General Conditions of Sale

1. General Provisions

1.1 All supplies and services of Flowhow BV are subject to the conditions hereinafter set forth. Standard-form contract conditions of the orderer (buyer) shall not apply.
1.2 In case of any provision not included in these General Conditions of Sale, not the standard-form contract conditions of the orderer or buying contractor shall apply but the statutory provisions.

2. Offer / Acknowledgement of Order

2.1 Unless a set term is expressly stated, offers from Flowhow BV are without engagement and a contract is only considered as being concluded when the order is acknowledged by Flowhow BV.
2.2 Purchase orders without preceding offer according to item 2.3 do not become binding for Flowhow BV unless and to such extent as acknowledged by Flowhow BV. The same applies where the orderer modifies the offer from Flowhow BV.

3. Sales References

3.1 Data contained in catalogues, brochures and folders, as well as general information in data sheets and drawings accompanying quotations are approximate and without engagement, unless expressly stated as binding.
3.2 In particular cases, Flowhow BV reserves the right to alter the design and, where there is a shortage of raw material, to use other materials unless opposed by overriding concerns of the orderer known to Flowhow BV.
3.3 Regarding all sales references and other documents made available to the customer, Flowhow BV reserves the right of ownership and copyright; they must neither be used for other purposes nor copied, reproduced or made available to a third party.
3.4 All sales references and other documents made available to the customer are to be returned to Flowhow BV immediately upon request; they must be returned without being requested if the order is not placed with Flowhow BV.

4. Prices, Packing, Insurance

4.1 The prices are quoted ex works or manufacturing plant, respectively, (INCOTERMS 2010) excluding packing, erection and start-up. Packing is charged at cost price.
4.2 The sales price does not include any sales, excise, turnover or freight transportation tax etc. nor any export, import or other duties to be additionally charged by Flowhow BV, as the case may be, in accordance with official regulations at the time of fulfilment of the contract.
4.3 Unless the orderer (buyer) expressly determines otherwise, Flowhow BV shall insure the ordered goods against the usual transport risks including breakage and charge the cost incurred to the orderer.

5. Erection and Start-Up

Provided that erection/assembly, supervision of erection and/or start-up/commissioning have to be carried out by Flowhow BV, the relevant Conditions for assembly and commissioning shall additionally apply; they will be available upon request.

6. Passing of Risk

6.1 Risk shall pass to the orderer (buyer) pursuant to the INCO-TERMS 2000 rules agreed upon. In the absence of such agreement the risk shall pass to buyer on delivery of the goods to the first carrier. This shall also apply to partial shipments or where Flowhow BV has undertaken to assume supple-mental services and payments.
6.2 If dispatch is delayed by reasons beyond Flowhow BV control, risks shall pass to buyer upon notice of readiness for dispatch.

7. Delivery Dates

7.1 The delivery period commences when all commercial and technical requirements for the performance of the contract have been clarified, documents to be supplied by the orderer have been received by Flowhow BV, any official authorisation or release that may be required has been issued and (advance) payments provided for in the contract have been credited to Flowhow BV bank account. Adherence to the time of delivery shall be subject to the timely fulfilment of the contractual obligations by buyer. The goods are deemed to have been delivered in time if handed over to the first carrier or declared ready for dispatch to buyer before expiration of the delivery period agreed upon. Partial deliveries are permitted to a reasonable extent. Minor defects do not affect buyer's obligation to take delivery of the goods; in that respect the delivery period shall be deemed to have been observed.
7.2 If delivery is delayed by unforeseen events beyond Flowhow BV control (Force Majeure) the delivery period shall be reasonably extended, at the latest by six months, however. Force Majeure are considered to be e.g. strikes, lockouts, sabotage, operating breakdown incurred through no fault of Flowhow BV, non- or delayed issuance of official authorisations, as well as any other unforeseen events.

8. Terms of Payment

8.1 Payments shall be made within 30 days from the date of invoice, unless otherwise stipulated in Flowhow BV offer and/or acknowledgement of order. In case of partial shipments Flowhow BV shall be entitled to issue invoices in part accordingly.
8.2 Payments shall be made exclusively to one of Flowhow BV accounts and shall be effected post-free and exempt of charges at the date due without any deduction. Fees, expenses or sundries incurring to Flowhow BV by accepting bills or cheques upon specific agreement between Flowhow BV and buyer shall be at buyer's expense. Determination when payment becomes due shall be in respect of the date of invoice or notice of readiness for dispatch. The date of fulfilment of all kind of payments shall be that on which the sum paid is actually at Flowhow BV disposal.
8.3 Withholding of payment because of counterclaims or setting payments off against any counterclaims is only permissible if such counterclaims are uncontested or legally ascertained.
8.4 Reminder costs will be charged in the following cases:
-You have not paid within the prescribed period.
-You received a payment reminder.
-You have not paid within the period prescribed in the reminder .
All claims will have minimal reminder costs of EUR 40,-.
Claims to EUR 2.500,- will have a maximum of 15% reminder costs. Claims from EUR 2.500,- to EUR 5.000,- will have a maximum of 10% reminder costs. Claims from EUR 5.000,- to EUR 10.000,- will have a maximum of 5% reminder costs.
Claims from EUR 10.000,- to EUR 25.000,- will have a maximum of 1% reminder costs.
This table shows how high the costs of the reminder costs can be. However, the table starts at € 2500, -. If an invoice is less than € 2500, - the minimum reminder costs are € 40, -. This is also the case with very small invoice amounts (for example, an invoice of € 10, -). You must also take into account the fact that when it comes to a claim, for example, € 4500, -, over the first € 2500, - 15% reminder costs will be calculated and 10% over the remaining € 2000,-.

9. Reservation of Property Right

9.1 Flowhow BV reserves the property right in the goods supplied until payment in full has been made in respect of any claims whatsoever resulting out of Flowhow BV business transactions with buyer including supplementary claims. If buyer is in default of payments, Flowhow BV shall without formal notice be entitled to taking back the goods as security. Claiming the right of property and distraint of delivery items by Flowhow BV shall not be deemed as cancellation of the contract, unless the Customer Loan Act applies. Where special regulations or any other provisions are applicable in the country of buyer or of destination of the goods in respect of the validity of the reservation of property rights, buyer himself shall undertake to carry out the terms of such regulations or provisions to safeguard Flowhow BV rights.
9.2 Buyer is entitled to dispose of delivery items in the course of regular business. Claims arising at buyer during the period of Flowhow BV property right and resulting from such or unjustified dispositions shall even now be assigned to Flowhow BV. Subject to revocation at any time, buyer shall be authorised to collect the claims.
9.3 Flowhow BV undertakes to release on buyer's request securities it is lawfully entitled to in as much as their sum will exceed the unsettled claims to be secured by more then 20 %.
9.4 Any working on the goods and any processing of the goods supplied shall be undertaken by buyer for Flowhow BV without Flowhow BV engagement. In case the goods supplied are used for, connected, mixed or mingled with another equipment not owned by Flowhow BV (§§947 and following BGB), Flowhow BV shall be entitled to a co-ownership in the new equipment pro rata the value of the goods supplied to the remaining equipment which existed before the date of working, processing, connecting, mixing or mingling. If buyer acquires sole title by operation of law, he shall grant to Flowhow BV a corresponding co- ownership share and thus hold the equipment in trust for Flowhow BV. The provisions in Paragraph 9 shall equally apply to the co-ownership share.
9.5 Distraints or any other such measures imposed by third parties must be reported by buyer without delay to Flowhow BV.
9.6 During the period of reservation of property rights buyer undertakes to fully insure the goods supplied at his own expense against risks and damages, such as robbery, breakage, fire and water and, upon request, to furnish proof there of to Flowhow BV. In case that buyer fails to furnish such proof requested within a reasonable period of time, Flowhow BV shall be entitled to take out such insurance at buyer's expense.

10. Warranties

10.1 Flowhow BV undertakes at its discretion to repair or to replace any goods supplied or parts thereof resulting defective prior to passing of the risk (e.g. owing to faulty design, defect in material or workmanship, failure to reach the performance figures quoted).
10.2 In case of failure of repair or replacement buyer shall be entitled to claim redhibition or abatement.
10.3 Notice of defects must be given within three weeks from the date of delivery. As exception from this rule, defects which are not perceptible even on inspection of the goods supplied must be notified immediately after their detection. The complaint must specify the nature of the found defects or faults and whether they have been discovered at once or only after subsequent treatment or processing of the supplied goods or parts. Flowhow BV shall be entitled to have the defectiveness checked by its own staff.
10.4 After mutual consent buyer shall grant to Flowhow BV reasonable time and opportunity to proceed with the repairs or replacements as Flowhow BV may deem necessary at its discretion. If buyer fails to do so Flowhow BV shall be relieved of any warranty or liability. Only in the event of extraordinary cases such as jeopardising safety of operation or risking excessive damages – whereupon Flowhow BV shall immediately be notified – or if Flowhow BV should be in delay of remedying the damage, buyer shall be entitled to remedy the defect himself or to have it remedied by a third party and to recover the cost necessarily incurred from Flowhow BV.
10.5 Flowhow BV shall bear the direct cost arising from repair or replacement for warranty claims provided they have proven justified and defect has been correctly notified in due course, i.e. the cost for the replacement part including carriage as well as reasonable cost for dismantling and assembly of the part, provided it can in so far be equitably claimed in the individual case. Any further costs shall be borne by the buyer.
10.6 The limitation period for warranty claims on goods supplied amounts to 12 months from the date of start-up or initial use, but not exceeding 15 months from the date of delivery.
10.7 Warranty claims in respect of parts replaced and repairs shall expire after three months, but not before the warranty period for the goods originally supplied.
10.8 Concerning any further claims Paragraph 12.2 shall apply.

11. Liability for Patent Infringement

11.1 Unless otherwise indicated by Flowhow BV, the goods supplied are to the best of Flowhow BV knowledge of the published prior art free from any third party rights in the Netherlands. Should despite this the goods supplied hereunder or part thereof, at the moment of conclusion of contract, infringe a third party patent already granted and published in the Netherlands or – if the goods supplied expressly comprise a specific process right – infringe on patented a process rights for which infringement buyer is sued in legal proceedings, Flowhow BV shall at its own expense and at its discretion within reasonable time procure for buyer the right to continue to use the goods or part thereof or to modify or replace them with non-infringing goods or process or to withdraw from the contract. Flowhow BV assumes no additional liability, e.g. for processes, applications, products, etc.
11.2 If third-party patents are infringed by a design or specification furnished by buyer, the latter shall conduct the defence of Flowhow BV against any claim and relieve Flowhow BV in case of implementation.

12. Further Liability of Flowhow BV; Buyer's Right to Cancellation

12.1 Cancellation of any orders by the customer is prohibited.
12.2 In case buyer suffers loss or damage owing to a delay imputable to Flowhow BV buyer shall be entitled to claim indemnification for delay, amounting to 0.5 % for every full week of delay, but not exceeding 5 % in total, of the value of that part of the whole consignment delivery of which has been delayed and that could not be used in due times as stipulated in the contract.
12.3 Any further claims other than expressly stated in these conditions, on legal grounds whatsoever, mainly such as for loss of profit and consequential damages from defects, are excluded, unless based on Flowhow BV liability for deliberate action or gross negligence, violation of fundamental duties stipulated in the contract or on statutory provisions regarding liability for personal injury, material damage to private property or failure to perform characteristics expressly quoted where this provision is just intended to protect buyer on account of damages other than to the supplied goods themselves.

13. Place of Fulfilment, Jurisdiction, Applicable Law

13.1 Place of fulfilment and jurisdiction shall be Assen. Flowhow BV shall also be entitled to sue buyer before the Court having jurisdiction over buyers` place of business.
13.2 Supplementary to all contractual provisions contracts shall be governed by the law of the Netherlands. The uniform UN Law on Sales (CISG) is not applicable. To contracts with relations to foreign countries the International and German Conflict Rules shall also not apply.

Note

Pursuant to the Netherlands Law for Protection of Data it is indicated that Flowhow BV has stored buyer's data and this data is processed.

FLOWHOW BV
FLOWHOW HAS THE KNOW HOW

Flowhow B.V.
Oldenhofstraat 53
9402 HK Assen
The Netherlands
Tel. +31850160894
www.flowhow.nl