

GENERAL TERMS AND CONDITIONS SWIFT FIBER B.V.

Having its registered office at the Zwettestraat 24 B, 8912 AV Leeuwarden, The Netherlands

Registered with the Chamber of Commerce under number 68630360

Article 1. Definitions

In these general terms and conditions the following terms are capitalised and used in the following meaning, unless expressly indicated otherwise:

1. **Offer/Proposal:** proposal by Supplier to Buyer to conclude an Agreement, for example in a quotation or price list.
2. **Buyer:** the natural person or legal entity who purchases Products or Services from Supplier and who is the other party to the Agreement with Supplier within the meaning of article 6:231 under c of the Dutch Civil Code (Burgerlijk Wetboek).
3. **Supplier:** the limited partnership SWIFT Fiber, Supplier of the Products, other party to the Agreement with Buyer and user of the general terms and conditions within the meaning of article 6:231 under b of the Dutch Civil Code.
4. **Order:** placing an order to supply Products and/or Services by the Buyer from Supplier.
5. **Agreement:** the agreement between the Supplier and Buyer on the basis of which Supplier supplies Products and/or Services to Buyer against payment.
6. **Parties:** Supplier and the Buyer jointly.
7. **Products:** all goods which are the subject of the Agreement.
8. **In writing:** "in writing" for the purposes of these general terms and conditions shall also include communication by e-mail, fax or digital (for example via an online interface), provided that the identity and integrity of the content are duly established.

Article 2. Applicability

1. The present general terms and conditions are applicable to any and all Proposals, Agreements and deliveries of Supplier, of whatever nature, unless this applicability is fully or partly expressly excluded in writing and/or unless expressly stipulated otherwise.
2. Any general terms and conditions of the Buyer, by any name whatsoever, are expressly rejected. Deviations from and additions to these terms and conditions shall only be applicable if and to the extent that they have expressly been accepted by Supplier in writing.
3. Should Supplier have permitted deviations from the present general terms and conditions for a short or a longer period of time, whether or not implicitly, then this shall not affect its right to demand direct and strict compliance with these terms and conditions as yet. Buyer cannot derive any rights from the manner in which Supplier applies the present terms and conditions.
4. The present terms and conditions are equally applicable to all Agreements concluded with Supplier for the implementation of which third parties must be relied on. Said third parties can invoke the present terms and conditions directly against the Buyer, including any exclusions of liability.
5. Should one or more provisions of the present terms and conditions or of any other Agreement concluded with Supplier be in breach of a mandatory statutory provision or any applicable legal provision then the relevant provision shall expire and shall be replaced by a new, legally permissible and comparable provision to be established by Supplier.
6. The Buyer with whom the present terms and conditions were contracted once is deemed to implicitly agree with the applicability of these terms and conditions to an Agreement concluded with Supplier at a later date.
7. In case of a discrepancy between the content of an Agreement concluded by and between the Buyer and Supplier and the present terms and conditions the content of the Agreement shall prevail.

Article 3. Proposals and Offers

1. Any and all Proposals and offers of Supplier are revocable and are made subject to contract, unless indicated otherwise in writing.
2. A complex quotation shall not oblige Supplier to deliver a part of the Products and/or Services included in the Proposal at a corresponding part of the price quoted.
3. The content of the delivery shall exclusively be determined by the description of the delivery specified in the Proposal. If the acceptance deviates (on subordinate points) from the Proposal included in the Offer then Supplier shall not be bound by the same. The Agreement shall in that case not be concluded in accordance with said deviating acceptance, unless Supplier indicates otherwise.
4. If an Agreement is quoted based on actual costs, the prices quoted shall merely serve as a guide; the actual hours worked by Supplier and the actual costs incurred by Supplier shall be invoiced.
5. Clear errors or clerical errors in the Proposal of Supplier shall not bind Supplier.
6. The prices in the Proposals of Supplier shall be exclusive of VAT and other official duties, unless indicated otherwise.
7. Supplier is entitled to change its prices at any time. Proposals and offers shall not automatically be applicable to future Orders.

Article 4. Conclusion of the Agreement

Barring the provisions set forth below an Agreement with Supplier shall only be concluded after Supplier has accepted respectively confirmed an Order in writing. The Order confirmation is deemed to correctly and completely represent the Agreement, unless the Buyer immediately objects to the same in writing. Any additional arrangements agreed on or changes made later shall only have binding effect on Supplier if they have been confirmed in writing by Supplier.

Article 5. Delivery

1. Unless otherwise agreed, delivery shall take place ex place of business or warehouse in Leeuwarden, Netherlands (Ex Works – Incoterms 2010).
2. If the delivery of Products takes place at a delivery address specified by the Buyer then the Buyer must see to it that the location where the Products must be delivered is located on the ground floor and is properly accessible and passable for the transport and/or supply of the Products over a paved road.
3. The choice of the means of transport is that of the Supplier, also in case of paid shipments, with no requirements for the shipment issued by the Buyer. Temporary hindrances or impediments in transport with the chosen means of transport, don't automatically require the use of another means of transport.
4. If the Buyer has specific requirements with regard to packaging used by the Supplier, all costs for the use of this packaging shall be accountable to the Buyer. Packaging materials are not taken back by the Supplier.

5. Products that are ready for pick-up or ready for shipping, should be collected immediately at the place of delivery or receipt. Shipping instructions possibly with provision of car, truck and/or shipping space need to be provided timely.
6. If it turns out to be impossible to deliver the Products to the Buyer because of a cause on the side of the Buyer, the Supplier reserves the right to store those Products for the account and risk of the Buyer, possibly in the open air, all without any liability on the part of the Supplier for damage, impairment, loss or otherwise. A 30-day period apply during storage during which the Supplier will enable the Buyer to collect or receive the Products. This applies unless the Supplier expressly determined a different period in writing.
7. If the Buyer also fails to comply with its obligations after the expiry of the time limit, as intended in the previous paragraph of this article, Buyer shall by operation of law be in default and Supplier shall be entitled to dissolve the Agreement, either in whole or in part, in writing and with immediate effect, without any prior or further notice of default and without any judicial intervention being required and without being liable to pay compensation for damage, costs or interest. As the occasion arises Supplier shall be authorised to sell the Products to third parties or to use the same for the implementation of other Agreements and also to destroy the documents already prepared. The foregoing shall not affect the obligation of the Buyer to pay the agreed price as well as possible storage costs and/or other costs.

Article 6. Delivery times

1. If Supplier has indicated a time for the delivery or the implementation of the Agreement then this shall only be approximate. A specified delivery time can therefore never be qualified as a fatal deadline. In the event that a delivery date is exceeded, the Buyer should, therefore, give Supplier written notice of default. Supplier must then be granted a reasonable time limit to implement the Agreement as yet.
2. If the delivery cannot be made ex-stock, the delivery period is the period that the manufacturer needs for the manufacture of the Products; This starts on the day on which the Agreement was finally reached and all information required for the implementation are received by the Supplier.
3. If and to the extent that this is, at the discretion of Supplier, required for a proper implementation of the Agreement, Supplier shall be entitled to rely on third parties for the performance of certain activities.
4. Buyer shall see to it that all data of which Supplier indicates that they are required or of which Buyer should within reason understand that they are required for the implementation of the Agreement, are supplied to Supplier in a timely fashion. If the data required for the implementation of the Agreement have not been supplied to Supplier in a timely fashion then Supplier shall be entitled to suspend the implementation of the Agreement and/or to charge the additional costs deriving from the delay to the Buyer in accordance with the usual rates.
5. Supplier shall be allowed to deliver Products sold in consignments, invoice each consignment separately and to require payment in accordance with the applicable payment terms.

Article 7. Inspection and complaints

1. The Buyer must inspect the goods delivered immediately after delivery for any deviations with what has been agreed. Any complaints relating to the Products delivered have to be filed ultimately within seven 30 days after delivery, in writing, and should together with the packing slip be submitted to Supplier. After the expiry of the said period, the goods delivered shall be considered as having been irrevocably and unconditionally accepted by the Buyer. The Buyer has to hold the defective Products available for Supplier. The submission of a complaint shall not suspend the Buyer's payment obligation in respect of the Products in question.
2. Should it upon arrival be visible from the outside that the Products are damaged, the Buyer has to make a reservation in writing in this regard against the carrier by means of a note on the proof of delivery, and it should, in derogation from the provisions of paragraph 1 of this article, inform Supplier hereof within 48 hours after receipt.
3. Drawings, technical descriptions, models, specimens, samples, images, colours, weights, sizes and indications of materials used, shall be stated by Supplier in good faith and as precise as possible. However, these informative data shall not be binding. Deviations in respect of Products delivered occurring within the margins that are customary in the industry must be accepted and shall not give the Buyer a right to complain, replacement, compensation of damage or any other right, unless the Agreement expressly provides for a smaller margin in respect of deviations.
4. The defective Products can only be returned after prior consultation with one of the salespeople of Supplier.
5. If Products have been assembled or processed by the Buyer, it shall no longer be allowed to lodge a complaint, irrespective of the ground, including in case of incorrect delivery, even though it is made within the prescribed period; in these cases Supplier shall not be obliged to compensate in any manner whatsoever.
6. Buyer shall under no circumstances, before or after delivery, have the right to complain, compensation or dissolution of the Agreement with Supplier, if not the purchased Products cannot be used for certain specific purposes, regardless of whether those purposes were shown, named or specified by Supplier.

Article 8. Price changes

1. If after the conclusion of the Agreement, however prior to the delivery, one or more of the cost factors undergo a change then Supplier shall be entitled to adjust the stipulated price accordingly. Supplier shall in any case be authorised to charge additional costs if there is question of cost increasing circumstances which Supplier did within reason not have to take into account, which cannot be blamed on Supplier or which are considerable compared to the price of the delivery.
2. Moreover, the following are passed on to the Buyer in full, to the extent that these changes take place after the date of the Offer:
 - a. taxes, import duties, duties, wages, terms and conditions of employment, social insurance contributions or other levies imposed or changed by the Dutch government (also including the European government) and/or trade unions;
 - b. changes in the wages, terms and conditions of employment, Collective Labour Agreements, VAT or social insurances and the like implemented by the government or trade unions and/or changes in the prices of suppliers;
 - c. price increases resulting from exchange rates, wages, raw materials, semi-manufactured products, packaging material, etc.
3. If Supplier is of the opinion that cost increasing circumstances have occurred then it must forthwith inform the Buyer accordingly adequately and in writing.
4. If Supplier increases the price by more than 10% of the original invoice amount within 3 months after the conclusion of the Agreement then the Buyer shall be authorised to dissolve the Agreement with Supplier without charge, unless Supplier indicates to be willing to implement the Agreement at the original price as yet. If the Buyer intends to dissolve the Agreement with Supplier

in case of a price increase then the Buyer must inform the Supplier of said intention to dissolve the Agreement within fourteen 14 days after the notification of the price increase by means of a registered letter.

Article 9. Invoicing and payment

1. Supplier shall be authorised, at the beginning of the Agreement, to desire an advance in full or in part from the Buyer. Advances must be paid immediately after the conclusion of the Agreement and shall be deducted from the (last) invoice.
2. If it has been agreed that payment will take place by means of invoice, payment must take place within 30 days after the date of the invoice, without any setoff or discount, in a manner to be indicated by Supplier in the currency of the invoice.
3. After the expiry of the stipulated payment term the Buyer shall be in default by operation of law without any further notice of default being required.
4. As from the moment of default the Buyer shall be liable to pay interest on the due and payable amount equal to 1% per month, unless the statutory commercial interest is higher in which instance the statutory commercial interest shall apply. As from that moment any and all judicial and extrajudicial costs that Supplier incurs in order to obtain satisfaction – both in and out of court – shall be at the expense of the Buyer. In that case the Buyer shall be liable to pay compensation equal to at least 15% of the outstanding amount with a minimum of € 150.00. Should the costs actually incurred and to be incurred by Supplier exceed the aforementioned amount then these costs shall equally qualify for compensation.
5. If the Buyer does not comply with its payment obligations in a timely fashion then Supplier shall be authorised to suspend the obligations entered into vis-à-vis the Buyer regarding delivery and/or performance of activities until the payment has been made or sufficient security has been provided for the same. The same already applies prior to the moment of default if Supplier may within reason assume that there are reasons to doubt the creditworthiness of the Buyer.
6. In case of liquidation, insolvency, debt management or suspension of payment of the Buyer or a relevant application or petition the claims of Supplier and the obligations of the Buyer vis-à-vis Supplier shall immediately fall due.
7. If the Buyer has, on any account whatsoever, one or more counterclaims vis-à-vis Supplier then the Buyer waives its setoff right. Said waiver of the setoff right is also applicable if the Buyer applies for (provisional) suspension of payment or is declared insolvent.

Article 10. Reservation of title

1. Any and all Products delivered or to be delivered by Supplier shall remain the property of Supplier up to the moment that the Buyer has complied in full with all its payment obligations vis-à-vis Supplier on account of any Agreement concluded with Supplier for the delivery of Products and/or the performance of activities or the supply of Services, including claims in connection with a failure to comply with this kind of Agreement.
2. A Buyer who acts as a reseller shall not be authorised to sell or deliver the Products that are subject to the reservation of title of Supplier, even if this falls within the framework of the normal business operations of its company.
3. The Buyer shall not be allowed to establish limited rights on Products that are subject to the reservation of title of Supplier. If third parties (wish to) establish (limited) rights on the Products subject to the reservation of title then the Buyer shall forthwith inform Supplier accordingly.
4. Supplier hereby already reserves an undisclosed pledge on delivered Products of which the title has transferred to the Buyer due to payment and which are still in possession of Supplier, by way of additional security for claims, other than within the meaning of article 3:92 paragraph 2 of the Dutch Civil Code, which Supplier may still have vis-à-vis the Buyer on any account whatsoever.
5. The Buyer is obliged to keep (have kept) the delivered Products subject to the reservation of title separate from other goods, with the required diligence and recognisable as property of Supplier.
6. The Buyer is obliged to insure the Products against fire, explosion and water damage as also against theft during the period of the reservation of title and to on demand provide Supplier insight into the policies of said insurances. Any and all claims of the Buyer vis-à-vis insurers of the Products on account of the aforementioned insurances shall, if so desired by Supplier, be pledged to Supplier in an undisclosed manner by way of additional security for the claims of Supplier vis-à-vis the Buyer.
7. For deliveries exported to Germany the following applies in addition to the above: if the Buyer (also) forms a new good from the Products delivered by Supplier then the Buyer shall only form this good for Supplier and the Buyer shall hold the newly formed good for Supplier until the Buyer has paid any and all amounts payable on account of the Agreement; up to the moment of satisfaction in full by the Buyer Supplier shall in that case be entitled to any and all ownership rights with regard to the newly formed good.

Article 11. Liability

1. If Supplier is liable for damage, said liability shall be limited to compensation of direct damages and at most to the invoice amount of the Agreement (excluding VAT), or that part of the Agreement to which the liability relates. The liability shall be limited in all cases to the actual compensation paid by the insurer of Supplier in that specific case. Direct damage is exclusively understood as:
 - a. the reasonable costs for the establishment of the cause and the scope of the damage, to the extent that the establishment is related to damage within the meaning of these general terms and conditions;
 - b. the possible reasonable costs incurred in order to have the defective performance of Supplier comply with the Agreement, unless they cannot be attributed to Supplier;
 - c. reasonable costs incurred in order to prevent or limit damage, to the extent that the Buyer demonstrates that these costs resulted in limitation of the direct damage within the meaning of these general terms and conditions.
2. Supplier shall never be liable for indirect damage, including bodily harm, consequential damage, lost profit, lost savings, wages, material costs, losses due to business interruptions, environmental damage and damage resulting from penalties imposed due to non-observance of delivery (completion) times.
3. Supplier shall not be liable for damage, of any nature or any form whatsoever, in case it has departed from incorrect and/or incomplete data supplied by the Buyer.
4. The limitations of liability for direct damage included in these general terms and conditions shall not be applicable if the damage can be blamed on intent or gross negligence on the part of Supplier.

Article 12. Limitation period

In all cases, the time limit within which the Supplier can be held liable for compensation for damage is limited to 6 months from the time when the damage has been detected and up to 1 year after delivery of the Products or Services to which the damage relates.

Article 13. Indemnity

The Buyer shall indemnify Supplier against possible claims of third parties who incur damage in connection with the implementation of the Agreement or the use of the Products and of which the cause can be blamed on others than Supplier. In the event that Supplier should be challenged by a third party in this respect, then the Buyer shall be obliged to assist Supplier both in and out of court and to immediately do all that may be expected of it in such a case. If the Buyer fails to take adequate measures then Supplier shall, without notice of default, be entitled to proceed accordingly. All costs and damage on the part of Supplier and third parties arisen as a result thereof, shall be fully for the risk and expense of the Buyer.

Article 14. Applicable law and choice of forum

1. All Agreements concluded and to be concluded by Supplier shall be governed by Dutch law.
2. All disputes arising in connection with the present Agreement, or further Agreements resulting therefrom, shall be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute in accordance with the following provisions:
 - a. the arbitral tribunal shall be composed of one arbitrator;
 - b. the place of arbitration shall be Leeuwarden, The Netherlands;
 - c. the proceedings shall be conducted in the Dutch language.

Article 15. Change and interpretation of the terms and conditions

1. In case of an interpretation of the content and meaning of these general terms and conditions as well as in the case of conflict between the content or interpretation of any translations of these general terms and conditions and the Dutch version, the Dutch text shall prevail each time.
2. The most-recently filed version and/or the version as applicable at the time of conclusion of the Agreement shall always apply.