

GENERAL TERMS AND CONDITIONS OF SALE | RAINBOW COMMERCE B.V.

Definitions

The following definitions shall be assigned the following meanings in these General Terms and Conditions and in the Contracts to which they apply, (whereby the same meaning shall apply to the plural form where the singular form is used):

Products: all Products to be delivered to Buyer by Rainbow Commerce B.V. within the framework of the Contract. **Rainbow Commerce B.V.:** the seller of the Products and user of these General Terms and Conditions Raadhuisstraat 20, 1016 DE Amsterdam.

General Terms and Conditions: these General Terms and Conditions.

Tender: the written (or digitally proffered) offer of Products to be provided by Rainbow Commerce B.V. for buyer, and which offer is subject to these General Terms and Conditions.

Contract: any agreement formulated between Rainbow Commerce B.V. and buyer, or any amendment or addition thereto, and which agreement is subject to these General Terms and Conditions.

2. Applicability

2.1 These General Terms and Conditions form an integral part of each Contract and Tender and are also applicable to all other transactions, legal or otherwise, between Rainbow Commerce B.V. and buyer, whether preparatory or executory in nature.

2.2 If the Contract, or as the case may be, the confirmation of a Tender, contains stipulations in conflict with these General Terms and Conditions, the prevailing stipulation shall be, successively: the applicable Contract stipulation, the confirmation of the Tender, and finally the applicable stipulation in these General Terms and Conditions. Other non-conflicting stipulations shall remain in effect between parties.

2.3 Arrangements agreed between parties shall be made exclusively in writing.

2.4 Buyer's General Terms and Conditions shall apply to Contracts concluded with Rainbow Commerce B.V. solely insofar as they do not contradict these General Terms and Conditions. In the event of doubt as to the existence of such a contradiction, these General Terms and Conditions shall prevail.

2.5 If any stipulation in these General Terms and Conditions, or in the Contract, is for any reason partially or completely null or void, or is nullified or voided, the other stipulations contained in these General Terms and Conditions or the Contract shall remain in effect.

2.6 If any stipulation in these General Terms and Conditions, or in the Contract, is for any reason partially or completely null or void, or is nullified or voided, Parties shall negotiate the terms of a new stipulation, which shall mirror as closely as possible the substance and the intent of the original stipulation.

2.7 In the event of uncertainty as to the interpretation of one or more stipulations in these General Terms and Conditions, they shall be interpreted in the spirit of the stipulation or stipulations concerned.

2.8 In situations not regulated by these General Terms and Conditions, Parties shall assess the situation in the spirit of these General Terms and Conditions.

3. Tenders and formulation of Contract

3.1 Tenders and quotations made by Rainbow Commerce B.V. are without obligation, except if, and inasmuch as, Rainbow Commerce B.V. states otherwise. If a Tender made without obligation is subsequently accepted by the buyer, Rainbow Commerce B.V. retains the right to revoke the Tender during the two working days immediately following upon receipt of the acceptance.

3.2 A Contract shall be deemed concluded only in the event that Buyer accepts the Tender and written confirmation of agreement has been provided to the Buyer by Rainbow Commerce B.V., or once performance of the Assignment has commenced.

3.3 If, at the request of Buyer, Rainbow Commerce B.V. performs any work prior to agreement being reached on, inter alia, the price and payment conditions for the work, Buyer shall pay Rainbow Commerce B.V. for that work pursuant to Articles 8 and 9, in accordance with the prevailing Rainbow Commerce B.V. tariffs.

3.4 Deviations from the terms of the Tender, whether or not of subordinate significance, shall not bind Rainbow Commerce B.V. unless Rainbow Commerce B.V. explicitly accepts such deviation.

3.5 In the event no Tender, or as the case may be, confirmation of Tender, has been sent due to the nature or scope of the activities involved, the invoice shall function in its stead, and shall be deemed to correctly and completely reflect the terms of the Contract.

4. Amendments and additions

4.1 Rainbow Commerce BV reserves the right to amend or add to these General Terms and Conditions. Barring receipt by Rainbow Commerce B.V. of a written objection within 14 days of notification by Rainbow Commerce B.V. of the amendments or additions, Buyer shall be deemed to have accepted the changes.

4.2 Amendments or additions to provisions in the contract and/or these General Terms and Conditions may be agreed exclusively in writing.

4.3 An amendment or addition as provided for in paragraph 1 shall apply solely to the contract in question.

5. Orders, prices and deliveries

5.1 Orders will be executed according to the availability in stock: Rainbow Commerce B.V. shall be entitled to perform and invoice partial deliveries.

5.2 Both the place of performance (transfer of risk) and the prices are valid: Ex Works (EXW). Insurance, duties, taxes, fees and other charges are at the expense of Buyer.

5.3 The offered prices are based on the costs at the time of offer. If the costs increase before the time of conclusion of contract, Rainbow Commerce B.V. is thus entitled to adjust the prices accordingly.

5.4 All the risks involved in the delivery of Products shall be borne by Buyer, and this even if Incoterm apply is different from Ex Works (EXW): in the absence of specific instructions from the Buyer, Rainbow Commerce B.V. will make the delivery using a carrier of its own choice, it has been understood that in such case, the Buyer shall have no right to claim anything against Rainbow Commerce B.V. in case of any problems and/or complications related to the delivery. Under no circumstances Rainbow Commerce B.V. shall be liable for tampering, theft or damage occurred during the transport: Buyer will have recourse only against the carrier.

5.5 Unless otherwise stipulated in writing, a specified delivery period serves only as a reference point for the Buyer and is not binding for Rainbow Commerce B.V., which means that the Buyer does not have the possibility of requiring the payment of penalties or the termination of the contract in case of late delivery.

5.6 The delivery period starts at the latest of: (i) the date of order confirmation; (ii) the date of fulfillment of all technical, commercial and other requirements set forth for the benefit of the Buyer; (iii) in the event an advanced payment is agreed, the date on which Rainbow Commerce B.V. will receive such advanced payment.

5.7 Approvals from authorities and any approvals required from third parties for export of equipment shall be obtained by the Buyer, Rainbow Commerce B.V. having no responsibility in this respect. If such approvals are not obtained in due time, the delivery period is thus extended accordingly.

5.8 If circumstances which are unforeseeable or independent of the will of Rainbow Commerce B.V., such as any instance of force majeure, and which hinder compliance with a stipulated delivery period arise on the part of Rainbow Commerce B.V. (including main subcontractors of Rainbow Commerce B.V. who are difficult to replace), that delivery period shall also be extended by the duration of this circumstances; in particular, this includes without limitation armed conflicts, official interventions and bans, delays in transport and clearance of customs, transport damages, shortages of energy and raw materials, work conflicts, labour disputes and loss of a main subcontractor of Rainbow Commerce B.V.. It is excluded, in any case, the compensation by Rainbow Commerce B.V. for any damage.

5.9 Rainbow Commerce B.V. reserves the right to voluntarily modify, at any time, the form and the configuration of Products for technical reasons or due to legal or commercial requirements. Rainbow Commerce B.V. shall be entitled to discontinue, at any time, and without notice, the supply of any product, and, provided the essential characteristics of the models mentioned in the catalogue, to make price changes, changes of parts or details deemed suitable for further improvement or technical, safety and/or commercial requirements.

5.10 Claims of wrong deliveries or regarding evident defects must be effected by and no later than eight working days from receipt of the Products by Buyer.

6. Payment

6.1 Net payment is to be made to the bank account of Rainbow Commerce B.V., whereby no deductions, withholding, or adjustments shall be allowed, also in the event Buyer has lodged a claim. The value date specified in Rainbow Commerce B.V. bank statements shall be considered as the date of payment.

6.2 In the event that the invoice is not paid in full within 30 days, Buyer is in default without need of further notification. Interest shall accrue at the rate of 1,5% of the late payment per month or part thereof from the date that Buyer is in default until the date payment in full is credited, whereby a part of a month shall count as a full month, or at the commercial rate specified in article 6:119a of the Dutch Civil Code (“Burgerlijk Wetboek”) if the commercial rate is higher than the contractual rate. Compound interest shall accrue annually, pursuant to article 6:119a paragraph 3 of the Dutch Civil Code.

6.3 Buyer is obliged to pay all judicial and extrajudicial (collection) expenses. These include, but are not limited to, costs relating to seizure, petition of bankruptcy, and debt collection, as well as expenses incurred by Rainbow Commerce B.V. for legal representation, process servers, and the consultation of other specialists. Rainbow Commerce B.V. is entitled to charge the client fines and extrajudicial debt collection expenses amounting to at least 10% of Buyer’s entire late payment, with a minimum of €750.- plus VAT, without prejudice to Rainbow Commerce B.V. rights to procure full compensation for damages and costs related to collection of payments due.

6.4 Any objection to the invoice must be brought to the attention of Rainbow Commerce B.V. within 10 days of invoice date, failing which the invoice is deemed to have been found in order and accepted by Buyer, and for which no further complaints shall be accepted. > written

7. Force Majeure

7.1 In the event that, due to a non-imputable failure to perform, Rainbow Commerce B.V. is unable to comply with its obligations to Buyer, whether or not this situation could have been foreseen, Rainbow Commerce B.V. is entitled to entirely or partially annul the Contract, or to postpone its performance, in writing and without judicial intervention, and without prejudice to Rainbow Commerce B.V. right to compensation for tasks performed before the onset of the force majeure. Rainbow Commerce B.V. shall inform Buyer of the force majeure situation at the earliest opportunity. In the event of postponement Rainbow Commerce B.V. nonetheless reserves the right to entirely or partially annul the Contract.

7.2 Force majeure shall be understood to include any situation which temporarily or permanently prevents Rainbow Commerce B.V. from performing its obligations, including but not limited to fire, freezing weather conditions, labour interruptions, power outages, and computer, telephone and internet disruptions, as a result of which compliance by Rainbow Commerce B.V. with those obligations cannot be reasonably demanded. Force majeure pertaining to third parties engaged by Rainbow Commerce B.V. shall be deemed force majeure pertaining to Rainbow Commerce B.V..

7.3 Parties shall inform each other at the earliest opportunity in the event of a situation of force majeure. > written

8. Intellectual property rights

8.1 Rainbow Commerce B.V. reserves all intellectual property rights with regard to the Products, as well as to their trademarks, logos and to the website and texts, image materials as well as other content of whichever nature. Buyer is forbidden to (have) multiply, to (have) copy, to (have) reproduce, to (have) register or to (have) disclose or distribute these Products or to use in whichever manner other than deriving from the nature or scope of the agreement or the normal use of the website.

8.2 A violation imputable to Buyer of the stipulations in the previous section, gives Rainbow Commerce B.V. the right to demand immediate undoing of the infringement, as well as to claim compensation of damages further to be established on the basis of the nature and scope of the infringement, and to exercise any of Rainbow Commerce B.V.'s other legal rights deriving from intellectual property rights.

8.3 If Products are manufactured by Rainbow Commerce B.V. based on design specifications, drawings, models or other specifications from Buyer, Buyer shall indemnify Rainbow Commerce B.V. and hold Rainbow Commerce B.V. harmless in the event of any violation of proprietary rights and upon request from Rainbow Commerce B.V., shall join the corresponding proceedings as a party or intervening party at the expense of the Buyer and shall conduct the lawsuit to Rainbow Commerce B.V. benefit.

9. Liability and indemnification

9.1 Rainbow Commerce B.V. cannot (besides product liability in its capacity as manufacturer, if applicable) under any circumstance be held liable for the consequences of any actions or omissions arising from the sale of the products.

9.2 Rainbow Commerce B.V. is not liable for consequential loss to Buyer or third parties, which shall be understood to include intangible damages, loss of profits or any other form of indirect damage whatsoever.

9.3 Rainbow Commerce B.V. is not liable for damage, irrespective of its nature, arising because Rainbow Commerce B.V. has acted upon incorrect and/or incomplete information provided by, or on behalf of Buyer.

9.4 Liability of Rainbow Commerce B.V. to Buyer, on whatever grounds, is limited in respect of each incident (where a consecutive series of incidents shall be deemed to be a single incident) to these tariffs and/or costs paid by Buyer.

9.5 Wrong usage, no consumer claims

10. Retention of title

10.1 All Products shall remain property of Rainbow Commerce B.V. until the Buyer has paid in full all amounts due in respect of the concerning order.

10.2 Buyer is prohibited to sell, to pledge on or otherwise encumber the Products subject to the retention of title, unless such act must be deemed permissible in the framework of its normal business operations.

10.3 Buyer shall retain the Products delivered under retention of title with necessary care and clearly identifiable as property of Rainbow Commerce B.V..

10.4 If the Products subject to the retention of title are seized by third parties, or if third parties wish to create or enforce rights in respect of same, Buyer will be obliged to notify Rainbow Commerce B.V. thereof as soon as possible.

10.5 Upon sale and/or delivery to third parties of the products subject to the retention of title within the context of Buyer's normal business operations, as well as upon violation of the other stipulations in this article, the purchase price will be immediately fully due and payable.

11. Applicable law and settlement of disputes

11.1 These General Terms and Conditions, and all contracts ensuing or disputes arising therefrom or related thereto, are governed by the law of the Netherlands. The application of the UNCITRAL Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

11.2 All disputes between the parties arising from, or related to, a Contract or these General Terms and Conditions shall be heard by the competent court in the jurisdiction in which Rainbow Commerce B.V. resides, but without prejudice to Rainbow Commerce B.V.'s right to have the dispute heard by another court whose competency can be established by law or treaty.