

**1 VALIDITY AND ACCEPTANCE OF THESE TERMS AND CONDITIONS**

- 1.1 The current terms and conditions are applicable to all contracts and orders between Cappa Engineering & Consulting BVBA, with its registered offices at Zagerijstraat 22, 3550 Heusden-Zolder (Belgium), with company number 0697.919.948 or one of its affiliates (hereinafter referred to as "CAPPA E&C") and its customers.
- 1.2 The general terms and conditions of CAPPA E&C are deemed accepted by the customer, even when they are conflicting with the customer's general or special purchasing conditions. The latter only have binding effect upon CAPPA E&C when explicitly agreed in writing. The fact that CAPPA E&C did not explicitly reject the terms and conditions of the customer referred to in any contract or agreement cannot be interpreted by the customer as an acceptance of such terms and conditions.
- 1.3 The designated person, the employee, or any other person who represents or acts for the customer, is deemed to have the necessary mandates to legally enter into agreements for the customer.

**2 OFFERS AND ORDERS**

- 2.1 All offers and price lists of CAPPA E&C are provided for information purposes only and do not legally bind CAPPA E&C. CAPPA E&C may issue updated price lists from time to time.
- 2.2 Every order commissioned by the customer is binding for the customer, but will only be legally binding for CAPPA E&C after its written confirmation.
- 2.3 CAPPA E&C cannot be held liable for not executing an order due to circumstances beyond CAPPA E&C's control, e.g. when the product is out of stock, delivery failure of CAPPA E&C's suppliers, the destruction of products due to accidents, strikes, fire, floods, etc. CAPPA E&C has no obligation to prove the unforeseeable nature of such circumstances.
- 2.4 Deviations from prior agreements or order confirmations are only allowed by means of an explicit and written agreement between the parties.

**3 PRICE**

- 3.1 The price for the products and/or services will be as mentioned on the order confirmation or on CAPPA E&C's quotation.
- 3.2 The prices mentioned do not include VAT, other taxes, costs and packing. All taxes, (transportation) costs, packing, insurances, are at customer's expense, unless otherwise explicitly agreed.

**4 DELIVERY AND TERMS OF DELIVERY**

- 4.1 The delivery dates are provided for information purposes only, are indicative and are not binding on CAPPA E&C. Delays in the delivery can under no circumstance be a reason for customer to claim any penalties and/or compensation and/or cause the rescission of this agreement.
- 4.2 CAPPA E&C reserves the right to make partial deliveries, which will constitute partial sales. The partial delivery of an order cannot justify the refusal to pay for the delivered products.
- 4.3 If CAPPA E&C is unable to deliver the products due to events of force majeure on the indicated dates, such dates shall be postponed with a period equal to the duration of the force majeure events.

**5 TRANSFER OF TITLE AND RISK**

- 5.1 The delivered products shall remain the property of CAPPA E&C until paid for in full, including all costs, interests and damages, when applicable. At the moment of payment, title of ownership of the delivered products will pass to the customer.

- 5.2 The customer will under no circumstances obtain any ownership rights in any delivered products or in any products put at its disposal, if the products are not paid in full. More specifically, the customer will not be able or allowed to transfer any ownership right to any third party, nor to pledge or to encumber the products with any other privilege.

For delivered products that are transferred to third parties, the retention of title applies to all products not paid in full.

For delivered products that are incorporated into other products, the retention of title applies to such new products. If the products with retention of title are incorporated into other products not belonging to CAPPA E&C, CAPPA E&C will have the co-ownership rights of such new products in proportion of its share in the products with retention of title, which will be calculated on the total value of these new products.

The customer will immediately notify CAPPA E&C by means of a registered letter of any confiscation performed by any third party.

- 5.3 The relationship between CAPPA E&C and the customer is governed by the "Incoterms 2010". Unless otherwise stipulated, all deliveries shall be made INCO term EX WORKS (Heusden-Zolder). The risk of the products shall transfer at the moment as stipulated in the INCO term EX WORKS (Heusden-Zolder). As such the risk of loss or damage to the products shall pass to the customer at the moment the products are made available for collection to the customer.
- 5.4 Even in the event CAPPA E&C organizes and/or pays for the transport of the products for the customer, the risk of loss and damage shall pass to the customer at the moment the products are made available for collection at CAPPA E&C's site in accordance with the INCO term EX WORKS.

**6 COMPLAINTS**

- 6.1 When the products or services are damaged, incomplete, have errors or have any other visible non-conformity, the customer shall be entitled to refuse the products and/or services or shall have the right to only partially accept the products or services, subject to mentioning the reasons for such reservation. The acceptance of the products or services at the time of delivery, respectively at the time of performance implies that the products comply with the specifications and that no visible defects are present.

Every complaint regarding visible defects at the time of delivery have to be reported to CAPPA E&C by means of a registered letter, within three (3) days after the delivery and with a reference to the number of the relevant order or invoice. After expiration of this period, the complaint will no longer be accepted and valid.

The possible return of the products will only be executed after a prior written confirmation by CAPPA E&C.

- 6.2 Claims for hidden defects or warranty claims can only be considered if the defects appear within a period of six (6) months following delivery, and are notified to CAPPA E&C by means of registered letter, within three (3) days following their discovery. After this period, the complaint will no longer be taken into account. The possible return of the products will only be executed after a prior written confirmation by CAPPA E&C.
- 6.3 Every complaint regarding the invoices of CAPPA E&C has to be communicated to CAPPA E&C by means of a registered letter within eight (8) days after the receipt of invoice. In default thereof, the invoice will be considered accepted, without any reservations, and must be paid at the date as specified on the invoice.

**7 WARRANTY OF THE DELIVERED PRODUCTS/SERVICES - LIABILITY FOR DEFECTS**

- 7.1 To the maximum extent permitted by law, CAPPA E&C's liability is limited to serious defects or errors in the products (including software) or services that appear within a period of three (3) months after the delivery of the products or provision of the services.

CAPPA E&C does not warrant that the delivered products or services will be free from any defect and/or error and/or will be able to meet the specific demands and/or requirements of the customer and/or user.

This warranty is only valid, if the delivered products are used in compliance with their specifications and for the purposes they are conceived for. Under no circumstances, shall CAPPA E&C be liable for defects caused by bad storage, abnormal or incorrect use, incorrect installation, incorrect maintenance or repair by the customer (or any third party not authorized by CAPPA E&C), or by alterations carried out without CAPPA E&C's prior written consent. This warranty does also not apply to normal wear and tear of the products.

- 7.2 The liability of CAPPA E&C is limited to the repair or replacement of the defective parts or re-performance of the services, at its sole discretion, and does not comprise any other compensation for losses, which are exclusively at the expense of the customer.

CAPPA E&C is under no circumstances obliged to pay any damages to the customer or to any third party, for any direct and/or indirect damage such as but not limited to damage resulting from loss of data, loss of profit, damage to products or persons, i.e. when the products or materials were adapted or altered, damage due to incorrectly applying the guidelines and/or instructions of CAPPA E&C, damage due to the use or misuse of the products, damage due to mis implementation of the products, damage due to an error in the services or damage due to an error or negligence of the user.

- 7.3 To the maximum extent permitted by law, CAPPA E&C shall not be liable for financial damages or for material damages to property caused by the products. Nor shall CAPPA E&C refund the value of the damaged products, or be liable for the damage caused to the products manufactured by the customer, or to products of which the customer's products are part.
- 7.4 CAPPA E&C's liability shall not be increased if the customer sells the products to a third party. The customer will fully indemnify and hold harmless CAPPA E&C against all claims or potential claims of its buyers, customers and/or users against CAPPA E&C and especially for such claims which would surpass the limitations of the claims the customer could file against CAPPA E&C.
- 7.5 Except as stipulated in Clauses 7.1.-7.4. and to the maximum extent permitted by law, CAPPA E&C shall not be liable for any other defects or errors in the products and/or services. In no event however shall CAPPA E&C's liability for direct damages exceed an amount equal to 10% of the order value. CAPPA E&C shall in no event be liable for indirect, consequential and incidental damages to customer.

**8 INTELLECTUAL PROPERTY RIGHTS**

- 8.1 Except as otherwise explicitly agreed in writing between CAPPA E&C and customer, all intellectual property rights in the products and/or services remain the exclusive ownership of CAPPA E&C and its licensors. The customer will under no circumstances be allowed to transfer, hand over, pledge or loan the intellectual property rights, free of charge or in any other way. The user will maintain all property notices of CAPPA E&C, its affiliates and its licensors, if any, displayed on the products, software and the manuals.

To the maximum extent permitted by law, the customer is not allowed to alter, reverse engineer, decompile, copy, allow or stimulate the copying of the products or components in any way whatsoever.

- 8.2 The customer agrees to inform CAPPA E&C immediately whenever it becomes aware of a patent or other intellectual property right, which is or might be infringed by the delivered products. If an infringement claim is brought against the customer by a third party, the customer shall immediately inform CAPPA E&C in writing thereof, and allow CAPPA E&C to take over the defence. If a final judgement holds the customer liable for (patent) infringement by the delivered products, the damages which CAPPA E&C may owe to the customer shall not exceed an amount equal to the sales price paid by the customer for the infringing products.

Under no circumstances does CAPPA E&C assume any liability for any use or application which the customer or any third party makes of the delivered products and which may infringe patent rights of third parties.

- 8.3 In the event CAPPA E&C produces or manufactures products for the customer according to the design, configuration and specifications of the customer, the customer represents and warrants that (i) such design, configuration and specifications do not and will not infringe on any third party intellectual property right and are fit for the purpose of use, and (ii) such products are save in design, configuration and application and do not contain any risk for the health and safety of any person using them.

The customer will fully indemnify and hold harmless CAPPA E&C from any and all claims, damages, losses and costs which CAPPA E&C incurs or may incur due to the manufacturing, production, and/or use of these products.

**9 TERMS OF PAYMENT**

- 9.1 Every order made by the customer is irrevocable, regardless if a down-payment was made or not.
- 9.2 All invoices of CAPPA E&C are to be paid net and without discounts, including all taxes (i.e. withholding taxes), at the time and upon the conditions specified on the invoice or if nothing is mentioned within thirty (30) days from the date of the invoice. Any invoice or part thereof which is not paid on its due date shall automatically and without prior notice, bear a monthly interest of 1% and administrative cost of 75 euro. If any invoice or part thereof is not paid on its due date, CAPPA E&C shall have the right to stop or suspend the provision of services, maintenance or delivery of products to customer.
- 9.3 The non-payment of one or more of the invoices on the due date, all applications for the postponement of payment, even unofficial, all applications for bankruptcy, or any other fact which demonstrates the customer's inability to pay, renders the amounts of all the other invoices due, even if they have not yet become due, and immediately claimable, without the necessity of formal notice. In addition to that, CAPPA E&C reserves the right in such cases to suspend all deliveries, without the necessity of a formal notice or to take, with regard to the products already shipped, any measures required to prevent the products from entering in to the property of the customer and to secure its rights. CAPPA E&C is also entitled to require a security or bond for such payments, at its sole discretion.

- 9.4 In case of a unilateral rescission by the customer of an order, the customer will pay an indemnification of a minimum amount of 50% of the total amount of the order. A higher indemnification can be requested when the damage incurred by CAPPA E&C is higher than such 50%.

**10 CONFIDENTIAL INFORMATION**

- 10.1 The Parties agree that all information contained in documents marked "confidential" and forwarded to one by the other will (i) be received in strict confidence, (ii) be used only for the purposes of the transactions under these general terms and conditions, and (iii) not be disclosed by the receiving Party, its agents or employees without the prior written consent of the disclosing Party, except to the extent that the receiving Party can establish competent written proof that such information:

- (i) was in the public domain at the time of disclosure;
- (ii) later became part of the public domain through no act or omission of the receiving Party, its employees, agents, successors or assigns;
- (iii) was lawfully disclosed to the receiving Party by a third party having the right to disclose it;
- (iv) was already known by the receiving Party at the time of disclosure;
- (v) was independently developed by the receiving Party; or
- (vi) is required by law or regulation to be disclosed.

- 10.2 Each Party's obligation of confidence hereunder shall be fulfilled by using at least the same degree of care with the other Party's confidential information as it uses to protect its own confidential information of a similar nature.

**11 SEVERABILITY**

- 11.1 If at any time one or more provisions of these general terms and conditions is or becomes invalid or unenforceable (in whole or in part), the validity and enforceability of the remaining provisions or part of a provision shall not be affected or impaired in any way to the extent, in view of the substance and purpose of these general terms and conditions, the remainder is not inextricably related to and therefore inseparable from the invalid or unenforceable provision or part thereof.

- 11.2 In the event of any such invalidity or unenforceability, the Parties shall negotiate in good faith with a view to agreeing on a valid and enforceable replacement provision which, to the extent practicable, is in accordance with the substance and purpose of these general terms and conditions and in its economic and legal effects comes as close as possible to the invalid or unenforceable provision.

**12 EXCLUSIVE JURISDICTION AND APPLICABLE LAW**

- 12.1 This Agreement shall be deemed to have been entered into and shall be construed, governed and interpreted in accordance with the laws of Belgium and no other law, and no effect shall be given to any principles of conflict of law that could cause the laws of any jurisdiction other than Belgium to be applicable.
- 12.2 All disputes in relation to the current agreement are to be submitted to the exclusive jurisdiction of the courts of Hasselt - Belgium. These Courts of Law are expressly recognised and considered as the only competent jurisdictions.