

# General Sales and Delivery Terms and Conditions 3M Nederland BV

Version 01-01-2015

## 1. General

- 1.1. These General Sales and Delivery Terms and Conditions apply to all offers and quotations of 3M Nederland B.V. (hereinafter referred to as "3M"), to all agreements concluded with 3M, as well as to all renewals thereof or follow-up agreements between the parties. By placing an order, the customer accepts the applicability of these terms and conditions. The applicability of general terms and conditions used by the customer is expressly rejected by 3M.
- 1.2. In these terms and conditions a "customer" is any (legal) person who has concluded or wishes to conclude an agreement with 3M.
- 1.3. These terms and conditions apply both to goods delivered by 3M, as well as to its services. Where applicable, the term "goods" in the present terms and conditions also refers to "services".

## 2. Offers

- 2.1. All offers of 3M are entirely free of any obligation and are valid only for a period of 30 days, unless explicitly stated otherwise in the offer. An offer may at any time be revoked or amended by 3M.
- 2.2. Price lists, brochures and other information, such as delivery times, provided to the customer are as accurate as possible, but serve only as an indication and are never binding. The customer cannot derive any rights from this, unless explicitly stated otherwise in writing.
- 2.3. Each offer is based on the performance of the agreement by 3M under normal conditions and at normal working hours.
- 2.4. Verbal promises of 3M and its subordinates are never binding for 3M, unless confirmed in writing by 3M.

## 3. Agreements

- 3.1. An agreement with 3M is only realised when 3M has confirmed in writing within 8 days of receipt any order from the customer, or when 3M has started with the execution of the order.
- 3.2. Messages sent by electronic means are considered to have reached 3M only when 3M has demonstrably taken note of the contents. Orders placed by electronic means will bind the customer without requiring a confirmation from 3M.
- 3.3. Any additions or amendments to the agreement are only binding for 3M when confirmed in writing by 3M.
- 3.4. 3M is entitled to increase or decrease the agreed quantities with up to 10% due to standard packaging and/or minimum quantities, without this resulting into any liability for damages towards the customer in any way. The customer is obliged to take delivery of the quantity actually delivered by 3M and to pay for it.

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- 3.5. 3M has the right to refuse an order, or to immediately terminate agreements with the customer, if accepting, processing and/or executing the order and/or agreement might involve a violation of applicable national and international laws, treaties and/or regulations. The customer expressly waives the right to submit a claim with 3M, which is in any way connected to such a refusal or termination by 3M.

## 4. Prices

- 4.1. Unless otherwise agreed in writing by 3M, specified prices are exclusive of VAT, other applicable governmental charges and packaging. Prices shown are only indicative and can be amended by 3M as long as no agreement has been concluded.
- 4.2. If, after the date of conclusion of the agreement, one or more of the cost factors increase - even if this happens as a result of foreseeable circumstances - 3M is entitled to increase the agreed price accordingly.
- 4.3. Any assembly or installation work is always for the account of the customer, unless otherwise expressly agreed in writing with the customer.
- 4.4. The agreement includes the authority of 3M to separately charge the customer with any additional work carried out by 3M. Additional work is considered anything supplied or provided by 3M in consultation with the customer, over and above the quantities agreed to in the agreement or in the confirmation.

## 5. Delivery time, delivery and risk

- 5.1. The delivery time commences as from: i) the conclusion of the agreement, ii) the moment the customer has provided the documents, information, licences, etc. required for the performance of the agreement to 3M and iii) 3M has received the amount which according to the agreement is payable by the customer as an advance before commencing with the performance of such agreement.
- 5.2. Unless expressly otherwise agreed, stated delivery times can never be regarded as a deadline. Except in the case of intent or gross negligence on the part of 3M, exceeding the delivery time does not entitle the customer to (full or partial) termination of the agreement.
- 5.3. 3M is entitled to deliver in parts, without the customer being entitled to fully or partially suspend his payment obligations toward 3M.
- 5.4. Deliveries of orders are carried out CIP, Incoterms 2010.
- 5.5. Immediately upon delivery of the goods, as referred to in Article 5.4, the customer bears the risk for all (direct or indirect) damages which may arise to the goods, except in so far as such losses or damages are due to intent or gross negligence on the part of 3M.
- 5.6. The customer has an obligation to take delivery. When goods, following the expiry of the delivery time, have not been taken delivery of by the customer, these are stored at his account and risk. After four weeks 3M is authorised to sell these goods. Any lesser return and costs are for the account of the customer, without prejudice to the other rights of 3M.

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## 6. Transport

- 6.1. The manner of transport, dispatch, packaging etc. is determined by 3M. Any specific wishes of the customer regarding transport, dispatch, packaging, etc. are only carried out if the customer has declared to bear the additional costs thereof.

## 7. Force majeure

- 7.1. In this document "Force majeure" will mean any circumstances outside the control of 3M as a result of which fulfilment of the agreement by 3M without shortcoming is or will be not (fully) possible, regardless whether the circumstances at the time of the conclusion of the agreement could already have been foreseen. Such circumstances include, but are not limited to: war, the danger of war, civil war, riots, strikes, work lockout, transport difficulties, fire and/or any other serious faults in the operations of 3M or its suppliers. 3M is entitled to invoke force majeure if the circumstance, resulting from the force majeure, occurs after the performance should have been carried out by 3M.
- 7.2. In the event of force majeure, 3M is never liable for (direct or indirect) damages suffered by the customer, all this in the broadest sense of the word.
- 7.3. In the case of temporary force majeure, the obligations of 3M, in so far as they are affected by the force majeure, will be suspended. In the event of continuous force majeure (a force majeure situation of longer than 60 calendar days) each of the parties may terminate the agreement, in so far as it is affected by the force majeure, without being liable to pay any compensation.

## 8. Liability

- 8.1. The obligations of 3M as a result of an attributable shortcoming, or on the basis of other legal grounds, pursuant to this Agreement, will be limited, at the discretion of 3M, to a (free of charge) repair of the defect, replacement of the faulty goods and/or the re-provision of the services supplied, or to the repayment of the amounts received from the customer in connection with the lack of performance, in which case the agreement shall be considered dissolved in so far as it relates to the lack of performance.
- 8.2. Liability of 3M is in any case limited to the amount of the payment made by the liability insurer of 3M in relation to the lack of performance.
- 8.3. In no event will 3M be liable for any resulting damage incurred by the customer, including damage due to delays, loss of profit and/or loss of goodwill, except insofar as the liability insurer of 3M will pay compensation for any such damage.
- 8.4. 3M will not be able to invoke the limitations of liability included in this article, if and insofar as the damage incurred by the customer is the result of intent or gross negligence on the part of 3M.
- 8.5. Claims by the customer towards 3M, which in any way relate to the agreement, all this in the broadest sense of the word, including, but not limited to, claims arising from breach of contract or tort, expire 1 year after the occurrence of the facts forming the basis of the claims made.

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- 8.6. The customer indemnifies or compensates 3M against all claims of third parties arising out of or relating to the fulfilment of the agreement by 3M.

## 9. Complaints

- 9.1. The customer must inspect the delivered goods immediately upon receipt for any visible defects or carry out this inspection upon the notification that the goods are at the disposal of the customer. Any visible defects must be noted immediately on the invoice and/or transport documents and must be reported to 3M in writing within five days, including the reference of the delivery note, failing which complaints with regard to this may no longer be dealt with by 3M.
- 9.2. Complaints relating to non-visible defects to the delivered goods must be reported in writing to 3M within five days as from detection thereof by the customer, failing which these complaints may no longer be dealt with by 3M. To complaints regarding non-visible defects a final complaint period of 3 months as from delivery applies, after which 3M is not obliged to deal with these complaints.
- 9.3. After expiry of the periods referred to in this article, the customer will be deemed to have approved the delivered goods, the invoice concerned respectively, and all rights of the customer regarding the matter will have expired.
- 9.4. Pending an investigation into the soundness of the delivered goods, the customer must store the goods or, if 3M requests this, return the goods to 3M. Returning the goods is done at the risk of the customer. The cost of the investigation, including any transport costs, will be for the account of the customer, unless a shortcoming attributable to 3M is determined.
- 9.5. 3M is not liable for defects that are a result of normal wear and tear, misuse and/or abuse of the delivered goods, or use that does not correspond with due care.

## 10. (Extended) retention of title

- 10.1. 3M retains the title of ownership to all goods delivered and still to be delivered to the customer until the (purchase) price - including all related amounts, such as VAT, interest and costs - for these goods has been paid. If 3M provides services for the customer in the framework of this agreement, the retention of title also applies until the customer has fully paid any invoices concerned. In addition, the retention of title also applies to claims which 3M may have toward the customer due to shortcomings of the customer with regard to one or more of his obligations towards 3M under the agreement.
- 10.2. 3M also retains the title to any goods delivered and still to be delivered to the customer until the customer has also fully met all obligations resulting from previous and future agreements with 3M.
- 10.3. If the customer fails to fulfil his payment obligations, or 3M has good reason to fear that he will fail to meet those obligations, 3M is entitled to take back any goods supplied subject to retention of title without judicial intervention. The customer is obliged to provide 3M with unhindered access and to give his full cooperation to enable the exercise of this right and to ensure that goods which are subject to the retention of title of 3M are properly insured.

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- 10.4. All goods present at the customer, supplied by 3M, are deemed to have been delivered on unpaid invoices. When taken back the customer will be credited for the market value of the goods taken back. Goods are taken back without prejudice to the other rights of 3M in connection with a breach of contract on the part of the customer.

## 11. Payment

- 11.1. Payment of the (purchase) price to 3M must be made on delivery or by transfer to a bank account designated by 3M, within 15 days as from the invoice date, without any deduction or set-off. In the event the customer has granted 3M an authorisation for direct debit, a payment period of 30 days applies. Payment for additional work must be done as soon as this has been invoiced to the customer.
- 11.2. 3M is at all times entitled to demand from the customer a guarantee for the performance of his obligations, before any (further) work is carried out. Any right of suspension or right of set-off from the customer is hereby expressly excluded.

## 12. Interest and costs

- 12.1. If payment is not received within the time limit set out in Article 11 (Payment), the customer is automatically in default and will owe statutory commercial interest as from the due date on the amount still outstanding.
- 12.2. All extrajudicial and judicial collection costs are for the account of the customer, set to at least 15% of the amount payable by the customer.

## 13. Intellectual property

- 13.1. 3M expressly reserves all intellectual property rights, including in respect of copyrights, wordmarks and logos, trade names, etc., all this in the broadest sense of the word. The intellectual property rights are and will remain the exclusive property of 3M and will never transfer to the customer. The customer undertakes to refrain from any action that might prejudice or cause an infringement of the intellectual property rights of 3M. The customer will not use the name of 3M, its logo or any other identification marks for advertising or publicity purposes without prior written permission from 3M.

## 14. Various

- 14.1. If any provision in these Terms and Conditions is considered null and void or non-binding, this will not affect the validity or binding nature of the other provisions in these Terms and Conditions. In that case, the parties will consult and replace the null and void or non-binding provision by a provision which is valid or binding, and which fits in the spirit of what the parties wish to set out.
- 14.2. 3M is entitled to transfer its rights and obligations arising from the agreement to a third party. The customer gives - if necessary - in advance its approval for this transfer.

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- 14.3. 3M will collect, store and/or use data, including personal data, of the customer with a view to or for the benefit of marketing and sales by 3M of goods and services. The customer hereby gives prior consent to the collection, storage and/or use of this data by 3M for those purposes. The customer also grants permission in advance to 3M for the use of the abovementioned data for the provision of product and promotional information to the customer, unless the customer informs 3M in writing that he no longer wishes to receive this information. When processing personal data, 3M will comply with the applicable privacy laws and regulations.

### 15. Compliance with legislation; rules on corruption; export control; licenses

- 15.1. By entering into an agreement with 3M, the customer confirms that he is aware of and will comply with all applicable laws and regulations, directives and rules with regard to the prevention of bribery and corruption (including, but not limited to, the relevant Dutch legislation, the U.S. Foreign Corrupt Practices Act and any legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials). The customer also guarantees that he will not carry out any actions, make any payments, gifts or other commitments to his customers, to government officials or to agents, officers, directors and employees of 3M or any other party, in a manner which is or may be contrary to this. Nothing in this Agreement will render 3M liable to compensate the customer for such a payment provided or promised.
- 15.2. The customer will comply with all laws and regulations applicable to the storage, use, handling, installation, registration and labelling of the goods as from the time of their delivery and the removal of all surplus or waste (including packaging) arising out of the use of the goods. The customer will arrange at his own expense any permits and licenses required for the services of 3M, or required for the operation of the equipment, or for the use or storage of the goods.
- 15.3. The customer acknowledges that the goods to be delivered may be subject to domestic and/or foreign legislation, rules, restrictions and regulations on use, import and export control, and embargo (including the US Export Administration Regulations), and may not be sold, leased or otherwise transferred for other than the agreed purposes without export or re-export licenses from the competent authorities. The customer declares to comply with such rules and regulations, including any applicable legislation on trade control and regulations applicable to the goods.
- 15.4. The delivered goods may not in any way, either directly or indirectly, be used in connection with the design, production, storage, or use of chemical, biological or nuclear weapons or transport systems. The delivered goods may not be used for military or nuclear applications without prior written permission from 3M.
- 15.5. The customer undertakes to comply with EU Directives 2002/95/EC (Restriction of the use of certain hazardous substances in electrical and electronic equipment) and 2002/96/EC of 27 January 2003 (Waste Electrical and Electronic Equipment (WEEE)) in general, as well as the implementation thereof in all countries to which the goods are imported, exported or in any other way distributed by the customer, which obligation also includes the registration as a 'manufacturer' in accordance with the relevant WEEE legislation.

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- 15.6. The customer undertakes to confirm in writing, at the request of 3M, his compliance with the provisions of this article.
- 15.7. Any breach by the customer of any of the obligations laid down in this Article 15, is a material breach of the agreement and will give 3M the right to automatically terminate the agreement, with immediate effect, without prejudice to any other rights or remedies of 3M under the agreement or the applicable legislation.
- 15.8. The customer hereby undertakes to fully indemnify and compensate 3M for any and all liability, damages, costs or expenses and for any loss that 3M may suffer as a result of the (alleged) violation by the customer of the provisions of this article and the resulting termination of the agreement.

### **16. Applicable Law and Settlement of Disputes**

- 16.1. All offers, agreements and the implementation thereof are governed by Dutch law, with the express exclusion of the Vienna Sales Convention.
- 16.2. In the event of a dispute between the parties, which is the case if one of the parties considers it a dispute, the parties will first try to resolve this dispute through mutual consultation. If this is not possible, the parties are entitled to submit the dispute to the court in The Hague, The Netherlands, which will have exclusive jurisdiction to hear disputes between the parties, without prejudice to the right of 3M to submit a dispute to another court.