

# General Terms and Conditions of Kenny&Mason BV

In these terms and conditions, the following terms are defined as stated below:

us: Kenny&Mason International, registered with the Chamber of Commerce under number 0828.378.515.

other party: the party who by signing a document or otherwise accepts the validity of these general terms and conditions.

products: any corporeal objects which can be subject to human control offered or to be offered by us, all forms of service provision, whether or not as part of another object and regardless of the way in which the property rights and right of use have been regulated, all this insofar as the purport of these terms and conditions is not incompatible with this.

contract area: the area consisting of one or more countries, in which the other party is authorized to sell our products to third parties based on an agreement concluded between the parties.

transaction: each actual act or legal act, declaration or conduct that establishes a commitment, a right or an agreement.

## **General Applicability**

Article 1. 1. These general terms and conditions apply to the contents, formation and performance of all our transactions and replace any previous general terms and conditions and/or general terms and conditions filed and/or customary terms between the parties. The applicability of stipulations, in particular special stipulations, which derogate from these general terms and conditions, are subject to our written confirmation.

2. With due observance of the above, the applicability of the general terms and conditions used by the other party is explicitly excluded.

3. In any case, these terms and conditions are supplemental to anything agreed between the parties

4. The Dutch text of these general terms and conditions shall prevail over translations thereof

## **Formation of the agreements**

Article 2. 1. All offers and quotations made or given by us are without obligation, also if these contain a time limit, unless explicitly stated otherwise.

2. An agreement enters into effect after written confirmation on our part or after performance of the agreement has commenced. Written or verbal agreements, transactions, arrangements and/or stipulations made by our employees or intermediaries can be revoked within 5 working days by the persons authorised to represent us in accordance with the Trade Register.

3. The other party is bound by written confirmation from us, if it has not denied the correctness of the contents of such confirmation within 3 days of receiving it.

4. The headings of the respective articles of these terms and conditions are meant as a reference only and do not have any meaning for the interpretation of those articles.

## **Performance term**

Article 3. 1. The terms for performance are an approximate only and therefore not regarded as deadlines, so that we must be given notice of default if these are exceeded. Default due to the performance term having been exceeded shall never entitle the other party to compensation or to dissolve the transaction.

2. We are entitled to adjust the performance terms if not all information required for the performance has been received by us in time.

## **Prices**

Article 4. 1. Unless agreed otherwise, our prices are ex works, excluding VAT, packaging, packaging material, shipment, transport documents, assembly/installation, inspection, insurance and any duties or taxes to be levied by the government.

2. A depreciation of Belgian currency as well as price rises that occur between the date of the instruction and payment permit us to change the agreed price correspondingly.

3. We can pass wages, social security contributions, taxes, import duties, levies and other charges introduced or increased after the offer or formation of the transaction to the other party.

## **Continuing performance contracts**

Article 5. Unless explicitly agreed otherwise, a transaction that creates a continuous commitment between the parties shall apply for an indefinite

period of time, subject to notice of termination. Notice of termination by the other party can only be given by means of a written notification to us and with due observance of a notice period of two months, not taking effect until the day after receipt of that notification.

## **Risk**

Article 6. 1. In the event of delivery duty paid, not including the unloading of products from any means of transport, the products shall travel at our expense and risk. In all other cases, the products shall travel at the other party's expense and risk. Time of delivery shall in such case be the time that the products have left our business location or when we have informed the other party that the products are ready for shipment.

2. Delivery conditions shall be interpreted in accordance with the most recently published "Incoterms", insofar as they do not deviate from the provisions of these terms and conditions and/or the arrangements laid down in writing between the parties.

3. War risk shall always be payable by the other party

4. We shall only take out insurance at the other party's request and expense.

The other party can never derive more rights from this provision than if it had taken out the insurance contract itself.

5. We may regard the address given as the current address, until we have been informed of a new address. All damage or losses resulting from this shall be payable by the other party.

## **Complaints**

Article 7. 1. Complaints must be lodged with us in writing within 8 days of compliance by the other party. Failing that, the other party is deemed to have approved of the transaction.

2. Complaints do not entitle the other party to postpone payment for the non-disputed element of the claim.

3. Each invocation of settlement is also excluded.

4. Exemption on the basis of hidden defects is excluded.

5. Minor, trade-customary or technically unavoidable deviations in terms of colour, dimension, finish, quantity and can never form a basis of a complaint.

6. The fact that a complaint is being dealt with does not mean that we regard it as having been received in time or that we feel it is justified.

## **Liability**

Article 8. 1. In the event of failure to perform, or late, incomplete or incorrect performance in any way, without prejudice to the provisions of article 3, our obligation to pay compensation will be fulfilled in full by a subsequent performance in accordance with the stipulations of the other party. Our obligation to compensate damages will be limited to replacement of the goods delivered or part thereof, or to compensation of the invoice value of the delivered goods or the part thereof that does not meet the agreed specifications.

2. In the event that we are unable to perform at a later stage, our obligation to pay compensation will be fulfilled in full by payment of the actual costs incurred by the other party, or, as the case may be, damages suffered subject to a maximum of 25% of the invoice amount, and subject to a maximum sum of € 2,500 in total.

3. Liability for indirect loss or consequential damages are excluded irrespective of the circumstances.

4. Advices, instructions, calculations, statements of results or user instructions by any name whatsoever, in connection with the use, treatment, processing, confirmation, etc., of our goods are provided free of obligation and without any liability on our part.

5. We shall not be liable for anything the other party is obliged to do towards third parties, except for our direct obligation to the other party as a consequence of these terms and conditions. The other party shall indemnify us in that respect.

6. Claims for compensation of damages shall lapse, if these have not been brought before the competent court within a year after discovery of the damages.

7. The limitation or exclusion of damages as stipulated in this article shall not apply in so far as damages are a consequence of intent, gross negligence or wilful recklessness on our part.

## **Force majeure**

Article 9. In the event of force majeure, that is, in cases described as force majeure in these terms and conditions, we are relieved from our contractual obligations towards the other party. Force majeure includes all circumstances, which must reasonably be regarded as hampering the fulfilment and/or timely fulfilment of the obligations resulting from transactions, such as fire, strikes or exclusion, mobilisation, a declaration of war or siege, riots,

governmental measures that ban or hamper fulfilment, our supplier's non-fulfilment, or at least non-fulfilment under the conditions agreed with us, floods, operational failure both at our own company and at companies we purchase materials from or where we have materials processed, or other circumstances that make normal business operations impossible, both in the Netherlands and the country of origin and/or the transit of (base) materials.

#### **Purchase, sale and distribution**

##### **Products, packaging and labels**

Article 10. 1. Without our prior written consent, the other party shall not make any changes to the products, their packaging or labelling.

2. The products shall comply with the specifications. We are entitled to change the products and specifications as we see fit. This right also includes the right to introduce new product versions onto the market and to remove certain products or parts thereof from the series of products.

3. The other party is not entitled to compensation of whatever nature in connection with a product change or termination as referred to in the previous paragraph.

4. The other party shall examine whether the products and product information meet all requirements of the applicable legislation and regulations of the country in which the products are offered or, as the case may be, sold by the other party. The other party will inform us immediately if any product or product information does not meet those requirements. If the other party fails to provide us with the information referred to in the previous paragraph, or if it provides incorrect information, the other party shall indemnify us against all claims from third parties (including government bodies) in relation with the products failing to comply with local legislation, and against all damage or losses and costs we suffer or incur in connection with such a claim.

5. The other party shall immediately notify us of all complaints with regard to the products to be received by the other party.

##### **Orders**

Article 11. 1. An order is delivered only after it has been accepted in writing. We shall deliver the products in accordance with the accepted order. We are entitled to deliver the order instalments.

2. Unless otherwise agreed, the other party must take delivery of an order within a week of the products being ready for that.

##### **Complaints upon purchase and selling**

Article 12. 1. The other party is responsible for checking the quantities. In derogation from the provisions in article 7.1, the other party must have lodged a complaint about quantities as soon as possible and at least within 3 working days of receiving the products, failing which the quantities stated on the waybills, delivery notes or similar documents are deemed to have been accepted as correct.

2. In the event of purchase and selling the complaint period starts after the products have been loaded or, in the case of delivery free domicile, after the products are ready for unloading

##### **Return shipments**

Article 13. 1. Unless agreed otherwise, we do not take back any delivered and accepted products.

2. If and insofar the parties have agreed on returning products, we are entitled to credit them at the market prices as at the day on which the products are returned, and to charge the other party at least 35% of the invoice value of the products in compensation, provided the products are in an irreproachable and new condition and without prejudice to our right to fulfilment and further compensations of damages.

##### **Retention of title/reserving a pledge**

Article 14. 1. All delivered products shall remain our property until all obligations under this transaction or related transactions have been completely fulfilled, also if these products have been processed, used, consumed or incorporated in other products. In the event of blending, processing or incorporation in other products, we shall at all times acquire co-ownership in proportion to the value of the products that we delivered. Before payment, the other party is therefore not authorised to pledge the products, transfer the title thereto or transfer these on loan to third parties.

2. Should the situation arise, we reserve rights of pledge in respect of all products that we deliver as additional security for the fulfilment of all obligations under this transaction or related transactions, insofar as permitted by law.

3. Until full payment has been made, the other party shall be obliged to insure the products against fire hazard and other risks to be insured and to keep such products with the necessary care and identifiability. Furthermore, the other party shall be obliged to pledge to us, upon first demand, all claims from the other party on the insurance companies arising from this as additional security for the payment of all obligations under this transaction and related transactions.

4. The other party undertakes to make products that have not yet been paid available to us upon first demand, and hereby authorises the person to be appointed by us to at such time enter the space and take back those products.

##### **Promotion**

Article 15. 1. The other party shall endeavour to advertise, distribute and sell the products in the contract area. During the execution of its activities, the other party shall comply with all applicable legislation in the contract area. Insofar as applicable, the other party shall organise the required permits to advertise, distribute and sell the products in the contract area.

2. Under the conditions outlined in this article, the other party is entitled to use our brands when promoting and distributing the products in the contract area. The other party shall not use our trade names.

3. The other party shall not disclose any type of promotional material relating to the products, including (yet not limited to) leaflets, flyers, faxes, advertisements (whether or not via the Internet), without our prior written consent about their contents.

4. The other party shall not change, remove or adjust the brands, numbers or other identification marks used on or in connection with the products. The other party shall not use the brands in a manner that may somehow harm their distinctiveness, reputation, validity, or our goodwill therein, or our business or name. The other party shall not use or register any brand or trade name that is similar to any of our brands or trade names to the extent that it may lead to risk of confusion (including indirect confusion) or misrepresentation. Furthermore, without our prior written consent, the other party shall not use any brand other than ours in connection with our products.

5. The other party shall, at our costs, render all reasonable cooperation required by us in connection with maintaining the brands in the contract area.

6. Apart from the right to use as referred to in paragraph 1, the other party shall not be entitled to any brand or the attached goodwill. These rights are and remain vested in us. All goodwill resulting from the other party using the brands shall be vested in us.

##### **Perpetual clause for reselling**

Article 16. 1. The other party shall sell and/or offer the products in the contract area only. The other party is not allowed to sell actively outside the contract area. The other party must also impose this obligation on its buyers and/or resellers, as well as all of its successors and/or partners, failing which the other party remains liable towards us for their defaults.

2. In the event that the other party breaches the obligations under this article, it owes us an immediately due and payable penalty, which is not open to judicial mitigation, of € 5,000.00 for each event and € 1,000.00 for each day the default continues, without prejudice to our right - if the damage or losses suffered exceeds the amount of the total penalty - to claim full compensation instead of the penalty.

##### **Rights and obligations upon termination of the agreement**

Article 17. 1. We are entitled to terminate this agreement with immediate effect in the following cases:

- a. the other party has failed to fulfil an obligation under this agreement, or one of the separate purchase/sales agreements concluded in connection with that;
- b. a statement and/or conduct from the other party has established that the other party shall not fulfil any obligations;
- c. the other party has been declared insolvent, it has been granted a (temporary) moratorium, a different, similar settlement has become applicable to the other party or the other party has otherwise fully or partially lost the power to dispose of its capital, all this regardless of whether that situation is irrevocable;
- d. the other party has proposed its creditors a composition outside insolvency, moratorium or other similar settlement;
- e. (part of) the shares of the other party are/have been taken over by a third party;
- f. the other party infringes one of our intellectual property rights.

2. Insofar as the agreement is terminated by us by virtue of paragraph 1 of this article, the other party is liable for compensation. The claim is fixed at an amount of 35% of the purchase obligation, without prejudice to our right - if the damage or losses suffered exceeds the fixed compensation - to claim full compensation instead of the fixed claim.

3. When we change the prices or discounts with more than 10%, the other party is entitled to terminate the agreement within one month of the change being announced, subject to a notice period of 2 months. The obligation to purchase remains in full force. Depending on how much of the contract year has lapsed the purchase obligation shall be adjusted pro rata.

4. Following termination of this agreement, the other party shall assign all clients of the produces within the contract area to us.

5. Upon expiry of the term of this agreement or upon termination thereof, regardless of the reason, neither the other party nor its personnel shall be

entitled to any compensation for goodwill, loss of income or any other type of damage or losses connected with the expiry or termination of this agreement. Furthermore, the other party shall not be entitled, neither during nor after this agreement, to compensation for goodwill relating to the activities undertaken by the other party. The other party is deemed to have built up this goodwill for us.

6. In the event that this agreement terminates, the other party shall immediately stop and continue to stop using our brand. Orders we had already accepted upon termination of this agreement, but which have not yet been delivered at that time, shall lapse automatically. The other party shall provide us with specified information about client orders already accepted by the other party before termination of this agreement, and the other party shall fulfil these orders. Insofar as the other party does not have enough in stock to deliver the orders referred to in the previous sentence, we shall provide the other party with enough products to be able to deliver those orders, if so required by the other party.

7. Upon termination of this agreement, the other party shall on our demand return all promotional material, samples, demonstration models and property that belong to us, including products not yet paid for by the other party and the return of which we require. In the event that this agreement terminates as a result of our notice of termination by virtue of this article, the other party shall for a period of six months after the date on which this agreement terminates refrain from developing, producing, promoting, distributing or selling products in the contract area, which products rival our products.

8. After termination of this agreement, regardless of the reason, the articles which by their nature are intended for that shall remain in force.

#### **Other provisions**

##### **Non-disclosure**

Article 18. None of the parties shall disclose to third parties any of the information it takes cognizance of within the framework of conclusion or performance of this agreement, the confidential nature of which it is aware of or could reasonably have suspected, except if disclosure is required for exercising or enforcing the rights of the disclosing party to this agreement. Both parties shall disclose the aforementioned information to third parties only if the third party is obliged to use or disclose this information only in accordance with this article.

##### **Intellectual property**

Article 19. Any drawings, models, images, videos, pictures, stamps, other data, sound and information carriers or other resources and designs, including software, both in full as well as in parts, will remain our property and only at our disposal. The other party is obliged to refrain from any act that constitutes a violation of a patent, copyright, trademark right or licence. Imitations, reprinting or reproductions in any sense whatsoever are prohibited.

##### **Payment**

Article 20. 1. If no other term is mentioned, an invoice or claim lapses 15 days after the invoice date or other date given. The other party is deemed to be in default by operation of law, i.e. without demand or notice of default, following the lapse of this term or other agreed date.

2. In the event that the other party fails to make the payment within the term set out in paragraph 1, we are entitled to charge interest at 1% per month, counting from the due date.

3. We can demand payment of each of the other party's payment obligations in the event that the other party applies for a moratorium, is declared insolvent, liquidates its business or (partially) transfers it to third parties, is placed under guardianship or if an attachment is made against it.

4. Payments received by us shall first be applied to pay the (judicial and extrajudicial) costs stipulated in the next article, subsequently the interest due and finally the longest outstanding invoice or claim, even if indicated otherwise by the other party.

5. In the event of partial performance, we may invoice each part separately.

6. If we doubt the other party's creditworthiness, we may demand security. The other party shall be obliged to give us sufficient security at our request.

##### **Costs**

Article 21. Any costs, including collection costs, bailiff's costs and lawyer's fees - both judicial and extrajudicial - incurred by us in order to effect the fulfilment of the other party's obligations, shall be payable by the other party. The extrajudicial costs amount to 15% of the claim, subject to a minimum of € 150.00, for which no proof needs to be submitted, without prejudice to our

right to fulfilment and further compensation; these are payable from the moment on which the claim has been handed over to our lawyer, regardless of whether the other party is aware of that.

##### **Guarantee**

Article 22. 1. We guarantee that the products comply with the state of the art, the applicable standards for drinking water plants, construction and test principles, as they apply in accordance with Belgian legislation.

2. The other party shall report any claims regarding defects, damage or non-conformity of the products which could have reasonably be identified upon inspection of the products to us in writing, within five working days of receiving the products at the other party's premises. The other party shall report any other claims to us in writing within six months of the delivery date. Upon our request and at the other party's expense, we shall immediately take back any products with regard to which the other party says they do not conform or are damaged, and we shall inspect them. We shall not accept claims which are not made in accordance with the requirements set out in paragraph 1 and within the terms referred to in this paragraph. In the event that the other party is not responsible for the non-conformity or damage to the product, we shall at our discretion repair the products or replace them with new products, or refund the other party the purchase price of the products. Other than outlined in the previous sentence, we shall not have any obligation or liability towards the other party in connection with products that do not conform or are damaged.

##### **Security and dissolution**

Article 23. In the event of non-fulfilment, late fulfilment or incomplete or incorrect fulfilment for whatever reason by the other party or if there is a justified reason to fear this, for instance when the other party applies for a moratorium, is declared insolvent, liquidises or (partially) transfers its business to third parties, is placed under guardianship or an attachment is made against it, we are for the term of the transaction entitled to suspend fulfilment of our obligations, to dissolve the transaction in question by a mere statement and without legal interventions, without prejudice to our right to further compensation, or to demand security for prompt fulfilment. If the other party fails to fulfil any of its obligations, including the one to furnish security, all invoices and/or claims are immediately due and payable, and we are, in addition to suspending our obligations, entitled to demand adequate security for further fulfilment.

##### **Perpetual clause**

Article 24. In the event of a (partial) assignment and/or change of its business, the other party is obliged to impose these terms and conditions on its successors and/or partners, failing which the other party remains liable towards us for their defaults.

##### **Multiple parties**

Article 25. If a transaction is concluded between us on the one hand and two or more parties on the other, they shall each be severally liable for full compliance thereof.

##### **Place of performance**

Article 26. The parties agree that the place of our registered office shall be regarded as the place where all commitments resulting from these terms and conditions shall be fulfilled.

##### **Legal force**

Article 27. These terms and conditions remain in full force in the event that our business fully or partially changes name, legal form or owner.

##### **Applicable law and choice of forum**

Article 28. 1. Belgian law shall apply exclusively to the general terms and conditions as well as to any agreement concluded with us.

2. In so far as not provided for differently by statutory law provision, any disputes between the parties –including those considered a dispute by only one of the parties - shall exclusively be settled by the competent court of the place where we have our registered office, which is currently Antwerp, Belgium.

##### **Conversion**

Article 29. If any provision referred to in these terms and conditions and applicable to the other party is void and nullified, this provision shall be replaced by a valid provision that is as close as possible to the purport of the void provision. The validity of the remaining provisions of these terms and conditions shall remain unaffected.