

**GENERAL TERMS AND CONDITIONS OF DYNETICS B.V., BEST.**

**These General Terms and Conditions were filed with the Chamber of Commerce in Eindhoven on 20 December 1995 under number 4155/95.**

**Best 12-01-2009**

**A. AGREEMENT TO SELL AND SUPPLY**

**1. General**

1.1 In these Terms and Conditions the following words will have the following meanings:

- Supplier: Dynerics B.V., Best, and its representative(s), authorized representative(s), legal successor(s).

- Counterparty: any legal or other person that wishes to enter into or has entered into a contract with the Supplier.

1.2 All offers made by the Supplier, as well as all contracts entered into and the performance thereof, will be governed by these General Terms and Conditions. Any deviations from these General Terms and Conditions must be expressly agreed in writing.

1.3 The applicability of general terms and conditions used by the Counterparty is expressly excluded. The Counterparty will be informed thereof by the Supplier before the contract is entered into.

**2. Offers**

2.1 Offers will be made without commitment. If the Counterparty accepts an offer, the Supplier has 14 days after receipt of that acceptance to revoke the offer. If the Supplier does not revoke the offer in writing within that period, the offer will result in a contract.

2.2 All price lists, brochures and other details provided with an offer are stated as accurately as possible. These will be binding on the Supplier only if explicitly confirmed in writing. The Supplier is not obliged to provide details unless agreed otherwise in writing.

2.3 All brochures/price lists sent with the offer and all related technical or other data provided in the form of drawings, drafts, models, samples and so on, as well as all other written documents, expressly remain the intellectual property of the Supplier. The Counterparty is expressly not allowed to copy and/or disclose such information to third parties in any way whatsoever, and/or to have such information used and/or resold by third parties, without the Supplier's prior written consent. The use of such information is to remain limited to own use under the assignment granted. All information must be returned immediately on the Supplier's demand and if the Counterparty does not enter into a contract within the validity of the offer or cancels it.

2.4 The Supplier is entitled to charge the Counterparty for the costs incurred in making an offer if a contract is not entered into.

2.5 Standard documentation, including such things as factory drawings, descriptions, instructions and test certificates will be sent free of charge, unless stated otherwise by the Supplier. The costs of producing larger numbers of documents and/or non-standard documents will be passed on.

2.6 Prices offered apply only in respect of the quantities offered.

### **3. Contract**

3.1 A contract will not be entered into until the Supplier expressly accepts or confirms the order. If the term for which the offer remains valid is binding, the contract will be deemed to be entered into upon acceptance of the offer by the Counterparty. The order confirmation or the binding offer will be deemed to reflect the contract correctly and fully.

3.2 Any additions and/or changes, as well as promises, whether made orally or otherwise by the Supplier and/or its staff, representative(s), agents or other intermediaries, will be binding only if confirmed in writing by a suitably authorized person on the Supplier's behalf.

3.3 In the event of any changes in the order or full or partial cancellation thereof by the Counterparty the Supplier will be entitled to pass on the related normal or additional costs and to re-set the delivery time. The above is all subject to the prior written permission of the Supplier and receipt of payment for the activities already performed.

3.4 In the case of activities for which, given their nature and size, no offer or order confirmation has been sent, the invoice will also be deemed to constitute the order confirmation, which will also be deemed to reflect the contract correctly and fully.

3.5 Each contract will be entered into under the suspensory condition that the Counterparty proves to be sufficiently creditworthy for the monetary fulfilment of the contract.

3.6 The Supplier is entitled, on or after the date on which the contract is entered into, to demand security from the Counterparty that payment obligations and other obligations will be met before performing or continuing to perform any further work.

3.7 The Supplier is entitled to engage other parties in order to ensure the contract is correctly performed. The costs of this will be passed on to the Counterparty as stipulated in the quotations provided. If possible, the Supplier will consult with the Counterparty on this subject.

### **4. Prices**

4.1 Quotations are given without any commitment unless a binding term applies.

4.2 Unless stated otherwise, prices are:

- based on the level of purchase prices, wages, wage costs, social security and other state charges, freight costs, insurance premiums and other costs applicable during the quotation or on the order date;
- based on delivery to the Counterparty's business address or another destination specified by the Counterparty;
- excluding V.A.T., import duties, other taxes, levies and rights;
- excluding the costs of assembly and putting into operation, unless stated otherwise, in which case these will be specified separately; - including the costs of packaging and insurance;
- stated in euros, subject to currency fluctuations, which will be passed on if the official exchange rate at the time of delivery deviates more than 2% from the rate applying on the date of the offer, which will be set at 100.

4.3 If one or more of the cost-determining factors increases, the Supplier will be entitled to increase the order price accordingly, with due observance of any existing statutory provisions applicable, on the understanding, however, that future price increases already known at the time of the order confirmation must be stated.

## 5. Delivery and delivery time

5.1 Unless otherwise agreed, delivery will be ex warehouse, freight on invoice. Administration costs may be charged by the Supplier for orders not exceeding an amount to be specified by the Supplier. The time of delivery will be deemed to be the moment when the goods are unloaded (the actual transfer); the risk of the goods then passes to the Counterparty. This also applies if the Supplier has to assemble the goods or put them into operation.

5.2 The Counterparty is obliged to check the goods or the packaging or to have these checked for any deficiencies or damage within 24 hours of delivery, or to carry out such check after notification by the Supplier that the goods are at the Counterparty's disposal.

5.3 The Counterparty must immediately inform the Supplier in writing of any shortages and/or damage found on delivery no later than 24 hours after delivery, failing which the Supplier is entitled not to deal with any complaints in that regard.

5.4 The Supplier is entitled to deliver in parts (part deliveries), which may be invoiced separately. The Counterparty must then pay in accordance with the provisions in Clause 15 of these Terms and Conditions.

5.5 Delivery periods or dates stated by the Supplier in the offer are not intended to be considered binding, unless agreed otherwise in writing. In the event of late delivery the Counterparty must therefore send the Supplier notice of default in writing.

5.6 Goods will be deemed delivered when they or the key components thereof are ready for testing at the relevant manufacturer (the Supplier or a third party), or when they are ready for inspection/dispatch, such after the Counterparty has been notified of this in writing.

5.7 The Supplier must observe the delivery date or period as much as possible, but will never be liable for the consequences of such date or period being exceeded. If such date or period is exceeded, the Supplier will not be obliged to pay any form of compensation. Failure by the Supplier to comply with the delivery date or period does not entitle the Counterparty to cancel the contract or to refuse purchase/acceptance of the goods. The parties will consult in the event of an excessive delay.

5.8 If goods are not accepted within the delivery period or if the Counterparty does not observe the agreed delivery period, the Supplier will be entitled to invoice the relevant goods and the goods will then be stored fully for the Counterparty's expense and risk.

5.9 For production reasons we reserve the right to deliver 10% more or less than the amount ordered and confirmed by us.

## 6. Transport/risk

6.1 The means of transport, dispatch, packaging and so on will be determined by the Supplier with due care and diligence, unless the Counterparty has instructed the Supplier differently. The Supplier will comply with specific requirements of the Counterparty with regard to packaging and/or transport, including relocation within the business or business premises, only if the Counterparty pays the costs of these specific requirements.

6.2 The goods will in principle be transported for the risk of the Supplier. Liability on the part of the Supplier will at all times be limited to the cover/compensation provided by the relevant transport insurers. The Supplier is entitled to charge an insurance surcharge.

6.3 The Supplier will be entitled to charge administration/packaging/shipping costs if the goods delivered do not exceed a certain value to be determined by the Supplier.

## **7. Packaging material**

7.1 Only durable packaging material, presented in good usable condition, will be taken back by the Supplier at cost. Such packaging material will be stated separately in the delivery documents/invoice at cost.

7.2 The Supplier will be entitled to charge a fee if the durable packaging material is returned in a worse condition than the condition in which it was received by the Counterparty. The Counterparty is not entitled to unilaterally deduct the value of the packaging material from the amount owed to the Supplier.

## **8. Force majeure (non-attributable shortcoming)**

8.1 Force majeure will be taken to mean:

Any condition arising that is outside the control of or could not have been foreseen by the parties and results in it no longer being reasonable for the Counterparty to require the Supplier to perform the contract.

'Force majeure' will in any case include:

Industrial action, excessive illness-related or other absenteeism by staff, transport difficulties, insufficient supply of raw materials/parts, fire, government measures, including import and export bans, setting of quotas, breakdowns at one or more suppliers or breaches of contract by one or more suppliers that result in the Supplier being unable or no longer able to fulfil its obligations towards the Counterparty.

8.2 If, in the opinion of the Supplier, the force majeure is of a temporary nature, the Supplier will be entitled to suspend performance of the contract until the circumstance causing the force majeure no longer exists.

8.3 If, in the Supplier's opinion, the condition of force majeure is of a permanent nature, the parties may arrange to dissolve the contract in accordance with the law and the associated consequences.

8.4 The Supplier is entitled to claim payment for work performed under the relevant contract before the circumstance causing force majeure manifested itself.

## **9. Warranties/service**

9.1 Subject to the provisions elsewhere in these Terms and Conditions the Supplier warrants the soundness of the materials used and the features promised and that these will function properly. This warranty applies to new products for a period of 12 months after delivery, including any 'approval period', unless otherwise agreed. A warranty for goods purchased elsewhere by the Supplier will be given only if and insofar as the original manufacturer(s) provides or provide such warranty.

9.2 Defects to goods supplied that are covered by the warranty will, at the Supplier's sole discretion, be repaired or replaced by new goods if, in the opinion of the Supplier/manufacturer, the deficiencies are due to structural defects, the materials used or the use thereof and, as a result, cannot be used by the Counterparty for the designated purpose.

9.3 Defective goods covered by the warranty must be sent to the Supplier carriage paid. If the Supplier has to outsource work required to be carried out under the warranty, the Supplier will be entitled to charge the Counterparty for any travel and accommodation expenses, as well as any ordinary and exceptional transportation costs and the costs of the testing equipment used. In principle, work under the warranty will be performed within the supplier's business (service department) and during normal working hours.

Only if a separate service contract has been agreed, can such work be performed outside normal working hours.

If goods presented for repair under the warranty are found not to be defective, all costs incurred will be borne by the Counterparty, including during the warranty period.

9.4 No claims will be allowed under the warranty if the Counterparty makes any changes or repairs or has any change(s) or repairs made to the goods delivered or does not use the goods delivered with due care and in accordance with the manufacturer's or other instructions supplied or otherwise handles/uses the goods improperly and/or other than for the originally designated purpose.

9.5 These warranty provisions do not apply to consumer goods. Non-performance by the Counterparty of any one of its obligations will release the Supplier from its warranty obligations. Fulfilment of the warranty obligation will constitute sole and full compensation.

#### **10. Right of retention**

10.1 The Supplier has the right of retention on all goods held by the Supplier on or on behalf of the Counterparty, irrespective of the cause, for as long as the Counterparty fails to fulfil all its obligations to the Supplier.

10.2 The Supplier is obliged to manage such goods in accordance with sound commercial practices, without the Counterparty being able to assert any right to compensation in the event of loss, partial loss and/or damage not attributable to the Supplier. The risk of the goods remains, therefore, with the Counterparty.

#### **11. Liability**

11.1 Except as specified in obligatory provisions regarding product and other liability, as well as the legal rules of public order and good faith, the Supplier will not be bound to pay compensation for any damage, of any nature whatsoever, whether direct or indirect, including loss of profits, damage to movable or immovable property or damage to persons, whether affecting the Counterparty or third parties. Subject to the provisions elsewhere in this Clause, the Supplier will in any case not be liable for damage caused by:

- improper use of goods or use for a purpose other than that for which they are suitable according to objective standards;
- negligent behavior by the Counterparty or its staff or other persons engaged by the Counterparty;
- breach of patents, licenses and/or other intellectual property rights of third parties as a result of the use of information, such as drawings, models, designs and the like, provided by or on behalf of the Counterparty.

11.2 If the Supplier assists in the assembly and/or the putting into operation of goods without such being specified in the assignment, such assistance will be provided for the Counterparty's risk.

11.3 If advisory services are provided, the Supplier will only be liable for shortcomings that are normally avoidable and/or foreseeable, but will never be liable for more than the amount of the fee agreed for the advisory services.

11.4 The liability of the Supplier will also be assessed under the terms of any product/consequential loss insurances the Supplier may have. Except as provided for in such insurance, liability will at all times be limited to the net invoice value of the goods or to the sum covered under the Supplier's indemnity insurance. If necessary and if requested by the Counterparty, the Supplier will provide details of the amount for which the Supplier is insured.

11.5 Fulfilment of the applicable warranty/complaint obligations and/or payment of the damage established by the Supplier or its insurer(s) will constitute full and sole compensation. The Counterparty will expressly and fully indemnify the Supplier in all other respects.

11.6 Claims for compensation and/or repair or replacement will not be considered if submitted more than one year after the damage and/or defect has been or should reasonably have been identified by the Counterparty, as evidenced by written reports, and will in any case be barred three years after delivery.

11.7 If the Supplier has to purchase goods elsewhere, any contractual or other provisions applicable to such transaction will also apply to the Counterparty if and insofar as invoked by the Supplier.

## **12. Complaints**

12.1 Complaints will be dealt with only if received directly by the Supplier in writing within 8 days after delivery. Complaints relating to hidden defects must be submitted within the warranty period and must accurately state the nature of and reason for the complaint. Complaints relating to external, visible defects must be lodged immediately on the testing date in the relevant factory of the Supplier or, if no testing takes place, within the period stated above.

12.2 Complaints relating to invoices must also be lodged in writing and within 8 days of the invoice.

12.3 After expiry of this period the Counterparty is deemed to have approved the goods delivered or the invoice. The Supplier will then no longer deal with complaints.

12.4 If the complaint is considered well-founded by the Supplier, the Supplier will be obliged only to replace/repair the defective goods, and the Counterparty will not be able to assert any additional right to any form of compensation.

12.5 Lodging a complaint will never release the Counterparty from its payment obligations towards the Supplier.

12.6 The returning of goods, for whatever reason, will be allowed only with the Supplier's prior explicit permission and forwarding instructions.

## **13. Intellectual property rights**

13.1 The Counterparty undertakes to use software, peripheral equipment, technical details, connection schemes and/or job schedules, instructions for use and/or operation, drawings and all other essential documentation supplied solely for its own internal purposes and not to sell or resell these in any form to any party whatsoever.

13.2 If the Counterparty is held liable in the Netherlands for infringement of intellectual property rights (industrial property and copyright) relating to goods sold by Supplier and the Counterparty informs the Supplier of this immediately and provides the Supplier with a power of attorney to put forward a defence against such notification of liability, the Supplier must put forward a defence at its own expense and pay any compensation awarded to the entitled party or the party assigned by the Supplier.

13.3 If the Counterparty fulfils the conditions referred to in sub clause 2, the Supplier may in as far as possible choose to grant the Counterparty user rights for the relevant goods or supply alternative or amended goods that do not constitute an infringement or to refund the purchase price to the Counterparty after return shipment less a reasonable fee for the time during which the Counterparty used the goods.

13.4 The Supplier cannot be held liable in any way whatsoever for infringement of intellectual property rights resulting from a change in an item sold and supplied by the Supplier or if such item is used in a way other than that prescribed by the Supplier or if the item is integrated into goods not supplied by the Supplier.

#### **14. Retention of title**

14.1 All goods supplied by the Supplier will remain the property of the Supplier until all amounts owed by the Counterparty to the Supplier on any grounds whatsoever, including any future claims on the Counterparty, including interest and costs, have been paid in full (and in the case of current account until any amounts chargeable to Counterparty have been settled).

14.2 If any delivered goods are not being used, the Counterparty must keep such goods clearly separated from other goods until such time as the rights of ownership have been transferred.

14.3 In the event of non-payment by the Counterparty of a due amount or suspension of payment or bankruptcy being granted to or applied for by the Counterparty, a liquidator or guardian being appointed, the death of the Counterparty or the winding-up of the Counterparty's business, the Supplier will be entitled, after forwarding a statement of dissolution on the grounds of default by the Counterparty, to reclaim ownership of any goods delivered, but not paid for fully or in part, less any amounts already paid, without prejudice to all rights to claim compensation for any loss or damage. In these cases any claim that the Supplier may have on the Counterparty will immediately become due and payable.

14.4 On the Supplier's demand the Counterparty will issue a power of attorney so that unpaid goods can be taken back immediately, wherever they may be.

14.5 Goods may be resold or used by the Counterparty in its ordinary business operations, but may not be given as security nor serve as security for a claim by a third party.

If unpaid goods are resold, the Counterparty is obliged to retain ownership and, on the Supplier's demand, to assign all claims to the Supplier up to the amount due.

#### **15. Payment**

15.1 Unless otherwise agreed, payment must be made in cash on delivery, or by deposit or transfer to a bank or giro account designated by the Supplier within 30 days of the invoice date or, in the case of assembly/installation, from the date of assembly/installation. This latter date will be reduced by the number of days by which, through no fault of the Supplier, the assembly/installation is delayed. The Supplier is entitled to grant a prompt-payment discount, which will be communicated in advance. The value date stated on the Supplier's bank/giro statements will be conclusive and will therefore be considered the date of payment.

15.2 Payment by the Counterparty will firstly be applied against interest due by the Counterparty and any collection costs and/or administration costs incurred by the Supplier and will subsequently be applied against the debt that has been outstanding for longest.

15.3 If the Counterparty:

- a. is declared bankrupt, assigns an estate, files a petition for suspension of payment, or all or part of its assets are attached;
- b. dies or is placed under guardianship;
- c. fails to fulfil any obligation arising in law or under any of these conditions;
- d. fails to pay an invoice amount or any part thereof within the stipulated period;

the Supplier will be entitled, by the mere occurrence of any of the above, either to consider the contract dissolved, without any judicial intervention being required, or to claim full and immediate payment of any amount due by the Counterparty for the activities performed and/or deliveries made by the Supplier and without any warning or notice of default being required, all without prejudicing the Supplier's rights to reimbursement of costs, losses and interest.

**16. Right of cancellation**

The Counterparty has the right to cancel the contract if:

- having exceeded the delivery period, the Supplier again exceeds an agreed reasonable period for delivery without a justified reason and the Counterparty stated in writing, prior to the new delivery period being agreed, that it would refuse delivery if the new delivery period were exceeded;
- the Supplier cannot fulfil its obligation to deliver within a reasonable period from the time the Supplier informs the Counterparty of such. No compensation will be payable in respect of any losses suffered by the Counterparty in the event of cancellation.

**17. Interest and costs**

17.1 If payment is not made within the period referred to in Clause 15, the Counterparty will be in default by operation of law and the Supplier will be entitled to charge interest of 1.5% per month or part of a month on the unpaid amount from 30 days of the invoice date

17.2 All judicial and extrajudicial costs incurred will be for the Counterparty's account. Extrajudicial collection charges will amount to at least 15% of the sum owed by the Counterparty, including the interest referred to above.

**18. Applicable law/disputes**

18. Applicable law/disputes 18.1 All offers, agreements and their performance on behalf of the Supplier will be governed by Dutch law. The provisions of the United Nations Convention on the Law Applicable to Contracts for the International Sale of Goods (Vienna Sales Convention (CISG)) are excluded.

18.2 All disputes, including those considered as such by only one party, that arise from or relate to the contract to which these terms and conditions apply or arise from or relate to the terms and conditions themselves and their interpretation or performance, whether of a factual or legal nature, will be settled by the competent civil court in the district in which the Supplier has its registered office, such to the extent permitted by law.

18.3 The provisions of subclause 2 will not affect the Supplier's right to submit a dispute to the civil court that is competent under the normal rules of competence or to have such dispute settled by means of arbitration or binding opinion.

**Dynerics B.V.**