

# GENERAL TERMS AND CONDITIONS TOOTAL FABRICS (HOLLAND) B.V.

## Article 1: Scope of these terms and conditions

- 1.1. These terms and conditions apply to every offer and every agreement between Tootal Fabrics (Holland) B.V., hereinafter referred to as "Tootal" and the buyer to whom Tootal has declared these terms and conditions to be applicable insofar as both parties have not expressly provided otherwise in writing.
- 1.2. In the present terms and conditions, the term "buyer" also means "customer" or "commissioning party".
- 1.3. In the present terms and conditions, the term "offer" also means the quotes and/or discounts in price lists, circulars, order confirmations, letters, etc. made by Tootal.
- 1.4. The terms and conditions of delivery used in this document, such as CIF, are terms of the trade and defined in the Incoterms 2010, the last version before the date of the agreement between Tootal and the buyer, unless the term has no meaning under the Incoterms and another term of the trade is used, such as "free domicile".
- 1.5. If one or more provisions in these terms and conditions are not legally valid, the validity of the other provisions will not be affected. Any invalid provision will be replaced by a provision that is as similar as possible and fills best the intended purpose of the invalid provision.

## Article 2: Offers

- 2.1. The offers made by Tootal are without obligation and subject reconfirmation unless they contain a period for acceptance. If an offer contains an offer without obligation and this is accepted by the buyer, Tootal has the right to retract its offer within two working days after its acceptance.
- 2.2. The prices in an offer made by Tootal are exclusive of VAT unless stated otherwise.
- 2.3. All offers made by Tootal are based on performance under normal circumstances and during working hours at Tootal.
- 2.4. Employees and/or sales persons and/or sales agents of Tootal are not authorised to enter into contracts unless the buyer has been confirmed the contrary in writing.
- 2.5. Any order made by a buyer with whom Tootal has not yet done business with is still accepted under the suspensive condition, that the creditworthiness of the buyer can be established from the information provided.

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- 2.6. Placement of an order, including the acceptance of an offer, must be in writing and include the information and documentation that Tootal needs to start preparing the order or production and to fulfil and complete it adequately. The information needed includes the buyer's specific product and quality requirements as well as the buyer's intended use of the goods of which Tootal would not reasonably be expected to know the quality requirements. If such information is not provided to Tootal, the suitability of the goods in terms of these requirements are at the buyer's risk. Both parties do not go into agreement until Tootal confirms the order of the buyer.
- 2.7. Your order is an offer to enter into an agreement with us. No agreement is created until your order and payment have been processed by us unless otherwise agreed. Tootal reserves the right to reject orders for any reason or no reason. If Tootal will reject an order, the buyer will be notified.
- 2.8. All amounts and/or other details concerning all goods and the performances and services that are directly connected with the delivery of these goods that are the subject of an agreement will be done with due care, however, Tootal cannot guarantee that there will be no departures from these. Information, drawings, photographs, samples, models, figures, technical data and services shown represent only an indication. If there is any inconsistency between the information described above and the information in an offer and/or order confirmation, the offer and/or order confirmation is binding.
- 2.9. Tootal may involve other suppliers in the supply chain and the manufacturing and or part of the supply chain and manufacturing of the goods than originally agreed.
- 2.10. Delivered goods are meant to be processed or used as is. Raw materials are a combination of both natural and chemical goods and therefore, Tootal cannot guarantee that every batch (working order) is 100% the same and the buyer must take this into account in the processing process. Tootal may not be held liable for any variations.
- 2.11. Tootal reserves the right to make technical changes and changes to the shape, colour and/or weight that are within the limits of reasonableness and fairness, at discretion of Tootal.
- 2.12. In case goods are produced according to preferences and requirements of the buyer, Tootal does not accept claims or returns for any reason except production error.
- 2.13. Goods re-made at a different date from the original order may differ in shape, colour and weight.
- 2.14. The buyer is not authorised to terminate a contract with Tootal unless the buyer also issues an irrevocable offer to pay the agreed purchase price. Any termination will be considered to imply such an offer.

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Such an offer is considered to be accepted if Tootal does not reject the offer immediately. Termination must be effected in writing and with mention of the date. The buyer may not derive any rights from an oral termination.

## Article 3: Delivery and term of delivery

- 3.1. The risk for the goods lies with the buyer from the moment that was set in the terms of delivery, agreed in accordance with the Incoterms 2010.
- 3.2. If delivery will be done in parts, every delivery will be considered an independent delivery to which all of the provisions of the agreement and these general terms and conditions apply in full. Tootal reserves the right to invoice each partial delivery separately.
- 3.3. If the buyer, for whatever reason, does not accept or does not call off delivery of the goods on the agreed date, Tootal has the right to:
  - either have the goods put into storage at the buyer's own risk and expense, for later delivery. All of the expenses entailed, including increases in duty and fees and premiums will be at the buyer's expense;
  - or consider the contract to be dissolved without judicial intervention, without prejudice to its right to compensation for damages, in particular without prejudice to its right for full compensation of goods produced according to preferences and requirements of the buyer, in addition to the statutory interest on the amount as of the day of dissolution.
- 3.4. Notwithstanding the buyer not accepting the goods on the date agreed, Tootal has the right to charge the buyer the purchase price.
- 3.5. The agreed date of delivery is not a deadline unless explicitly agreed otherwise. If delivery is not on time, the buyer shall give Tootal written notice of default.
- 3.6. The term within which the goods must be delivered or the services must be performed first starts when the agreement has come into effect, all of the details needed for performance are in possession of Tootal and the buyer has fulfilled its obligations up to that moment.

## Article 4: Price, price increase

- 4.1. All prices specified by Tootal are based on the current cost prices and the exchange rates at the time of making the offer.
- 4.2. Even if Tootal agrees a certain price with the buyer, Tootal has nevertheless the right to increase the price. Tootal may charge the price of its current price list at the moment of delivery. If the price increase is over 10%, the buyer has the right to terminate the agreement by means of a written statement. In such case the termination must effect immediately after the buyer has been informed of the price increase.

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- 4.3. The price does not include turnover tax (VAT) unless otherwise stated in writing.
- 4.4. Import duties, other taxes than VAT and fees, costs for quality control and/or testing, costs of loading and unloading, packaging, transport and insurance are not included in the price offered by Tootal, unless respectively stated otherwise.
- 4.5. The prices are all given in euros unless a different currency is given on the offer and invoice of Tootal.

## Article 5: Payment

- 5.1. Payment must be effected by the agreed due date without qualifying for suspension or setoff and without deduction of costs or discounts for which the buyer does not yet have a credit note or written agreement at the time of giving or issuing a payment document or at the time of the buyer's payment. The net agreed price must be paid into the account of Tootal in its entirety. Costs, such as bank costs, bill charges, collection charges, etc. to effectuate payment must be paid by the buyer and not by Tootal. If the buyer exceeds the agreed term of payment, no any entitlement it may have to a discount for cash payment. If it is exceeded by over fourteen days, Tootal has the right to charge the buyer default interest from the agreed date of payment to the day payment is effectuated. The interest rate will be the current statutory interest as referred to in Article 119a, Book 6 of the Dutch Civil Code (rate was 8% on 1 January 2010) plus a 2% surcharge.
- 5.2. In case of winding-up, bankruptcy or moratorium on the buyer's part, the obligations towards Tootal will become immediately due and payable.
- 5.3. The buyer can only request for a setoff if its claim is acknowledged in writing by Tootal. Any authorisation to set off the amount will then be explicitly relinquished by the buyer.
- 5.4. Before starting to or continuing to execute the agreement, Tootal has the right to require the buyer to provide adequate security for the fulfilment of its obligations.

## Article 6: Collection charges

- 6.1. If the buyer does not fulfil one or more of its obligations, all costs within reason for obtaining payment out of court are for the buyer. Tootal has the right to charge at least all of the judicial and extrajudicial collection costs to the buyer by virtue of the court-approved scale of costs in accordance with the Voor-Werk II Report of the Dutch Association for the Judiciary. If Tootal can prove that it has incurred more expenses and they were necessary within reason, these will also be payable. In this case, the extrajudicial collection costs will be at least 15% of the overdue principal with a €500 minimum.

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## Article 7: Force Majeure

- 7.1. The term force majeure is taken to mean: any circumstance beyond the control of Tootal that temporarily or permanently impedes its performance of the agreement, and, insofar as not already implied among these, war, threat of war, riot, obstructing measures taken by any government, import and export bans, loss or damage during transport, interruptions in the energy supply, natural disasters and pandemics, strikes, exclusion of workers, transport problems, fire, theft, accident and/or any other serious disturbances in companies of Tootal or its suppliers.
- 7.2. If the performance is delayed longer than five weeks, all parties are, with the exclusion of further rights, authorised to terminate the agreement in accordance with the law, without Tootal being liable for any compensation for damage or loss incurred by the buyer or any third party.
- 7.3. Tootal also has the right to invoke force majeure if the circumstance that impedes (future) performance begins after its supplier was supposed to fulfil its obligation.
- 7.4. If, when the force majeure takes place, Tootal has already fulfilled its obligations in part or in full, or can only fulfil its obligations in part, it has the right to invoice for the already delivered or deliverable part separately and the buyer is required to pay this invoice as if it were a separate agreement. However, this is not applicable if the already delivered or deliverable part does not have an independent value.

## Article 8: Complaints

- 8.1. The buyer is required to check goods immediately after receipt. Complaints must be submitted in writing within seven days of delivery of the goods together with proof. In this case and unless parties have agreed otherwise in writing, Tootal will request either a neutral expert to write an inspection report or an officially certified laboratory that is familiar with the goods to have the quality analysed. The results of the above will be binding for both parties. If the reports show that the complaint or complaints is/are not founded, the costs of the investigation will be for the buyer.
- 8.2. Complaints do not preclude the buyer's payment obligations.
- 8.3. Small differences in quality in broad sense, composition, workmanship, sizes, or colour, which cannot be prevented from a technical point of view or which are customarily accepted cannot be grounds for complaints.
- 8.4. Complaints concerning goods that are processed or treated in any way or form after delivery are not accepted. Tootal is not liable for the results of such processing or treatment.

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- 8.5. Return shipments of goods without prior consultation with Tootal are not permitted. If this does occur nevertheless, both the shipment and storage of the goods after arrival are at the buyer's own risk and expense.

## Article 9: Retention of title

- 9.1. The goods delivered by Tootal remain property of Tootal until the buyer has fulfilled all of the following obligations ensuing from the agreement entered into with Tootal:
- the consideration(s) for the delivered or to be delivered goods themselves;
  - the consideration(s) for the services performed or to be performed by Tootal under the agreement;
  - any claims ensuing from non-performance on the buyer's part of one or more agreements.
- 9.2. If the goods delivered by Tootal are made into a constituent element or mixed with one or more other movable items, Tootal becomes co-owner of the new goods, each of a part proportionate to the value of the goods.
- 9.3. The goods delivered by Tootal, which fall under the retention of title clause pursuant to paragraph 1, can only be sold on within the context of normal business operations. Moreover, the buyer is not authorised to pledge the goods or claim these as its own.
- 9.4. If the buyer does not fulfil its obligations or there is a founded reason to think it will not do so, Tootal has the right to remove or have removed the delivered goods to which the retention of title referred to in paragraph 1 applies from the buyer or a third party who is keeping the goods for the buyer. The buyer is required to cooperate entirely under penalty of a fine of 10% of the amount owed by it.
- 9.5. If a third party wants to claim or exercise its rights to the goods delivered under the retention of title clause, the buyer is required to inform Tootal as quickly as can be expected.
- 9.6. The buyer undertakes to:
- insure the goods delivered under the retention of title clause against fire, explosion and water damage and against theft and to give the policy to Tootal for inspection;
  - to pledge to Tootal all of the buyer's and insurer's claims to the goods delivered under the retention of title clause at first request of Tootal and in the manner described in Article 239, Book 3 of the Dutch Civil Code;
  - to pledge the claims that the buyer acquires from its customers when selling on the goods delivered by Tootal under the retention of title clause at first request of Tootal and in the manner described in Article 239, Book 3 of the Dutch Civil Code;

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- to mark the goods delivered under the retention of title clause as property of Tootal;
- to cooperate in other ways at first request of Tootal with all the reasonable measures that Tootal wants to take with regard to its right of ownership of the goods and not unreasonably impede the buyer in the performance of its normal business operations.

## Article 10: Liability

- 10.1. Tootal is not liable for any damage or loss incurred by the buyer or third parties of any nature or scope whatsoever that is connected with or ensues from the performance of the agreement or remaining in default thereof, unless this can be attributed to intent or gross negligence on the part of Tootal or its executive staff.
- 10.2. Neither is Tootal liable for intent or (gross) negligence of (non-executive) employees or others whom it has engaged within the context of the performance of the agreement.
- 10.3. The buyer releases Tootal from liability for the delivered goods and services if and insofar as the damage is caused by negligence of the buyer, its employees or others whom the buyer has used within the context of an agreement entered into with a third party or parties. The buyer also releases Tootal from all liability if and insofar as the damage or loss is caused by an infringement of a patent, license or other rights of third parties resulting from the use of, by or due to the information provided by the buyer.
- 10.4. If Tootal is held liable by a third party for any damage for which it is not liable under the agreement with the buyer or these terms and conditions, the buyer will release it from all liability.
- 10.5. If and insofar as Tootal is found to be liable towards the buyer, on any basis whatsoever, this liability is limited per claim/incident to the amount that the insurer of Tootal pays in this matter on the basis of the policy terms and conditions. A series of connected cases/incidents are considered to be a single claim/incident. If Tootal is not in the possession of such an insurance policy, the liability as referred to in this paragraph is limited to the amount of the consideration for the agreed goods or services as stated on the invoice (exclusive of VAT).

## Article 11: Termination of the agreement

- 11.1. Claims of Tootal on the buyer are payable immediately in the following cases:
  - if, after entering into the agreement, Tootal comes to know of circumstances that give Tootal reason to believe that the buyer will not fulfil its obligations;

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- if, when entering into the agreement, Tootal requested the buyer to provide security for fulfilment of its obligations and this security is not forthcoming or is insufficient;
- if the buyer files for bankruptcy, is granted a moratorium, is closed down or liquidated or its assets are transferred in full or in part.

In the above cases, Tootal has the right to suspend further performance of the agreement or terminate it without prejudicing the right of Tootal to claim damages.

- 11.2. If circumstances arise that affect persons and/or materials Tootal engages or has committed to engage for performance of the agreement, which are of such a nature that the performance of the agreement becomes impossible or inconvenient and/or disproportionately expensive to such an extent that the performance of the agreement can no longer reasonably be required, Tootal is authorised to terminate the agreement.

## Article 12: Transport insurance

- 12.1. Unless under the applicable terms and conditions of delivery the transport is at the buyers risk, the costs of insuring the transport risks are paid by Tootal. Tootal is not obligated to insure the goods to be transported for more than the net invoiced amount and consequently not for extraordinary risks such as threat of war or wilful damage.
- 12.2. In case of loss or damage during transport, Tootal will put in a claim with the insurer after receiving a bill of transport which clearly states the flaw or damage. Tootal will settle the amount with the buyer after receiving payment from the insurer.

## Article 13: Currency

- 13.1. If payment is to be made in a currency other than euros, the buyer is required, if payment is overdue, to compensate the deficit between the amount that should have been paid on the contractual due date and the amount that was paid on the actual date of payment, calculated based on the official exchange rate of the currency at De Nederlandse Bank - as well as the other losses caused by this overdue payment.

## Article 14: Disclaimers

Tootal provides its website, web shop and service, with all copyright material, trademarks and registered trademarks, on an "as is" and "as available" basis.

Tootal hereby disclaims any and all express or implied warranties, including without limitation, warranties of fitness for a particular purpose, merchantability, and non-infringement to the fullest extent of the law, except to the extent that this agreement provides otherwise.

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Tootal does not represent or warrant, that its website, web shop and service or its use:

- will be uninterrupted, timely, safe, or secure;
- will be free of inaccuracies, errors, or vulnerabilities;
- will meet the expectations or requirements of the buyer;
- will operate in the configuration or with the hardware or software the buyer uses.

14.1. The user and buyer agree, that Tootal has no responsibility for any damages suffered by the user and buyer in connection with the website, web shop and/or service of Tootal and that use of its website, web shop and service, including all content, data or software distributed by, downloaded, or accessed from or through the site and service, is at the users and buyers sole risk. The user and buyer will be solely responsible for any damage to the user's and buyer's business or computer system or any loss of data that results from the user's and buyer's actions and use of the website, web shop and/or service. Tootal does not control or endorse in any respect any information, goods or services offered by third parties through the site and service and is not responsible for any possible representations and warranties these third parties may make.

14.2. Due to normal course of business and changes in our industry and in technical production processes, Tootal may reasonably deviate from the descriptions, images and information found in its brochures, catalogues and other documents as well as on its website and web shop with respect to material, colour, weight, size and measurements, workmanship, design or other features.

14.3. Tootal may use subcontractors or third parties to provide certain elements of its website, web shop and service and will not be liable to the user and buyer in any way for the user's and buyer's use of these services.

## Article 15: Limitation of liability

15.1. The user and buyer use the website, web shop and service of Tootal at own risk. Tootal provides its website, web shop and service without any express or implied warranties. Tootal is not responsible for the actions, content, information or data of third parties. The user and buyer release us, our directors, officers, employees and sales agents from any claims and damages, known and unknown, arising out of or in any way connected with any claim the user and buyer have against Tootal or any related third parties.

15.2. Tootal is not liable to the user and buyer for any lost profits or other consequential, special, indirect or incidental damages arising out of or relating to the website, web shop and service of Tootal or any agreement between Tootal and the buyer, even if advised of the possibility of such damages.

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## Article 16: Dispute resolution and applicable law

- 16.1. Notwithstanding the statutory rules for the competence of the civil court, the District Court of Almelo (the Netherlands) will, in the first instance, have exclusive jurisdiction over any dispute between the buyer and Tootal. However, Tootal is still authorised to bring a dispute before the court whose jurisdiction is determined by law or the applicable international treaty.
- 16.2. Any agreement between Tootal and the buyer is governed by Dutch law. The Vienna Sales convention (the Convention of the United Nations Concerning Agreements for International Sales of Goods dated 11 April 1980 or C.I.S.G.) does not apply nor does any other international regulation for which exclusion is permitted.

## Article 17: Translations

- 17.1. The Dutch text of the general terms and conditions of Tootal prevails over any translations.

