



# Terms and Conditions of Sale

## 1 General

- 1.1 Unless otherwise agreed in writing, these Terms and Conditions of sale (the "Conditions") apply exclusively to each Contract for the sale of goods or services (the "Goods") by Curve Works BV ('the Company') to a purchaser of Goods or Services (the "Purchaser"), (together the "Parties"). Any additional or different terms or conditions proposed by the Purchaser are expressly objected to and will not be binding upon the Company unless specifically assented to in writing by the Company. Any order for, or any statement of intent to, purchase hereunder shall constitute assent to these Conditions.
- 1.2 "Contract" means the purchase order sent by the Purchaser and accepted by the Company in writing, together with these Conditions. Notwithstanding that a quotation has been made by the Company no Contract exists between the Company and the Purchaser until the Company accepts the Purchaser's order in writing or through issue of an invoice.
- 1.3 Unless otherwise specified in writing by the Company, any quotation by the Company will expire 30 days from its date and may be modified or withdrawn by the Company prior to receipt of the Purchaser's acceptance.

## 2 Price and payment

- 2.1 The price of the Goods (the "Price") is the Company's quoted price or if no price is quoted, the current list price of the Goods and is exclusive of VAT, delivery, packaging, carriage and insurance, which shall be paid by the Purchaser in addition to the Price. The Company reserves the right to increase the Price at any time to reflect any increase in its costs because of any factor beyond its control or any changes in delivery dates, quantities or specifications requested by the Purchaser or any delay caused by the Purchaser's failure to provide adequate information or instructions.
- 2.2 Subject to credit approval and unless the Parties agree otherwise, the Purchaser will pay the Price (whether or not the Company has formally demanded it) within 14 days of the date of the invoice unless otherwise agreed in writing. Payment shall also be made if insignificant components are missing but usage of the delivered Goods is not rendered impossible.
- 2.3 If the Price is not paid in full when due, then, without affecting any of the Company's other rights or remedies, the Company may cancel the Contract and/or suspend performance of any delivery [any cost incurred by the Company in accordance with such suspension (including storage costs) shall be payable by the Purchaser]; charge interest at 4% a year above the RaboBank base rate at the time on all unpaid amounts; withdraw all credit facilities extended and require immediate payment of all outstanding invoices issued whether or not they were due for payment; and/or cancel and withdraw any trade discount allowed on the Price.

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## 3 Delivery

- 3.1 Delivery and dispatch dates quoted are approximate only and the Company is not liable for any delay in the delivery of the Goods. Partial delivery will be permitted. If the Company agrees to deliver the Goods other than at its premises, the Purchaser shall pay for carriage, insurance and any other delivery costs. The export terms in Condition 9 apply to Goods to be delivered outside of The Netherlands.
- 3.2 If the Purchaser fails to take delivery of the Goods or fails to give adequate delivery instructions then, without affecting any of the Company's other rights or remedies, the Company may store the Goods until actual delivery takes place and charge for the reasonable costs (including insurance) of storage. The Company may, after 30 days, sell the Goods at the best price readily obtainable and (after deducting reasonable storage and selling expenses) account for the excess over the Price or charge the Purchaser the amount of any shortfall.



- 3.3 Any claim by the Purchaser relating to Products which is based on any defect in material or workmanship, a failure to correspond to the specification agreed in writing or for non or incorrect delivery (whether or not delivery is refused by the Purchaser) must be notified to the Company within 3 working days from the date of delivery. If delivery is not refused, and the Purchaser does not notify the Company accordingly, the Purchaser is not entitled to reject the Goods and the Purchaser will be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.

#### 4 Risk and property

- 4.1 Risk of damage to or loss of the Goods passes on delivery or, if the Purchaser wrongfully fails to take delivery, at the time when delivery is tendered.
- 4.2 Property in the Goods does not pass to the Purchaser until the Company has received full payment of the Price (plus VAT and other applicable charges) and all other sums due to the Company from the Purchaser. Until property in the Goods passes to the Purchaser, it will hold the Goods on the Company's behalf, and will keep the Goods separate from its goods and those of third parties, properly stored, protected, insured and identified as the Company's property; and the Purchaser shall not pledge or charge the Goods by way of security or otherwise. Breach of any of the provisions of this Condition will result in all monies owing by the Purchaser to the Company (without prejudice to any other right or remedy) becoming immediately due and payable. The Purchaser is entitled to resell or use the Goods in the ordinary course of its business, subject to the following: (i) if the Goods are combined or intermingled with other goods, the Purchaser hereby transfers his/its ownership rights in the new goods to the Company in the amount of the invoice value of the Goods; (ii) if the Goods are resold by the Purchaser, the Purchaser hereby transfers to the Company its claims arising from the aforesaid resale in the amount of the invoice value of the Goods. As long as the Purchaser is honouring its payment obligations, the Purchaser shall, however, be authorised to collect its resale claim which has been assigned to the Company. Until title to the Goods passes to the Purchaser, the Company may require the Purchaser to return the Goods and, if the Purchaser fails to do so, the Company may repossess the Goods. The Purchaser hereby grants the Company an irrevocable right to enter, with or without vehicles, any premises for the purpose of inspecting or repossessing the Goods.

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#### 5 Insolvency of the purchaser

- 5.1 If the Purchaser makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt, or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or an encumbrancer takes possession, or a receiver is appointed of any of the property or assets of the Purchaser, or the Purchaser ceases or threatens to cease to carry on business or the Company reasonably apprehends that any of the events mentioned in this clause is about to occur (and notifies the Purchaser accordingly) then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries without any liability on the part of the Company and, if the Goods have been delivered but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary.

#### 6 Limitations of liability

- 6.1 The remedies of the Purchaser set forth herein are exclusive and the total liability of the Company, on all claims of any kind, whether in contract, indemnity, tort (including negligence), strict liability, or otherwise, shall not exceed 100% of the Price by which the Goods giving rise to the claim were sold to the Purchaser or €10,000, whichever is greater.
- 6.2 In no event, whether as a result of breach of contract, indemnity, tort (including negligence), strict liability, or otherwise, shall the Company or its subcontractors or suppliers be liable for loss of profit, revenue, business, contracts, opportunity, goodwill, use, production, anticipated savings, expenses, costs or similar loss; and/or or any special, consequential, incidental, indirect, speculative, punitive or exemplary loss or damage, or claims of the Purchaser's customers for any of the foregoing damages and the Purchaser agrees to defend, indemnify and hold harmless the Company from any such claims of the Purchaser's customers.



- 6.3 Notwithstanding the Conditions set out above, no Condition shall exclude or restrict the liability of the Company for breach of the statutory warranty as to title and quiet possession and nothing in these Conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Company for death or personal injury caused by reason of the negligence of the Company.

## 7 Force Majeure

- 7.1 The Company shall not be under any liability to the Purchaser for any failure to perform any of its obligations under the Contract where it is prevented by (i) reasons beyond its reasonable control including without limitation any act of God, war, riot, malicious damage, strikes or other labour disturbances, lockout, industrial action, government action, accident, breakdown of machinery, default of suppliers, fire, flood, storm, drought, tempest or similar event; or (ii) acts (or omissions) of the Purchaser including to promptly: (a) provide the Company with information and approvals necessary to permit the Company to proceed with work immediately and without interruption, or (b) comply with the terms of payment, or (c) provide the Company with such evidence as the Company may request that any export and import license or permit has been issued (is such is the responsibility of the Purchaser), or (iii) inability, due to causes beyond the reasonable control of the Company, to obtain necessary materials, necessary components or services. If the performance of the Contract is prevented by this Condition for more than 120 days, then either party (except where delay is caused by the Purchaser, in which event only the Company), upon 30 days written notice, may terminate the Contract with respect to the unexecuted portion, whereupon the Purchaser shall promptly pay the Company its termination charges determined in accordance of the Company's standard accounting practices upon submission of the Company's invoices therefore.

## 8 Intellectual property

- 8.1 Where Goods are to be made by the Company to the Purchaser's specification and/or design, the Purchaser warrants to the Company that such manufacture will not infringe the patent, copyright, design right, trade mark or other industrial or intellectual property rights ("IPR") of any person and undertakes to indemnify the Company from and against all losses, damages, costs and/or expenses (including legal fees) awarded against or incurred by the Company in connection with any claim for infringement of the IPR of any person as a result of use of the Purchaser's specification.
- 8.2 All information, drawings, specifications, documents, design material and all other data which the Company has given to the Purchaser is proprietary and confidential and shall remain the absolute exclusive property of the Company together with the copyright therein. The Purchaser agrees that it will not disclose such information to third parties, whether directly or indirectly, without the Company's prior written consent. All IPR, including but not limited to, inventions, patents, copyrights, trademarks, know how, engineering and drawings and specifications belonging to or provided by the Company and used or developed in the course of the fulfillment of the Contract by the Company shall remain the absolute exclusive property of the Company.

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## 9 Export terms

- 9.1 'Incoterms 2010', shall mean the ICC (International Chamber of Commerce) 2010 Rules for the Use of Domestic and International Trade Terms.
- 9.2 Where the Goods are supplied for export from The Netherlands, the provisions of this Condition 9 shall apply (subject to any special terms agreed in writing between the Purchaser and the Company) and any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, unless there is any conflict, in which case these Conditions shall prevail.
- 9.3 The Goods shall be delivered "ex works the Company's premises Incoterms 2010 ", unless otherwise agreed in writing.



- 9.4 The Purchaser shall be responsible for ensuring that the Goods comply with the laws and regulations of the country to which it requires the Goods to be supplied and for timely obtaining any required authorisation, such as an export license, import license, foreign exchange permit, work permit or any other governmental authorisation, even though such authorisation may be applied for by the Company. The Purchaser expressly acknowledges and agrees that it will NOT: (i) divert, use, export and/or re-export any Goods contrary to any applicable export laws; and/or (ii) export, re-export, or provide any Goods to any entity or person within any country that is subject to any sanctions; and/or (iv) export, re-export, or provide any Goods to entities and persons that are ineligible under applicable export laws. The Purchaser and the Company shall provide each other reasonable assistance in obtaining required authorisations. The Company shall not be liable if any authorisation is delayed, denied, revoked restricted or not renewed and the Purchaser shall not be relieved thereby of its obligations to pay the Company for the Goods.

## 10 Third parties

- 10.1 Each Contract will only confer rights and benefits on the Purchaser and no third party shall acquire any rights or benefits under the Contract.

## 11 Changes

- 11.1 The Company reserves the right, in its sole discretion and without incurring any liability to the Purchaser, to: (i) alter the specifications or design of the Goods; (ii) discontinue or limit the manufacture of any Good (with a 6-month advance notice), (iii) cancel or limit the deliveries of any such Good; (iv) discontinue or limit the development of any new product, whether or not such new product has been announced publicly; (v) manufacture new good(s) having feature(s) which make any product wholly or partially obsolete; or (vi) substitute such altered products for the prior Goods in filling orders.
- 11.2 The Company shall use its best effort to provide the Purchaser with prompt notice of such decisions. The Company and the Purchaser shall then agree on the conditions pursuant to which any order(s) accepted by the Company before such notice shall be filled. The Company shall have no obligation to deliver any Goods deleted or modified pursuant to the above paragraphs, which is ordered by the Purchaser after the issuance of the aforementioned notice.

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## 12 Confidentiality

- 12.1 In connection with the Contract, the Company and the Purchaser (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with "Confidential Information". The Purchaser shall not provide any Confidential Information to the Company without the Company's prior written consent to receive it. "Confidential Information" as used in these Terms and Conditions shall mean all Goods pricing, all terms of the Contract, and all information related to the business or products of the Disclosing Party that is not known generally to the public, provided that the obligations of these Conditions shall not apply as to any portion of the Confidential Information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party or (ii) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party when such source is not, in the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party, or (iii) has been or is subsequently independently developed by the Receiving Party without reference to the Confidential Information.
- 12.2 The Receiving Party agrees, except as otherwise required by law: (i) to use the Confidential Information only in connection with the Contract, and permitted use of the Goods, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees to the extent necessary to facilitate the Contract and permitted uses in the Goods and provided that those employees have agreed to be bound by the provisions hereof. The Receiving Party accepts liability that its involved employees will abide by these provisions.
- 12.3 If either party is requested or required (by interrogatories, subpoena, or similar legal process) to disclose any Confidential Information, such party agrees to provide the Disclosing Party with prompt notice of each such request, to the extent practicable, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Condition 12, or both.



### **13 Assignment**

- 13.1 The Contract or any of its rights or obligations may not be assigned or otherwise transferred by the Purchaser without the prior written approval of the Company. The Company may, in part or in whole, assign, transfer or subcontract all or any of its rights or obligations under the Contract.

### **14 Waiver**

- 14.1 Any waiver by the Company of any breach of the Contract by the Purchaser will not be treated as waiving any subsequent breach of the same or any other provision.

### **15 Entire Agreement**

- 15.1 These Conditions and the documents referred to in them, shall unless otherwise expressly agreed in writing, contain the entire agreement between the Parties and no other agreements, representations, warranties, promises or understandings express or implied will bind the Parties or form part of a Contract. Each party agrees that it has not relied on, or been induced by, any representations of the other party not contained in these Terms and Conditions or the Contract.
- 15.2 If the provision of the Contract is determined to be void or unenforceable, this finding shall not render other provisions void or unenforceable, and the Company and Purchaser shall make their best endeavours to replace such provisions by a valid one, covering the original commercial intention as far as legally possible.

### **16 Law and jurisdiction**

- 16.1 The Contract is construed and shall be interpreted in accordance with the laws of The Netherlands, applicable at the Company's location. The rules on conflict of law shall be excluded. The place of jurisdiction shall be the court at the place of the registered offices of the Company. However, the Company is entitled to bring action against the Purchaser at the place of the Purchaser's registered offices, in which case that country's law shall apply, with the exclusion of that country's conflict of law. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the above-mentioned courts, and waives any right to object to any proceedings being brought in those courts.