

# TERMS OF SALES

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF CAZANDER BROS. & SIS. B.V. LODGED WITH THE REGISTRY OF THE DISTRICT COURT ROTTERDAM ON 6 OCTOBER 2017, NUMBER 57/2017**

## 1. General provisions

**1.1** In these general conditions of sale and delivery - hereinafter to be referred to as: "General Conditions" - of Cazander Bros. & Sis. B.V. - hereinafter to be referred to as: "Cazander Bros. & Sis." - the following terms have the following meanings:

- "*clients*": every individual or legal person who purchases products of Cazander Bros. & Sis. or to whom Cazander Bros. & Sis. makes an offer;

- "*product*": each item subject to an offer or an agreement and each provision of services by Cazander Bros. & Sis., such as contracting for work, transfer of title, giving advice, inspection, overhaul, etcetera.

**1.2** These general conditions are part of all offers made by Cazander Bros. & Sis., all orders to Cazander Bros. & Sis. and all agreements concluded with Cazander Bros. & Sis. regarding the delivery of products or provision of services by Cazander Bros. & Sis. Unless parties have explicitly and in writing stipulated otherwise, all terms and conditions of these general conditions are fully and unconditionally effective. Every reference by a client to his own general conditions, irrespective of the name given to those conditions and regardless of the phase of the conclusion of an agreement with Cazander Bros. & Sis. in which the reference is made, is explicitly rejected. In the event of contrariety of these general conditions with written conditions of a client, whatever called, the general conditions of Cazander Bros. & Sis. are given priority, unless if and when the applicability of clients written conditions has been explicitly and in writing accepted by Cazander Bros. & Sis.

**1.3** Client is believed to accept the applicability of these general conditions with respect to subsequent offers by Cazander Bros. & Sis., orders to Cazander Bros. & Sis. and agreements with Cazander Bros. & Sis.

**1.4** Cazander Bros. & Sis. has the right to amend these general conditions. The amended conditions will be sent to the client timely. An amendment is in effect from the announced date of effectiveness or, in the absence of such a date, from the moment that the amendment has been announced or has become knowable to the client.

## 2. Offers

**2.1** Every offer made by Cazander Bros. & Sis. is made free of obligation, unless Cazander Bros. & Sis. has explicitly and in writing stated otherwise.

**2.2** Each offer is based on and budgeted under the presumption that the agreement which is to be made in accordance with the offer can be completed by Cazander Bros. & Sis. under normal circumstances during normal working hours.

## 3. Conclusion and amendment of agreements

**3.1** An agreement is only concluded if and when Cazander Bros. & Sis. accepts an order from the client in writing or when Cazander Bros. & Sis. commences the execution of such an order.

**3.2** The client is obliged to notify Cazander Bros. & Sis. of any significant changes regarding the execution of a given order timely and in writing. The order with regard to which such a change is given, is considered to be a new order which only leads to an agreement with Cazander Bros. & Sis. if Cazander Bros. & Sis. accepts that order in writing. In case Cazander Bros. & Sis. does not accept the new order, it is



entitled to dissolve the original order, in which case with regard to the obligations already performed obligations to undo arise.

In the event that the obligation that has already been (partially) performed can reasonably not be undone, an obligation to remunerate the value - which is known from the invoiced value - of the obligation performed arises. Cazander Bros. & Sis. is authorised to charge any additional costs in relation to such changes in the execution to the client.

**3.3** Except for explicit written consent of Cazander Bros. & Sis. the client is not authorised to revoke a given order to delivery of a product. Cazander Bros. & Sis. is free to decline the consent for such a revocation. In the event that Cazander Bros. & Sis. consents to the revocation of a given order to delivery of a product, Cazander Bros. & Sis. is still entitled to the down payment made, if any.

**3.4** Subject to the other provisions stated in this section, all advises, calculations, statements and estimations regarding abilities, results and/or expected performances only bind Cazander Bros. & Sis., if and when such information is included in the written confirmation of the order of Cazander Bros. & Sis. or is part of the separately concluded written agreement between the client and Cazander Bros. & Sis.

## 4. Delivery

**4.1** The sale and delivery of products by Cazander Bros. & Sis. takes place under one of the following conditions, with the following meanings attached thereto:

- "*manufacturer's condition*": a new product, to be delivered in the condition in which the product has been delivered to Cazander Bros. & Sis. by the manufacturer of the product;
- "*as is, where is*": a used product in the condition in which and at the place where the product is, with all deficiencies at the clients risk;
- "*in working order*": the used product is complete and has been tested on proper operation in conformity with the manual, it is possible that certain parts need to be replaced;
- "*reconditioned where necessary*": the used product is complete and has been tested on proper operation in conformity with the manual, defective and insufficiently working parts have been replaced by (new or used) working parts.

**4.2** Article 7:17 paragraph 2, last sentence of the Dutch civil Code does not apply.

**4.3** In case a used product is sold, client is aware of the fact that Cazander Bros. & Sis. has not used the product itself.

**4.4** In case the sales information, offer or order confirmation of Cazander Bros. & Sis. states dimensions of the product, these dimensions are by approximation only.

**4.5** Cazander Bros. & Sis. can not vouch for the presence of a CE-marking, neither for the conformity of the product with applicable laws and regulations, such as the laws and regulations that follow from the Machinery Directive.

**4.6** Each delivery takes place ex warehouse of Cazander Bros. & Sis., unless parties have explicitly and in writing agreed otherwise.

**4.7** The client bears the risk and costs related to the transport of the products from the agreed place of delivery to the final destination of the products as appointed by the client, unless explicitly and in writing agreed otherwise,

## 5. Term of delivery

**5.1** The term of delivery does not commence until after Cazander Bros. & Sis. has received all documents, information, permits and suchlike necessary for the delivery.

**5.2** The term of delivery stated or agreed upon by Cazander Bros. & Sis. is without any obligation and only count as an approximation, unless parties have explicitly and in writing agreed otherwise. The sole expiration of the term of delivery does not put Cazander Bros. & Sis. into default.

**5.3** Cazander Bros. & Sis. makes every reasonably demandable effort to deliver within the stated or



agreed term of delivery. The exceeding of the term of delivery does not give the client the right to claim compensation, to reject the product, to breach or suspend any of his own obligations arising from the agreement concluded with Cazander Bros. & Sis., or to (partial) dissolution of that agreement, except in the case of malicious intention or gross negligence.

**5.4** Only the exceeding of a term of delivery which was explicitly and in writing agreed upon by Cazander Bros. & Sis. and which was expressly qualified as fatal gives the client the right to compensation. Said compensation can never exceed the agreed price for the delayed performance. The client has the right to dissolve the part of the agreement that has not been carried out, if the agreed performance is not carried out within a reasonable term set in writing by the client after the exceeding of the aforementioned term of delivery. If the client chooses to dissolve the agreement the claim to compensation expires.

**5.5** Each term of delivery is extended for the period that the performance of the obligations arising from the agreement is delayed because of force majeure, regardless whether the circumstances that constitute the force majeure occur before or after the time at which the obligations should have been performed. An extension of the term of delivery also takes place when and for the time that the client is later than agreed with or may be expected by Cazander Bros. & Sis. with any payment or in performing any other obligation, regardless whether the client is in default or not.

**5.6** The provisions of this section shall apply to the assembly time as well.

## 6. Price

**6.1** Prices stated by Cazander Bros. & Sis. are based on the exchange rates, tariffs and other cost price factors at the time of the offer. If, after the moment on which an agreement is concluded in accordance with the provisions of section 3 of these General Conditions, any of the cost price factors undergoes a change, Cazander Bros. & Sis. has the right to change her prices accordingly. These changes include (without limitation) the increase of freight tariffs, import duties, export duties and other impositions, the increase of energy prices, changes in labour costs and the change-over to other currencies including the Euro.

**6.2** The stated prices are exclusive taxes, levies and surcharges imposed by the government, suchlike VAT, environmental contributions, copper- or metal charges and costs of packaging, transport and sending, unless Cazander Bros. & Sis. has explicitly and in writing stated otherwise. Packing will not be taken back.

**6.3** In the event that Cazander Bros. & Sis. has agreed to assemble the product, the stated price is inclusive of the costs of assembly and delivery in running condition of the product at the place agreed upon and inclusive of all other costs, except those referred to in the previous paragraphs of this section and those referred to in section 7 of these General Conditions.

**6.4** In its agreements Cazander Bros. & Sis. uses indications as laid down in the ICC Incoterms 2010.

## 7. Assembly and installation

**7.1** The client is bound to correct and timely completion of all arrangements, provisions and conditions necessary for the erection of the product to be assembled or the proper operation of the product in assembled condition, except in the event that said completion is carried out by or on behalf of Cazander Bros. & Sis. on the basis of information or designs furnished by Cazander Bros. & Sis.

**7.2** Subject to the provisions of the preceding paragraph, the client makes sure at his own expense and risk that:

- (a)** the present employees of Cazander Bros. & Sis. or other persons called in by Cazander Bros. & Sis. can commence and proceed their activities during normal working hours and beyond normal working hours, the latter if and when the client has been timely notified of that;
- (b)** in the event of assembly and installation outside the Netherlands the persons referred to under (a) are lodged appropriately;
- (c)** the access roads to the designated place of assembly are suited for the necessary transport and the



designated place of assembly itself is suited for the assembly;

**(d)** there are stores for materials and tools which can be sufficiently locked;

**(e)** the necessary additional workmen, tools, materials, measuring equipment and testing equipment is available;

**(f)** all customary safety and other precautions and all measures as laid down by the government are taken and maintained;

**(g)** at the commencement of and during the assembly the products that were sent beforehand by or on behalf of Cazander Bros. & Sis. are available at the place of assembly;

**(h)** the product is insured.

**7.3** Any damages suffered or costs made as a result of non-compliance with the provisions stated in this section comes at the expense of the client.

## **8. The retention of title and the right of retention**

**8.1** As an additional security for payment of the amount due by the client, the transfer of title to the product delivered by Cazander Bros. & Sis. takes place only after clients settlement of all amounts due to Cazander Bros. & Sis. in relation to the agreement concerned, and if and as far as the law permits also in relation to other agreements, inclusive of possibly outstanding interests and costs.

**8.2** Without knowledge and explicit written consent of Cazander Bros. & Sis. the client does not have the right to alienate or to encumber the product delivered by Cazander Bros. & Sis. before the payment of the amount due by him to Cazander Bros. & Sis.. In the event of non-compliance with this provision the selling price will be immediately and fully claimable.

**8.3** The client has the obligation to notify a third party to whom he transfers the title to products delivered by Cazander Bros. & Sis. or to whom he gives such products in non-possessory pledge of the contents of this section of the General Conditions.

**8.4** Cazander Bros. & Sis. has the right to retain possession of all goods that in ownership belong to the client but are or will be, for whatever reason, in her possession, until the moment that all amounts due to Cazander Bros. & Sis. are settled by the client. Cazander Bros. & Sis. has this right of retention as well in the event that the client is granted a suspension of payments or goes into bankruptcy. This right of retention expires when the client furnishes sufficient security for the amounts due by him.

**8.5** With respect to the custody and the use of goods which are placed at the disposal of Cazander Bros. & Sis. by the client, Cazander Bros. & Sis. will apply the same care as to her own goods. Nevertheless does the risk of these goods remain with the client at all times.

## **9. Intellectual and Industrial property**

**9.1** The copyright and possible other rights of intellectual or industrial property that rest on sketches, drawings, photographs, models, etcetera, designed by Cazander Bros. & Sis. lie and remain at Cazander Bros. & Sis., unless parties have explicitly and in writing agreed otherwise.

**9.2** The client guarantees that Cazander Bros. & Sis.'s performance of any order given to Cazander Bros. & Sis. by the client does not violate any right of intellectual or industrial property of a third party.

## **10. Invoices and payment**

**10.1** Cazander Bros. & Sis. has the right to invoice each partial delivery, which includes the deliveries of parts of a compound order, separately. With respect to orders which demand a long processing time Cazander Bros. & Sis. has the right to invoice in instalments, but only after consultation with the client regarding the terms and the amounts.

**10.2** All payments are to be made in the currency appointed by Cazander Bros. & Sis.. The payments are to be done at the offices of Cazander Bros. & Sis. or to be credited to an account appointed by Cazander Bros. & Sis.



**10.3** Payments are to be done within the due date stated on the invoice, and in the absence of such a date within 30 days after the invoice date, unless parties have explicitly and in writing agreed upon another term.

**10.4** At all times Cazander Bros. & Sis. has the right to require advance payments or sufficient (preceding) security with respect to the amounts due to her. Furthermore she has the right to cease the performance of an order when the required security fails.

**10.5** The client who does not settle any amount due by him in compliance with the provisions of the preceding paragraphs is in default de jure. Immediately from the commencement of the default the client owes Cazander Bros. & Sis. an interest for overdue payment in the order of 1% of the invoiced amount for every month or part of a month with which the due date is exceeded. This goes notwithstanding any other right Cazander Bros. & Sis. acquires as a result of the non-payment by the client, suchlike the right to recover from the client all (extra-)judicial costs involved with the collection of the amounts due to Cazander Bros. & Sis.

In the event of default the extra-judicial collection charges, which amount to 15% of the amount due, come to the expense of the client.

**10.6** The client is never authorised to any deduction of or set-off with any claim he states to have against Cazander Bros. & Sis.. The fact that the client states to have a claim arising from the agreement with Cazander Bros. & Sis. does not discharge him of his obligations to pay at the agreed time and in the agreed manner and does not give him the right to suspend his payment obligations.

**10.7** Payments by the client shall always first serve to pay possibly due interest and costs and subsequently the collectable invoices that have been outstanding longest, even if the client should state that a payment relates to a later invoice.

## 11. Force majeure

**11.1** In these general conditions “force majeure” shall have the following meaning: each circumstance or occurrence independent of the will of Cazander Bros. & Sis. which makes the performance of obligations towards the client completely or partially, temporarily or not, impossible or reasonably not demandable, regardless whether the circumstance or occurrence was foreseen at the time of the conclusion of the agreement, suchlike government measures, fire, accidents, labour disturbances, defects or disturbances in (embedded) software and the (partial) non-performance, for whatever reason, by sub-contractors or manufacturers.

**11.2** The fact that Cazander Bros. & Sis. performs her obligations notwithstanding an existing force majeure situation does not prejudice Cazander Bros. & Sis.’s right to invoke her right to suspension or termination in other situations.

## 12. Dissolution

**12.1** Without prejudice to her right to compensation Cazander Bros. & Sis. has the right to suspend the performance of her obligations and has the right to extra-judicial (partial) dissolution of the agreement without preceding notice of default and furthermore has the right to take back her properties in the event of client’s breach of contract, placing under tutelage, placing under administration of capital, suspension of payment, bankruptcy, termination of business or demise and, if the client is a legal person, also in the event of liquidation of this legal person or substantial changes in the power structure within this legal person.

**12.2** The taking place of one of the occurrences mentioned in the preceding paragraph makes all claims of Cazander Bros. & Sis. toward the client immediately and fully claimable.

**12.3** If performance by Cazander Bros. & Sis. of one or more of her obligations arising from the agreement can reasonably not be demanded from her because of force majeure, Cazander Bros. & Sis. has the right to (partially) dissolve that agreement by registered letter without judicial intervention and has the right to suspend the performance (partially) without being held to payment of any compensation.





**12.4** The client only has the right to dissolve the agreement in the event mentioned in section 5 of these General Conditions and even then only after payment to Cazander Bros. & Sis. of all amounts due to Cazander Bros. & Sis., whether claimable or not.

### **13. Limited liability and guarantees**

**13.1** Unless a different period of guarantee has explicitly and in writing been agreed upon, products delivered under the condition "manufacturer's condition" are delivered with a one year period of guarantee.

**13.2** Every liability of Cazander Bros. & Sis. for the sale and delivery of used products ends with the delivery of the product, with the exception of the liability pursuant to an explicit written guarantee and the liability pursuant to mandatory law.

**13.3** The client is obligated to check whether the delivered product is in conformity with the applicable condition as mentioned in section 4.1 of the General Conditions within 30 days after the day of delivery. Reclamations made with respect to non-conformity must be made in writing to Cazander Bros. & Sis. within 31 days counting from the day of delivery under penalty of cancellation of the right to put in a claim. If Cazander Bros. & Sis. considers the reclamation valid it shall make every reasonably demandable effort to perform to the satisfaction of the client.

**13.4** In case Cazander Bros. & Sis. has given an explicit written guarantee, the client is obligated to complain about visible deficiencies within 10 days counting from the day of delivery under penalty of cancellation of the right to put in a claim. If Cazander Bros. & Sis. considers the reclamation valid it shall make every reasonably demandable effort to perform to the satisfaction of the client. Cazander Bros. & Sis. only answers for other deficiencies than the ones meant in the preceding sentence when the client demonstrates that the deficiency has its cause in either a faulty construction, an insufficient finishing or the use of materials of insufficient quality. If Cazander Bros. & Sis. considers a reclamation which was made within a reasonable term after the moment that the stated deficiency could have been discovered valid, Cazander Bros. & Sis. will make every reasonably demandable effort to perform to the satisfaction of the client.

**13.5** Any indications of capacities, throughout or other performance information is based upon information supplied to us and is conveyed in good faith. Cazander Bros. & Sis. takes no responsibility for the accuracy of this.

**13.6** If Cazander Bros. & Sis. delivers products that were (partially) manufactured by a third party Cazander Bros. & Sis. explicit written guarantee will in no event go beyond the guarantees given to Cazander Bros. & Sis. by its sub-contractors or its manufacturers.

**13.7** The client is not entitled to invoke any explicit written guarantee when Cazander Bros. & Sis. if the delivered products were worked on in accordance with the instructions of the client, if the client has used the delivered products for another purpose than it was meant to be used for or if the client has treated or applied the products in an otherwise negligent manner. Furthermore there is no guarantee with respect to normal wear and tear. If products that have already been used by a third party are involved, the normal wear and tear includes the wear and tear of the preceding usage.

**13.8** Cazander is not held to any explicit written guarantee if the client does not fully or timely perform any of his obligations arising from the agreement with Cazander.

### **14. Indemnification**

**14.1** Excluded is any liability toward the client regarding direct or indirect damages, suffered as a result of whatever cause, even damages suffered because of the own fault or the fault of personnel of Cazander Bros. & Sis. - with exemption of malicious intention or gross negligence of the managing directors of Cazander Bros. & Sis. - as well as any claim of the client going to annulment or dissolution of the agreement. The client indemnifies Cazander Bros. & Sis. against any liability of third parties resulting from actions or neglects by Cazander Bros. & Sis. or her personnel with respect to the performance of the



obligations arising from the agreement or faulty delivery.

**14.2** The provisions stated in the preceding paragraph are also applicable with regard to possible third parties - such as sub-contractors and/or manufacturers - who have been contracted by Cazander Bros. & Sis. for the performance of the obligations arising from the agreement.

**14.3** As far as the non-performance of contractual or statutory obligations results in Cazander Bros. & Sis.'s liability towards a third party, the client indemnifies Cazander Bros. & Sis. herewith against all consequences of that liability.

**14.4** The client is responsible for all damages, suchlike trading losses, costs and interests, that Cazander Bros. & Sis. or third parties through Cazander Bros. & Sis. suffer as a consequence of a shortcoming or wrongful act by the client.

## **15. Choice of law and choice of forum clause**

**15.1** On all offers made by Cazander Bros. & Sis. to a client and all agreements concluded between Cazander Bros. & Sis. and a client Netherlands law, with the explicit inclusion of chapter 6.5.3 Netherlands civil code, is applicable.

**15.2** The United Nations Convention on Contracts for the International Sale of Goods (the so-called Vienna Sales Convention) is not applicable.

**15.3** Any and all disputes arising out of an agreement concluded with Cazander Bros. & Sis. shall be exclusively heard by the District Court Rotterdam without prejudice to the powers of (one of the) parties to bring the dispute before the President of the competent District Court in order to acquire a provisional arrangement by way of summary proceedings.

## **16. Authentic version**

**16.1** These general conditions are drawn up in Dutch and English. In the event of differences between the versions, the [Dutch version](#) shall prevail.

