

Backpacker

Industrial Equipment B.V.

General Terms and Conditions of Sale, page 1.

The following General Terms and Conditions relate to an agreement (the “Contract”) for the sale by Backpacker Industrial Equipment B.V. (“Seller”) to the buyer (“Buyer”) of one or more units, systems or services (the “Product”). The Contract shall consist of said General Terms and Conditions, together, with Seller’s acknowledgement of Buyer’s order (the “Order Acknowledgement”) and other accompanying documents prepared by Seller and designated in writing by Seller as part of the Contract (individually a “Contract Document” and collectively the “ Contract Documents”).

1. Acceptance of the Contract by Seller is expressly conditional on Buyer’s assent to the terms and conditions set forth in the Contract Documents, and no other terms and conditions, which assent shall be deemed to be given unless Seller receives from Buyer written objection to the terms and conditions set forth in any Contract Document within ten business days following receipt thereof by Buyer. Additional or different terms or conditions contained in Buyer’s order or otherwise proposed by Buyer shall not become part of the Contract Documents unless Seller expressly agrees to such additional terms or conditions in writing.

2. Any Product offered from Seller’s stock may be sold to another party prior to the date of the Order Acknowledgement. Any quotation (“Quotation”) for shipment from Seller’s suppliers is subject to acceptance and compliance by such suppliers with the price and delivery schedules upon which the Quotation or Order Acknowledgement is based.

3. Seller shall not be responsible for failure to deliver, or for delays in delivery, resulting from events beyond Seller’s control, including, without limitation, any such failure or delay resulting from war, strikes, labour differences, shortage of labour or goods, delays in transportation, necessary changes in production or shipment schedules, failures or delays by subcontractors or suppliers. Acts of God, or governmental actions. In the event of any such delay, Seller’s time for performance shall be extended for the duration of the event from which such delay has resulted; provided, however, that Seller shall not be required to make any concession in order to resolve any strike or labour difference and further provided that in case of any such delay which, in the opinion of Seller, is unreasonable Seller shall have the right to terminate the Contract, by written notice of such termination to Buyer, without liability.

4. Buyer is hereby notified, and acknowledges, that the Product is intended for uses which may create extreme hazards to persons and property unless the highest degree of care is exercised in such use and unless appropriate safety procedures are followed. Moreover, the length of the safe, useful life of the Product bears a direct relationship to the type of use to which it is subjected and the Product may be unavoidably weakened as a result of such type of use. Buyer undertakes to exercise such care, and to adopt and follow such procedures, in the use of the Product as may be necessary to eliminate or minimize the hazards referred to in this paragraph 4.

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5. Seller makes no warranty of merchantability or fitness for a particular purpose and no other warranty, express or implied, except as specifically provided in subparagraph (a) of this paragraph 5.

(a) Seller warrants to Buyer so much of the Product as is manufactured by Seller to be free from defects in material and workmanship under normal use and service and to be free from inadequate mechanical design when operated within its specified design limitations. Seller's obligation under this warranty shall be limited to the following: Provided that, within one year after delivery of the Product to Buyer, the Product is returned to Seller with transportation charges prepaid and Seller's examination thereof reveals the Product to be defective, as aforesaid, Seller, at its opinion, shall either refund to Buyer the purchase price paid for the Product or repair or replace, at Seller's plant, any part or parts of the Product which the aforesaid examination of Seller has disclosed to have been thus defective. This warranty shall not apply to any Product which has been maintained, handled, stored, repaired or altered in any manner so as, in Seller's judgment, to affect adversely such Product or which has been subject to misuse, negligence, accident or corrosion. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, AND ALL OTHER LIABILITIES AND OBLIGATIONS ON THE PART OF SELLER; SELLER SHALL NOT BE LIABLE FOR ANY OTHER CLAIMS OR DAMAGES, EITHER DIRECT OR CONSEQUENTIAL ARISING DIRECTLY OR INDIRECTLY OUT OF SUPPLYING THE PRODUCT.

(b) All warranties, express or implied, with respect to any apparatus, instrument, component, equipment, part, appurtenance or material of any kind whatsoever incorporated or attached to the Product and not manufactured by Seller are the responsibility of the manufacturer thereof and shall not affect or apply to Seller.

6. If Buyer makes an inspection of the product or a model thereof prior to entering into the Contract, or refuses, or otherwise fails, to inspect the Product or such model after a request by Seller, any defect or nonconformity which would have been observable on reasonable inspection and which is not objective to at such time and place is waived and Buyer shall have no right to reject or revoke acceptance of the Product based upon any such defect or non-conformity nor shall any such defect or nonconformity give rise to any claim under Seller's limited warranty.

7. Buyer hereby waives any right to revoke, reject acceptance or assert any claim under Seller's limited warranty for any claim for defects or nonconformity in any Product which would be observable on reasonable inspection at the time of delivery, unless written notice thereof is received by Seller within ten days after delivery of the Product to Buyer, which Buyer and Seller agree is a reasonable time for such purpose. Acceptance of the Product on delivery shall constitute a waiver of any right to revoke, reject acceptance or assert any claim for damages on account of delay.

8. Any and all engineering drawings and documents, whether general assembly, detail or schematic and any engineering calculations that may be furnished or otherwise disclosed by Seller to Buyer at any time during negotiations or as part of the Quotation or the Contract are furnished or otherwise disclosed with the express understanding that no such drawings, documents and/or calculations are to be divulged or disclosed, in any manner whatsoever, to any other person and no such drawings, documents and/or calculations are to be used other than by Buyer or for any purpose other than the purchase and use by the Buyer of the Product.

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9. Seller shall not divulge or disclose to any person, other than its employees, agents and affiliates, any information received from Buyer at any time during negotiations or as part of the Contract which Buyer has previously identified in a writing to Seller as proprietary or confidential by such words or words of similar import. Buyer shall not divulge or disclose to any other person any details of any patented or proprietary design or device of Seller or its affiliates, nor shall Buyer divulge or disclose to any other person any other information received from Seller, or its affiliates, at any time during negotiations or as part of the Quotation or Contract which Seller has previously identified in writing to Buyer as proprietary or confidential by such words or words of similar import.

10. Except as hereinafter provided in this Paragraph 10, Seller shall indemnify Buyer against any judgement for damage and costs which may rendered against Buyer in any suit brought on account of the alleged infringement of any Dutch patent by any Product supplied by Seller hereunder, provided that prompt written notice shall be given by Buyer to Seller of the bringing of such suit and that an opportunity shall be given to Seller to settle or defend such suit as Seller may deem fit and that every reasonable assistance in settling or defending such suit shall be rendered by Buyer. Seller shall in no event be liable to Buyer (a) for infringement of any patent by any apparatus, instrument, component, equipment, part, appurtenance or material of any kind whatsoever incorporated or attached to the Product and not manufactured by Seller, (b) for infringement of any patent resulting from compliance by Seller with any design or specifications furnished by Buyer, (c.) for infringement of any patent resulting from modifications made to the Product by Buyer or at Buyer's request or (d) for special, indirect, incidental or consequential damages arising out of or resulting from infringement of any patent.

11. Any excises, levies, assessments or taxes of whatever kind which Seller may be required to pay or collect, under any existing or future law, rule or regulation, upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of the Product shall be for the account of Buyer and Buyer shall promptly pay the amount thereof to Seller upon request.

12. All prices referred to in the Contract Document are prices F.O.B. Seller's plant in Assen, Holland. Seller, in its sole discretion, shall select means of transportation and carriers for which Buyer shall be fully responsible, including, without limitation, for all costs thereof. Risk or loss shall pass to, and remain with, Buyer at the time the Product leaves Seller's plant in Assen, Holland or is delivered to a carrier, whichever occurs first. The sequence of delivery shall be at Seller's convenience and sole discretion and delivery may be made in lots unless a particular sequence of delivery is specified in the Contract Documents.

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13. Seller shall submit invoices to Buyer hereunder for the Product upon shipment, provided, however, that in case shipments are held up at Seller's plant on request of Buyer, invoices shall be rendered for the completed Product as though actually shipped, and Seller shall receive reasonable compensation for all extra expenses incurred, including without limitation, storage. There shall be no cancellation by Buyer after the date of the Order Acknowledgement unless agreed by Seller, in which case Seller may assess such cancellation charge as may reasonably be determined by Seller. Unless otherwise provided in the Contract Documents, invoices shall be payable thirty days after the date thereof. All payments shall be made by Buyer as and when the same become due and payable and Buyer shall not withhold or delay payment or any part thereof for any reason whatsoever. Payments not made when due shall bear interest at an annual rate of 2% over the rate of interest from time to time announced by A.B.N. AMRO Bank, Assen, Holland (or any successor thereto) as its then prime rate.

14. Buyer hereby represents and warrants to Seller that Buyer is solvent. This representation and warranty shall be continuing representation and warranty and shall be renewed by each and every act of Buyer in recognition of the Contract, including, without limitation, acceptance of the Product.

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15. Title to and ownership of the Product, both legal and equitable, shall remain vested in Seller and shall not pass to Buyer until the purchase price, together with all other amounts due Seller hereunder, has been paid full. Upon the occurrence of any of the following (an “Event of Default”):

- (a) The failure by Buyer to make any payment hereunder as and when the same becomes due and payable; or
- (b) the failure by Buyer to observe or perform any other undertaking or obligation of Buyer under the Contract; or
- (c.) the breach by Buyer of the representation and warranty contained in paragraph 14; or
- (d) the cessation or threatened cessation by Buyer to conduct its business, or any substantial part thereof, as the same is conducted at present; or
- (e) the repudiation of the Contract by Buyer or its wrongful rejection or revocation of acceptance; or
- (f) a good faith determination by Seller that the ability of Buyer to pay the full purchase price for the Product is impaired or that Seller otherwise is insecure,

then in such case, Seller, in addition to any other rights it may have at law or in equity may, at its option: (i) declare the entire unpaid balance of the purchase price and all other payments due Seller hereunder to be, whereupon the same shall become, immediately due and payable; (ii) suspend work or further shipments or stop shipments in transit until the Event of Default has been cured by Buyer, including, in the case of an Event of Default described in subparagraph (f) of this paragraph 15, the prompt receipt by Seller of guarantees and/or security satisfactory to Seller; (iii) immediately responses, dismantle and remove the Product (including any part of parts thereof which may have become fixtures) without notice, demand or legal process; or (iv) cancel the unfinished portion of the Contract, if any, whereupon Seller shall be paid the full value of the Product, or any part thereof, that is finished or identified to the Contract, or in the process of fabrication, and for all labour expended thereon, and for any loss sustained by Seller by reason of such Event of Default. In the event of repossession of the Product, Seller, or its legal representatives, may and is hereby authorized and empowered to enter upon Buyer’s premises and repossess, dismantle and remove the Product and Seller may sell the Product at a public or private sale, at which Seller may bid and be a purchaser, and the net proceeds of such sale, after deducting all charges, expenses and costs of repossession, removal, repair, preparation for sale, holding for sale and selling the Product, including reasonable legal costs, shall be applied to the unpaid balance of the purchase price and Buyer shall be liable for any deficiency. Any materials, supplies or components for the Product which have been cut to size from stock, or ordered from a manufacturer or supplier specially for the work covered by the Contract shall be considered in process of fabrication. On any Product that is not finished or identified to the Contract or in the process of fabrication, a charge will be made for incurred material and labour costs and all other costs to Seller thereon including engineering, material handling, manufacturing, sales and administrative overhead, plus a reasonable profit mark-up, all as reasonably determined by Seller. The remedies provided in this paragraph 15 shall be cumulative and pursuit by Seller of any of such remedies shall not preclude the pursuit of any other remedies provided herein or otherwise available to Seller at law or in equity. The failure of Seller to seek redress for any violation of, or to insist on the strict performance of, any provision of the Contract or to avail itself of any remedy shall not constitute a waiver of such violation and forbearance by Seller to avail itself of such remedy shall not constitute a waiver of such remedy.

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16. Buyer shall keep, or cause to be kept, with a responsible insurer or insurers, the Product insured against damage, destruction or other loss by fire, theft and such other insurable risks as Seller shall request for the full insurable value thereof. The policy or policies evidencing such insurance shall expressly name Seller and Buyer as insured, as their interests may appear, and each such policy shall provide that the insurer there under shall give Seller at least thirty days' prior notice of any amendment thereto or termination thereof. Each such policy also shall provide that no act, omission or default of Buyer there under shall affect Seller's right to recover there under upon the occurrence of an insured peril, to the extent that the same can be obtained without unreasonable cost to Buyer. Buyer shall, upon the request of Seller, furnish Seller with a copy of each such policy or with the full particulars thereof. If Buyer fails to furnish such copies or particulars or fails to insure the Product as required by this paragraph 16, Seller may, but shall not be obligated to, so insure the Product and, in such case, Buyer shall immediately pay to Seller all premiums paid by Seller.

17. Any suit or proceedings against Seller arising from the Contract must be commenced within two years after the cause of action relating to such suit or proceeding occurred.

18. The Contract shall be governed by, and construed and interpreted in accordance with, the laws of Holland (the "Law"). If any provision of the Law is inconsistent, or conflicts, with any provision of the Contract, the provision of the Contract shall apply to the extent permitted by the Law. Buyer hereby irrevocably consents to the bringing of any action or proceeding against it arising out of the Contract in courts in Holland. Buyer and Seller agree that any action in law or in equity against Seller arising out of the Contract may be brought only in the courts of Holland and that such courts shall have exclusive jurisdiction over any such action. No action commenced in, or removed to, a higher court located within Holland shall be transferred to a court located outside Holland.

19. Any provision of the Contract which is prohibited, invalid, illegal or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective only the extent of such prohibition, invalidity, illegality or unenforceability without affecting the validity, legality or enforceability of the remaining provisions thereof, and any such prohibition, invalidity, illegality or unenforceability in any jurisdiction will not, of itself, affect the validity, legality or enforceability in any other jurisdiction. To the extent permitted by Law, Buyer and Seller waive any provision of Law which renders any provision of the Contract invalid, illegal or unenforceable in any respect.

20. The Contract Documents constitute the entire agreement and understanding of Seller and Buyer with respect to the Contract and are the complete and exclusive statement of the terms of such agreement and understanding.

21. The Contract may not be amended, supplemented or modified, except by a writing signed by Buyer and by an authorized representative of Seller and no provision of the Contract may be waived, except by a writing signed by the party to be bound thereby, a written waiver of any such provision shall be valid only in the instance for which given and shall not constitute a continuing waiver or a waiver of any other provision.

END.