

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 rehabilitation and repair of pressure pipelines, conduits, sewers and other passageways, used in the construction, repair, replacement, lining and re-lining, renovation, and rehabilitation of conduits (the "Systems"), such Systems consisting of flexible textile liners and specific resins.

The Seller owns certain patents, trademarks, and other intellectual property rights and know how relating to the Systems, their application and the Products (the "Technology").

These terms and conditions (the "General Terms and Conditions") shall apply exclusively to any sale and delivery of liner and/or resin and third party products (the "Products") by the Seller to the customer (the "Buyer") unless expressly agreed otherwise in writing by the Seller and the Buyer. **Without the Buyer's acceptance of these Terms and Conditions, without which the Seller would never have contracted with the Buyer, the Seller shall have no obligations to the Buyer.**

2. Offers and conclusion of contract

2.1 No contract shall be formed between the Seller and the Buyer until the Seller has signed the order confirmation (the "Order Confirmation"). The terms of the contract shall be exclusively (in descending order of precedence) the Order Confirmation, these General Terms and Conditions to the exclusion of any (general) conditions or terms of the Buyer or any third parties, and the global price list for rehabilitation materials (the "Contract").

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

2.3 Any sketches, drawings or plans supplied 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 grants to the Buyer a non-exclusive right to use and sell Products utilising the Technology limited to the Products purchased and paid for and their installation.

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

3.3 The Buyer shall hold the Seller harmless for any damage that the Seller may suffer due to the Buyer breach failing to comply with the obligations referred to in 3.2.

3.4 The Buyer has to ensure that he has sufficient knowledge to use and to apply the Technology. To this end, the Buyer shall undertake a training programme or to follow the Seller's manual.

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

4. Prices

4.1 Product prices are detailed in the global price list for rehabilitation materials. These product prices are net prices, excluding VAT, duties, taxes, customs clearance, insurance, packaging and transport costs.

4.2 The Seller may amend the product 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. Unless otherwise stated in the Order Confirmation, the standard terms of payment shall be 30 days from the date of invoice. The Buyer accepts that the Seller may send the invoices by email.

5.2 Invoices are payable in full, whether or not the Buyer has collected the invoiced Products for any reason whatsoever.

5.3 Any claim in respect of an invoice must be sent to the Seller by registered mail or by email at sales@norditube.com within eight (8) days of the date on which the invoice was sent. Any claim sent in after this period will not be considered.

5.4 If the Buyer defaults in the due and punctual payment of any amount due to the Seller and such default continues for a period of 30 days, then and without limiting any other remedy the Seller may withhold services or materials until such default is remedied.

5.5 In the event that the Buyer fails to pay the invoiced amounts on the due date, the amount due shall, without further consideration or formal notice, be subject to interest and arrears at the rate provide for in the Belgian Act of

02.08.2002 on combating late payment in commercial transactions and indemnity at a flat rate of 10% of the total amount of the invoice.

5.6 The Buyer may not retain payments against any possible claim he may have against the Seller.

6. **Restocking Fee:** Order Confirmations are binding. In the event that the Buyer cancels any order after receiving the Order Confirmation and before the production of the Products has commenced, the Seller is entitled to an amount of 50 % of the price quoted in the Order Confirmation, subject to the Seller's right to claim higher damages if it appears that the actual loss/damage resulting from such cancellation exceeds the 50% of the Order Confirmation. If the production of the Products has commenced, 100% of the invoiced price shall be payable.

7. Delivery and delivery time

7.1 Production and delivery times are approximate. The Seller will estimate the expected delivery time at the time of Order Confirmation.

7.2 If there is a delay in the estimated delivery time, the Buyer will be notified as soon as the delay is known. Partial deliveries by the Seller are permitted.

In such event, the Buyer shall not be entitled to claim any damages or to refuse delivery or cancel the Contract on the grounds of the Seller's wrongdoing or grievances.

7.3 The Buyer will be notified by telephone or email at least 24 hours in advance of the exact date on which the goods will be made available to him at the Sellers' warehouse mentioned in the delivery note which is the place of delivery for the Products.

7.4 A storage fee of 50 € per day per pallet of crates will be charges for the storage of finished Products five (5) days after the original delivery date.

7.5 If the Products sold are not collected within 30 days of the date stipulated in art. 7.3, the Seller reserves the right, in addition to the possibility of enforcing the Contract, to cancel the Contract without summoning the Buyer and to claim damages amounting to 100% of the agreed sale price, plus the storage, packaging and disposal/destruction costs of the Products, by way of total compensation.

7.6 The Seller shall not be liable for any delay caused by the occurrence of any event or circumstances beyond the reasonable control of the Seller or any foreseeable event, the consequences of which cannot reasonably be avoided, occurring after the date of the Order Confirmation (the "Force Majeure Event"), including but not limited to a pandemic, earthquake, fire, flood, strikes, lockouts or other industrial or labour disturbances, shortage of raw materials, war, hostilities, or the threat or apprehension thereof, or any interruption in 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 any such period of delay affecting the Seller or the Seller's suppliers. If the Force Majeure Event continues for a period in excess of three (3) months, either the Buyer or the Seller shall each be entitled to cancel any unperformed part of the Contract by giving reasonable notice in writing.

7.7 Unless otherwise agreed in the Order Confirmation, the obligations and liabilities of the Buyer and the Seller in respect of delivery, transport, insurance, and customs clearance shall be EXWorks (Incoterms applicable at the date of the execution of the Contract) from the Seller's manufacturing plant in Liège, Belgium.

8. Packing

8.1 Unless otherwise agreed in writing, the Product shall be packed in accordance with the commercial practice normal shipping conditions.

8.2 The Buyer shall notify the Seller in writing if special packing is required; the price of packaging will be adapted accordingly. The Seller may refuse any such request if it would impose an unreasonable amount of work on the Seller. If the Seller agrees to the Buyer's request for special packaging, the time for delivery of the Products shall be extended by a reasonable period.

8.3 All packaging costs will be charges separately and are non-refundable.

8.4 In the case of Tubetex – in addition to the other terms set forth in this art. 8, the Buyer shall purchase spools for shipment from the Seller at the Seller's expense or otherwise acquire spools which the Seller considers to meet the Seller's requirements for the shipment. The Buyer's order for Tubetex shall be deemed to be an order for sufficient spools to ship the Tubetex after taking into account any spools of the Buyer held by the Seller. The Seller shall invoice the Buyer for the spools in the same manner and at the time as it invoices the Buyer for the Tubetex. The Seller will use spools returned by the Buyer DDP (Incoterms) Liège (Belgium) as far as it is reasonable to do so. If refurbishment of the Buyer's spools is necessary, the Buyer shall reimburse the Seller all reasonable costs of refurbishment.

9. Acceptance

The Buyer undertakes to inspect the Products for conformity, damage, quantity and/or visible defects immediately on delivery and to notify the Seller in writing without delay (but not later than 48 hours) of any damage or apparent defect, conformity and/or quantity in the Product prior to installation of the Product. Complaints received after this deadline will not be accepted and will be deemed to have been rejected. In the event of a complaint, the Buyer must keep the Products unchanged at its expense and at the Buyer's disposal until the Seller has been able to inspect them in full.

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

10. Warranties

10.1 The Seller warrants that the Products:

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

10.2 Any treatment, manipulation, use or handling of the Products by the Buyer or any third party as well as any form of transport or assembly damage will invalidate the warranty.

10.3 Any warranty (i.e. latent defects or latent non-conformity) given by the Seller is limited to 1 (one) year following notification to collect the Products.

10.4 Normal wear and tear shall not give rise to any claim for compensation.

10.5 The Buyer's sole and exclusive remedy for any warranty claim shall be limited, at the Seller's option, to the replacement of the Products or the amount invoiced for the Products, even if the Buyer has complied with the Seller's instructions, advice, guidelines etc.. In the event of a claim, the Buyer must follow the Seller's claim procedure.

10.6 The warranties referred to 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 in relation to the Technology or the Products or services resulting therefrom.

11. Liability

11.1 The Seller shall not be held liable in the event of Force Majeure Event.

11.2 Except in the case of wilful act, serious misconduct (by the Seller or its employees) or failure to perform or delay in performing any of its essential obligations under the Contract, the Seller shall not be liable to the Buyer or any third party, without limitation, for any incidental, personal, consequential, punitive, exemplary, special, remote, or speculative damages, or property damages to property or loss of income or profits suffered by the Buyer or any third party, whether or not the Seller is aware or should have been aware of the possibility of such damages.

11.3 The Seller shall not be held liable for any claim by any third party against which the Buyer shall at all times hold the Seller harmless and shall indemnify the Seller.

11.4 If, for any reason whatsoever, the Seller is liable, its liability shall be limited to the amount invoiced to the Buyer for the Products.

12. Retention of title

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

12.2 The Buyer acknowledges that it shall only hold the Products solely as bailee/trustee until payment of all monies due under the Contract and until such time the Buyer:

- shall not encumber or otherwise charge the Product;
- undertakes to do all things necessary to give legal effect to the Seller's right of retention;
- 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 shall identify such proceeds as such in the Buyer's books and shall account and notify to the Seller for such proceeds of sale and maintain an action for their recovery.

12.3 The Buyer irrevocably authorises the Seller at any time to enter upon any premises owned, occupied or used for storage of the Products by the Buyer and to recover any Product for which the Seller has not been paid in full.

13. Confidentiality

13.1 All information (whether confidential or not) supplied by the Seller or the Buyer shall remain the sole property of the Seller or the Buyer and shall be treated as confidential by the Buyer or the Seller, and no right in such information shall exist under or after the Contract other than the right to use such confidential information as agreed between the Parties.

13.2 Upon the request of the Seller/Buyer or upon termination of the Contract, the Buyer/Seller shall promptly return to the Seller/Buyer all documents containing such confidential information, except for such copies as the Buyer/Seller is required by law to retain.

13.3 The Buyer/Seller shall hold harmless respectively indemnify the Seller/Buyer for any damage the Buyer/Seller may suffer as result of a breach of the confidentiality clause by the Buyer/Seller or its employees.

14. Intellectual and industrial property

14.1 In so far as the Seller/Buyer may hold any intellectual property rights, know how, any sketches, plans, drawings, recipes, formulae or similar documents supplied to the Buyer/Seller, such documents shall remain the Seller's/Buyer's intellectual property and shall not be copied or otherwise reproduced or in any way disclosed to any the prior written consent of the Seller/Buyer, provided that the Buyer/Seller may copy any documents supplied hereunder for the Buyer's/Seller's internal use.

14.2 The Buyer shall take all reasonable steps to prevent the disclosure or copying of the confidential specifications of the Technology or any part thereof to any other person unless such disclosure or copying has been previously authorised in writing by the Seller.

14.3 The Buyer shall not do or omit to do anything which may be prejudice, invalidate or render void the Seller's rights in respect of the Technology.

14.4 The Buyer shall not directly or indirectly contest or assist in contesting the validity of the Technology or the Seller's title to 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 of which it has 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 to the Technology of which it has knowledge and which may be advantageously incorporated into the Technology.

14.7 All patentable rights, discoveries, inventions, secret processes, designs, recipes, formulae, or process improvements 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 right, discovery, invention, secret process, design, or process improvement made or discovered by the Buyer which is not primarily an improvement or adaptation of the Technology shall be the sole absolute property of the Buyer.

14.8 The Seller may pursue 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 as a result of any such infringement, the proceeds shall be applied in the following order:

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

14.9 To the best of the Seller's knowledge, the Technology or Product does not infringe the rights of any third party. The Buyer shall promptly notify the Seller in writing of any notice or claim of any infringement and of the commencement against it of any suit or action against the Buyer for infringement of any third party patent based on the Buyer's use of the Technology hereunder.

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

The Buyer shall keep the Seller fully informed of the progress of any such claim or action and the Buyer shall not settle any such claim or action without the 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 such claim or suit.

15. Entire agreement

These General Terms and Conditions together with the global price list for Products and the Order Confirmation constitute the entire agreement between the Parties relating to the subject matter hereof and the Parties agree that this agreement supersedes, prevails and replaces 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 independent of and severable from the invalid provision shall remain valid and enforceable according to their terms.

17. Governing law and jurisdiction

The Contract shall be governed by, and construed in accordance with Belgian law, to the exclusion of the Vienna Convention on contracts for the international sale of goods (CISG). All disputes arising out of or in connection with this Contract shall be subject to the exclusive and final jurisdiction of the courts of the judicial district of Liège, Belgium. The Seller shall have the right to bring an action before the courts having jurisdiction over the Buyer's registered office and/or place of business.