

General PHAER Terms of Sale and Delivery

1. Scope. The present conditions of sale and supply apply to sales and deliveries by PHAER, excluding any customer (purchasing) terms that may apply. Specific agreements, when in writing, always prevail over these general terms.

2. Advice. Advice, whether in writing or oral, is always non-binding; the customer himself is responsible for deciding to either follow or not to follow the advice. As a result, PHAER can never be held liable for any errors contained in the advice given.

3. Constitution and offers. All our written and oral offers are non-binding and can be revoked by PHAER at any moment, even when they contain a term of acceptance. Documents being part of the offer (such as drawings, technical descriptions, etc) are as accurate as possible, yet they are not binding and remain the (intellectual) property of PHAER. They shall not be used, copied or made available to third parties, or made public in any other way without the consent of PHAER. If the customer does not accept the offer, he shall have the obligation to return to PHAER immediately all data referred to in this clause. A sale agreement can only be concluded after acceptance of the offer in writing by the customer.

4. Prices. Unless stated otherwise, prices are always net and do not include VAT. Offers are based on factors that were relevant at the time when the offer was made. If those factors should change, PHAER shall have the right to adapt the prices accordingly, even if those changes should occur in the period between the conclusion of the agreement and delivery, as soon as three months have passed following the conclusion of the agreement.

5. Terms of delivery. Delivery times are only mentioned for the sake of information and are not binding for PHAER. Delays shall neither create rights to compensation, nor shall they cause the agreement to be dissolved.

6. Risks, transport and safekeeping. All risks are transferred to the customer upon conclusion of the agreement. Therefore, safekeeping of the goods waiting to be delivered as well as transport are effected at the customer's risk. Unless stated otherwise, the goods shall always be delivered *ex works* (Inco Terms 2000). In the event of loss, damage or delay of delivery, the customer will only be able to address the transport company, even when the latter was chosen by PHAER. Upon reception of the order, the goods shall be delivered as soon as possible. If, however, the customer asks to be supplied later, or if he does not collect the goods on the date announced by himself, or if he refuses to accept the goods, PHAER shall have the right to invoice safekeeping costs amounting to a lump sum of 2 % (two percent) monthly of the total sale price of the goods.

7. Intellectual property. Copyrights and any other rights of intellectual and industrial property on the computer software, the devices and other materials remain exclusively with PHAER or their licensor.

8. Right of use. PHAER grant their customer a non-exclusive and non-transferable right of use without time limit for the Software supplied to the customer. This right of use solely includes the right to load the Software, visualize it and to process data with it for which the Software was conceived. The customer shall use the Software only for internal purposes within his own company. In no way shall he make the Software directly or indirectly available to third parties, neither for free nor against payment. It is forbidden for the customer (1) to reproduce the Software in its entirety or partly in whatever way, with the exception of making one copy, which shall exclusively be used for back-up purposes; (2) to edit, translate, adjust, adapt or change the Software in any way; (3) to integrate the Software in other computer programs or to check the compatibility of the Software with other computer programs; (4) and/or make user licenses entirely or partly available for rent, for loan, for sale or to license them, distribute them or make them available under any form to third parties, whether or not for commercial purposes. Unless agreed upon explicitly otherwise, the source code of the Software shall not be made available to the customer.

9. Protection. PHAER shall have the right to introduce technical measures to protect the Software. When PHAER uses technical protection to protect the Software, the customer shall not have the right to remove or avoid this protection. If, as a result of protective measures, the customer is not able to make a backup copy of the Software, PHAER will make available a backup copy to the customer upon request.

10. Interoperability. Information about interoperability (i.e. using the Software on other devices than the supplied ones and/or when combined with other programs) of Software made available by PHAER shall be requested with PHAER and specified by the customer in writing. PHAER will inform the customer within a reasonable period of time whether he can have this information and on which financial and other conditions this can be arranged.

11. Errors. Upon discovering errors in the Software, the customer shall notify PHAER immediately. In the present terms and when referring to these terms, errors shall mean that specifications explicitly agreed upon have not been met, or, if no specifications were agreed upon, that the functional specifications provided by PHAER have not been met. Errors shall only be considered as such if they can be reproduced. If, after a reasonable period of time and after written notice, PHAER has not repaired an error seriously impeding functionality, the customer shall have the right to correct the error himself.

12. Payment. Invoices shall be paid in cash and without reductions at the headquarters of PHAER in Ghent. The invoice amount is due on a net basis. PHAER may decide to deliver only when advance payments or partial payments have been done or if a guarantee has been made available. Debt and banking costs shall be paid for by the customer. If the invoice has not been paid within the prescribed period, interest on arrears shall be due by law upon invoice maturity and without prior notice. This interest on arrears amounts to 1 % (one percent) per month of the invoiced amount. Equally, in such case a fixed sum of 10 % (ten percent) of the invoiced amount shall be due by law as a fixed compensation, without prior notice. Any costs related to unpaid bills or cheques, as well as any other costs of collection are not included in this fixed compensation and shall be billed to the customer separately. Non-payment of one single invoice on maturity day shall make the balance of all other invoices, including the ones that have not reached maturity yet, fall due by law and without prior notice. Equally, in the event of late payment of complete or incomplete amounts, fines and interests are due as mentioned in this clause. Drawing or accepting bills or other tradable documents shall not be considered renewal of debt

and shall not entail a deviation from these general conditions. (Partial) payments shall first be used to settle compensations, costs and interests, and only after that to settle the principal. In the event of non-payment on maturity day, PHAER shall have the right to stop any further deliveries. In that case, PHAER also reserves the right to consider the agreement to be dissolved by law and without prior notice for the entire order or the non-executed part.

13. Duty of investigation, flaws, reporting of complaints, and guarantee. At the moment of delivery or acceptance of the goods and any accessories, the customer shall investigate their conformity and look for any visual flaws. Every complaint regarding conformity or visual flaws or conformity of the delivered goods and flaws thereof shall be communicated explicitly by registered mail within 8 (eight) days from reception of the goods, under penalty of non-acceptance. This obligation shall not affect the fact that transport takes place on the customer's risk and that PHAER shall never be held liable for damage resulting from transport. Any hidden flaws have to be communicated to PHAER within eight days of discovery of the flaw by registered mail, under penalty of non-acceptance. Functional flaws shall not be accepted if PHAER was not informed about the intended use for the ordered goods. In the event of non-conformity of deliveries or when visual or hidden flaws are discovered, the customer shall not use the goods or sell them, and he shall have the obligation to take all measures to keep the goods in their original condition on his own costs, under penalty of non-acceptance of his complaint. The obligation to safeguard for PHAER, however, shall not extend beyond the obligation to safeguard for our suppliers. The obligation to provide a guarantee for PHAER is limited to replacing or repairing goods which are not conforming or which are flawed, at the discretion of PHAER. If the goods are to be repaired, the goods shall be sent immediately to the place of repair, free of transport costs. The above equally applies for flawed assembling or installation, in which case PHAER shall only accept to repair the flaws.

14. Protest. Without prejudice to the clause concerning the guarantee, any protest against invoices shall, under penalty of being void, be submitted by registered mail within eight calendar days following the date of the invoice. The customer is requested to always mention the date and the number of the invoice.

15. Reservation of ownership. Goods remain the property of PHAER until they have been paid completely by the customer, including any accessories. The customer accepts, under penalty of damage compensations, equaling 10 % (ten percent) of the sale price of the goods, not to alienate the goods, nor to turn them into real estate by incorporation. If, as a result of non-payment by the customer, PHAER wishes to have the goods returned to them, the customer shall be obliged to bring the goods back to PHAER on his own costs within 48 (forty-eight) hours upon PHAER's request. The goods in question shall not be credited until reception by PHAER and until investigation. They shall be credited for the purchase amount, reduced by 10 % (ten percent) as mentioned above, and reduced by any costs that are necessary for repairing the goods.

16. Bankruptcy or manifest lack of means. PHAER reserves the right to consider the agreement dissolved by law and without notice in the event of a bankruptcy, a manifest lack of means, the customer going into administration or receivership, and in the event of any change in the legal status of the customer.

17. Cancellation. In the event of cancellation of an order by the customer within eight calendar days following reception of the said order, a lump sum of EUR 500 will be invoiced as compensation for the cancellation. In the event of cancellation after eight calendar days, PHAER shall have the right to claim payment of a cancellation compensation equal to 50 % (fifty percent) of the total order price (excluding VAT), without prejudice to PHAER's right to prove any higher damages.

18. Insurance. PHAER shall cover their liability risk through an insurance offering coverage in Belgium, in line with the customs in use in this sector of economy.

19. Damages. Gross negligence or fraud excepted, the liability of PHAER for contractual and extra-contractual damage, excluding physical injury, shall in any case be limited to 50 % of the total sale price, with a maximum of EUR 25,000; in cases where PHAER's liability is covered by an insurance policy entered into by PHAER, their liability shall be limited to the amount paid out to them by the insurance company. Any liability for damage to products and means of production, indirect damage, such as loss of production or production coming to a standstill, as well as loss of profit, are explicitly excluded.

20. Prescription. Claims for compensation or restoration submitted by the customer shall become void when not submitted within 1 (one) year following delivery. Actions at law by the customer based on contractual or extra-contractual liability are subject to prescription after one year following the date on which the customer submitted his claim. If the law should provide shorter terms of prescription, the terms provided by the law shall apply.

21. Applicable law and competent jurisdiction. The constitution, validity and interpretation of this agreement are governed by Belgian law, excluding the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Sales Convention) or any law replacing this convention in a later stage. Any disputes relating to this, directly or indirectly, shall be dealt with by the Court of the judicial district of Ghent, excluding any other courts. PHAER reserves the right to file a claim with another Court than the one which is competent according to the rules of the European Enforcement Treaty or Belgian law.