

# CONDITIONS OF SALES AND DELIVERY – CARMO A/S



## 1. THE AGREEMENT

Unless otherwise stated by the company issuing this document, hereafter called Seller, in writing these General Terms and Conditions of Sales shall apply to all offers, sales and deliveries by Seller irrespective of any contradictory terms specified either in the Customer's order or the offer acceptance.

## 2. DRAWINGS AND SPECIFICATIONS:

Drawings, estimates etc. which we work out in connection with quotations or deliveries, may be used by the Customer, but are otherwise our property and subject to copyright, which means they must not be shown to or handed over to a third party. The specifications in catalogues, brochures, price-lists etc. are merely directive. Possible assistance in technical guidance is exclusively a service, for which we accept no claims for damages. Seller reserves the right to make changes in design without prior notice due to changing technical production demands and improvements.

## 3. QUOTATIONS AND ORDER-CONFIRMATION:

Unless stated otherwise by Seller any offer from Seller shall be valid for 30 days. The Customer's order shall be order confirmed in writing by Seller and shall be binding on the part of Seller. Unless the Customer has informed Seller of any differences between the order and the written confirmation of the order within three days of the receipt of the confirmation by the Customer, the confirmation of the order shall constitute the agreement between Seller and the Customer. Seller reserves the right to supply up to 10% more or less than agreed in the confirmation of order and reserves the right to invoice the Customer for the quantity supplied.

## 4. CANCELLATIONS

The Customer's cancellation of an agreement relating to standard goods as determined by Seller shall only be valid provided that Seller has received such cancellation in writing no later than 8 weeks before the order confirmed delivery date given by Seller. An agreement relating to non-standard goods as determined by Seller cannot be cancelled by the Customer after confirmation of the order has been sent from Seller.

## 5. PRICES

Prices indicated in offers, confirmations of order, catalogues and current price lists are, unless otherwise specified, current prices Ex Works, cf. Incoterms 1990, exclusive of VAT and other applicable taxes. Seller reserves the right to change the price without prior notice due to changes in prices of raw material, wages, rates of exchange, taxes, duties or the like. Otherwise, Seller reserves the right to change the prices with 30 days' notice. In the event of price adjustments between the time of the confirmation of order and the time of delivery the Customer is entitled to cancel the order if the cancellation is made in writing immediately after the receipt of the information of the price adjustment.

## 6. ADMINISTRATION CHARGE:

By execution of small orders, a fee will be debited.

## 7. DELIVERY

As herein, before stated goods are delivered Ex Works, cf. Incoterms 1990, unless otherwise agreed and confirmed in writing. Seller can arrange transport of the goods on behalf of the Customer and the total transportation costs according to volume/weight will then be invoiced to the Customer. All goods will be delivered in an appropriate export carton. Transport insurance shall only be taken out at the Customer's request and at his expense. The time of delivery is separately agreed upon for each individual order and shall be stated on the order confirmation. Seller reserves the right to alter the delivery dates. In such case, Seller is obliged to inform the Customer, without unreasonable delay, of such alteration and the reason for same. Partial shipments may be effected. Seller shall only be liable for the delay if it is due to gross neglect on their part. Irrespective of the delivery date as stated overleaf, any delivery dates stated in the offer or the order confirmation shall be approximate. Delays shall not entitle the Customer to cancel the agreement. In the event that any delay in delivery, caused by force majeure (section 13), has exceeded 12 months, the Customer and Seller have the right to cancel the order without any obligation whatsoever. This condition shall apply whether the reason for the delay arises before or after the delivery date originally agreed.

## 8. TERMS OF PAYMENT

The terms of payment mentioned in the invoice are valid unless other written agreement has been made. In the event of a breach of credit terms or if payment is not received in due time, Seller reserves the right to:

- I. Charge interest, at the bank rate valid at any time from the National bank in Seller's country +4%, from the due date of payment until Seller receives payment.
- II. Withhold all other deliveries and/or part deliveries ordered but not effected at the time in question until the Customer has paid all outstanding amounts, including interest and costs;
- III. Make future deliveries conditional upon cash payment; and
- IV. Cancel any orders not effected but still outstanding.

The Customer shall not be entitled to set off against the purchase sum any claims, which the Customer may have against Seller and the Customer shall not be entitled to withhold the purchased goods against any counter-claim.

If Seller has reason to believe that the Customer will not be able to fulfil this obligation of payment, Seller shall be entitled to demand adequate security of payment or pre-payment. If adequate security or pre-payment cannot be provided, Seller is entitled to cancel any outstanding deliveries and claim damages.

## 9. RETENTION OF TITLE:

These goods remain our property till the full payment inclusive interest and other related costs have been received.

## 10. CUSTOMERS DEFAULT

In the event that the Customer does not take delivery of the goods after the agreed delivery date, or in the event that the Customer requests that delivery be delayed, Seller reserves the right to store the goods at the Customer's own risk and expense. In the event that delivery is delayed because of changes in prevailing conditions on the part of the Customer, the Customer shall be liable for all payment to Seller on the date agreed in the written order confirmation unless otherwise agreed in writing by Seller. If the Customer for any reason, despite a written request from Seller refuses to take delivery of any goods Seller retains the right to sell the goods in question at the best possible price at the Customer's expense. This right also applies in the event that the goods in question have been specifically manufactured for the Customer.

## 11. SHORTCOMINGS

The Customer is obliged to examine the goods upon receipt. Objection against a delivered quantity must be raised in writing within 8 days of receipt, whereas objection against the quality must take place in writing immediately after the defect has been discovered, but no later than 12 months after delivery, unless a longer expiry period is stated on the delivered product in question. Goods shall be considered to be defective if they do not function properly owing to a fault in material or workmanship or to a material discrepancy from the contract description. The Customer is not entitled to return merchandise without the prior written approval of Seller and return shipment must take place freight prepaid. Freight expenses will be credited if the complaint is justified. Where goods are returned and on inspection are found not to be defective, Seller may charge for inspection and handling. Seller retains the right not to include used products in any analysis of quality complaints. If Seller has been duly informed and it has been proven that short shipment has taken place or the goods were defective at delivery and that Seller is therefore liable, Seller shall have the right to elect, without further liability, to exchange the delivered goods for a new delivery.

## 12. PRODUCT LIABILITY

Seller shall be liable for any damage due to product liability according to the general rules of Danish law with the following specific limitations:

- I. Seller shall only be liable for product damage caused by defects in the delivered product if the defect is due to fault or neglect on the part of Seller.
  - II. Liability for damage to property not comprised by Paragraph 1 of Section 2(2) of Act No. 371 of 7 June 1989 (i.e. damage to "non consumer goods") shall be maximized at EUR 30.000,00 - or the purchase price whichever is the greater - per incident or series of incidents relating to the same purchase.
  - III. Seller shall not be liable for any kind of indirect loss or consequential damage, including but not limited to trading loss, loss of time, loss of profits, etc.
  - IV. Where product liability is imposed on Seller in relation to a subsequent purchaser of the damaging product, the Customer shall exempt Seller from any claim in so far as Seller would not have been liable to the Customer according to the provisions of these General Terms and Conditions of Sale.
  - V. Seller shall not be liable for product damage caused by the use or composition of the delivered products if the actual use or composition of the delivered products has not in advance been approved by Seller. The above-mentioned limitations of liability shall not apply if Seller incurs liability due to gross negligence.
- Seller and the Customer shall be mutually obliged to answer in actions before the court or court of arbitration hearing claims for damages advanced against either of them due to damage allegedly caused by the delivered products. Any dispute between the Customer and Seller shall always be decided in accordance with Danish law cf. Art. 14.1 irrespective of whichever law governs such third party claim.

## 13. FORCE MAJEURE

Seller cannot be held responsible for shortages, lack of or delays in delivery caused by war, riots, civil unrest, terrorists attack, Governmental Intervention or Intervention by another public authority, fire, machine damage, strike, lockout, export and/or import restrictions, shortage of labour, fuel or any other reason out of the control of Seller and which causes delay or prevents production or delivery of the goods ordered.

## 14. LIMITATION OF LIABILITY

Except as otherwise stated in these General Terms and Conditions of Sale, Seller expressly disclaims any liability for faults or defects and shall not be obliged to provide additional replacement delivery or other remedy, damages or compensation of any kind, including, in particular, any remedy, damages or compensation for trading loss, loss of profits and other indirect loss or consequential damage to the Customer or a third party.

## 15. APPLICABLE LAW AND VENUE

This Agreement shall be governed by Danish law and the parties shall accept the Maritime and Commercial Court of Copenhagen as venue unless Seller should wish to bring the case before another competent court of law.