



1. Scope

The present General Terms and Conditions (further: GTC), except for any derogation and modification expressly agreed upon in writing, shall regulate all present and future contracts and agreements between EVAPCO EUROPE BVBA (further: EVAPCO) and the Client.

Any general (sales) conditions which are inconsistent with the terms and provisions hereto shall not be binding on EVAPCO and shall not be considered applicable, not even to the sale and shipment of the materials mentioned and referred to herein.

No waiver, alteration, or modification of the provisions hereof shall be binding on EVAPCO unless made in writing and agreed to by an officer of EVAPCO. Waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of any default by the other which may hereafter occur.

2. Order and Cancellation

An order shall be considered binding for the Client, whereas for EVAPCO it will only be considered binding if confirmed in writing. If EVAPCO order confirmation contains any partial modification or addition, or is, in any case, different from the order, the contract shall be considered entered unless the Client disagrees within 7 (seven) days of receipt of the order confirmation.

The Client shall not be entitled to cancel confirmed orders without EVAPCO's written consent. When an order is cancelled by the Client EVAPCO is entitled to reimbursement of all the damages, reasonable costs and expenses caused by such cancellation.

3. Prices - Taxes - Terms of Payment

All prices of EVAPCO refer to goods delivered Ex Works. Different conditions may be indicated in the order confirmation issued by EVAPCO, and shall control.

These GTC are also applicable to any agreement between EVAPCO and the Client regarding the transport of the goods and/or other logistic services provided by EVAPCO.

Unless agreed upon in writing, all taxes, either Federal, State or Local, VAT, legal stamp duties, costs, etc., shall be paid by the Client. In general, the afore-mentioned extra costs are not considered to be subject of the prices presented by EVAPCO.

Methods of payment are determined with regards to each individual order and indicated in the order confirmation.

All payments shall be made at the office of EVAPCO.

Invoices which have not been contested by registered letter within 8 (eight) days after the post stamp, shall be considered definitively accepted. The fact that an invoice or multiple invoices have been contested, shall not entitle the Client to delay or to suspend the payment of the consideration for the goods supplied, not even partially.

The possible use of promissory notes, cheques or the authorisation to draw drafts covering the agreed price, shall never be considered as novation of the original credit, nor shall it cancel any "retention of title" agreement, nor any territorial competence; the price will still have to be paid at the offices of EVAPCO.

Interest charges, discount, cashing expenses and costs related to exchange rates shall be borne by the Client, unless expressly differently agreed upon in writing.

If the time limit for payment expires, the Client shall be in default, and this without any requirement for the issue of a default notice nor taking into account any period of notice, and all claims of Evapco against the Client shall be immediately and fully payable. While in default, the Client shall owe a default interest of 1% per month or part of a month on the outstanding debts as well as a 10% damage for late payment on the outstanding debts.

Should the Client fail to comply with the term of payment of any other contractual term, EVAPCO shall have the right to suspend or delay the performance of its contractual obligations or to terminate the contract by giving written notice thereof, as well as the right to claim damages and any and all reasonable costs and expenses. In addition, EVAPCO

shall have the right to delay or withhold shipping on other orders place by the Client, even if Client has made payment thereon, and EVAPCO shall incur no liability whatsoever for delaying or withholding such shipments.

EVAPCO shall retain ownership of all the goods provided or delivered until the price for these goods has been paid in full. The retention of title shall also apply to all other claims or outstanding debts of the Client which EVAPCO has or may acquire against the Client.

4. Delivery

The goods ordered by the Client shall be delivered directly Ex Works to the Client or to carriers, forwarding agents or representatives indicated by him.

The delivery date shown on the order confirmation is merely indicative and shall not binding for EVAPCO. Any delay shall not entitle the Client to any damages.

Partial deliveries shall always be allowed and do not provide any ground for damages or termination for the Client.

Delivery of goods is deemed, to all effects, Ex Works EVAPCO upon written notice that the goods are ready, even when the delivery is executed by EVAPCO which shall, in this case, simply act as a demand of the Client.

When the goods ordered are delivered, the Client has to check them and has to notify EVAPCO immediately in writing by means of a registered letter when the goods supplied do not correspond with what was expressly agreed between the parties. The Client is considered to have accepted the goods as they were delivered, unless the Client has notified EVAPCO by means of a registered letter.

The responsibility of EVAPCO ceases upon delivery of the goods in good order to the carrier. The Client assumes all risk of loss, damage or shortage in transit and in storage, and any claims based thereon must be filed by the Client with the transportation company.

In the event the goods are produced and ready for delivery and the Client is unable to meet delivery or asks for a delay in delivery, EVAPCO shall take the necessary steps for the goods as an extra payable service. In that case the Long Term Storage procedure will be applied as defined in the Long Term Storage Document.

In the event the Client refuses to accept the goods or does not cooperate duly in accepting them, EVAPCO shall have the right to claim damages. If the goods delivered in question are specifically and custom tailored for the Client, the Client shall still have to pay full price in addition to any costs related to safekeeping or holding of the goods at the facilities of EVAPCO and any and all damages.

5. Warranty

EVAPCO guarantees that its goods are manufactured in accordance with the rules of the most advanced available technology using high quality raw materials and that the goods supplied correspond with what was expressly agreed between the parties. The Evapco manufacturer's warranty statement is available on request.

EVAPCO guarantees that its goods will be free from defects in materials and workmanship for a period of two years from the date of ex works delivery.

EVAPCO undertakes during the warranty period indicated in Clause 6 hereafter or during the other different term or period indicated on the order confirmation, to replace free of charge, any faulty parts, except for those parts damaged in the course of normal wear and tear or further to faulty assembly and/or maintenance. The part in question shall be supplied Ex Works EVAPCO.

Shipment charges and assembly expenses shall be entirely borne by the Client.

Replaced parts shall remain the property of EVAPCO and the Client shall have to return them at its own expense.

The warranty shall not cover the cost of labour in replacing the parts / Products nor their transport nor the transportation costs, but only the parts actually replaced.

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The guarantee shall be valid only if the unit is operated with the correct amount of water which is neither salty nor corrosive. The presence of salt, algae or corrosive water shall render this guarantee invalid. All evaporative cooling equipment utilizing galvanized construction requires initial passivation to maximize the service life of the equipment. The site's water treatment vendor should be contacted several weeks prior to adding any water to the system to provide a passivation plan along with associated passivation plan costs.

The warranty here-above excludes any other guarantee or remedy, express or implicit, and does not entitle to any further indemnity or damage, whatever its nature and by whoever claimed.

Upon the expiry of the warranty period, no further request can be made to EVAPCO.

In case of force majeure, as defined in art. 9 of the GTC, there is no guarantee.

The guarantee is not applicable if invoices are not fully paid.

6. Claims

All claims regarding quantity or quality defects or lack of compliance shall have to be put forward by the Client, under penalty of forfeiture, by means of a registered letter addressed to EVAPCO within 15 (fifteen) days of delivery (in case of obvious defects) or within 15 (fifteen) days of discovery (in case of latent defects).

In any event, all claims shall have to be put forward within 24 months of the date of ex works delivery.

The fact that requests or claims based on the warranty have been put forward, shall not entitle the Client to delay or suspend the payment of the consideration for the products supplied, not even partially.

7. Manufacturer's Liability

Being stated that, as far as the characteristics of the goods are concerned, EVAPCO operates in accordance with the technical rules and laws in force in Belgium, the Client shall bear the risk of any difference between the Belgian provisions and the provisions of the country of destination of the products, thus holding EVAPCO blameless.

EVAPCO shall be liable, within the limits provided for by Belgian mandatory rules, for damages to both persons and property caused by the products sold.

EVAPCO shall never be deemed liable for indirect or consequential damages, loss of production or lack of profit. In addition, notwithstanding anything else in any document, EVAPCO's liability of any kind whatsoever (whether in contract, tort, warranty or otherwise), shall not exceed, in the aggregate, the purchase price for the goods or services provided by EVAPCO.

8. Returns

Goods may not be returned by the Client to EVAPCO except by permission of authorized factory officials of EVAPCO. In case where EVAPCO accepts return of the goods, the client will be responsible for subsequent costs. In addition, notwithstanding anything else in any document, EVAPCO's liability of any kind whatsoever (whether in contract, tort, warranty or otherwise), shall not exceed, in the aggregate, the purchase price for the goods or services provided by EVAPCO.

9. Force Majeure

When EVAPCO is unable to execute (in total or in part) the delivery of the products due to events of force majeure, it shall forthwith give notice thereof to the Client.

The delivery will therefore be suspended, within the limits of the impediment caused by any force majeure, for the entire period during which the force majeure question prevails. When the force majeure or prevails for a continuous period in excess of 45 (forty-five) days, EVAPCO shall be entitled to terminate the contract, by returning to the Client the amount anticipated. In this case the Client shall not be entitled to damages nor shall the Client have any right to charge EVAPCO for any replacement or substitution the Client undertakes or seeks.

"Force majeure" means, any circumstances beyond the reasonable control of EVAPCO, such as, but not limited to, fire, flood, strikes, lockout, labour disputes or other industrial disturbances, (declared or undeclared) war, embargoes, blockades, legal restrictions, riots, insurrections, governmental regulation or action, custom clearance, any act of God, ...

10. Retention of Title

Until the Client actually pays for the goods in cash and in full, including any incurred costs, interests or damages, the goods supplied by EVAPCO, even if incorporated or otherwise changed, shall remain the property of EVAPCO who will be entitled to claim them back wherever they may be. During this period, the Client shall act as a depository of the goods supplied, thus undertaking all the liabilities connected therewith, and shall look after them and insure them against damage, destruction, theft, fire, loss, force majeure (as defined in art. 9), etc.

The Client shall be obliged to take all necessary steps in order to create, in the country where the goods are located, a valid Retention of title in the most extensive form permitted, or to create a similar form of guarantee in favour of EVAPCO.

11. Proper Law and Jurisdiction

All issues, questions and disputes concerning the validity, interpretation, enforcement, performance and termination of any Agreement between EVAPCO and the Client, and the present GTC, as well as all tort matters and other matters of pre- and extra-contractual liability between EVAPCO and the Client, as well as the settlement of possible disputes arising there from, shall be governed by and construed in accordance with Belgian law, and no effect shall be given to any other choice-of-law or conflict-of-laws rules or provisions (Belgian, foreign or international), not even the United Nations Convention on Contracts for the International Sale of Goods (1980), that would cause the laws of any other jurisdiction to be applicable, except for art. 19 of the afore-mentioned Convention.

All disputes concerning the validity, interpretation, enforcement, performance and termination of these GTC and or any contract between EVAPCO and the Client, even if it involves foreign citizens or if it relates to goods supplied abroad, shall be submitted to the exclusive jurisdiction of the courts of Antwerp, department Tongeren, Belgium.

It is however agreed that EVAPCO shall also have the right to bring legal actions against the Client before the Court of the place where the latter has its offices or where goods have been received.

To the extent required and allowed, the Client hereby expressly waives his right to submit any dispute arising in connection herewith to any other jurisdiction.

All costs and expenses made by EVAPCO related to recovery of amounts owed through judicial or legal means as well as the cost and expenses of any legal counsel that EVAPCO calls upon in such an event shall be borne by the Client.

12. Invalidity or Nullity

In the event any of the above clauses or any part of these GTC are found by a Court or any other entity with jurisdiction to rule as such, to be invalid or null, such invalidity or nullity shall only affect the particular clause or part in question, with as narrow, in size and scope, an interpretation as possible of the affected part, so as to keep a maximal amount of the GTC intact.

The Client declares that he is aware of and accepts the General Conditions here above.

Date

Signature Customer