

General Terms and Conditions of Norditube Technologies SE

1. General

Norditube Technologies SE (the "Seller") is a supplier of systems used or useful in the reconstruction, rehabilitation and repair of pressure pipelines, conduits, sewers and other passageways, used in the construction, repair, replacement, lining and relining, renovation, and rehabilitation of conduits (the "Systems"), such Systems consisting of flexible textile liners and specific resins. The Seller holds certain patents, trademarks, and other intellectual property rights and know how in respect of the Systems, their application and the products (the "Technology").

These terms and conditions (the "General Terms and Conditions") are deemed to apply to any sale and delivery of liner and/or resin and products of third parties (the "Products") by the Seller to the customer (the "Buyer") unless specifically varied in writing by the Seller and Buyer.

2. Offers and conclusion of contract

2.1 A contract shall not come into existence between the Seller and the Buyer unless and until an order confirmation is signed by the Seller (the "Order Confirmation"). The terms of the contract shall be comprised solely of (in descending order of precedence) the Order Confirmation, these General Terms and Conditions excluding all other (general) conditions or terms of the Buyer or third parties, and the global price list for rehabilitation materials (the "Contract").

2.2 Any price list, offer or quote made by the Seller shall not be considered binding unless the Buyer places a purchase order and the Seller issues an Order Confirmation.

2.3 Any sketches, drawings or plans provided by the Seller are not binding and the Seller reserves the right to modify the Products at any time in accordance with improvements in manufacturing techniques or design.

2.4 Prior to the formation of the Contract, the Buyer shall notify the Seller of any legal or other specific requirements which may delay or otherwise prevent delivery of the Product.

3. Non-exclusive right to use Technology

3.1 In consideration of the purchase of the Product, the Seller shall grant the Buyer a non-exclusive right to use and sell Products utilising the Technology restricted to the purchased and paid Products and their installation.

3.2 The Buyer shall only purchase and use Products supplied by the Seller, and the Buyer shall use the Seller's trade marks in the business.

3.3 The Buyer shall hold the Seller harmless for any damages that might arise for the Seller from the Buyer's breach of the obligations set out in § 3.2.

3.4 The Buyer has to ensure that he has sufficient knowledge to apply the Technology. For this purpose, the Buyer has to run through a training programme or to follow the manual of the Seller.

3.5 The Buyer has to keep proper records of the installations it performs using the Technology, and has to provide the Seller a quarterly report of its projects. Details of such report shall include the applied product, customer, project/city, length and diameter of the pipe rehabilitation.

4. Prices

4.1 The product prices are detailed in the global price list for rehabilitation materials. These product prices are net prices, excluding VAT, duties, taxes, custom clearance, insurances, packing and transport costs.

4.2 The Seller may adjust the price lists on annual base.

5. Terms of payment

5.1 The Buyer shall make all payments in the agreed currency in accordance with the terms of the Order Confirmation. If not otherwise stated in the Order Confirmation, the standard terms of payment are 30 days as of date of invoice. The Buyer accepts that the Seller may send the invoices by email.

The invoices have to be paid in full, whether the Buyer, for any reason whatsoever, has collected the invoiced goods or not.

Any claim regarding invoicing should be sent to the Seller, by registered mail or by email at _____ within eight (8) days of invoice sending date. Any claim sent in after expiry of the said period cannot be taken into consideration.

5.2 If there is a default by the Buyer in the due and punctual payment of any amount payable to the Seller, where that default continues for a period of 30 days then and without limiting any other right of remedy the Seller may withhold services or materials until such default is corrected.

In the event of failure of the Buyer to pay the invoiced amounts on the due date, the sum owing shall, without further consideration or formal notice, be subject to interest on overdue amounts equivalent to the interest rate and indemnities according to the law of 02.08.2002 regarding combating late payment in business dealings.

In the event of failure of the Seller to guarantee the warranties mentioned in article 10.1, the Seller shall reimburse the invoiced amounts and interests on received amounts at the interest rate according to the law of 02.08.2002 regarding combating late payment in business dealings.

5.3 The Buyer is not allowed to withhold payments against any claim that might arise from the Buyer.

6. Restocking Fee: Orders Confirmations are binding. In the event that the Buyer cancels any order after receipt of the Order Confirmation, the Seller is entitled to an amount of 50 % of the invoiced price. If the production of the Products has started, 100% of the invoiced price is due.

7. Delivery and delivery time

7.1 At the time of Order Confirmation, the Seller estimates the expected delivery period. If a delay in delivery occurs, the Buyer will be notified as soon as the delay is known. Partial deliveries by the Seller are allowed.

In such event, the Buyer has no right whatsoever to claim any damages or refuse delivery or cancel the Contract on grounds of wrongdoing or grievances committed by the Seller.

7.2 The Buyer will be notified at least 24 hours in advance by telephone, email or fax of the precise date upon which the goods are put at his disposal at the Sellers' store in Liège, Belgium which is the place of delivery of the sold goods.

7.3 A storage charge of 50 € per day per crate reel pallet for storage of finished goods will become applicable five (5) days after original delivery date.

7.4 Failing to collect the sold goods within 30 days of the date settled in art. 7.2, the Seller reserves the right, besides the possibility to pursue the forced execution of the Contract, to cancel the sale without summoning the Buyer and to demand an indemnity equal to 100% of the agreed sales price, plus the storage charges, packaging costs and the disposal/destruction costs of the Products.

7.5 The Seller shall not be liable for delays due to the occurrence of any event of circumstances that is not within the reasonable control of the Seller (the "Force Majeure Event") including but not limited to earthquake, fire, flood, strikes, lockouts or other industrial disturbances, shortage of raw materials, war, hostilities, or the threat or apprehension thereof, or any interruption to the supply of materials or information, or the making of emergency or essential repairs thereto, or compliance with any valid order of any governmental or public authority; and the time allowed for delivery of the Product shall be extended by a period equal to each such period of delay affecting the Seller or the Seller's suppliers. Should the Force Majeure Event continue for a period exceeding three (3) months, the Buyer and the Seller shall each be permitted to withdraw from any unfulfilled part of the Contract upon giving reasonable written notice to the other party.

7.6 Unless otherwise agreed in the Order Confirmation, the obligations and liabilities of the Buyer and Seller with respect to delivery, transport, insurance, and customs clearance shall be EXWorks (Incoterms applicable at the date of the realisation of the Contract) from the Seller's production facility in Belgium.

8. Packing

8.1 Unless otherwise agreed in writing, packing of the Product will be effected as commercially usual under normal shipping conditions.

8.2 The Buyer is required to give written notice if special packing is required, provided always that the Seller may refuse any request for special packing if an unreasonable amount of work would be

imposed on the Seller. Should the Seller agree to the Buyer's special packing request, the time for delivery of the Products shall be extended by an appropriate period of time.

8.3 All packing costs shall be separately invoiced and are non-refundable.

8.4 In case of Tubetex – in addition to the other terms set forth in this art. 8, the Buyer will purchase spools for shipping strip from the Seller to the Buyer at the Seller's cost or otherwise acquire spools which the Seller agrees meet the Seller's requirements for effecting shipment of strip to the Buyer. The Buyer's order for Tubetex is deemed to comprise an order for sufficient spools for shipping the Tubetex after taking into account any of the Buyer's spools that the Seller has on hand. The Seller will invoice the Buyer for the spools in the same manner and time as it invoices the Buyer for the Tubetex. The Seller shall use spools returned by the Buyer DDP (Incoterms) Liège (Belgium) to the extent that it is reasonable to do so. The Buyer shall be liable to pay the Seller all reasonable costs of refurbishing the Buyer's spools where such refurbishing is necessary.

9. Acceptance

The Buyer undertakes at delivery to immediately examine the Product upon receipt and to give written notice to the Seller without delay (at least within 24 hours) in regard of any apparent damage or defect in the Product prior to installation of the Product. Complaints received later will not be accepted. If the Buyer has a complaint, he must keep the Products unchanged, at its expenses, at our disposal until the seller has been able to inspect them in full.

By accepting the Products, the Buyer acknowledges that it has checked the conformity, quantity and/or visible defects.

10. Warranties

10.1 The Seller warrants that the Products:

- shall be free from defects in design, materials, and workmanship;
- when used by the Buyer in compliance with the Seller's instructions, will meet the Seller's official written performance specifications ; and
- does not infringe, to the best of the Seller's knowledge, the rights of any third party.

10.2 Any treatment, manipulation, use or handlings of the Product by the Buyer or third persons as well as any form of transport or assembly damage invalidate the warranty.

10.3 Any warranty by the Seller is limited to 1 (one) year after delivery of the Product by the Seller.

10.4 Normal wear and tear does not grant any entitlement to any compensation.

10.5 The Buyer's sole and exclusive remedy to any warranty claim shall be limited, at the Seller's choice, to the replacement of the Products or the amount invoiced for the Products, even in the event that the Buyer followed the instructions, advices, guidelines etc. of the Seller. In case of a claim, the Buyer has to follow the Seller's claim procedure.

10.6 The warranties set forth in this art. 10 are in lieu of all other warranties (whether expressed or implied), including any warranty of merchantability or fitness of the Products or any component thereof for a particular purpose.

10.7 Except as expressly authorised by the Seller, the Buyer shall not make or grant to its customers (including potential customers) any representation or warranty as to the Technology or the Products or services resulting therefrom.

11. Liability

The Seller cannot be held liable in case of Force Majeure Event.

Except in case of wilful act, serious misconduct (by the Seller or its employees) or non-performance or delay of its essential contractual obligations, the Seller shall not be liable to the Buyer or any third party for incidental, personal, consequential, punitive, exemplary, special, remote, or speculative damages (without limitation), any property damages or loss of income or profits incurred by the Buyer or third party regardless of whether the Seller is aware or has reason to know of the possibility of such damage.

The Seller cannot be held liable for claims by third parties, against which the Buyer must always hold the Seller harmless.

Should the Seller be, for any reason and in all cases, held liable, its liability shall be limited to the amount invoiced for the Products.

12. Retention of title

12.1 Notwithstanding delivery or installation of the Product, title in the property of the Products shall remain with the Seller until the Buyer has paid and discharged any and all monies owing pursuant to the Contract.

12.2 The Buyer acknowledges that it retains possession of the Product solely as bailee/trustee until payment of all monies owing pursuant to the Contract and until that time the Buyer:

- shall not encumber or otherwise charge the Product;
- undertakes to take all measures to make the Seller's right of retention legally effective;
- shall be fully responsible for any loss or damage to the Product whatsoever and howsoever caused; and
- agrees that if the Product is sold, the Buyer shall hold the proceeds of sale on trust for the Seller and identify those proceeds as such in the books of the Buyer and shall account to the Seller for those proceeds of sale and maintain an action for their recovery.

12.3 The Buyer irrevocably authorizes the Seller at any time to enter and reclaim any Product for which the Seller has not been fully paid on any premises owned or occupied or used for storage by the Buyer.

13. Confidentiality

13.1 Any information (confidential or not) provided by the Seller or the Buyer shall remain the sole property of the Seller or Buyer and shall be treated as confidential by the Buyer or Seller, and no right therein, apart from the right to use such confidential information as agreed between the parties, shall exist under and after the Contract.

13.2 Upon request of the Seller/Buyer or upon termination of the Contract, the Buyer/Seller shall immediately return all documents containing such confidential information to the Seller/Buyer with the exception of any copies that are required to be maintained by the Buyer/Buyer for legal reasons.

13.3 The Buyer/Seller shall hold the Seller/Buyer harmless for any damage that might arise for the Seller/Seller from the infringement of the confidentiality article by the Buyer/Seller or its employees.

14. Intellectual and industrial property

14.1 To the extent that the Seller/Buyer may possess intellectual property rights, know how, any sketches, plans, drawings, recipes, formula or similar documents that are provided to the Buyer/Seller, such documents shall remain the Seller's/Buyer's intellectual property and must not be copied or otherwise reproduced nor disclosed in any way to a third party without first obtaining the written consent of the Seller/Buyer, provided always that the Buyer/Seller may copy any documentation supplied hereunder for the Buyer's/Seller's internal use.

14.2 The Buyer/Seller shall take all reasonable steps to prevent the transference or copying of the confidential specifications of the Technology or any part thereof to any other person unless such transfer or copying is approved beforehand in writing by the Seller/Buyer.

14.3 The Buyer shall nor do or commit any act or omission whereby the rights of the Seller in respect of the Technology may become prejudiced, void, or voidable.

14.4 The Buyer shall not directly or indirectly contest or aid in contesting the validity of the Technology or the Seller's ownership of the Technology.

14.5 The Seller shall notify the Buyer as soon as practicable of any improvements or adaptations of the Technology of which it has knowledge and the right to use and enjoy, and the Buyer shall have the right to use and enjoy the same.

14.6 The Buyer shall notify the Seller as soon as practicable of any improvements or adaptations of the Technology of which it has knowledge that may with advantage be incorporated in the Technology.

14.7 Any patentable rights, discoveries, inventions, secret processes, designs, recipes, formula, or improvements in procedure made or discovered by the Buyer which are primarily an improvement or adaptation of the Technology shall be the sole absolute property of the Seller, provided that the Buyer shall have the exclusive right to enjoy and use the same and thereafter to retain a perpetual worldwide, non-exclusive right to the same. The Seller acknowledges that any patentable rights, discoveries, inventions, secret processes, designs, or improvements in procedure made or discovered

by the Buyer which are not primarily an improvement or adaptation of the Technology shall be the sole absolute property of the Buyer.

14.8 The Seller may prosecute any infringement of the Technology by third parties. The Seller shall have the control and conduct of all such proceedings or prosecutions and all negotiations for settlement or compromise of such proceedings. If the Seller recovers any money due to such infringement, the proceeds will be allocated in the following order:

- to reimburse the Seller for all costs and expenses of the infringement action;
- to the Seller for its lost profits;
- to the Buyer for its lost profits; and
- the remainder to the Seller.

14.9 To the best of the Seller's knowledge, the Technology or Product do not infringe third parties' rights. The Buyer shall promptly advise the Seller in writing of any notice or claim of any infringement and of the commencement against it of any suit or action for infringement of a third party patent made or brought against the Buyer and based upon the use hereunder by the Buyer of the Technology.

The Buyer shall render the Seller all reasonable assistance required by the Seller in any defence of such suit or action. The Seller has the primary right to control the defence of any such suit or action by counsel of its own choice, and the Buyer shall have the right (at the Buyer's own expense) to be represented in any such suit or action in respect of which the Buyer is a defendant by counsel of its own choice, subject always to the Seller's right of control.

The Buyer shall keep the Seller constantly informed of the progress of said claim and suit, and Buyer shall not make any settlement thereof without prior written consent of the Seller. The Seller shall make available to the Buyer free of charge all information, data and evidence in its possession relating to the defence of such claim and suit.

15. Entire agreement

These General Terms and Conditions together with the global price list for Products and the Order Confirmation contain the entire agreement between parties with respect to the subject matter hereof and parties agree that this agreement supersedes and prevails over any prior agreement or understanding between them.

16. Severance

If any provision of the Contract is found to be invalid and/or unenforceable, all other provisions of the Contract which are self-sustaining and capable of separate enforcement with regard to the invalid provision, will continue to be valid and enforceable in accordance with their terms.

17. Governing law and jurisdiction

The Contract shall be governed by, and construed in accordance with Belgian law, excluding the Vienna Convention (VISG) on contracts for the international sale of goods. All disputes arising out of or in connection with this Contract shall be finally settled by the courts at the judicial district of at Liège, Belgium. The Seller has the right to sue before courts having jurisdiction over the Buyer's head and/or registered office.