

## **Veenhuis Machines B.V. of Raalte, the Netherlands**

### **General Terms and Conditions**

#### **1 Definitions**

- 1.1 For the purposes of these general terms and conditions “Veenhuis” refers to the company with limited liability, Veenhuis Machines B.V., having its registered office and place of business in Raalte.
- 1.2 For the purposes of these general terms and conditions “client” refers to the purchaser of an item manufactured and/or supplied by Veenhuis, as well as anyone at whose behest and at whose expense services are provided and/or goods are manufactured.

#### **2 Scope of application**

- 2.1 These general terms and conditions shall apply in relation to all Veenhuis offers and any agreement concluded between Veenhuis and a client or any assignment accepted or services provided by Veenhuis. These general terms and conditions shall also apply in relation to any negotiations conducted by Veenhuis or any pre-contractual situation in which it finds itself.
- 2.2 Veenhuis explicitly precludes the application of any client’s general terms and conditions. Any derogating terms and conditions shall only constitute part of an agreement in so far as Veenhuis explicitly consents to them or any other provisions in writing.
- 2.3 In the event that one (1) or more provisions of these terms and conditions may be nullified, their remaining provisions shall continue to apply in full. In this case the parties shall agree on replacement provisions in consultation with each other, having regard as far as possible to the purpose and purport of any nullified provision(s).

#### **3 Offer and conclusion of an agreement**

- 3.1 Any offer which Veenhuis makes shall be free of obligation unless explicitly stipulated otherwise.
- 3.2 Veenhuis shall only be bound by a legal act (which is deemed to include an offer), provided that it is performed by staff who are authorised to do so. Any legal act performed by staff who are not authorised to do so shall only be binding on Veenhuis, provided that the latter explicitly confirms that legal act.
- 3.3 In the event that Veenhuis exhibits or supplies a sample, model or example, such sample or model shall only be deemed to have been provided by way of an indication. The nature of any goods that are to be supplied may derogate from such sample, model or example, unless Veenhuis has warranted that the relevant goods are to be supplied in accordance with the sample, model or example exhibited and/or supplied.
- 3.4 An agreement, which is deemed to include any amendment of or addendum to it, shall only be concluded by virtue of it being recorded in writing in a contract signed by the parties or in a notice of confirmation signed by Veenhuis.
- 3.5 A written notice of confirmation signed by Veenhuis shall be deemed to constitute a full, accurate record of the substance of the relevant agreement which has been concluded, unless the client concerned notifies Veenhuis of their objections in writing within four (4) calendar days after the date on which that notice has been dispatched.
- 3.6 Where a client provides data, drawings and so forth to Veenhuis, the latter shall be entitled to assume that they are accurate and shall base its offer on them.
- 3.7 In the event that its offer is not accepted, Veenhuis shall be entitled to charge the relevant for any costs which it has been required to incur in order to make that offer.

#### **4 Prices and adjustments**

- 4.1 The costs involved in loading, transporting and unloading any goods as well as those of any packaging shall not be deemed to be included in the price and, as such, in the event that Veenhuis has a duty to load, transport, unload and also arrange packaging for the relevant goods, the client concerned shall be charged separately for same.
- 4.2 The prices shall be based on the items of expenditure applicable at the time when the relevant offer was made. Should they change, Veenhuis reserves the right to charge the prices applicable on the date of deliv-

ery. This shall also apply in the event that any inflationary factors were foreseeable when the relevant agreement was concluded.

- 4.3 Payment of any increase in price referred to in the foregoing clause of this article shall occur simultaneously with payment of the principal or the final instalment.

## **5 Intellectual property rights**

- 5.1 Unless otherwise agreed in writing, Veenhuis shall retain copyright and all other intellectual property rights to any offers made or designs, images, drawings, samples and other models, software and so forth.
- 5.2 The rights to the data referred to in Clause (1) of this article shall remain Veenhuis' property irrespective of whether or not a Client has been charged for their production. Such data may not be copied, used and/or exhibited to any other party without Veenhuis' explicit consent. In the event that a client contravenes this clause, they shall be liable for payment to Veenhuis of a penalty, payable with immediate effect, amounting to €25,000.00 for each such contravention subject to Veenhuis' entitlement to seek full compensation.
- 5.3 A client shall be required to return to Veenhuis anything referred to in Clause (1) that has been supplied to them by a deadline stipulated by Veenhuis. In the event that a client contravenes this clause, they shall be liable to pay Veenhuis a penalty amounting to €1,000.00 per day. Such penalty may be sought in addition to any compensation pursuant to the law.

## **6 Advice, drawings calculations and designs**

- 6.1 A client may not derive any rights from advice or information that they have received from Veenhuis if they are not directly related to the relevant agreement or assignment.
- 6.2 A client shall be responsible for any drawings and/or calculations produced by them or on their behalf, as well as the functional suitability of any materials stipulated by them or on their behalf.
- 6.3 A client shall indemnify Veenhuis against any claim made by a third party in relation to the use of any drawings, calculations, samples, models and the like supplied by that client or on their behalf.
- 6.4 Veenhuis may examine any materials which a client wishes to use or may arrange for them to be examined at its own expense before they are treated.

## **7 Delivery time and passing of risk**

- 7.1 A delivery date stipulated by Veenhuis shall be approximate and shall be mentioned in the relevant offer referred to in Article 3(1). Under no circumstances shall a delivery date cited by Veenhuis serve as a material deadline, unless Veenhuis has explicitly stipulated otherwise.
- 7.2 When determining a delivery date, Veenhuis shall assume that an assignment may be carried out in the circumstances known to it at that point in time.
- 7.3 Under no circumstances shall failure to meet an explicitly agreed material delivery date confer entitlement to compensation, unless this has been agreed to in writing beforehand.
- 7.4 A client shall bear any risk and expense due to the delay of a delivery as a result of any interim change made to the specifications in response to that client's wishes.
- 7.5 Delivery shall be effected ex-works, which term of delivery shall be interpreted in accordance with Incoterms 2010 drawn up by the ICC (International Chamber Of Commerce). Amongst other things, this means that any risks pertaining to an item shall pass at such time as Veenhuis places such item at the relevant client's disposal.
- 7.6 Notwithstanding the provisions of Clause (5) of this article, Veenhuis and a client may agree that Veenhuis will assume responsibility for transport. In that case the relevant client shall also bear all of the risks pertaining to storage, loading, transport and unloading.
- 7.7 Where Veenhuis assembles and/or installs any item that has been sold, the risks pertaining to that item shall also pass to the client concerned at such time as Veenhuis places that item at the client's disposal on Veenhuis' business premises or in any other place as agreed.
- 7.8 Delivery may be effected in instalments as the relevant products are ready or in stock. In such a case invoicing shall also occur in instalments. A client shall not be entitled to refuse delivery in instalments.

## **8 Trade-in**

- 8.1 Unless otherwise agreed when a sale occurs, where a client fulfils part of their financial obligations towards Veenhuis in a form other than pecuniary payment, to which Veenhuis must also have explicitly consented, and as such tendering of payment occurs in accordance with Section 6:45 of the Dutch Civil Code, acting at

- Veenhuis' discretion, the client shall be entitled to continue to use any object that has been traded in or a replacement object supplied by Veenhuis until the latter delivers the item which has been sold to the client.
- 8.2 Until such time as Veenhuis delivers any item that it has sold to the relevant client and the latter has placed the object which has been traded in in Veenhuis' possession, the client shall bear any risk or expense associated with the object which has been traded in.
- 8.3 Where Veenhuis is of the opinion when it effects delivery that the condition of any object given to it by way of payment differs from its condition at the time when it and the relevant client agreed that the object would be given to it by way of payment or at any rate when Veenhuis and the client agreed on the price of the object provided by way of payment, Veenhuis shall be entitled to set the price of such form of payment again (unilaterally) or to cancel the agreement for such tendering of payment without the need for any notice of default.
- 8.4 In the event that Veenhuis exercises its right to cancel an agreement for such tendering a payment, the relevant client shall have a duty to fulfil their financial obligations towards Veenhuis entirely in the form of pecuniary payment.

## **9 Payment**

- 9.1 Unless otherwise agreed in writing, payment must be made into a bank account designated by Veenhuis within fifteen (15) days after the relevant invoice date.
- 9.2 The date on which the amount owed is deposited into the bank account designated by Veenhuis shall be deemed to be that of payment.
- 9.3 A client shall not be entitled to suspend any of their obligations towards Veenhuis and/or to set off any claim they may have against Veenhuis or to apply any deduction or discount.
- 9.4 Veenhuis shall at all times be entitled to require sufficient security from a client to ensure compliance. A client shall tender any security so required when first requested to do so by Veenhuis. Veenhuis shall be entitled to suspend compliance with its obligations until such required security has been tendered.
- 9.5 Irrespective of whether or not Veenhuis has effected the agreed performance in full, everything for which a client is or will be liable pursuant to the relevant agreement shall fall due with immediate effect in the event that:
- a) a deadline for payment is not met;
  - b) an application is filed for that client's bankruptcy or a moratorium on payments for it;
  - c) one (1) or more of the client's assets is or are attached;
  - d) the client's business is dissolved or is liquidated;
  - e) all or part of the client's business is transferred;
  - f) the client submits a request for legally stipulated debt restructuring, is placed in the care of a guardian or under administration or dies.
- 9.6 In the event that payment does not occur by the agreed deadline for payment, the relevant client shall be liable – in the absence of any further reminder or notice of default – for payment to Veenhuis of interest directly payable on the amount due as of the date on which it falls due until that on which it is paid. Such interest shall amount to 12% per annum but shall be equal to the legally stipulated interest rate (commercial or otherwise) should the latter exceed it. When calculating interest, part of a month shall be treated as a full calendar month.
- 9.7 In the event that an invoice is not fully paid by the stipulated deadline, the relevant client shall also immediately be liable for payment to Veenhuis of compensation for extrajudicial costs (of debt collection or otherwise) in the absence of any further notice of default. Contrary to Section 6:96(4) of the Civil Code and in derogation of the Extrajudicial Debt Collection Costs (Compensation) Decree, this compensation shall be set now in lieu of then at an amount equivalent to 15% of the total outstanding principal sum subject to a minimum of €75.00 (seventy-five euros) in the case of each invoice which has not been paid or not in full. In the situation described in this clause, a client shall also have a duty to pay all of the judicial expenses involved.
- 9.8 Any payment made by a client shall first serve to pay off any costs or interest owed and only then the relevant invoice or invoices (the principal sum). With regard to the latter, any payment shall be imputed to the longest outstanding invoice, even where the relevant client stipulates that it pertains to some other invoice when effecting payment.

## **10 Liability and *force majeure***

- 10.1 Veenhuis shall not accept any liability in the event that it is unable to comply with its obligations due to non-culpable non-compliance.
- 10.2 For the purposes of these terms and conditions any form of non-culpable non-compliance shall be deemed to refer to circumstances as a result of which a client may no longer reasonably require Veenhuis' compliance with the relevant agreement, which are at any rate deemed to include war, the danger of war, insurrection, flooding, a disaster (natural or otherwise), a lack of raw materials, additives or fuel, a disruption of traffic, an industrial strike, a lockout, a lack of staff, transport difficulties, the late or improper fulfilment of an order by a supplier and/or manufacturer of the relevant goods, fire, government measures, the prohibition of imports or exports, a disruption of business or the effects of weather.
- 10.3 In the event of non-culpable non-compliance, acting at its discretion, Veenhuis shall be entitled to postpone the delivery or handover time in proportion to the duration of the delay or to cancel the agreement concerned in so far as it has been affected by such delay. In the event that a client reminds Veenhuis to do so, the latter shall have a duty to express its preference within five (5) working days.
- 10.4 Where Veenhuis has already complied with part of its obligations upon the occurrence of such non-culpable non-compliance and/or is only capable of complying with part of its duties, it shall be entitled to issue invoices for any goods and/or services that have already been supplied and also to supply and issue separate invoices for any goods and/or services that it is still capable of supplying. The relevant client shall have a duty to pay the aforementioned invoices as though they pertained to a separate agreement.
- 10.5 Any duty on the part of Veenhuis to provide compensation on any legal grounds whatsoever shall be confined to the loss for which it is insured pursuant to an insurance policy taken out by it or for its benefit but shall under no circumstances exceed the amount that is paid out pursuant to such insurance in the relevant case.
- 10.6 Should Veenhuis be unable to invoke the limitation stipulated in the foregoing clause for any reason whatsoever, its duty to provide compensation shall be confined to no more than 15% of the total contract fee (exclusive of VAT). Where an agreement makes provision for parts or part deliveries, its liability for compensation shall be confined to no more than 15% of the contract fee payable for that part or part delivery (exclusive of VAT).
- 10.7 The following shall not qualify for compensation:
  - a) consequential loss. Amongst other things, "consequential loss" shall be deemed to refer to any loss due to the disruption of business or production, loss of earnings, transport charges, and travel and accommodation expenses;
  - b) damage to property held in custody. "Damage to property held in custody" is deemed to refer to, amongst other things, any damage that is inflicted on property on which work is performed or which is located within the vicinity of the site where work is carried out as a result of or during the performance of that work;
  - c) any loss due to a deliberate act or omission, or wilful recklessness on the part of Veenhuis' assistants or non-supervisory subordinates.

Where so required, a client shall insure themselves against the aforementioned loss(es).

- 10.8 Veenhuis shall not be liable for any damage inflicted on materials supplied by or on behalf of a client as a result of them not being treated properly.
- 10.9 A client shall indemnify Veenhuis against any claim made by another party (directly or otherwise) on the grounds of product liability due to a defect in an item which that client has supplied to such third party and which consists (partly or otherwise) of goods and/or materials supplied by Veenhuis. A client shall have a duty to provide compensation for any loss which Veenhuis suffers in this respect, including all of the costs involved in defending itself.
- 10.10 Veenhuis shall at all times be entitled to remedy any loss suffered by a client in so far as it is possible to do so.

## **11 Warranties and other claims**

- 11.1 Unless explicitly agreed to in writing, Veenhuis warrants that the agreed performance will be properly effected in accordance with what is stipulated in these terms and conditions for a period of twenty-four (24) months after any item is put into service and a period of twelve (12) months after any service is provided. Where a different term of warranty is agreed to, the other clauses of this article shall also apply.
- 11.2 Should Veenhuis fail to effect performance as agreed, it may elect to ensure that it does so or it may credit the relevant client for a proportionate part of the invoice concerned.

- 11.3 In the event that Veenhuis elects to effect proper performance, it shall itself determine the manner in which and time when this is to occur. Where the agreed performance consists (partly or otherwise) of the treatment of materials supplied by a client, that client shall be required to supply new materials at their own risk and expense.
- 11.4 No warranty shall be granted on a warranty. As such, the repair or replacement of an item that has been supplied (or part thereof) under warranty shall not result in an extension of the term of warranty.
- 11.5 Where an item (or part thereof) which is subject to wear and tear is replaced, Veenhuis shall be entitled to charge the relevant client for the impairment of the value (depreciation) of the original item or part.
- 11.6 On pain of its rights lapsing, a client shall at all times afford Veenhuis an opportunity to investigate (or arrange for this to be done) any complaint on site to determine whether it is well-founded and/or to provide Veenhuis with all of the information which it requires, as well as to assist it.
- 11.7 A client may only invoke a warranty after they have complied with all of their obligations towards Veenhuis.
- 11.8 When Veenhuis first requests this, a client shall be required to return to it any part and/or materials which Veenhuis is to repair or replace.
- 11.9 A client shall be liable for:
- all transport and/or shipping charges;
  - all assembly costs;
  - travel and accommodation expenses.
- 11.10 No warranty shall be provided in the event that a defect is due to:
- normal wear and tear;
  - improper use;
  - maintenance which has not been carried out or not appropriately;
  - installation, assembly, alterations or repairs carried out by the relevant client or any other party;
  - any defective or unsuitable item sourced from or stipulated by the relevant client;
  - any defective or unsuitable ancillary or other materials used by the relevant client;
  - external causes (*force majeure*).
- 11.11 No warranty shall be provided:
- for any item supplied that was not new at the time when it was delivered;
  - for the inspection and repair of an item belonging to a client;
  - where a client fails to permit Veenhuis to conduct a “maintenance inspection” within one year after the first “warranty year”. The relevant client shall be liable for the costs involved in such an inspection;
  - in the event that the relevant client fails to replace any part which Veenhuis has advised it to replace (or arrange for it to be replaced) on the occasion of the aforementioned inspection;
  - where the relevant client has used the item concerned outside the Benelux and Germany or has allowed this to occur.
- 11.12 A client may not assign any rights pursuant to this article. As such, these rights shall lapse upon the sale of the item concerned.
- 11.13 The provisions of Clauses (2) to (12) of this article shall apply *mutatis mutandis* in the case of a client’s entitlements pursuant to default of performance, non-conformity or any other grounds whatsoever.
- 11.14 What is stipulated in the “Warranty Instructions for Dealers” appended as an annex shall apply where a client is a dealer that effects supply to end users. Furthermore, in the aforementioned case the relevant client shall have a duty to secure similar terms and conditions as those set out in these terms and conditions in their relationship with such end users. In this respect a dealer shall also be required to use the appended “warranty certificate”. Under no circumstances may a dealer claim more or different rights from Veenhuis than those which the latter has warranted that dealer. In the event of a conflict between what is stipulated in these terms and conditions and what is stipulated in such dealer instructions and/or warranty certificate, the dealer instructions and/or warranty certificate shall prevail.

## **12 Duty to lodge a complaint**

- 12.1 On pain of their rights lapsing, a client shall be required to submit a written, substantive complaint concerning any defective performance to Veenhuis within five (5) days after they discover or reasonably ought to have discovered such deficiency. In this respect a client shall have a duty to inspect any item supplied to them for any visible defects immediately after delivery.
- 12.2 A client shall submit a complaint concerning the level of an invoiced amount to Veenhuis in writing by the deadline for payment on pain of all of their rights lapsing. Where the parties agree to a term of payment in

excess of thirty (30) days, the relevant client shall be required to lodge a complaint with Veenhuis by no later than within thirty (30) days after the relevant invoice date.

- 12.3 A complaint shall not suspend the relevant client's obligations pursuant to any agreement concluded with Veenhuis.

### **13 Suspension and cancellation**

In the event that a client fails to comply with an obligation pursuant to any agreement that they have concluded with Veenhuis or fails to do so properly or on time, as well as where any of the situations referred to in Article 9.5 of these general terms and conditions occurs, that client shall be deemed to be in default by operation of the law. In this case Veenhuis shall be entitled to cancel or suspend all or part of the relevant agreement(s) in the absence of any judicial intervention or notice of default without Veenhuis having a duty to provide any compensation or to comply with any warranty, and subject to any other rights held by Veenhuis.

### **14 Retention of title, assignment of claim and lien**

- 14.1 All of the goods supplied by Veenhuis shall remain the latter's property until the relevant client has complied with all of their obligations pursuant to any agreement which they have concluded with Veenhuis, including:
- a) the counterperformance for the relevant or any previous consignment, or any goods which have not yet been paid for or are still to be delivered;
  - b) the counterperformance for any services which Veenhuis has provided or is to provide;
  - c) any claim for compensation, costs or interest on the grounds of the relevant client's failure to ensure appropriate compliance with any agreement concluded with Veenhuis.
- 14.2 As long as any goods supplied are encumbered with a lien, the relevant client may only sell them pursuant to the normal conduct of their business. A client shall be explicitly not entitled to pledge such goods or to encumber them with any other right (or to allow this to be done).
- 14.3 In the event that a client fails to comply with their obligations pursuant to any agreement(s) or Veenhuis is of the opinion that there are grounds to fear that they will fail to do so, Veenhuis shall be entitled to remove (or arrange for this to be done) any goods that have been supplied and which are subject to the aforementioned retention of title from the client or any other party who holds such goods for that client. A client shall undertake to provide every assistance for this purpose and also to instruct any other party who may hold such goods for that client to provide every assistance. In the event that a client fails to comply with the provisions of this clause, they shall forfeit a penalty equivalent to 10% of the amount that they owe Veenhuis, subject to the latter's entitlement to remove the goods concerned or to arrange for this to be done.
- 14.4 Should Veenhuis be unable to invoke retention of title because the goods supplied have been mixed, reshaped or drawn, the relevant client shall have a duty to pledge the newly formed goods to Veenhuis or to tender some other form of security for what it still owes or may owe Veenhuis.
- 14.5 In the event that Veenhuis is no longer able to invoke retention of title in view of the fact that the relevant client has alienated the goods supplied, when first requested to do so by Veenhuis, the client shall have a duty to assign their claim against the party to whom the client has sold the goods supplied by Veenhuis to the latter. In this respect the relevant client shall grant Veenhuis irrevocable power of attorney to sign the relevant deed of assignment on their behalf. When first requested to do so, a client shall have a duty to permit Veenhuis to inspect their accounts in order to establish the identity of the party to whom the client has sold the goods supplied by Veenhuis. What the relevant client owes Veenhuis may be set off against the claim against such other party which has been assigned to the latter subject to the suspensive condition that the other party pays Veenhuis.
- 14.6 A client shall have a duty to ensure any goods supplied subject to retention of title and to keep them insured against damage due to fire, an explosion or water and theft, and again when first requested to do so, to provide Veenhuis with a copy of the relevant policy. Furthermore, when first requested to do so a client shall have a duty to pledge any entitlement to goods supplied subject to retention of title which they have against an insurer or any other party where the relevant goods are not covered by the insurance concerned or have not been insured, to Veenhuis in the legally stipulated manner.
- 14.7 In addition to those cases in which Veenhuis is entitled to retention of title pursuant to the law, Veenhuis shall also have the power to retain possession of any item or goods belonging to a client which it has under its control until all of the claims which Veenhuis has against that client on any grounds whatsoever have been paid.

**15 Governing law and choice of forum**

- 15.1 Any agreement which Veenhuis concludes, as well as any negotiations or other pre-contractual situation in which Veenhuis finds itself, shall be governed by and construed in accordance with the law of the Netherlands.
- 15.2 The Vienna Sales Convention (C.I.S.G.) shall not apply in relation to Veenhuis and a client.
- 15.3 Any dispute arising pursuant or in relation to an agreement which Veenhuis and a client have concluded with each other shall only be brought before the District Court of Overijssel, having its seat in Zwolle, the Netherlands, unless Veenhuis stipulates that it wishes to bring such dispute before some other legal tribunal.
- 15.4 In the event that these general terms and conditions have been translated into another language, the Dutch version shall prevail in the event of a dispute.