

## ORAC GENERAL TERMS AND CONDITIONS COMPANIES

### Article 1 – General

Unless otherwise agreed in writing, the present general terms and conditions apply to every offer, every price quotation and every agreement between **NV ORAC** (Biekorfstraat 32, 8400 Ostend, KBO 0407.323.091 – hereinafter “**Orac**”) and its client (hereinafter the “**Client**”) and to all invoices from Orac, regardless of whether the domicile of the Client is in Belgium or abroad, and regardless of whether the delivery must be made in Belgium or abroad. The placing of an order means that the Client understands the present terms and conditions, takes note of them, accepts them without reservation and is bound by them. Any general terms and conditions of the Client only apply if these have been accepted expressly and in writing by Orac. In the event of conflict between general terms and conditions accepted in this manner and the current general terms and conditions of Orac, the latter shall prevail.

### Article 2 – Price quotations

Price quotations always state the net price and always rely on information previously communicated. The prices quoted and the quantities are based on data and information provided by the Client to Orac. If particular details which are provided by the Client and which are important for the setting of the price and quantities, **do not appear to be realistic**, Orac is entitled i) to make an appropriate amendment to the agreed prices and quantities or, at its option, ii) to cancel the agreement at the expense of the Client if the implementation of the modified order appears to be impossible.

Unless otherwise agreed expressly and in writing, price quotations shall be valid for a period of one month from the date when they are notified, after which they shall expire automatically and irrevocably.

If all or part of the costs that influence the price rise due to circumstances beyond the control of Orac, then Orac is entitled, by means of a simple notification, to charge the Client a proportionate price increase.

### Article 3 – Orders

The communication of prices, rates, delivery terms and conditions of sale does not constitute an obligation on the part of Orac, unless these have been expressly confirmed in writing by Orac.

The cancellation by the Client of an order accepted by Orac can only occur with the prior written permission of Orac. In the event of cancellation of an order, Orac has a right to charge an amount equal 25% of the agreed price in compensation for the damage and costs that the cancellation entails, without prejudice to Orac’s right to prove and claim greater damages, provided that such proof can be supplied.

Changes by the Client to an order accepted by Orac - such as but not limited to, postponing delivery at the request of the Client – can only be made with the prior written permission of Orac. Orac can make its permission dependent on changes in conditions, such as prices, delivery times or the charging of a payment in advance.

### Article 4 – Delivery period

Unless explicitly stipulated otherwise in writing, the delivery periods stated by Orac are not binding and are only indicative. The expected delivery date is determined on the basis of the workload of Orac at the date when the delivery period is stated, and as a function of the delivery periods for components and materials. The stated delivery periods will be respected as much as possible. If Orac cannot meet the specified delivery date, it will notify the Client accordingly. Exceeding the delivery period cannot give rise to any liability of the part of Orac, nor can this constitute a reason for the termination of the agreement.

The Client must provide Orac with all information and take all necessary measures to ensure that Orac is able to execute the agreement within the specified delivery periods. If the Client fails to do this, it automatically implies that the proposed delivery period will be extended. Changes in the order – only if accepted in writing by Orac – automatically mean that the proposed delivery period will be extended by an indefinite time. Exceeding the agreed payment periods shall automatically suspend the execution of delivery and such periods will be automatically added onto the delivery period.

### Article 5 - Delivery – risk for the goods purchased

Unless explicitly agreed in otherwise in writing, the goods will be purchased and accepted at Orac in Ostend (*FCA Free Carrier Incoterms 2012*).

If for whatever reason the goods are not collected by the Client on the delivery date, Orac has the right to store the goods for the account of, and at the expense and risk of the Client (including fire risk). In such cases, the Client may be charged a storage fee of

€10.00 per m<sup>2</sup>. Orac is only obliged to stock the goods ordered for one month after the agreed delivery date, after which time it has the irrevocable right to terminate the agreement for the goods not collected and at the expense of the Client.

#### **Article 6 – Cancellation**

If the Client refuses to take delivery of the goods purchased, or if the Client fails (after being given notice, where necessary) to fulfil his commitments towards Orac, then Orac, in addition to other legal remedies, may opt for the cancellation of the entire agreement or a part thereof, subject to compensation or subject to compulsory execution thereof.

If the confidence of Orac in the creditworthiness of the Client has been shaken through legal measures taken against the Client and/or other demonstrable events, which call into question or render impossible confidence in the proper fulfilment of obligations made by the Client, Orac retains the right, even if the goods have already been dispatched wholly or in part, to suspend the whole or part of the order and to demand adequate guarantees from the Client. If the Client refuses to comply with this, Orac reserves the right to annul the whole order or part of it. All the foregoing applies without prejudice to the rights of Orac to receive compensation and interest, and to the other remedies based on the present terms and conditions, or in accordance with the law.

Any cancellation of the agreement may occur by operation of the law and without prior notice of default or other legal intervention, after notification by registered mail from Orac. The client is hereby obliged to compensate Orac for all losses suffered, including lost profit, administration costs, personnel costs, costs for raw material, storage, etc. On a flat rate basis, such damages amount to at least 25% of the agreed price, without prejudice to the right of Orac to prove and claim greater damages, provided that such proof can be supplied. In addition, Orac will have the right to suspend in whole or in part the further implementation of both the agreement concerned and other current agreements with the Client.

#### **Article 7 – Payment terms for invoices – overdue payment**

The order will be invoiced at the prices and subject to the conditions as stated in the order confirmation and/or the contract, the agreed price list or the delivery conditions.

Unless otherwise agreed in writing, Orac's invoices are payable not later than 30 days from the invoice date. Any dispute concerning an invoice must be notified in writing to Orac within five working days of receipt of such invoice.

In the event of non-payment by the due date, outstanding invoices will be automatically, and without prior notice of default, subject to delay interest of 12% per year. Moreover, in the event of the total or partial non-payment of the debt by the due date without any valid reason, after a notice of default, the balance of the debt will be increased by a flat rate compensation of 10% of the invoiced amount, subject to a minimum of 75 EURO and a maximum of the invoice amount, even after the award of a period of grace, and without prejudice to Orac's right to claim a higher compensation subject to proof of higher actual damage suffered.

In addition, without prejudice to the right to reimbursement of legal costs, Orac is entitled to reasonable compensation by the Client for all relevant costs of collection incurred as a result of such non-payment. In the event of non-payment by the due date of a single invoice (i) Orac is also entitled, without any prior notice of default or compensation demand, to suspend any other orders of the Client until the entire payment of such invoice; and (ii) all other payment claims from the Client that are not yet due shall become automatically payable immediately, and without prior notice of default.

#### **Article 8 – Liability of Orac**

Unless otherwise explicitly stipulated in writing, Orac will never guarantee a particular outcome.

Complaints regarding visible defects must be reported to Orac in writing immediately, and at latest within 2 working days after delivery.

Complaints about hidden defects are only admissible if they are made by registered letter within a period of five working days after they have been discovered, and at latest 6 months after the date of sale of the goods. Subsequently, any right to repair or replacement or to any other warranty expires. Complaints must be submitted with sufficient evidence to substantiate the claim, including but not limited to photos, a description of the problem, reporting of defects and samples of the rejected goods. The Client must prove the alleged error, the resultant damage and the causal link.

Products cannot be rejected or refused if they show no changes compared with the approved reference samples with regard to size, finish and general quality.

**In the event of non-compliant delivery or in the case of an admissible and well-founded complaint about hidden defects, Orac's liability, at Orac's option, is limited to the replacement of the goods or to the refund of the price the customer has paid for the goods in question. In such cases, Orac is not liable for any compensation, nor can any other sanction be imposed.**

Any claims to any warranty expire in the event of:

- incorrect use of the products supplied by Orac;
- defects due to incorrect interventions by the Client or third parties;
- late reporting of defects in accordance with the provisions of the present general terms and conditions;
- minor dimensional deviations.

No complaint can, in any case, relieve the Client from his obligation to pay the amounts of the invoices on the agreed date. Moreover,

a complaint, even if justified, does not authorise the Client to refuse the fulfilment of the agreement with regard to goods that are not subject to the complaint.

Under no circumstances can Orac be held liable for any amount that would exceed the invoice amount for the order(s) concerned. In no case can Orac be held liable for indirect and unforeseeable damages, such as loss of profit, economic damage, damage to reputation, etc.

#### **Article 9 – Force majeure**

The liability of Orac cannot be invoked if failure to comply with its obligations is due to any form of force majeure, such as war, unrest, partial or general strike, partial or general lockout, infectious diseases, operational accidents, fire, machine breakdown, bankruptcy of suppliers, lack of raw materials, discontinuation in the delivery of raw materials, etc. In any event, force majeure does not entitle the Client to cancel the agreement, unless the situation of force majeure continues for three consecutive months.

#### **Article 10 – Rights of ownership to the purchased goods – obligations of the Client**

The goods purchased remain the property of Orac until the point of full payment of their price, including interest and costs. The Client undertakes not to sell the goods, to process them, pledge or dispose of them as long as they remain the property of Orac. The Client shall notify Orac without delay of any seizure, theft, or other circumstances that may infringe Orac's rights of property in the goods.

If on the due date payment has not been made in full, the Client is obliged, on first request, to return the goods to Orac.

#### **Article 11 – Confidentiality**

The Client is obliged to keep secret all information of which it becomes aware within the framework of the agreement between the parties concerning Orac's business and/or goods, in whatever form (documents, oral or written information, etc.), including inter alia knowhow, technical data, drawings, documentation, manuals, formulae, commercial information, etc. and not to disseminate them, and to demand the same from staff members and/or third parties involved in the implementation of the agreement.

If a confidentiality agreement has been concluded between the Client and Orac, such confidentiality agreement shall continue to apply, unless it is expressly determined otherwise in writing.

#### **Article 12 – Liability**

Orac (including its officers, representatives and/or employees) is only liable for damage caused by non-compliance with its contractual obligations if and insofar as such damage is caused by fraud, deceit, serious or intentional error. In the event that Orac is held liable for any damage, then the liability of Orac is always limited to a maximum of the invoice value of the order by the Client, or in any case to that part of the order to which the liability refers. If the damage is covered by insurance, the liability of Orac is in any case always limited to the amount actually paid out by its insurer. Orac is never liable for indirect damage, including but not limited to consequential damage, loss of profit, failed opportunities to make savings, limitations in production, administration or personnel costs, any increase in general costs, loss of clientele, claims from third parties or damage to third parties. The Client bears sole responsibility for the use that he makes of the goods.

The Client accepts expressly that Orac is not liable and that the Client does not have the right to cancel the agreement, or to refuse the delivery and/or payment, or the right to any form of compensation for damages or reimbursement in the event of (i) slight differences in the colour or slight differences in the dimensions of the goods, insofar as these cannot be prevented from a technical point of view or are generally accepted or are specific to the materials used, (ii) inaccuracies in the measurements made by the Client, (iii) inaccuracies in the works carried out by the Client, (iv) inaccuracies in the constructions and working methods required by the Client, (v) defects in the goods or items of property onto which they are being assembled, (vi) defects in materials or tools made available by the Client, and (vii) inaccuracies in the information provided by or on behalf of the Client.

To the extent that Orac, in fulfilling its obligations, depends on the co-operation, services or deliveries of third parties, it cannot be held liable for any damage resulting from errors on their part, including fraud, deceit or serious and/or intentional error.

Any claim for compensation by the Client against Orac will lapse by operation of the law if it has not been brought before the competent court within a period of 1 year after the facts on which the claim is based were known to the Client, or could reasonably have been known.

#### **Article 13 – Miscellaneous**

All agreements between Orac and the Client form part of one overall contractual relationship. If the Client does not fulfil his obligations under one particular agreement, Orac can suspend the further execution of both the agreement concerned and other current agreements.

Orac has the right to annul the agreement with the Client at any time, with immediate effect and without judicial authorisation, without prior notice of default and without payment of any compensation, in the following cases: (i) if the Client fails to meet the (timely) fulfilment of one or more obligations arising from the agreement; (ii) in the event of a suspension of payment or (an application for) bankruptcy or for any reorganisation under Book XX of the Code of Economic Law by the Client; (iii) in the event of liquidation or termination of the Client's activities; or (iv) if an attachment is levied on (a part of) the Client's assets. In the event of such annulment, all claims by Orac against the Client become immediately due and the Client owes to Orac a fixed rate compensation amounting to 10% of the value of the goods ordered, without prejudice to Orac's right to claim higher compensation subject to proof of higher damage actually suffered.

If a (part of a) provision of the present general terms and conditions of sale is invalid or unenforceable, this will not affect the validity and enforceability of the other provisions of the said general terms and conditions of sale. In such cases, Orac and the Client will negotiate in good faith and replace the invalid or unenforceable provision with a legally valid and enforceable provision that is as close as possible to the purpose and scope of the original provision. Where appropriate, the parties confirm that the court has power to modify the clause in question to the maximum that is permitted within the relevant legal limits.

#### **Article 14 – Applicable law – competent Court**

All disputes between Orac and the Client are subject to the exclusive competence of the Courts competent for the registered office of Orac in Ostend.

This agreement is exclusively governed by Belgian law to the exclusion of the Convention of 11 April 1980 concerning the international purchase and sale of moveable tangible property.