

## GENERAL CONDITIONS OF DELIVERY OF HOSHIZAKI EUROPE B.V.

Filed with the Chamber of Commerce in Amsterdam under file no. 33238845

### **Article 1. Definitions**

1.1. In these general conditions, the terms below are defined as follows:

General Conditions of Delivery	The present general conditions of delivery of Hoshizaki Nederland B.V.
Hoshizaki	Hoshizaki Europe B.V., with its registered offices in Amsterdam, the Netherlands and its principal place of business in (1101 GC) Amsterdam, the Netherlands at Keienbergweg 50 C/D.
Products	Goods and services.
Agreement	The agreement concerning the sale of Products by Hoshizaki and the purchase of Products by the buyer.

### **Article 2. Applicability**

- 2.1. The present general conditions of delivery of Hoshizaki ("**General Conditions of Delivery**") apply to and are an integral part of all quotations and offers of Hoshizaki Europe B.V. ("**Hoshizaki**"), of each acceptance, confirmation and validation by Hoshizaki of the orders placed by the buyer and of all agreements ("**Agreements**") concerning the sale by Hoshizaki and the purchase by the buyer of goods and services ("**Products**"), unless and in so far as otherwise is expressly agreed with Hoshizaki.
- 2.2. Any conditions and provisions that are stated in any document or any documents that the buyer issues before or after Hoshizaki issues any document in which the present General Conditions of Delivery are enunciated or the General Conditions of Delivery are referred to are herewith expressly rejected by Hoshizaki and set aside. The conditions and provisos concerned do not apply in their entirety to any sale made to the buyer by Hoshizaki and are in no way whatever binding on Hoshizaki.

### **Article 3. Offers/Agreements**

- 3.1. All quotations and offers of Hoshizaki are free of obligations. A quotation or offer serves as an invitation issued to the buyer to place an order. An Agreement is concluded if Hoshizaki has accepted an order in writing or Hoshizaki has commenced to complete the order.
- 3.2. All statements of and/or listings about Products made by or on behalf of Hoshizaki are accurate to the best of Hoshizaki's knowledge, but may vary somewhat from being accurate within reasonable limits.
- 3.3. Changes made to an Agreement are binding on Hoshizaki only in so far as Hoshizaki accepts these changes in writing or in so far as Hoshizaki has actually begun implementing the changed Agreement.
- 3.4. Hoshizaki is entitled to refuse orders or to set certain conditions for the delivery of Products unless

otherwise is expressly determined.

#### **Article 4. Prices/Payments**

- 4.1. Unless otherwise stated, the prices of Hoshizaki are given in euros. If prices are given in another currency, then any exchange rate changes occurring between the quotation and the delivery are charged on.
- 4.2. All prices exclude Value Added Tax, duties and any other comparable levies that are imposed in connection with the sale of Products, unless otherwise is expressly stated. Hoshizaki will increase the sales price with taxes, duties or comparable levies if Hoshizaki is required to do so by law or has the opportunity to pay them or to collect them and the buyer shall pay the same together with the price.
- 4.3. All prices that are stated on price lists, in catalogues, quotations or other statements or listings of Hoshizaki are based on delivery in accordance with the applicable INCOTERMS.
- 4.4. Unless agreed otherwise in writing between Hoshizaki and the buyer, Hoshizaki can change the price of the delivered Products to the buyer after delivery of the Products in accordance with the applicable INCOTERMS.
- 4.5. Net payments should be paid within thirty (30) days after the invoice date, unless otherwise agreed in writing between Hoshizaki and the buyer.
- 4.6. All payments should be transferred to the stated address of Hoshizaki.
- 4.7. If deliveries are made in instalments, each instalment will be invoiced separately and this should be paid by the due date. No discount will be given for early payment, unless Hoshizaki consents to such a discount in writing.
- 4.8. In addition to all other legal rights and legal remedies that Hoshizaki might have, interest will be charged, as permitted by law, on all overdue payments at a rate of eighteen per cent (18%) annually or – if it is higher – at the legal interest from the date payment falls due to the date on which payment is made in full.
- 4.9. In addition to the amount due, increased by the interest charged in accordance with Article 4.8, the buyer should reimburse Hoshizaki for all costs that Hoshizaki incurs or suffers as a consequence of the non-payment or late payment on the part of the buyer, including all costs of judicial and extra-judicial measures that Hoshizaki must take against the buyer due to the buyer not fulfilling his payment obligations. The extra-judicial costs amount to at least 15% of the outstanding amount, increased by the aforementioned interest, with a minimum of EUR 150.00 and are payable on demand by virtue of the singular fact that the buyer has not fulfilled his payment obligation(s).
- 4.10. All deliveries of Products to which Hoshizaki has consented are always dependent on the ascertainment of the required credit rating of the buyer by Hoshizaki. If, in the opinion of Hoshizaki,

the financial situation of the buyer is at any time such that it would not be sensible to start production or delivery of Products on the basis of the aforementioned payment conditions, then Hoshizaki can insist on full or partial payment in advance or insist on other payment conditions as a condition for delivery, and Hoshizaki can also proceed to suspend, postpone or terminate the extension of credit, delivery or any other action or operation performed by Hoshizaki in the context of the Agreement.

- 4.11. If the buyer fails to pay any costs or expenses owed, or is otherwise in default, then Hoshizaki has the right to refuse to carry out the Agreement and/or delivery of Products until the buyer has paid the amounts due in full and Hoshizaki can proceed to suspend, postpone or terminate the extension of credit, delivery or any other action or operation performed by Hoshizaki in the context of the Agreement. This right shall apply in addition to and not instead of any other rights and legal remedies which apply or which are available by virtue of the Agreement or the law.

#### **Article 5. Deliveries**

- 5.1. Delivery of Products shall take place ex-works, (INCOTERMS, most recent version), unless:
- 5.1.1. the buyer is established in one of the following countries, in which case the delivery of Products shall take place Carriage and Insurance Paid To (CIP) (INCOTERMS, most recent version): the Netherlands, Belgium, Luxembourg, Great Britain, Ireland, France, Germany, Austria, Switzerland, Spain or Portugal; or
- 5.1.2. the parties agree otherwise in writing.
- 5.2. Hoshizaki is entitled to deliver Products in stages (partial deliveries).
- 5.3. The dates of delivery given or confirmed by Hoshizaki are only approximate dates and Hoshizaki cannot be held liable nor on the basis of this be considered to be in default in fulfilling its obligations towards the buyer if a delivery occurs within a reasonable period before or after the given date of delivery. Hoshizaki promises to do everything it can within commercially reasonable limits to comply with the delivery dates it has given or confirmed on the condition that the buyer provides all necessary order and delivery data within a reasonable period before the delivery date concerned.
- 5.4. The buyer should inform Hoshizaki in writing if the delivery has not taken place and should give Hoshizaki a period of thirty (30) days to rectify the delay. If Hoshizaki does not deliver within this period of thirty (30) days, then the buyer has the possibility, as the only and exclusive legal remedy, to dissolve the relevant parts of the Agreement not executed.
- 5.5. The ownership of the Products is transferred to the buyer in accordance with the provisions in Article 6. The risk of loss linked to the Products is transferred to the buyer on the delivery of the same by Hoshizaki in accordance with the applicable INCOTERMS.
- 5.6. If the buyer does not accept the Products ordered, then Hoshizaki can deliver the Products on consignment at the cost of the buyer. The buyer is required to reimburse the ensuing (storage) costs.

## **Article 6. Retention of Title**

- 6.1. All Products delivered or to be delivered by Hoshizaki by virtue of the Agreement, as well as claims existing due to shortcomings in the compliance with Agreements, remain the property of Hoshizaki until the moment full payment is made of everything that the buyer owes to Hoshizaki by virtue of the Agreement concerned, including interests and costs.
- 6.2. The buyer is required to save items delivered under retention of title with all due care and as the recognizable property of Hoshizaki. In the case of the attachment of Products that are the property of Hoshizaki, the buyer is required to inform Hoshizaki of this attachment immediately and to point out immediately that the buyer received delivery of the goods under retention of title.
- 6.3. The buyer is forbidden to sell on any Products of Hoshizaki involved, other than in the context of the normal business operations of the buyer, without the prior payment to Hoshizaki of all outstanding invoices. As long as the ownership of Products has not been transferred to the buyer, the buyer may not pledge the Products nor grant any other right to them to a third party. The buyer is required, as long as one or more invoices remain outstanding, to provide security for the payment thereof at the first request of Hoshizaki in the form desired by Hoshizaki.
- 6.4. If the buyer fails to comply fully with his payment obligations to Hoshizaki or if Hoshizaki has good reason to fear that he shall fail to meet this obligation, then Hoshizaki is entitled at any time and without judicial intervention to retrieve the Products or otherwise to gain access to the Products. Hoshizaki is entitled at any time, in order to gain access to the Products, to enter the space in which the Products are located or can be reasonably considered to be located. The costs of recovery shall be borne by the buyer.
- 6.5. If buyer fails to return Products, the buyer shall owe to Hoshizaki a fine in the amount of EUR 1,000 a day, payable on demand.

## **Article 7. FORCE MAJEURE**

- 7.1. Hoshizaki is not liable for any failure or any delay to implement an Agreement if:
  - 7.1.1. the failure or the delay is the result of interruptions in the production process of the Products; or
  - 7.1.2. the failure or the delay is the result of Force Majeure as defined hereinafter or in the law.
- 7.2. If a failure or delay arises as referred to above, the implementation of the relevant part or the relevant parts of the Agreement shall be suspended as long as the failure in question continues, yet this will not constitute any responsibility or liability for Hoshizaki towards the buyer in respect of any damage or loss ensuing therefrom.
- 7.3. The term "Force Majeure" refers to circumstances or events – whether or not they could be foreseen at the time the Agreement was concluded – which, in all reasonableness, diminish the influence of Hoshizaki and, as a result of which, it cannot reasonably be required to fulfil its obligations. This definition also extends to Force Majeure and/or failure on the part of the suppliers of Hoshizaki.

- 7.4. If the situation of Force Majeure continues for a period of three (3) successive months (or if Hoshizaki reasonably expects that the delay shall continue over a period of three (3) successive months), then Hoshizaki has the right to dissolve the Agreement entirely or partially, without this constituting any liability towards the buyer.
- 7.5. If, when a situation of Force Majeure arises, Hoshizaki has already fulfilled some of its obligations ensuing from the Agreement, then Hoshizaki is entitled to invoice for the actions already performed separately and the buyer is required to pay this invoice as though it concerned a separate transaction.

#### **Article 8. Guarantee**

- 8.1. Hoshizaki guarantees, under normal use in accordance with the accompanying user's manual, that at the time of delivery to the buyer and for a period of twenty-four (24) months from the delivery date (or another period that the parties might have agreed to in writing) the Products shall be free from material defects and manufacturing defects and to an essential degree shall meet the specifications of Hoshizaki for the Product concerned or, if applicable, other specifications to which Hoshizaki has consented in writing.
- 8.2. The only and exclusive obligation of Hoshizaki and the only and exclusive right of the buyer in connection with claims ensuing from the applicable guarantee is limited, at the discretion of Hoshizaki, either to the replacement or repair by Hoshizaki (or by a distributor/dealer appointed by it or a recognized and qualified maintenance service) of a defective Product or a Product that does not meet the specifications, or to the reimbursement of the purchase price of the Product. Hoshizaki shall be granted a reasonable period of time for the repair, replacement or allocation of a reimbursement. The Products that do not meet the specifications or defective Products shall become the property of Hoshizaki as soon as they are replaced or reimbursement has been awarded for such.
- 8.3. Notwithstanding the previous article, Hoshizaki has no obligations on the basis of the guarantee if it is found that the asserted defect or the non-fulfilment of the specifications can be ascribed to power failures or the incorrect connection of the Product to the electricity grid, the incorrect connection of or defects in the water supply or drainage to and from the Product, respectively, tests conducted under circumstances of special use, incorrect use, use in another manner than is described in the user's manual, insufficient care, faulty installation or an accident, or to faulty repair, adaptations or changes or storage, or incorrect transport, or incorrect handling, cleaning or maintenance of the Product.
- 8.4. The explicit guarantee as specified in the previous articles applies directly for the buyer and not for his customers, agents or representatives and supplants all other guarantees of an explicit or implicit nature, including but not limited to any implicit guarantees with respect to the suitability for a certain goal, saleability, or the absence of any infringement of intellectual property rights. All other guarantees are hereby rejected specifically by Hoshizaki.
- 8.5. In compliance with the exclusions and limitations stipulated in Article 9 of the present General Conditions of Delivery, the previous is an account of the complete liability of Hoshizaki in respect of defective Products or Products that do not meet the specifications.

## **Article 9. Liability**

- 9.1. Hoshizaki is not liable for lost profit, lost savings, the loss of reputation, loss of goodwill, damages of an indirect, incidental or exceptional nature, or damages imposed as a fine or in connection to consequential loss ensuing from or relating to the Agreement or the sale of Products by Hoshizaki or the use thereof, irrespective of whether these damages are based on unlawful action, guarantee, contractual relationship or any other legal grounds, and even if Hoshizaki is informed of or is aware of the possibility of such damages (compensation).
- 9.2. The total and cumulative liability of Hoshizaki towards the buyer in the context of any Agreement is limited to an amount equal to the amount that is connected to the Agreement concerned. The total amount for which Hoshizaki can be held liable on the basis of the previous sentence shall never be more than the amount that is paid out under the liability insurance of Hoshizaki.
- 9.3. Any claim of the buyer for damages should be submitted by him within ninety (90) days after the date of the event which is the basis of the claim, while any legal proceedings related to such a claim should be instituted within one (1) year after the date of the claim. Claims that are submitted that do not comply with this provision are invalid.
- 9.4. The limitations and exclusions stipulated in this article apply only in so far as this is permitted by law.

## **Article 10. Intellectual Property Rights**

- 10.1. With the sale of a Product by Hoshizaki to the buyer, a non-exclusive and non-transferable limited licence is granted to the buyer, on the basis of the relevant intellectual property rights of Hoshizaki and/or the companies and legal entities affiliated with it in the licence area, to use and to resell the Products sold by Hoshizaki to the buyer. All intellectual property rights of Hoshizaki and/or the companies and legal entities affiliated with it or rights of Hoshizaki derived from them with respect to the Products or parts of them and with respect to the packaging or other material that is delivered with the Products shall fully remain the exclusive property of Hoshizaki.
- 10.2. Hoshizaki shall, at its own cost: (i) conduct the legal defence if a third party institutes legal proceedings against the buyer, in so far as these legal proceedings involve a claim asserting that any Product delivered by Hoshizaki in the context of an Agreement directly infringes upon the patent, copyright, trade mark or corporate secret of the plaintiff; and (ii) indemnify the buyer against the payment of damages and costs that are imposed in the final judgement in such legal proceedings, in so far as this judgement can be directly and exclusively ascribed to the infringement in question.
- 10.3. By virtue of Article 10.2, Hoshizaki bears no obligation or liability towards the buyer if (1) Hoshizaki is not: (i) informed immediately in writing of a claim as referred to in this connection; (ii) given the exclusive right to take control of and organise the research, the preparations, the defence and the settlement in the context of such a claim, including the selection of legal counsel; and (iii) within the limits of reasonableness, is not given full support and cooperation on the part of the buyer in the context of the research, the preparations, the defence and the settlement as mentioned above; or if

(2) the action is instituted after the expiry of a period of three (3) years after the date of delivery of the Product.

- 10.4. If, in respect of a Product, legal action is instituted citing infringement as referred to in the previous Article 10.2, or if, in the opinion of Hoshizaki, it can be expected that this will occur, then Hoshizaki has the right, without obligation and entirely of its own choice: (i) to obtain the right for the buyer to continue with the use and the sale of the Product; (ii) to ensure the replacement of the Product, or (iii) to adapt the Product in such a manner that, in its new form, the Product no longer makes any infringement; or (iv) to terminate an Agreement in so far as this pertains to the Product in question.
- 10.5. In compliance with the exclusions and limitations stipulated in Article 9 of the present General Conditions of Delivery, the previous is an account of the complete liability and obligation of Hoshizaki towards the buyer and is the only thing to which the buyer can appeal with respect to any actual or alleged infringement of any intellectual property rights or any other property rights of whatever nature.

#### **Article 11. CONFIDENTIALITY**

The buyer acknowledges that all technical, commercial and financial data that is disclosed by Hoshizaki and/or companies affiliated with it to the buyer are a part of the confidential information of Hoshizaki and or companies and legal entities affiliated with it. The buyer is forbidden to disclose any of this confidential information to third parties or to use it for any other purpose than that which the parties have reached agreement on within the context of the intended sales transaction in the present document.

#### **Article 12. EXPORT/IMPORT REGULATION**

- 12.1. If for the delivery of Products in the context of the Agreement, an export or import licence must be granted by a government and/or any governmental body by virtue of any applicable law or regulations, or the delivery is otherwise restricted or forbidden by law or regulations governing the regulation of exports or imports, then Hoshizaki can proceed to suspend its obligations and the rights of the buyer with respect to the delivery in question until the required licence is granted or for the duration of the relevant restriction and/or the relevant ban and Hoshizaki can even terminate the Agreement without thereby incurring any obligation towards the buyer.
- 12.2. If an end-user statement is required, Hoshizaki should inform the buyer of this immediately and the buyer should send this document to Hoshizaki at the first request for it by Hoshizaki; if an import licence is required, the buyer should inform Hoshizaki of this immediately and the buyer should send this document to Hoshizaki as soon as it is available.
- 12.3. By accepting the quotation of Hoshizaki, by entering into any Agreement and/or by accepting Products, the buyer consents to refrain from any manner of using the Products and/or the documentation pertaining to them if he thereby would violate law and regulations concerning the regulation of exports or imports.

### **Article 13. TRANSFER AND SET-OFF**

- 13.1. The buyer is not permitted to transfer any rights or obligations in the context of the Agreement without the prior written permission of Hoshizaki.
- 13.2. The buyer is not entitled to withhold or lower any payments, or to set off current and future receivables against any payments that are owed for Products which have been sold in the context of the Agreement or any other agreement that the buyer or one of the companies affiliated with him possibly has with Hoshizaki.
- 13.3. The buyer promises to pay the payments due in full without taking into consideration any claimed set-off which the buyer claims or is claimed on his behalf.

### **Article 14. BREACH AND TERMINATION**

- 14.1. Without prejudice to any rights and legal means that Hoshizaki might have or that Hoshizaki has at its disposal by virtue of the Agreement or the law, Hoshizaki can terminate the Agreement or any part thereof, effective immediately, by means of a written notification of such to the buyer without incurring any liability of whatever nature, if:
  - 14.1.1. any provision of the Agreement is violated or not respected by the buyer;
  - 14.1.2. any proceedings pertaining to insolvency, bankruptcy (including reorganisation), liquidation or dissolution with respect to the buyer are instituted (even if such proceedings are initiated voluntarily or involuntarily by the buyer), the buyer is placed under an administrator or receiver or a transfer is made on behalf of the buyer's creditors.
- 14.2. As soon as one of the aforementioned events occurs, all payments to be made by the buyer in the context of the Agreement will immediately become payable on demand.
- 14.3. If an Agreement is annulled, terminated or nullified, the conditions and provisions that are meant to remain intact after annulment, termination or nullification of the Agreement in question shall also actually remain intact.

### **Article 15. Applicable Law and Choice of Forum**

- 15.1. All quotations, confirmations and Agreements are subject to and are interpreted by Dutch law.
- 15.2. The buyer and Hoshizaki should initially try, via consultation and negotiation with each other in good faith and in an atmosphere of mutual cooperation, to settle every dispute that ensues from or is connected to any Agreement.
- 15.3. All disputes that cannot be settled amicably should be submitted to the exclusive jurisdiction of the court in Amsterdam, with the understanding that Hoshizaki is entitled at any time to take legal steps or to institute proceedings against the buyer via any other competent court.
- 15.4. The Convention of the United Nations on international sales agreements for movable property does

not apply to any quotation, confirmation or Agreement.

- 15.5. Nothing that is contained in this article may be read or interpreted as a restriction of the right of either Hoshizaki or the buyer to obtain a court ruling or another legal measure under the applicable laws or to take steps to guarantee the possibility of seeking recourse from the other party.

#### **Article 16. OTHER PROVISIONS**

- 16.1. If, as the result of the determination of a competent court or as the result of any future action of a legislative or administrative body, one or more provisions of the present General Conditions of Delivery become invalid or untenable, this will not affect the validity or the tenability of the other provisions.
- 16.2. If, in the last case, the determination is made that any provisions of the present General Conditions of Delivery are not legal or are untenable, then the provision in question shall be considered to be removed from these General Conditions of Delivery, while all the other provisions shall continue to be fully valid and in effect, and the provision that is deemed illegal or untenable shall be replaced by a provision to the same effect that reflects the original purpose of the provision in so far as this is legally permissible.
- 16.3. If one of the parties neglects to make use of any right or legal means based on the Agreement, or if use is made of the same only after some time has passed, this may not be seen as the waiver of that right or legal means, nor can any single instance of making use of such a right or legal means fully or partially lead to the exclusion of any further or future use of the same or to the exclusion of making use of any other right or legal means based on the Agreement or any associated document or the law.
- 16.4. Hoshizaki is entitled at any time to change and/or to amend these conditions. Changes and/or amendments shall take effect after they have been brought to the attention of the buyer and have no retroactive effect.
- 16.5. If these general conditions are agreed between the parties in a language other than Dutch, then the text and the significance of the Dutch language general conditions shall nevertheless prevail.