



**GENERAL  
TERMS &  
CONDITIONS**

**TVH EQUIPMENT**



## GENERAL TERMS & CONDITIONS

### Art. 1 Scope

1.1 Save where explicitly provided otherwise, the legal relationship between Gunco NV (hereinafter to be referred to as "the Supplier") and the Client-Purchaser or the Client-Renter (hereinafter to be referred to jointly as "the Client") shall be governed exclusively by the present General Conditions, the applicable Special Terms & Conditions and, where applicable and insofar as they are drawn up, the Quotation and/or the maintenance contract. The legal relationship between the Supplier and the Client shall thus always be governed by:

1.1.1 The present General Conditions; and

1.1.2 The Special Terms & Conditions – Sale of Equipment; and/or the Special Terms & Conditions – Sale of Parts; and/or the Special Terms & Conditions – Rental of Equipment; and/or the Special Terms & Conditions – Maintenance and Repair, and where applicable and insofar as they are drawn up

1.1.3 The Quotation and/or the maintenance contract.

1.2 The General Conditions and the applicable Special Terms & Conditions shall be valid from the time of the written confirmation by the Supplier of the order placed by the Client or the actual delivery by the Supplier, and shall furthermore be referred to in the present General Conditions, in the Special Terms & Conditions, and, where applicable and insofar as they are drawn up, the Quotation and/or the maintenance contract, as the "Sale Agreement", or the "Rental Agreement", or the "Maintenance Agreement", hereinafter to be referred to jointly as the "Agreement".

1.3 In the event of a contradiction between the General Conditions, the Special Terms & Conditions and, where applicable and insofar as these are drawn up, the Quotation and/or the maintenance contract, provisions in the maintenance contract shall prevail over contradictory provisions in the Quotation, provisions in the Quotation shall prevail over contradictory provisions in the Special Terms & Conditions, and provisions in the Special Terms & Conditions shall prevail over contradictory provisions in the General Conditions.

1.4 Omission or delay by the Supplier in the (partial) enforcement of a provision in the Agreement may not be regarded as a relinquishment of any of its rights whatsoever on the basis of the Agreement, now or in the future.

1.5 The Supplier reserves the right at all times to change the provisions in the Agreement.

1.5.1 The Client-Purchaser shall be notified in writing of any such change. In the absence of any reaction from the Client-Purchaser within fifteen (15) calendar days after the written notification, the Client-Purchaser shall be deemed to have fully and irrevocably accepted the changes.

1.5.2 The Client-Renter shall be notified in writing of any such change. The Client-Renter shall sign and return the amended Rental Agreement by fax or email no later than 24 hours after receipt thereof. Where the Client-Renter fails to return a signed amended Rental Agreement within the above deadline, it shall be deemed, by the simple fact

of continuing to use the Rented Equipment, to have accepted the amended Rental Agreement.

1.6 The Client may not depart unilaterally or tacitly from the Agreement in any way whatsoever (including by simple conduct). The Agreement excludes any further application of the Client's general or Special Terms & Conditions. The Client therefore recognises that its own general or Special Terms & Conditions are not applicable to the Agreement.

1.7 The Agreement annuls and replaces all written or oral agreements, contracts, proposals and obligations which relate to the same subject, as described in the Agreement, and which might precede the date of the Agreement.

### Art. 2 Quotations and orders

2.1 Quotations are free and are applicable as a whole and are indivisible. Prices offered are guaranteed for thirty (30) calendar days. Quotations relate only to a proposal by the Supplier and do not bind the Supplier, even after acceptance by the Client. Only the written acceptance of the order by the Supplier shall cause the Agreement to come into existence.

2.2 The Supplier assumes that the information, drawings and other data provided by the Client are correct and may thus use them as the basis for its Quotation. If the Client places an order by itself citing references from the Supplier, the Supplier will assume that these tally with the Goods actually required.

2.3 Images, dimensions, capacities, weights, description of appliances and options and other indications of machines and parts, price lists, offers included in the Supplier's catalogue or on the Supplier's website or demonstration models are indeed compiled as carefully as possible, but are only approximate and for information purposes, and are given only by way of information supplied free of obligation.

2.4 The sale of machines, accessories and/or parts may occur against purchase of a used machine from the Client-Purchaser. The Supplier will in principle make a takeover offer exclusively in respect of what the Supplier deems to be properly working machines, accessories and/or parts. If the Supplier agrees to the purchase of machines, accessories and/or parts which show defects, then the Client-Purchaser must report the defects in writing as comprehensively and in as much detail as possible. If it emerges that the machines, accessories and/or parts to be purchased show more defects than indicated in the written report by the Client-Purchaser, then the Supplier will automatically deduct the repair costs from the agreed purchase price. Work assignments originating from the Supplier shall in such cases serve as evidence of repair work carried out by the Supplier and to be paid for by the Client-Purchaser. Any machines, accessories and/or parts to be purchased shall become the property of the Supplier only after it has accepted the actual delivery thereof. Acceptance occurs seven (7) working days after the signature of the bill of lading for receipt by the Supplier. Until that time, the machines, accessories and/or parts to be purchased shall in all cases remain the property of the Client-Purchaser and all risks and costs continue to be borne by the latter.

### Art. 3 Subject

3.1 The subject of the present Agreement is explicitly described and includes



the explicitly described machines, devices, accessories, apparatus, auxiliary attachments, parts, maintenance and/or repair services and installation. Depending on the specific context, the subject is hereinafter referred to as the "Equipment Sold"; or "Product"; or the "Equipment Rented"; or the "Maintenance", all to be referred to jointly as "Goods".

- 3.2 The Client is fully liable for the choice of the Goods. The Goods are standard goods which are not created specifically for the Client's needs, or goods which the Supplier has adapted at the Client's request to specifications described by the Client. The Supplier has no liability whatsoever if it should emerge that the Goods fail to meet the Client's specific needs and intended purpose and use, where the Goods meet the specifications described by the Client.
- 3.3 The Client recognises that the Supplier or one of its associated companies remains the exclusive owner of all intellectual property rights relating to the Goods and the name and the logo under which they are provided by the Supplier, and undertakes not to make any claim thereto.

#### **Art. 4 Purchase Price and Rental Price**

- 4.1 The price for the Goods is fixed in the Agreement (to be referred to hereinafter as the "Purchase Price" (if it is the price of the Equipment Sold, Products or Maintenance) or the "Rental Price"). The Purchase Price or the Rental Price excludes VAT, taxes and levies, import and export duties, and neither does it include the cost of insurance, delivery or collection of the Goods and the costs of use (such as fuel) and any assembly, installation and start-up or commissioning (hereinafter to be referred to as the "Costs"). The Costs are payable by the Client and shall be billed separately, and exclude VAT, taxes and levies.

#### **Art. 5 Payment**

- 5.1 Save where otherwise agreed in writing, all invoices from the Supplier are payable on the due date fixed in the Special Terms & Conditions via transfer to the account number cited on the invoice, quoting the reference indicated.
- 5.2 The Client is not entitled to suspend and/or defer payment of the Purchase Price or the Rental Price, nor to make an offset vis-à-vis the Supplier, even in the case of any complaint whatsoever that may relate to the (partial) performance of the Agreement and may be filed for any reason whatsoever, including a legal procedure. The Client is accordingly never released from its obligation to pay the Purchase Price, or the Rental Price, within the deadline agreed.
- 5.3 The Purchase Price, or the Rental Price, and the Costs are effectively paid only as from the point in time when they have actually been received by the Supplier.
- 5.4 If the Supplier consents in writing to payment by cheque or bill of exchange, then the drawing of the bill of exchange or cheque shall count as payment only on the day that the Supplier has unconditionally received the bill of exchange or cheque amount. In addition, the drawing and/or acceptance of bills of exchange or other negotiable instruments does not include any novation and does not depart from the General and Special Terms & Conditions.
- 5.5 In the event of complete or partial non-payment of the debt on the due

date, as set out in the Agreement, interest will be payable automatically and without prior notice at 15% on the entire amount left unpaid, from the calendar day following the due date until complete settlement. In addition, the Client shall in such cases be immediately, automatically and without prior notice liable to pay flat-rate compensation of 15% on the unpaid balance, with a minimum of 125 EUR, even where respite deadlines are granted, without prejudice to the Supplier's right to demand higher compensation.

- 5.6 The complete or partial non-payment on the due date of a single invoice shall automatically render the balance owing on all other invoices, even those not overdue, immediately payable without prior notice.
- 5.7 In the event that the Supplier becomes aware of any circumstance that might substantially influence the Client's financial situation, or where a Client fails to accept a bill of exchange in a timely manner, all outstanding amounts, even those that the Client owes to companies associated with the Supplier, shall become immediately due, with no need for notice to be served.
- 5.8 If the Client requests, on ordering, that the order be invoiced to a third party, the Client shall, despite the third-party invoicing, remain jointly and severally liable to comply with its obligations under the Agreement.

#### **Art. 6 Right of retention**

- 6.1 In the event of default, the Supplier shall have a right of retention over all objects and documents handed over to it by the Client until the complete payment of the Purchase Price or the Rental Price, the Costs, and all possible interest and additional recovery costs.

#### **Art. 7 Delivery**

- 7.1 Delivery deadlines are given in good faith, but only as an approximation, and accordingly are not binding, unless otherwise agreed in writing between the parties.
- 7.2 Delay in the delivery can never give rise to a penalty for lateness, compensation or exemption from the Agreement to the detriment of the Supplier, or to refusal by the Client to receive the Goods delivered.
- 7.3 Any explicitly agreed delivery deadline shall commence only after the Supplier is in possession of all information and documents that are required for the performance of the delivery.
- 7.4 However, if the Supplier has explicitly made a written commitment to compensation in the event of delayed delivery in the Agreement, such compensation shall be payable only if the Client has claimed against the Supplier for exceeding the delivery deadline by registered letter within the binding period of five (5) calendar days from the expiry of the delivery deadline, appending proof of the damage suffered. However, the Supplier may not be required to pay compensation if the delayed delivery is the consequence of Force Majeure, or if it is attributable to the Client. In the latter case, the Client must compensate the damage suffered and the costs. In any case, any compensation for delayed delivery shall always be limited to 0.5% of the Purchase Price or the Rental Price, per complete week of delayed delivery following the 21st working day of the delivery date, up to a maximum amount of 5% of the Purchase Price or the Rental Price.



7.5 Where a partial delivery has already been made and the Client refuses to accept further deliveries or where the Client renders further deliveries impossible, the invoicing of the goods already delivered shall become due immediately and the Client shall owe compensation which is set at a flat rate of a minimum of 35% of the Purchase Price or the Rental Price, of the unperformed part of the Agreement, without prejudice to the Supplier's right to demand higher compensation.

## Art. 8 Force Majeure

- 8.1 In the event of Force Majeure on the part of the Supplier, delivery will be suspended for as long as the state of Force Majeure renders the Supplier unable to perform the Agreement, without prejudice to the Supplier's entitlement to dissolve the Agreement without legal intervention.
- 8.2 Force Majeure shall entitle the Client neither to dissolution, nor to compensation, nor to breach the Agreement.
- 8.3 Force Majeure shall include, but not be limited to, the following: government order, mobilisation, war, epidemic, lockout, strike, demonstration, defects, fire, flood, explosion, lack of raw materials or labour, changed economic circumstances, vandalism, exceptional weather conditions, where the maintenance and/or repair costs of the Rented Equipment are substantially higher for the Supplier than it could have expected, where a necessary permit or registration is withdrawn or is not extended, and all circumstances outside the will of the Supplier which disturb the normal course of business.

## Art. 9 Liability

- 9.1 The Supplier's entire liability vis-à-vis the Client (including deeds committed by or negligence by its directors, employees, agents and/or subcontractors) with regard to the performance of the Agreement shall be limited as set out below.
- 9.2 With the exception of damage stemming directly from non-performance by the Supplier of the explicit obligations it has entered into in accordance with the Agreement, the Supplier's liability shall be limited to the binding liability which is placed upon it under the law.
- 9.3 If the Supplier is deemed to be liable in accordance with Art. 9.2, the Supplier may never be held liable vis-à-vis the Client for indirect damage, such as, although not limited to, loss of turnover, loss of profit or any increase in overheads.
- 9.4 If the Supplier is deemed to be liable in accordance with Art. 9.2, the maximum amount of its liability shall in any case be explicitly limited to the amount of the Purchase Price or the Rental Price, excluding VAT and Costs.
- 9.5 Where the Client is held liable by third parties as a result of damage caused by a fault in the Goods supplied, which were supplied by the Client in any form whatsoever to third parties, the Client shall in no sense be entitled to any recourse against the Supplier.

## Art. 10 Suspension and dissolution

10.1 In the event of the complete or partial non-payment of the debt on the due date set out in the Agreement, the Supplier shall have the right to

refuse any new Agreement with the Client or to suspend or terminate any current Agreement with the Client, with the Client not being entitled to any compensation.

- 10.2 Without prejudice to the provisions of Art. 10.1, the Supplier shall be entitled to suspend the performance of its obligations under the Agreement or to dissolve or terminate the Agreement if, after or before the conclusion or beginning of the performance of the Agreement, the Supplier becomes aware of any circumstance that might substantially adversely influence the Client's financial situation, or if it becomes clear to the Supplier that the Client will fail in its obligations in a major way. The Supplier shall, in such a case, write to the Client to notify it of its decision.
- 10.3 In the cases referred to in Art. 10.1 and 10.2, the Client shall be liable for all damage suffered by the Supplier.

## Art. 11 Miscellaneous

- 11.1 The potential invalidity of one of the clauses in the Agreement shall in no sense affect the validity of the other clauses. The parties shall make every effort to ensure, by mutual agreement, that the invalid clause is replaced by a valid clause with the same or substantially the same economic impact as the invalid clause.
- 11.2 During the commercial relationship between the Supplier and the Client, the Supplier or a company associated with it shall store the information provided by the Client (hereinafter referred to as "Data") in its customer relations database in accordance with all legal data protection provisions. Should the Client wish to consult or amend the Data, it must apply to the Supplier in writing by registered letter to the latter's relevant department. The Supplier will in no way divulge the Data to third parties not connected to it.
- 11.3 Working days are deemed to be: Monday to Friday inclusive, except where such days are legal holidays in Belgium.
- 11.4 Unless otherwise indicated in the Agreement, written notification shall mean: all communications in writing from one party to the other, including (i) email addressed to the email address agreed between the parties or (ii) fax.
- 11.5 Only the General and Special Terms & Conditions in the following language versions shall be authentic: Dutch, French and English. If the Supplier makes available other language versions of the General and Special Sale Conditions, these shall be purely for information purposes and the parties may not derive any rights from them.

## Art. 12 Transfer

- 12.1 The Supplier may transfer the Agreement or part thereof to any person, company or business or outsource it by means of subcontracting.
- 12.2 The Client is not entitled to transfer the Agreement or part thereof to a third party without the prior written consent of the Supplier.

## Art. 13 Applicable law

13.1 Where not otherwise explicitly stipulated in the Agreement between the parties, they shall be governed by Belgian law. The application of the Vienna



Sales Convention is explicitly excluded.

## Art. 14 Competence

- 14.1 The materially competent Court located closest to the registered address of the Supplier shall hold sole competence to rule in any disputes, unless the Supplier chooses to bring the dispute before the Court of the place of residence of the Client or the Court in the location where the Agreement is performed.
- 14.2 The previous paragraph is to be interpreted to the benefit of the Supplier, in such a way that the Supplier shall have the right, at its discretion, to depart from the exclusive competence as laid out in Art. 14.1, and as appropriate to bring proceedings in any other competent court of law.