

## **General Terms and Conditions of Sale of Villagepump B.V.**

### **1. Applicability**

1.1 These General Terms and Conditions (hereinafter to be referred to as the "Terms") govern the offering, sale and delivery of all goods and/or services (the goods and services hereinafter both separately and jointly referred to as "Goods") from or on behalf of Villagepump B.V. (hereinafter to be referred to as "VILLAGEPUMP" or the "Supplier") to customer (hereinafter also to be referred to as "Customer") and apply to all similar dealings and agreements between VILLAGEPUMP and Customer. VILLAGEPUMP expressly rejects the applicability of any of the Customer's general terms and conditions (of purchase).

1.2 Deviations from these Terms shall be permitted only if and in so far as VILLAGEPUMP has expressly accepted any such deviation in writing, with a specific reference to the articles of these Terms to which the deviations relate, and then, only in respect of the mere request or agreement for which the relevant deviations have been agreed.

### **2. Quotations, Orders and the Conclusion and Annulment of Agreements**

2.1 All quotations issued by VILLAGEPUMP are not binding upon VILLAGEPUMP. All quotations issued by VILLAGEPUMP are revocable and subject to change effective immediately without notice. The Customer shall compensate VILLAGEPUMP for any costs which may arise in relation to the issue of a quotation.

2.2 An agreement (hereinafter to be referred to as "Agreement") shall be deemed to have been concluded in case and to the extent an agreement has been confirmed by VILLAGEPUMP in writing to the Customer under the conditions stated by VILLAGEPUMP in writing (hereinafter to be referred to as "VILLAGEPUMP' Confirmation"). VILLAGEPUMP shall be entitled to refuse an order without indication of reasons.

2.3 The contents of a written Confirmation by VILLAGEPUMP shall be binding on the Customer, unless the Customer contests the correctness of the provisions of that Confirmation in writing, with a statement of reasons, within eight business days of the Confirmation having been dispatched by VILLAGEPUMP. If the Customer proves that it was not reasonably possible for it to communicate the objections to the Confirmation within said period, VILLAGEPUMP may, upon request, but at its own discretion, extend the prescribed term by a reasonable time period.

2.4 Any electronic communication between VILLAGEPUMP and the Customer shall be considered to be a "writing" and/or "in writing". The electronic communication system used by VILLAGEPUMP will serve as a sole proof for the content and the time of delivery and receipt of such electronic communication.

### **3. Delivery**

3.1 Delivery times and dates quoted by VILLAGEPUMP are guidelines and shall never be of the essence for VILLAGEPUMP. VILLAGEPUMP shall

not be liable for any damage(s) which may result from non-adherence to times of delivery.

3.2 All deliveries of Goods shall be Ex Works from VILLAGEPUMP's production facility. The term Ex Works has the meaning set forth in the INCOTERMS published by the International Chamber of Commerce at Paris, France at the time of VILLAGEPUMP's Confirmation. As of the moment of delivery by VILLAGEPUMP the Customer shall carry the full risk of the Goods.

3.3 All prices shall be quoted Ex Works.

3.4 VILLAGEPUMP may assign its obligations under the Agreement to third parties, or have them performed by third parties.

### **4. Price and Payment**

4.1 VILLAGEPUMP is - with immediate effect after written prior notice - entitled to increase the price of the Goods still to be delivered if the cost price determining factors have been subject to an increase. These factors include, but are not limited to: (i) raw and auxiliary materials, semi finished products, consumables such as oil, water and energy; (ii) governmental measures and changes in the foreign exchange rates, products and services obtained from third parties, freight rates, import and export duties, excise duties, levies, taxes (in so far such rates, duties, levies and taxes are included in the price of the Goods), wages, salaries, social security contributions, freight costs and insurance premiums; VILLAGEPUMP is also entitled - with immediate effect after written prior notice - to increase the price of the Goods in case of a delay of the delivery times and delivery dates referred to in section 3 above which is not attributable to VILLAGEPUMP; Unless specifically agreed, the price shall not include international freight costs, import duties, levies and taxes, fees or other charges or costs relating to the application, granting and maintenance of the permits which are necessary to carry out the Agreement, or travelling and hotel expenses, which charges, costs and expenses shall be reimbursed separately by the Customer to VILLAGEPUMP.

4.2 The Customer shall pay all invoices, without any discount, set-off or postponement, within 30 days of the invoice date.

4.3 Every payment by Customer shall be in the first place serve to pay the judicial and extra-judicial costs and the interest owed by it and afterwards shall be deducted from the oldest outstanding claim regardless of contrary advice from Customer.

4.4 Any complaint with respect to the invoice must be notified to VILLAGEPUMP within eight business days after the date of invoice. Thereafter Customer shall be deemed to have approved the invoice.

4.5 If VILLAGEPUMP has at any time any doubts about the Customer's financial position, VILLAGEPUMP may demand the Customer to provide (additional) security for its compliance with its payment obligations. Customer is obliged to provide the requested security within the term set by VILLAGEPUMP. If Customer fails to provide the requested security, VILLAGEPUMP is entitled to postpone the supply of Goods.

4.6 In the event of any late payment by the Customer, the Customer shall be in default, without any prior reminder or notice of default being required, as of the date payment should have been made. Said date of payment shall be considered of the essence and, as of that date, VILLAGEPUMP shall be entitled to suspend its obligations under the Agreement and/or rescind the Agreement, whilst as from that moment, the Customer shall owe interest on the amount outstanding at the legal interest rate as stipulated in section 119a of Book 6 of the Dutch Civil Code plus 1% per month.

4.7 If any of the following events occur in respect of the Customer, then at that time all amounts to be paid by the Customer shall become immediately due and payable and VILLAGEPUMP shall be entitled to suspend its obligations under the Agreement and/or rescind the Agreement without prior notice: (a) if an application for a suspension of payments (moratorium) or for the bankruptcy of the Customer is filed or granted; (b) if a material part of the assets of Customer is frozen by an attachment or sold to a third party; (c) if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer; (d) if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; (e) if there is a change in the control in respect of the business of Customer; (f) if the Customer's company is liquidated or if the business carried on by the Customer is discontinued in whole or in part; (g) if the Customer fails to comply in full or in part with its obligations towards VILLAGEPUMP. The Customer shall be under an obligation to immediately notify VILLAGEPUMP if any of the events described above occurs.

4.8 Customer shall reimburse VILLAGEPUMP for any costs of collection incurred by VILLAGEPUMP due to non-payment or late payment of its receivables by the Customer.

## 5 Retention of Title

5.1 Goods supplied by VILLAGEPUMP shall remain its property until the Customer has fully complied with all its obligations towards VILLAGEPUMP.

5.2 As long as VILLAGEPUMP's retention of title exists, the Customer is entitled to use the Goods solely to the extent required in its ordinary course of business, and, to the extent possible, shall: -keep the Goods separate and in a clearly identifiable manner; - notify VILLAGEPUMP immediately of any claim by third parties which may affect the Goods; and - adequately insure the Goods.

## 6 Intellectual and Industrial Property Rights

6.1 VILLAGEPUMP is the sole owner of all right, title and interest in all intellectual and industrial property rights, including proprietary rights in any and all confidential information, including but not limited to technical know how and other trade secrets, in and to all (i) products, machines, installations and equipment and other hardware ("Hardware"), (ii) computer programs, (source) codes and databases ("Software"), and (iii) any and all related materials, documentation and information ("Documentation") provided under any proposal/offering from VILLAGEPUMP or developed under any Agreement between VILLAGEPUMP and Customer ("Proprietary Materials"). Unless otherwise agreed in writing,

Customer shall only have a non-exclusive and non-transferable right to use such Proprietary Materials to the extent required for the customary use of the Hardware as acquired from VILLAGEPUMP and shall not be entitled to reproduce, alter, adjust or reengineer any part thereof. Customer shall not disclose or publish any part of the confidential information provided by or obtained form VILLAGEPUMP and take all customary measures to maintain the confidentiality thereof.

6.2 The Proprietary Materials shall not be used for, and are not intended or represented to be suitable for, any purpose other than the customary use of the Hardware as acquired from VILLAGEPUMP. Customer will be liable for, and will hold VILLAGEPUMP harmless from and against, any claims, damages and costs related to any use in violation of these provisions and any such use will be at Customer's sole risk and account.

6.3 VILLAGEPUMP has not verified the possible existence of third party intellectual property rights which might be infringed as a consequence of the sale and delivery of the Goods and VILLAGEPUMP shall not be held liable for any loss or damages in that respect. Customer expressly assumes all risks of any intellectual property infringement by reason of its importation and/or use of the Goods.

## 7 Warranty

7.1 VILLAGEPUMP solely warrants that on the date of delivery the Goods are free from defects in material and workmanship. Except for this warranty, VILLAGEPUMP only issues warranties if and in so far as specifically stipulated by VILLAGEPUMP in writing. If and to the extent Goods fail to meet such warranty, VILLAGEPUMP may at its own option within a reasonable time either repair or replace the Goods or part of the Goods, or issue a credit for any such Goods or part of the goods to the maximum of the amount of the 'VILLAGEPUMP' liability shall be limited solely to repair or replacement of the Goods or for credit of the Goods.

7.2 In case of replacement Goods or Parts of the Goods, these Goods will be shipped (incoterm CPT) to the nearest international airport or sea harbour. All costs regarding import, local transport and replacement has to be covered by Customer.

7.3 The warranties and remedies as laid down in subsection 7.1 are exclusive and all other express or implied statutory and other warranties, representations, remedies and other obligations are excluded.

7.4 No warranty shall be given in respect of:- emergency repairs;- used parts and/or parts which are subject to wear and tear and/or are vulnerable; - Goods or installations not supplied, or supplied only in part, by VILLAGEPUMP.

7.5 Customer shall be responsible for presenting the end-users of the Goods of Customer which incorporate the Goods with correct and complete user instructions, installation instructions and product warnings and Customer shall be solely responsible for the contents thereof. If VILLAGEPUMP would supply instructions to Customer regarding the Goods, such instructions do not imply or construe any warranty or representation whatsoever towards the end-users. Customer is not entitled to make

warranties and representations towards the end-users on behalf of VILLAGEPUMP.

7.6 Customer will pursue and ensure that all tests, approvals and certifications necessary for the sale of Goods to end-users, and necessary for the sale of products of Customer which incorporate the Goods to end-users, are obtained.

7.7 Warranties shall cease to be valid completely and with immediate effect if:- the Customer has not fully complied with VILLAGEPUMP's instructions regarding use and maintenance, in which case the Customer must prove that said instructions have been observed by the Customer ; - the Customer has made any change to the good or installation in which the defect has been discovered without having obtained VILLAGEPUMP's consent; - the Customer has not offered VILLAGEPUMP the opportunity to do everything which would be necessary or desirable to repair the defect concerned.

7.8 Unless explicitly otherwise agreed warranty will commence upon installation of the Goods or till a maximum of six (6) months after the date of Goods are ready for shipment Ex Works, The Netherlands, (EXW, Incoterms 2010) whichever comes first, and ends one calendar year later.

7.9 Customer will register any installation of the Goods and inform VILLAGEPUMP about the installation date of every installed Goods within six (6) weeks after installation.

## 8 Complaints

8.1 Any complaints as to defects regarding the Goods (including hidden defects) and claims based on warranties must be submitted in writing to VILLAGEPUMP within eight business days from the date of delivery of the Goods in respect of any defect which would be apparent from an inspection on delivery, and not later than eight business days after the discovery of the defect by the Customer, but in no event later than six months from the date of delivery of the Goods -unless another term has been explicitly agreed-, failing which the right to complain shall lapse.

8.2 If the Goods have been approved by the Customer, the Customer shall lose the right to complain. Use or processing of the Goods shall be deemed to be an unconditional acceptance of the Goods and a waiver of all claims in respect of the Goods.

8.3 In the event that a written complaint with respect to the Goods has been submitted to VILLAGEPUMP, the Customer shall fully cooperate to the taking of samples or the conducting of any further investigation by or on behalf of VILLAGEPUMP.

8.4 Defects in parts of the Goods do not entitle Customer to reject the entire delivery of the Goods. Complaints, if any, do not affect Customer's obligation to pay as defined in section 4. Upon receipt of a written complaint, VILLAGEPUMP is entitled to suspend all further deliveries until the complaints are established to be unfounded and/ or refuted or until the defect has been totally cured.

8.5 Return shipments shall be accepted only if VILLAGEPUMP has given its prior written consent to

the returning of goods. VILLAGEPUMP may attach conditions to any such consent.

## 9 Liability and indemnity

9.1 VILLAGEPUMP's liability is restricted to the remedies as set forth in clause 7.1 of these Terms. Under no circumstances shall VILLAGEPUMP be liable, on any ground whatsoever, to Customer or any other person for any kind of damage or loss, cost or expense, whether caused by VILLAGEPUMP, by VILLAGEPUMP's directors or employees, or by subcontractors or other third parties engaged by VILLAGEPUMP. This limitation of liability is also applicable for VILLAGEPUMP's directors and employees and subcontractors and third parties engaged by VILLAGEPUMP.

9.2 The Customer indemnifies VILLAGEPUMP for third party claims with respect to the Goods.

9.3 This clause 9 prevails over any other provision of these Terms and any other provision agreed between VILLAGEPUMP and the Customer, unless VILLAGEPUMP and the Customer have explicitly deviated from this clause in accordance with clause 1.2 of these Terms.

## 10 Force Majeure

VILLAGEPUMP shall not be liable for any damage(s), loss, cost or expense arising out or in connection with any failure to fulfil any term of the Agreement caused by any circumstance or event beyond VILLAGEPUMP's reasonable control. In such event of force majeure, which shall be understood to include any situation or circumstance which is to be interpreted as such an event by general legal standards (but in any case include fire, natural disaster, war, acts of aggression and terrorism, blockade, export or import embargo's, non-availability of skilled labour caused by the fact that no work permits or equivalents were issued, delays in acquiring other permits, governmental regulations, law, ordinance, legislative measures, court orders, business interruptions, labour disputes - in particular strikes and lock out - epidemic, lack of or failure of transportation, emergency repair or maintenance, flood, earthquake, breakdown of plant or essential machinery, or delay in delivery or defects in goods supplied to VILLAGEPUMP by suppliers or subcontractors) VILLAGEPUMP is entitled to suspend its obligations of delivery for a period equal to the time loss by reason of Force Majeure. If a Force Majeure event continues for a period of six months after the agreed delivery date, VILLAGEPUMP is entitled to rescind the Agreement, without any liability or further obligation for VILLAGEPUMP whatsoever.

## 11 Applicable law; jurisdiction

These Terms, as well as every Agreement which is subject to the provisions thereof, shall be exclusively governed and must be construed interpreted and enforced according to Dutch law, excluding principles of conflict of laws. The applicability of the United Nations Convention on Contracts for International Sale of Goods is excluded as well. Any disputes, which may arise from these Terms and/or the Agreements, shall be submitted solely to the competent court in the judicial district of Amsterdam and the relevant court of appeal.

## **12 Miscellaneous**

If a court of law finds that any of the provisions hereof is in conflict with any applicable statutory provision, the remaining provisions shall nonetheless remain in full force and effect. The invalid provision shall in that case be deemed to have been replaced by a similar, legally enforceable provision which approximates the purpose and intent of the invalid provision as closely as possible. The headings contained in these Conditions are included for mere convenience of reference and shall not affect their construction or interpretation.

VILLAGEPUMP may transfer its obligations under the agreement, or any part thereof, to third parties without requiring the prior written consent of the Customer.