatsoever compensation of the damage up to an amount equal to the price excluding VAT stipulated for the agreement concerned, up to a maximum of 100% of the order amount, excluding sales taxes.
- 8.4 The limitation period for claims against the Supplier, based on whatever legal ground, shall be twelve (12) months from the date of delivery to the Buyer and in case of tortious claims, twelve (12) months from the date the Buyer becomes aware of the grounds giving rise to a claim.

9 Term and termination

- 9.1 If circumstances occur of which the Supplier was unaware on conclusion of the contract and as a result of which compliance with the contract is not possible, the Supplier may demand of the Buyer that the content of the contract is amended in such a way as to enable performance.
- 9.2 The Buyer may terminate the contract only if the Supplier has imputably failed to comply with its obligations and has been notified of its default in writing by the Buyer and the Supplier has been given a reasonable period of time to remedy this failure.
- 9.3 The Supplier may terminate the contract in part or in whole without prejudice to its right to compensation of costs and loss of profit and without prior notice or judicial intervention if the Buyer is granted a moratorium of payments, files a petition for bankruptcy, debtor relief or other protection from creditors, or the Buyer's business is liquidated (other than on behalf of reorganization or combination of enterprises or assets).
- 9.4 In the event of (partial) termination the Buyer cannot claim annulment of performances already made by the Supplier and the Supplier shall be fully entitled to receive payment in this respect.

10 Force majeure

- 10.1 In the event of a *force majeure*, meaning any circumstance which is not within the reasonable control of the Supplier, without limitation, any (or the apprehension of any) strike, lockout or labor dispute or any government order or restriction or compliance with any order, software hacks of malfunctioning, or other circumstance which prevent performance of a contract by the Supplier or requires such far-stretching measures of the Supplier that performance under reasonable economic conditions is no longer possible, the Supplier may suspend delivery and other obligations arising out of the contract. If the period in which the Supplier is unable to perform an obligation as a result of force majeure lasts longer than two months, both the Supplier and the Buyer shall then be authorized to dissolve the contract without judicial intervention and without this giving rise to any right to damages.
- 10.2 If the Supplier has already partly fulfilled its obligations before the commencement of force majeure, or if it will only partly be able to fulfil its obligations as a result of the commencement of force majeure, it shall be entitled to invoice whatever has already been supplied or the part that can still be supplied separately and the Buyer shall be obliged to pay this invoice as if it concerned a separate contract.
- 10.3 The Supplier shall also be entitled to rely on force majeure if the non-imputable circumstance which prevented performance of its obligation only commenced after it should have fulfilled its obligation.

11 Intellectual property rights

- 11.1 In the event of claims against the Buyer because of breach of an industrial property right or a copyright in using deliveries or services supplied by the Supplier in accordance with the contractually defined manner, the Supplier shall be responsible to obtain the right for the Buyer to continue using such deliveries or services, provided that the Buyer gives immediate written notice of such third-party claims and the Supplier's rights to take all appropriate defensive and out-of-court actions are reserved. If, despite such actions, it proves impossible to continue using the deliveries or services supplied by the Supplier under reasonable economic conditions, it shall be understood as agreed that the Supplier may, at the discretion of the Supplier, modify or replace the particular delivery or service for removal of a legal deficiency, or take back such delivery or service with refunding of the sales price previously paid to the Supplier less a certain deduction to account for the age of the delivery or service in question.
- 11.2 The Buyer shall have no further claims alleging infringement of industrial property or copyrights provided the Supplier has neither violated essential contractual duties nor intentionally or grossly negligently breached contractual duties. The Supplier shall have no obligations in accordance with section 13.1 in case breaches of rights are caused by exploiting the deliveries or services supplied by the Supplier in any other manner than contractually defined or by operating these together with any other than the Supplier's deliveries or services.

12 Confidentiality

- 12.1 Both the Supplier and the Buyer warrant that all information, which is exchanged between parties within the framework of the agreement concluded between parties, is of a confidential nature and shall remain secret. Information is regarded in any case confidential if this information has been designated as such by one of the parties.

13 Disputes and governing law

- 13.1 All disputes arising from offers and contracts between the Supplier and the Buyer shall be submitted to the jurisdiction of the court of Amsterdam, the Netherlands unless the Buyer is seated outside the European Union, in which case the NAI (Nederlands Arbitrage Instituut) in Rotterdam will have jurisdiction.
- 13.2 Governing law shall be the law of the Netherlands with the exclusion of the international conflict of law's provisions thereof and with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).