

IV. GENERAL TERMS & CONDITIONS

Application and definitions

1. For the purpose of these General Terms & Conditions the following definitions apply:
 - Seller: PerfoTec B.V.
 - Purchaser: the natural person or legal entity who/that receives offers from the Seller or enters into agreements with the Seller.
 - PerfoTec Machinery: all PerfoTec Lasers including all of its elements and also including related machinery within the broadest sense of the word such as for example Respiration Meters.
 - Packing Products : foils, linerbags and all other kind of packing materials.
 - Installation work: the installation of the PerfoTec Machinery sold and supplied by the Seller.
 - PerfoTec Items: Perfotec Machinery as well as Packing Products.
2. These General Terms & Conditions apply to all offers made by the Seller and to all agreements between the Seller and the Purchaser.. They also apply to all obligations arising from subsequent agreements between the parties unless agreed upon otherwise.
3. These General Terms & Conditions also apply to agreements between the Seller and the Purchaser or to stipulations in agreements relating to maintenance, installation and repair work and other work to be performed by the Seller within the broadest sense of the word.
4. Amendments and/or additions to any stipulation in an agreement and/or in these General Terms & Conditions only apply if they have been agreed upon in writing and relate exclusively to the agreement in question.
5. The application of any general and/or special conditions of the Purchaser is excluded, unless the Seller has agreed to such application in writing.
6. In the event that one or more stipulations from these General Terms & Conditions prove to be invalid or are void this does not affect the validity of the other stipulations.
7. The address submitted by the Purchaser prior to or at the time of entering into the agreement can be used by the Seller to send the Purchaser communications and/or notices, until such time as the Purchaser has notified the Seller his new address in writing.

Quotes and offers

8. A quote and offer is not binding to the Seller and only serves as an invitation to place an order or commission with Seller. The Seller does not become bound by the quote or offer until the Purchaser has signed the Seller's Purchase Schedule or any other written agreement.
9. Seller can choose to accept in another manner than described in point 8, for instance by fully or partially complying with a request for delivery on the part of the Purchaser, or by Sending an invoice to the Purchaser who requested the delivery.
10. The possible documents that accompany an offer (such as drawings, technical descriptions etc.) with the Seller's specification of numbers, sizes, weights and/or other details have been carefully prepared by Seller. However, the Seller does not guarantee that later adjustments from such information will not be necessary. The Seller is not bound by errors such as calculation and writing errors in offers, quotes, prospects, publications, order confirmations, invoices and other documentation originating from the Seller.
11. The Seller is the owner of all intellectual property rights pertaining to the PerfoTec Machinery and the methods used in connection with the PerfoTec Machinery. Seller retains all intellectual and industrial property rights of the supplied PerfoTec Machinery, methods and of any designs, drawings, images, diagrams, material lists, software and other documentation. None of the aforementioned items and documentation may be fully or partially copied, shown or made available to third parties or used in interactions with third parties in any other way, without the express prior written permission of the Seller. The delivery and/or sale of the PerfoTec Machinery does not constitute to a license under the intellectual property rights to use the PerfoTec Machinery and the methods pertaining thereto. Such a license can only be rendered by means of a written instrument which is signed by both Seller and Purchaser.

Agreements

12. If the Seller's offer is accepted the agreement shall only come into existence if and to the extent that the Seller has confirmed his acceptance to the Purchaser in writing or has commenced the realisation of the agreement.
13. The Seller cannot be bound to supply and/or realise Installation Work until after he has all the information required for this purpose in his possession – amongst which the confirmation that the site where the installation work will be performed will be ready for this work - and has received the agreed (upfront) payment. The possibly agreed upon delivery term will commence as of the moment that the Seller has received the agreed upfront instalment payment from the Purchaser unless agreed upon otherwise.

Execution of the agreement

14. A. Deviations between offers, samples (or previous deliveries) and deliveries can form no reason to reject the delivery, terminate the agreement, suspend payment or demand compensation if the deviation is of minor consequence, whereby the Seller defines minor consequence as a quality that does not affect the essence of the delivered goods and their practical value and whereby, in any event (though not exclusively) the Seller has delivered proper performance, provided that the deviations fall within the tolerances referred to below. An average has to be taken from the entire order when assessing whether a delivery is compliant.
 - B. A delivery of Packing Products is compliant when differences in weight, thickness and dimensions do not exceed 15%.
 - C. The perforation of Packing Products is compliant when differences in the quantity, diameter and spreading of perforations do not exceed 15%.
 - D. Except in the event of attributable manufacturing failure, the Seller is not liable for (un)usability of any code, including the EAN codification, that is applied on the request of the Purchaser.
 - E. For other specifications than those (Deviations) referred to in this Article, the deviation permitted in prior deliveries and, if they are lacking, the normal deviations delivered by the Seller, are permissible.
15. The Purchaser has the obligation vis à vis the Seller to enable the supply and/or execution of the Installation Work within the Seller's normal working hours and under conditions that comply with statutory safety requirements and other government regulations applicable at the place where the work should be performed which standards will never be less than the applicable – average - standards in the European Union.
16. The Purchaser takes care of and warrants that the Seller has all necessary governmental and non governmental authorizations required for the delivery and/or the installation of the PerfoTec Items (such as permits and exemptions) and any other approval needed for the delivery and/or the installation of the PerfoTec Items at the time of the delivery and/or installation.
17. The Purchaser takes care of and warrants the availability of sufficient electricity required for the installation of the PerfoTec Machinery at the time of installation. The cost of the required sufficient electricity is for the expense of the Purchaser only.
18. The Purchaser is responsible for organizing the connection of the PerfoTec Machinery to the electricity network of the local utility company in question or the various public transmission networks respectively. The connection costs are for the expense of the Purchaser only.
19. The Purchaser warrants that any third-party work and/or deliveries that does/do not form part of the Seller's Installation Work is performed and/or delivered in such a way and at such a time that the delivery and/or realization of the Seller's installation work will not be impaired in any manner.
20. If the realisation of the Installation Work is delayed as a result of circumstances for which the Purchaser is responsible (such as the conditions referred to in article 18) the Purchaser must reimburse the Seller for any damages resulting thereof.
21. The Purchaser bears the risk for damages caused by defects or unsuitability of items that originate from the Purchaser or are prescribed by the Purchaser or that must be purchased from a supplier prescribed by the Purchaser, and for the late delivery of such items.
22. The Purchaser bears the risk for damages caused by errors or defects in drawings, calculations, constructions, specifications and implementation regulations supplied by or on behalf of the Purchaser.
23. During the realisation of the Installation Work by the Seller or the rendering of any other services, the Purchaser bears the risk for damage to and loss of materials, components or tools that have been brought to the site by Seller.
24. If the Seller has undertaken to install the sold and supplied PerfoTec Machinery the Seller will only be liable in respect to the functioning of that Machinery under the condition that:
 - the installation took place according to Seller's instructions and under his responsibility.
 - the functioning of the PerfoTec Machinery is not negatively influenced by environmental factors at the site where the installation took place. All necessary adjustments of floors, partitions and walls as well as other adjustments to environmental factors needed for the proper functioning of the supplied PerfoTec Machinery are at the expense of the Purchaser only.

Cost-increasing circumstances

25. If circumstances arise that may increase the costs for the Purchaser the Seller must notify the Purchaser accordingly as soon as possible.
26. Any cost-increasing circumstances that are not attributable to the Seller and not calculated into the Seller's offer will be for the expense of the Purchaser only.

Prices

27. During the existence of the Agreement the Seller has the right to change an agreed upon price annually with the percentage indicated by the European Index of Consumer Prices, All Items Index, applying for the whole the European Union. If the seller increases his prices within three months after the agreement was entered into, the Purchaser is entitled to fully or partially dissolve the agreement in writing within eight days after notification of the price increase.
28. If after order acceptance the Seller demonstrates that its purchasing costs have increased by more than 10% as a result of general price increases and/or currency fluctuations the Seller is entitled to increase the agreed upon price accordingly. In such case the Purchaser is entitled to fully or partially dissolve the agreement in writing within eight (8) days after notification of the price increase.
29. All prices are exclusive of VAT, packaging, freight and transport insurance unless the offer stipulates otherwise.

Delivery

30. Delivery terms quoted by the Seller are based on conditions applicable at the time of the entering into of the agreement and to the extent that they are dependent on the performance of third parties, on the information such third parties have provided the Seller with. The Seller will always try to comply with the quoted delivery times as much as possible.
31. The quoted delivery terms are an indication only and will never constitute a strict deadline, unless expressly agreed upon otherwise.
32. If the delivery term has not been met the Purchaser is not entitled to any compensation.
33. If the delivery time is exceeded by more than 60 days the Purchaser has the right to send the Seller a written notice of default and propose a reasonable term for the Seller to comply with his obligations in absence whereof the agreement can be terminated by Purchaser.
34. The Seller is entitled to make partial deliveries.
35. If a particular quantity of Packing Products is agreed on for sale and purchase, Seller will not be in default of fulfilling the agreement if the quantity delivered does not deviate by more than 10% (above or below) the quantity ordered. In the case of such difference, the actual quantity delivered will be invoiced.
36. If the quantity of Packing Products delivered deviates by a percentage greater than 10% (above or below) the
37. quantity ordered, the Purchaser must communicate the difference and confirm it in writing within eight days after the date
38. of delivery, indicating the goods delivered, quantity of goods actually received versus quantity indicated on the waybill. If the difference is indicated at a later time, the Purchaser will no longer be entitled to appeal the invoiced and actually delivered quantity or claim subsequent delivery of the insufficient quantity delivered.
39. If the Packing Products delivered show observable defects on receipt, the Purchaser must claim these in writing from Seller no later than 2 (two) business days after delivery, failing all claims by the Purchaser against Seller in that regard will lapse.
40. If the Packing Products delivered show hidden defects, or form defects, these must be claimed from Seller within 2 (two) business days after they are observed, failing which all claims will lapse.
41. The PerfoTec Machinery and the Installation Work are considered to have been accepted by Purchaser at such time when:
 - the Seller has notified the Purchaser that the installation has been completed, tested and is operational and the Purchaser has approved or accepted the installation and PerfoTec Machinery; or
 - if within the period of eight days after the Seller has notified the Purchaser in writing that the installation has been completed, tested and is operational, the Purchaser has failed to disapprove or complain in writing about the PerfoTec Machinery and/or the Installation Work.
 - the Purchaser takes the supplied PerfoTec Machinery into use (early).
42. Minor defects that can be remedied during the warranty period and that do not affect the functioning of the PerfoTec Machinery will not impede a proper delivery.
43. The acceptance as outlined in article 39 releases the Seller from any liability for defects the Purchaser should reasonably have noted at the time of the installation of the PerfoTec Machinery.
44. The risk will be transferred from the Seller to the Purchaser upon delivery of the PerfoTec Items to the transporter unless agreed upon otherwise.
45. The Seller will supply the Packing Products, PerfoTec Machinery, components, accessories and tools from the Seller's premises, unless an alternative arrangement has been agreed upon in writing. Transport thus not included unless agreed upon otherwise.

46. Dispatch and transport are at the expense of Purchaser, and for the responsibility of Purchaser unless an alternative arrangement has been agreed in writing. Dispatch and transport are not included in the price unless agreed upon.
47. Unless an alternative arrangement has been agreed upon in writing, import and export duties, stamp duties, station and inward clearing costs, taxes etc. will be at the expense of the Purchaser and are not included in the price.
48. If the Purchaser does not take delivery of the PerfoTec Items, components, accessories, tools and other articles he has ordered, or does not purchase them within the appropriate term, the Purchaser is in default without a notice of default being required. In this case the Seller is entitled to store the items at the risk and expense of the Purchaser, or sell them to a third party. The Purchaser remains liable for the purchase amount, with interest and costs (by way of compensation) where applicable, minus the net revenue of any sales to third parties.

Retention of title

49. Notwithstanding article 42 the ownership of the Items supplied to the Purchaser will not pass to the Purchaser until the Purchaser has paid in full all monies he owes or will owe to the Seller for the supplied or to be supplied Items, including the installation costs and including any surcharges, interest, taxes and costs payable pursuant to these terms or the agreement.
50. The failure to pay on any due date shall entitle the Seller to reclaim the Items sold. The Purchaser undertakes to communicate the existence of this retention of title clause to any third party wishing to acquire the Purchased Items. Throughout the validity of the retention of title clause, the Purchaser undertakes to maintain and conserve the Items in good condition for the purpose for which they are intended, at its cost, and to maintain the labels or other material used to identify the Seller's ownership of the Items. In the event that the Purchaser breaches its obligation to pay the price, interest and expenses to the Seller in the term stipulated to that end, the Seller shall notify the Purchaser of this fact, indicating the date and time of collection of the Items from the Purchaser's warehouse, or, at the Seller's option, to claim free dispatch of the Items to the Seller's warehouse. If the Purchaser has transferred ownership of the Items to a third party, or if as a result of any circumstance a third party has become the owner of the Items, the Purchaser shall assign to the Seller, upon the Seller's request, the actions in its favour against any such third party.

Payment

51. Unless agreed upon otherwise, payment must be made within thirty days after invoice date. If the Purchaser does not pay within the agreed upon term he will be in default from the due date of the invoice without a prior notice of default being required.
52. From the due date of the invoice the Purchaser must pay 1% interest per month on the outstanding amount as well as any extrajudicial collection costs incurred, which will not be less than 15% of the principal sum, with a minimum of 250 Euro. Actual extrajudicial costs are in any case payable if the Seller has sought the assistance of a third party to collect the outstanding amount.

Warranty

53. The Seller renders a warranty for the components of the new PerfoTec Machinery supplied by Seller for a period of twelve months after delivery. This warranty is based on a usage of eight hours per day, five days a week. If it is necessary to send a technician to replace or repair faulty components Purchaser will be charged for the usual cost of the technician.
54. The aforementioned warranty in respect of the repair or free supply of a new component does not include any statutory levies in respect of the component to be supplied free of charge, or import duties and turnover tax; these will be at the expense of the Purchaser.
55. The warranty obligation only covers defects that could not reasonably have been visible at the time of the installation and that become manifest under normal conditions after the installation and with the correct use of the PerfoTec Machinery. The warranty does not cover defects that are the result of inadequate maintenance on the part of the Purchaser, alterations to the PerfoTec Machinery without prior written permission from the Seller, or repairs performed by or on behalf of the Purchaser or normal wear and tear or defects for which the Purchaser is liable pursuant to articles 21- 22 - 23.
56. In order to be able to invoke the rights pursuant to articles 51- - 53, the Purchaser must:
 - notify the Seller in writing of the observed defects forthwith and at least within eight days after the defect became apparent;
 - demonstrate that the defects can be attributed to the inferior quality or inadequate construction of the PerfoTec Machinery or are the direct consequence of an attributable error of the Seller in the realisation of the Installation Work.
 - grant every assistance to enable the Seller to remedy the defects within a reasonable period of time.
57. Any claim in respect of supplied items does not affect the rights and obligations of the parties in respect to other previously supplied items even if those items are or will be supplied pursuant to the same agreement.

Liability and indemnity

58. The Seller is not liable in whatever manner for defects which do not fall within the scope of the warranty described in articles 51– 55 unless the parties entered into a Full Service Contract in which Seller's obligations are further outlined.
59. The Seller is never liable for any indirect damages, such as those caused by operational holdups, lost profits, delays or disruptions or any other trading losses for any reason or of any nature.
60. The Seller is never liable for any damages arising as a result of the use of drawings and/or technical information compiled by third parties, irrespective of whether these drawings and/or this information were/was supplied by the Purchaser.
61. The Seller is not liable for any loss, vandalism, theft or damage of any items, such as materials, semi-finished products and machinery the Purchaser makes available for the execution of the agreement. The Purchaser is responsible for the insurance of these items.
62. The Purchaser indemnifies the Seller against claims by third parties relating to the use of the items referred to in articles 50 and 51.

Amount of the compensation

63. If, without prejudice to the stipulations in articles 47 - 51, the Seller is obliged to reimburse the Purchaser for damages suffered, this compensation will never exceed the sum of the amount of the Seller's insurance maximum and the payments made by his insurance company unless agreed upon otherwise.
64. Any claim to compensation for or repair of damages suffered before or after the installation respectively the becoming apparent of the defect is void if the Seller has not been notified of this claim within eight days upon the installation or the becoming apparent of the defect.
65. Any legal claims for compensation for or repair of damages the Purchaser has against the Seller pursuant to these terms expire one year after the Purchaser has notified the Seller of the claim.

Force majeure

66. If the Seller is unable to meet his obligations towards the Purchaser as a result of a non-attributable shortcoming (force majeure), the Seller is entitled, without the intervention of the court, to either suspend the realisation of the work for the duration of the hindrance but never longer than six months, or to cease the work in unfinished condition, without being liable for any damages. All costs incurred by the Seller up to that point will become due and payable forthwith and in full.
67. Force majeure on the part of the Seller is deemed to be any circumstance the Seller has no influence over that fully or partially prevents the Seller from meeting his obligations towards the Purchaser, or which implies that the Seller cannot reasonably be expected to meet his obligations, irrespective of whether this circumstance could have been foreseen at the time the agreement was signed. Such circumstances include, among others: strikes, lockouts, fire, equipment breakdown, delays or failure to meet their obligations on the part of the seller's suppliers, problems with transport organized by the Seller or third parties and/or any government measures, as well as the lack of any government-issued permit, work stoppages, loss of any components to be incorporated, import or trade prohibitions.

Default/dissolution

68. If the Purchaser does not comply with any of his obligations pursuant to this agreement or to these terms, or if the Purchaser complies inadequately or late, the Purchaser is in default without official notice of default being required, and the Seller is entitled to:
 - suspend his obligations under the agreement and any directly associated agreements until payment has been sufficiently guaranteed; and/or
 - fully or partially dissolve the agreement and any directly associated agreements;

without the Seller being liable to pay any damages and without prejudice to the Seller's other rights.

69. In the event of a (temporary) moratorium on payments or bankruptcy of the Purchaser, or a guardianship order in respect of the Purchaser, all agreements with the Seller will be dissolved by operation of law unless the Purchaser notifies the seller within a reasonable period that he requires compliance with (part of) the agreement(s) in question, in which case the Seller is entitled, without a requirement for notice of default, to suspend the realisation of the agreement(s) in question until such time as payment has been sufficiently guaranteed, without prejudice to the seller's other rights.

Applicable law and competent court

70. Dutch law applies to this agreement and to these terms as if this agreement was only connected to the territory of The Netherlands.
71. Any disputes that arise as a result of this agreement or of these terms will, unless the imperative rules of law dictate otherwise, exclusively be brought before the Court in Utrecht, The Netherlands, including its injunctive relief judge.
72. Purchaser will not oppose the perfecting of a judgment issued by the court/judge mentioned in article 62.