

**GENERAL TERMS AND CONDITIONS OF  
TECHNICAL DIVING EQUIPMENT POMMEC B.V.  
established in Bergen op Zoom**

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1. APPLICABILITY

- a. These general terms and conditions apply to all offers, agreements and all obligations ensuing therefrom of or with Technical Diving Equipment Pommecc B.V., hereinafter also referred to as Pommecc.
- b. Derogation from these general terms and conditions can only take place by means of a clause that is expressly in writing, which only the management of Pommecc is authorised to agree to. Such a clause will only be valid with regard to the agreement in the context of which it is made.
- c. The word "purchaser" hereinafter refers to the other party of Pommecc with regard to offers, agreements and the obligations ensuing therefrom.

2. OFFERS, ASSIGNMENTS

- a. All offers of Pommecc with the prices referred to therein are valid during thirty days, or for a longer or shorter period as stated therein and are made entirely without obligation at all times. They can be withdrawn by Pommecc within three days after receipt of the acceptance thereof.
- b. Pommecc will only be bound, even if it has made an offer, after it has accepted an assignment in writing, or, as the case may be, has actually proceeded with the execution thereof.

3. PRICES

- a. The stated or agreed prices are in Euros and apply for delivery ex works of Pommecc. Prices are excluding packaging and dispatch costs and excluding turnover tax, unless expressly stated otherwise.
- b. The prices are based on the factors applicable at the time of the statement thereof, or at the time of the coming into effect of the agreement, which factors include wages, social and tax liabilities, duties, insurance premiums, raw materials and prices of materials, import duties and freight costs and exchange rates of and vis-à-vis the Euro. If after the statement or the concluding of the agreement and prior to the delivery changes of these price-determining factors occur, to such an extent that this results in the increase of Pommecc's cost price, Pommecc will have the right to increase the agreed price accordingly and to invoice this price increase to the purchaser, even if this cost price increase was already foreseeable at the entering into of the agreement.

4. DELIVERY AND RISK

- a. The delivery periods stated by Pommecc are never to be regarded as final deadlines, unless expressly agreed otherwise. In the event of exceeding of the stated delivery periods, Pommecc will only be in default after notice of default in writing.
- b. Pommecc will deliver ex works and goods will apply as delivered:
  - if the goods are collected by or on behalf of the purchaser: by taking delivery of the goods;
  - if the goods are dispatched by intervention of a third party: by handing over the goods to this third party;
  - in the event of dispatch by Pommecc with its own transport: by means of the delivery to the premises or the business of the purchaser, unloaded from the means of transport.
- c. The goods will be at the risk of the purchaser from the time of the delivery and all direct and indirect damage, which might occur to and/or arise as a result of the goods for the

purchaser and/or third parties, will be at the expense of the purchaser. The time of delivery must also be taken to mean, within the meaning of this provision, the day of delivery stated in article 5 under b.

5. PURCHASE OBLIGATION

- a. The purchaser will be obliged to provide the necessary cooperation to the delivery of the performance by Pommec, expressly including the obligation to take receipt of the purchased goods.
- b. The receipt will be deemed to have been refused if the ordered goods are offered for delivery to the purchaser, but delivery appeared to be impossible. The day on which the receipt of the delivery is refused will apply as the day of delivery.
- c. In the event of refusal to take delivery, the purchaser will owe compensation to Pommec, equal to the purchase price of the goods the delivery of which was refused, plus the statutory commercial interest over this amount from the day of the delivery and the costs on the part of Pommec ensuing from the refusal to take delivery. These costs expressly include reasonable payment for the storage related to usual rates applicable at that location. This will not affect all other rights of Pommec concerning the failure on the part of the purchaser.
- d. Orders can only be cancelled with permission in writing from Pommec and Pommec will be entitled to set out conditions in this respect. In the event of cancellation, the purchaser will be obliged to compensation in full, including lost profits etc., which compensation will amount to at least 35% of the agreed price.

6. ADVICE, INSTRUCTIONS, CATALOGUES

- a. No rights can be derived toward Pommec from any advice, instructions or instructions for use provided by Pommec which are not recorded in writing.
- b. The catalogues, images, drawings, statements of dimensions, weights and capacity provided by Pommec will not be binding on Pommec. In addition, the aforesaid documents will remain its property.

7. COMPLAINTS

- a. The responsibility for the inspection of the quantity and the external condition of the delivery is vested in the purchaser. If the purchaser has not complained by telephone as soon as possible and in any event in writing within 48 hours after receipt of the delivery, the delivery will in that case apply as correct with regard to the quantity and the external condition.
- b. Other complaints must be submitted by the purchaser to Pommec in writing as soon as possible but no later than within eight days after the delivery of the goods.
- c. Minor or unimportant differences in the execution or dimensions cannot provide any ground for complaints.
- d. Complaints about invoices must be submitted in writing within eight days after the date of the sending of the invoices.
- e. Return consignments must take place carriage paid and will be at the expense and risk of the purchaser unless expressly agreed otherwise.

8. PAYMENTS

- a. In the event of partial delivery of goods, each part can be invoiced separately by Pommec.
- b. Payment must be made upon delivery of the goods, or within thirty days after the invoice date, at the office of Pommec, or, as the case may be, by means of transfer to a bank or giro account stated by Pommec for this purpose.
- c. If the purchaser pays within fourteen days after the invoice date, a prompt payment discount of 2% of the invoice amount excluding VAT will be granted to the purchaser.
- d. The purchaser is not permitted to rely on setoff unless Pommec has acknowledged the counterclaim wholly and unconditionally.

- e. If the purchaser does not pay within the payment term, Pommec will have the right from the due date to charge default interest of 1.5% per month, without prejudice to the further rights accruing to it in this respect.
- f. All extrajudicial collection costs that are incurred by Pommec in order to ensure fulfilment by the purchaser of the obligations will be charged to the purchaser. These costs will amount to at least 15% of the amount to be collected, all this without prejudice to the right of Pommec to claim higher actual extrajudicial collection costs.
- g. The payments made by the purchaser will always serve firstly as payment of all interest and costs owed and thereupon as payment of due and payable invoices which are outstanding the longest, even if the purchaser states that the payment relates to a later invoice.
- h. Pommec will be entitled at all times, without statement of reasons, to require advance payment from the purchaser, or, as the case may be, to require cash on delivery, or to require sufficient security for the correct and timely fulfilment of the payment obligations of the purchaser.
- i. If Pommec concludes an agreement with two or more purchasers, natural persons or legal entities, each of these parties will be jointly and severally liable for the complete fulfilment of the obligations ensuing for them from the agreement.

9. TERMINATION

If the purchaser does not, does not properly, or does not in a timely manner, fulfil any obligation ensuing for the purchaser from an agreement concluded with Pommec, as well as in the event of the bankruptcy, moratorium or placement under guardianship of the purchaser, or the cessation, or liquidation of the business of the purchaser, or if the purchaser transfers his/her business to third parties, initiates a settlement with creditors, or the bank loan of the purchaser is cancelled, the execution of the payment orders of the purchaser are suspended by the bank, or attachment is levied on the assets of the purchaser, the purchaser will be deemed to be in default by operation of law and Pommec will be entitled at its discretion, without any obligation of compensation and without prejudice to the further rights accruing to Pommec, without the requirement of notice of default, or judicial intervention, to terminate the agreement wholly or in part, or to declare the agreement terminated or to suspend the performance of the agreement. In these events all claims of Pommec against the purchaser will be immediately due and payable and Pommec will be entitled to claim immediate payment of all the claims accruing to it.

10. RETENTION OF TITLE

- a. All goods delivered by Pommec will remain its property until the time of payment in full of all its claims - together with any interest and costs owed over this - on the basis of an agreement for delivery of goods and the execution of accompanying work. The purchaser will not be entitled to pledge or transfer the ownership of the goods to third parties until the time of payment in full or settlement. However, the purchaser will be entitled to use the goods in conformity with their usual designated use in the context of the normal business operations of the purchaser. As long as no payment in full has been made and the purchaser is in default, or as the case may be if Pommec has good grounds to fear that the purchaser will be in default of the payment, Pommec can promptly claim back the delivered goods without prior notice of default. The purchaser will provide Pommec with authorisation to enter the sites and buildings of the purchaser for this purpose. In that event, the agreement can be terminated by Pommec without judicial intervention, notwithstanding the right of Pommec to compensation of costs, damage and interest.
- b. The risks of the goods that are subject to retention of title pursuant to paragraph a. of this article will be vested in the purchaser after delivery. The purchaser will be obliged to adequately insure the goods, in any event against the risk of theft, damage and loss. The purchaser is not permitted to pledge to third parties, or use as security in the broadest sense of the word toward third parties, any claims against the insurer of the purchaser on the basis of an insurance as referred to in this paragraph. Payments related to damage and loss of the goods referred to in this article will replace the goods involved.
- c. The purchaser will be obliged to immediately inform any persons in writing who levy attachment on the goods delivered by Pommec which fall under the retention of title of

Pommec, or as the case may be in the event of a regime of administration or bankruptcy of the purchaser personally, the receivers or administrator of the purchaser, with a copy thereof to Pommec, that Pommec has continued to be the owner of the delivered goods, all this subject to incurring an immediately due and payable financial penalty in the amount of € 5,000, or if higher, in the amount of the original invoice amount of the goods, without prejudice to the right of Pommec to recover the actual damage suffered.

## 11. EXONERATION

- a. The purchaser will be obliged each time prior to using the goods delivered by Pommec to inspect these goods for their correct functioning.
- b. Pommec will be responsible for ensuring proper packaging of the goods. The risks of the goods will transfer to the purchaser upon delivery of the goods. The risk of the packaging will also transfer to the purchaser at that time. Damage to goods that is caused after delivery due to damage or destruction of packaging will be at the expense and risk of the purchaser.
- c. In the event that Pommec becomes liable toward the purchaser due to non-performance, performance that is not in a timely manner, incomplete performance or improper performance, in whatsoever manner, Pommec must be given the opportunity by the purchaser to provide proper and complete performance, or in the event that this is no longer possible, enable Pommec to take back the delivered goods in exchange for repayment of the purchase price.
- d. The purchaser can only hold Pommec liable for direct damage that is the immediate and direct result of a failure attributable to Pommec in the fulfilment of its obligations on the basis of the agreement concluded between the parties.
- e. Pommec will not be liable for indirect damage, including, but not limited to, consequential loss, resulting damage, lost profits, lost savings and/or business interruption loss and not for damage that could reasonably have been prevented and/or limited by the purchaser.
- f. In all cases in which Pommec is obliged to pay compensation, this will never be higher than, at the discretion of Pommec, either the maximum of the invoice amount of the delivered goods as a result of which or related to which the damage was caused, with a maximum of 100,000 EURO, whereby a series of the same and/or related damage causing incidents will apply as one incident or, if the damage is covered by the corporate liability insurance of Pommec, the amount that is actually paid by the insurer in the case concerned.
- g. Every claim against Pommec will lapse by the mere expiry of six (6) months after the arising of the claim, unless this claim is acknowledged by Pommec.
- h. Pommec will never be liable for personal injury on the part of the purchaser or on the part of third parties.
- i. Every right to compensation of purchasers toward Pommec will lapse in the event of the failure to, pursuant to the provisions under a, inspect the delivered goods, improper use of the goods, use of the goods in conflict with advice or instructions from Pommec, modifications of the delivered goods made, or attempted to be made, by the purchaser or third parties, without permission in writing from Pommec;
- j. The conditions, exclusions and limitations of liability as set out in the present general terms and conditions are likewise stipulated for and on behalf of employees of Pommec and any other party engaged, or, as the case may be, used by Pommec in the context of the coming into effect and performance of the agreement with the purchaser, as well as for and on behalf of those from whom Pommec obtains the delivered goods.
- k. If and insofar as the purchaser has insured any risk attached to the agreement between the parties, the purchaser will be obliged to claim any damage under this insurance and to indemnify Pommec against claims for recovery from the insurer.
- l. The purchaser will be obliged to indemnify, or as the case may be compensate, Pommec in the context of all claims by third parties for compensation of damage, the liability for which is excluded in these general terms and conditions in the relationship with the purchaser.
- m. The liability of Pommec is expressly limited to the provisions of this article.

- n. The provisions of this article do not affect any liability on the basis of mandatory statutory provisions with regard to product liability.

12. INDEMNITY

With respect to damage arisen during the performance of the agreement which the present general terms and conditions apply to, Pommec will never be liable toward third parties any further than the extent to which it would be liable toward the purchaser. The purchaser indemnifies Pommec against further liability and, if possible, will accordingly stipulate exoneration for the benefit of Pommec in the agreements of the purchaser with third parties.

13. FORCE MAJEURE

- a. If Pommec, due to circumstances, is temporarily incapable of fulfilling its obligations under the agreement, Pommec will be entitled to suspend the performance of the agreement for the duration of the hindrance. If Pommec, due to circumstances, is permanently incapable of fulfilling its obligations under the agreement, both parties will have the option to terminate the agreement wholly or in part, without Pommec becoming obliged to any payment to the purchaser.
- b. Circumstances as referred to in the previous paragraph are inter alia considered to include failure and/or shortcoming by or at suppliers and/or carriers, fire, industrial actions or exclusions, war, disturbances or riot, mobilisation, government measures as a result of which the execution of assignments are hindered or prohibited, flood emergency, operational failures due to weather conditions, all this regardless of whether the possibility that these circumstances could occur was already foreseeable at the time when the agreement came into effect.

14. APPLICABLE LAW

- a. The laws of the Netherlands exclusively apply to all offers, agreements and all obligations ensuing therefrom, regardless of the question as to where these obligations must be executed; the Vienna Sales Convention is excluded.
- b. Any disputes ensuing from offers, agreements concluded with Pommec, or obligations ensuing therefrom, must be adjudicated by the court with competent jurisdiction at the place of the business location of Pommec, except if Pommec prefers the court with competent jurisdiction in accordance with the law.

15. CONCLUDING PROVISION

These general terms and conditions have been drawn up in both the Dutch and the English language. In the event of a difference of opinion related to interpretation, the Dutch text will prevail.

The Management: