



Technical Development Corporation
P.O. Box 126, 8260 AC Kampen
Constructieweg 45, 8263 BC Kampen
The Netherlands

Tel +31 38 3371020
Fax +31 38 3371039

Info.tdc@itmgroup.eu

GENERAL TERMS AND CONDITIONS OF SLUIS CIGAR MACHINERY B.V. (SCM) ALSO OPERATING UNDER THE NAME TECHNICAL DEVELOPMENT CORPORATION (TDC)

1 DEFINITIONS

1.1 In these General Terms and Conditions (the “**General Conditions**”), the following terms, identifiable by the use of a capital letter, shall have the following meanings:

Agreement: means any agreement concluded between TDC and Buyer;

Buyer: any party or customer to which TDC submits an offer or concludes an Agreement with;

Confidential Information: means the specific contents of the Agreement, and all information and data which either Party receives from the other Party and which is marked as confidential or the confidential nature of which is known or can reasonably be deemed to be known by the receiving Party, including technical, financial and business information, names of actual or potential customers, partners, suppliers or proposed business transactions, reports, plans, computer programs, computer files, designs, models, know-how, show-how and any other information which can be deemed confidential and all documents and records containing such information, relating to the disclosing Party and/or its subsidiaries, group companies or affiliated companies and/or business relations. “Confidential Information” shall not include any information which: (i) is already in the public domain or becomes available to the public through no breach of this Agreement by the receiving Party; information shall not be deemed to be in the public domain merely because any part thereof is embodied in general disclosures or because individual features, components or combinations thereof are known or become known to the public; (ii) was in the receiving Party's possession prior to receipt from the disclosing Party, as proven by its written records; and (iii) is independently received by the receiving Party from any third party which is not bound by any confidentiality obligation with respect to such information.

Direct Damages: means: (a) reasonable expenses which Buyer would have to incur to make TDC's performance in compliance with the Agreement; (b) reasonable expenses incurred by Buyer to determine the cause and scope of the damage, insofar as the determination relates to direct damages within the meaning of the Agreement; (c)

reasonable expenses incurred to prevent or to mitigate damages, insofar as Buyer incurring such expenses demonstrates that these expenses resulted in mitigation of direct damages within the meaning of the Agreement;

Force Majeure: means any circumstances reasonably out of TDC's control, that could not have reasonably been foreseen, prevented or overcome by reasonable diligence and without unusual expense, including but not limited to war, the threat of war, civil war, revolt, mobilisation, molestation, fire, water damage, flood, frost, communicable, infectious and/or virulent diseases, excessive health-related absenteeism of personnel, site or building blockages, strikes, specific work interruptions or work-to-rule slowdowns and lock out, storage- and transport difficulties, shortage of raw materials, energy or personnel, disturbances of import and export, measures by the government and the delay in the provision to TDC of parts, goods, or services ordered from third parties, other than by circumstances, accidents and interruptions of business operation to be imputed to TDC;

Goods: means the equipment and/or services as more specifically described in the Agreement;

Guarantee Period: means the guarantee period of 1 year or 2000 running hours of (a separate part of) the Goods as of the date of delivery, whichever occurs sooner;

Intellectual Property Rights: means all inventions, patents, designs, design rights, database rights and copyrights, know how, internet names, domain names, email address names, trade marks, trade names, logos and other source identifiers (whether registered or not) and the goodwill therein and applications for any of the same and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist in any part of the world whether owned by or consisting of a right to use for the benefit of TDC together with any application by or on behalf of TDC or the owner granting the right to use for any such rights.

TDC: means the supplier under the Agreement, Sluis Cigar Machinery B.V., also operating under the name Technical Development Corporation;

Total Contract Value: means the purchase prices of the Goods as mentioned in the Agreement;

Parties/ Party: means TDC and Buyer collectively and each of TDC and Buyer individually;

Variation: means the changes and/or additions to the Agreement and/or to the specifications of the Goods;

Working Day: means a day on which the banks in Amsterdam are open for business, excluding, however, Saturdays and Sundays and public holidays in The Netherlands.

2 APPLICABILITY

- 2.1 These General Conditions apply to all quotations and offers from and all orders to TDC for the sale and delivery of Goods and to all agreements with TDC with respect thereto.

- 2.2 The applicability of conditions of Buyer is hereby explicitly rejected.
- 2.3 Provisions which deviate from these General Conditions can be invoked by Buyer only if and to the extent that these provisions are accepted by TDC in writing.
- 2.4 By accepting the applicability of these General Conditions once Buyer agrees and accepts that these General Conditions shall also apply to all future agreements with TDC.
- 2.5 These General Conditions may be amended from time to time by TDC. The modified General Conditions shall apply to the Agreement within 14 Working Days after TDC has notified Buyer of the amended General Conditions in writing.
- 2.6 In such case and for insofar as no recourse can be taken, on grounds of reasonableness and equity, or an unreasonably burdensome character, to any condition in these General Conditions, then such condition in terms of content and application shall be converted to a condition as close as possible to its original meaning in such a way that recourse can indeed be taken to such condition.

3 OFFERS, ESTABLISHMENT OF AGREEMENT

- 3.1 All offers from TDC are non-binding, unless such offer shall contain a deadline for acceptance. Should an offer comprise a non-binding offer, and this offer shall be accepted by Buyer, then TDC has the right to recall such acceptance within 2 Working Days after the receipt by TDC of said acceptance.
- 3.2 Should Buyer grant TDC an order, then the Agreement shall take effect only at such time as TDC shall have accepted such order in writing, casu quo shall have commenced execution of said order.
- 3.3 For defects or deviations in the Goods as regards to illustrations, drawings, and in mention of sizes, weights, and other specifications occurring in folders, price lists, and the like, TDC is not liable unless specific reference to such specifications shall have been made in the Agreement.

4 SAMPLES, MODELS AND EXAMPLES

- 4.1 In case TDC shall display or provide a sample, model, or example to Buyer, this shall be considered to have been displayed or provided only as a demonstration. The quantities and/or specifications of the Goods to be delivered can deviate from the sample, model or example, unless it shall have been specifically agreed to the contrary by the Parties in the Agreement that delivery of the Goods shall take place in accordance with such displayed or provided sample, model or example.

5 PRICE, PRICE INCREASES

- 5.1 The prices are exclusive of VAT and based on delivery EXW (ex works) and therefore exclusive of import or export, duties, exercise, taxes, packaging taxes, any other

charges, levies and rights unless explicitly provided otherwise. The prices are furthermore exclusive of all costs of packaging, loading, transport, unloading, insurance, assembly, commissioning and any other services unless explicitly indicated otherwise.

5.2 The price stated by TDC is based upon (cost) determining factors (such as cost of raw materials, materials, transport and wages) prevailing at the date of the Agreement. If the costs increase thereafter (i.e. after the date of the Agreement) by 5%, TDC is entitled to adjust the prices accordingly and to charge Buyer a corresponding price increase.

5.3 In the event a Variation which has been mutually agreed upon by the Parties in writing, TDC shall have the right to amend the prices in accordance with the consequences of the Variation to the prices.

6 DELIVERY

6.1 Unless the Parties have explicitly agreed upon otherwise, delivery of the Goods shall take place on the basis of the Incoterm EXW (ex-works) warehouse TDC as set forth in the Incoterms that apply at the date of the Agreement.

6.2 Unless expressly agreed otherwise, loading, dispatching or transport, unloading and insuring of the Goods to be delivered shall be effected for the risk of Buyer, even if TDC arranges for this or pays for the same

6.3 TDC shall be deemed to have delivered the Goods to Buyer ex-works after TDC has informed Buyer that the Goods are available and ready for transport or despatch in the designated warehouse of TDC. Goods consisting of services are deemed to be delivered as soon as TDC has notified Buyer that the Goods are completed.

6.4 Buyer is obliged to receive the Goods at the moment at which the Goods shall be made available to Buyer, casu quo at the moment at which said Goods shall be delivered to Buyer. In such case as Buyer shall refuse such receipt, or shall be negligent in the granting of information or instructions necessary for such delivery, then the Goods shall be stored by TDC at the risk of Buyer. Buyer shall in such case be responsible for the payment of all supplementary costs, including in any case storage costs, thus incurred by TDC.

6.5 If the Goods are not collected within 14 days after delivery has taken place, Buyer shall be in default without prior notice of default and TDC will be entitled either to rescind the Agreement or hand over the Goods to Buyer in any way that TDC deems appropriate. All costs and damages which result from the default of Buyer are at the expense of Buyer.

7 DELIVERY TIME

7.1 An agreed-upon delivery time by the Parties is not a deadline unless specific agreement shall have been reached to the contrary by the Parties.

7.2 A delivery time only becomes effective after all the following requirements have been fulfilled: (a) conclusion of the Agreement, (b) receipt by TDC of all documents and data

to be provided by Buyer in connection with the Agreement, and (c) receipt of any advance payments agreed upon by TDC or a security for the benefit of TDC has been provided by or on behalf of Buyer.

- 7.3 Delivery periods will be extended by the amount of time that: (a) the implementation of the Agreement is delayed due to Force Majeure, and/or (b) Buyer exceeds a term which has been set or agreed upon with TDC or which could reasonably be expected by TDC for the fulfilment of any obligation of Buyer.
- 7.4 In the event of a Variation which has been mutually agreed upon by the Parties in writing, TDC shall have the right to amend the delivery time in accordance with the consequences of the Variation to the delivery time.
- 7.5 Whilst all reasonable endeavour will be made to meet the quoted delivery time, TDC shall not be liable in any manner for failure to deliver within the delivery time quoted.
- 7.6 If TDC expects that the agreed delivery time will be exceeded, it will inform Buyer thereof as soon as possible. A failure to make a timely delivery shall never entitle Buyer to additional or substitute compensation or to non-compliance by Buyer of any of its own obligations vis-à-vis TDC arising from the Agreement.

8 **PARTIAL DELIVERIES**

- 8.1 TDC has the right to deliver the Goods in parts. Each partial delivery will be deemed an independent delivery with respect to the applicability of the provisions of these General Conditions. TDC has the right to invoice a partial delivery separately.

9 **CHANGES IN THE DELIVERED GOODS**

- 9.1 Minimal deviations with regard to the specified sizes, weights, quantities, colours and other similar specifications in the Goods to be delivered by TDC are permissible, and shall not be considered as shortcomings on the part of TDC in its fulfilment of the Agreement.

10 **PAYMENT AND COLLECTION COSTS**

- 10.1 Buyer will pay a deposit of 30% of the contract price at the time of conclusion of the Agreement. The deposit will be non-returnable unless the Agreement is terminated due to a breach of TDC. Buyer will pay 60% of the contract price upon shipment of the Goods. Buyer will pay 10% of the contract price after acceptance of the Goods.
- 10.2 Payment shall be made in the currency as specified on the invoice within 30 days after the invoice date. However, TDC shall at all times have the right to demand full or partial payment in advance from Buyer and/or otherwise obtain security for payment from Buyer. Any full or partial payment made in advance by Buyer is non-refundable unless the Agreement is terminated by Buyer due to a breach of the Agreement by TDC.

- 10.3 In the event of payments by bank transfer, Buyer must at all times mention the respective invoice numbers. Payments by bank transfer which are not (completely) specified in this manner are first applied against the oldest invoices of Buyer as well as against the interest due and costs made in relation thereto.
- 10.4 If Buyer fails to pay any amount due in the manner described above, it shall be in default without prior notice of default. If Buyer remains in default with any payment, all other TDC claims on Buyer shall be immediately and totally due and the default becomes effective also with respect to those other claims, and without notice of default. As from the day Buyer is in default with a payment, overdue payment interest equal to the legal interest rate plus 2% of the outstanding amount per month shall be due for any part of a month during which the default continues.
- 10.5 Buyer's payment shall be deemed to have been made on the moment the payment is credited to TDC's bank account.
- 10.6 Should Buyer fail to make payments within the time specified above, it shall pay a penalty in the amount of 1% of the total value of the late payment for each full 7 days of delay. However, the total amount of the penalty is not to exceed 5% of the Total Contract Value.
- 10.7 Buyer relinquishes any right to settle amounts charged by and between the Parties. The submission of guarantee claims does not suspend the payment obligations of Buyer.

11 **PROPRIETARY RIGHTS**

- 11.1 After the Goods have been delivered as per Article 6, the Goods are for Buyer's risk and expense.
- 11.2 All Goods sold by TDC to Buyer shall remain the property of TDC until Buyer has paid in full all that is owed to TDC in connection with the Agreement and/or in connection with prior or subsequent agreements of the same nature, including, without limitation, damages, costs and interest. Buyer has no right of retention in respect of these Goods.
- 11.3 Buyer is not entitled to pledge or otherwise encumber the Goods covered by the retention of title.
- 11.4 If any third party imposes an attachment on the Goods covered by the retention of title or wish to establish or assert rights on the same, Buyer is required to inform TDC thereof immediately.
- 11.5 Buyer is required to insure and keep insured the Goods covered by the above retention of title against fire, explosion and water damage, as well as against theft, and to provide TDC with the insurance policy upon TDC's first request. If Goods covered by the above retention of title are destroyed or damaged in any way, Buyer shall fully compensate TDC.
- 11.6 In the event TDC wishes to exercise its ownership rights in accordance with the above retention of title, Buyer authorises TDC (or any third party designated by TDC), now for then, unconditionally and irrevocably, to enter the locations where TDC's Goods are

located and retrieve such Goods there from and to grant all cooperation in this respect. Upon TDC's first request, Buyer shall pledge in accordance with Article 3:239 Dutch Civil Code all its claims towards insurers with regard to the Goods and/or its claims towards customers in the resale of the Goods covered by the retention of title.

- 11.7 As long as the retention of title is applicable to the Goods delivered by TDC, Buyer will store the Goods and label them in such a way that they are clearly identifiable as Goods belonging to TDC.

12 ACCEPTANCE OF DELIVERY AND INSPECTION

- 12.1 Buyer is obliged to confirm the delivery of the Goods within 3 Working Days in writing to TDC.
- 12.2 Buyer is obliged to inspect the correctness, quality and the quantity of the Goods delivered by TDC as soon as the Goods are offered for inspection by TDC.
- 12.3 In any event, the Goods consisting of services are deemed to be accepted 3 months after the agreed or actual date of commencement of the services or one month after completion of the services, whichever occurs sooner. The Goods consisting of goods are deemed to be accepted after 1 month after delivery.
- 12.4 Buyer shall cooperate without delay in the acceptance of the Goods delivered as soon as TDC offers these Goods for acceptance. TDC is also entitled to offer the Goods for acceptance in parts. All costs incurred by TDC in relation to the non-acceptance of the Goods delivered are for the account of Buyer including any costs of storage and transport.

13 GUARANTEE

- 13.1 During the Guarantee Period, TDC warrants the good quality of the Goods TDC delivered to Buyer to the extent that in the event of defects in the manufacturing or construction with respect to which timely notice was given by Buyer, TDC will either: (a) redeliver the Goods in question at no cost to Buyer, or (b) repair the Goods at no cost; all this at the absolute discretion of TDC.
- 13.2 After expiry of the Guarantee Period, TDC is no longer obliged to offer the services as meant under (a) and (b) in Article 13.1 of these General Conditions, and TDC is no longer liable for defects in the manufacturing or construction of the Goods, to the extent no timely notice was given of such defect in the Guarantee Period as set out under Article 13.3..
- 13.3 With respect to noticeable defects of the Goods, Buyer has to submit a claim to TDC in writing within 14 Working Days after Buyer has the Goods in its possession, being the moment on which: (a) Buyer collects the Goods at a warehouse of TDC or (b) TDC or a carrier used by TDC delivers the Goods on the location as agreed between the Parties or (c) in case of Goods consisting of services, after delivery, failing which any claim of

Buyer on TDC relating thereto will lapse. With noticeable defects is also meant, delivery of (a quantity of) Goods that are not in conformity with the Agreement

- 13.4 Claims with respect to other defects must be made in writing within 14 Working Days after their appearance and at the latest prior to the expiration of the Guarantee Period failing thereto will lapse.
- 13.5 TDC will investigate claims under the guarantee as soon as possible after notification thereof by Buyer. Buyer shall provide TDC with the opportunity to do so. On the basis thereof TDC will determine whether Buyer's claim is justified.
- 13.6 Any rights to a guarantee also lapses if:
- (a) The directions given by TDC for assembly and/or commissioning and/or use of the Goods are not followed exactly;
 - (b) The Goods are used improperly or not in accordance with the agreed to or usual purpose;
 - (c) Buyer has not fulfilled any of its obligations towards TDC arising from the underlying Agreement, or has not fulfilled them adequately or on time;
 - (d) The Goods have been damaged by external causes such as (rain)water, heating, fire etc.
- 13.7 Goods may only be returned to TDC by Buyer after TDC has agreed thereto in writing.

14 **LIABILITY**

- 14.1 TDC's liability in connection with any defects in Goods it has delivered is limited to the fulfilment of the guarantee described in Article 13.
- 14.2 TDC shall never be liable for any damages (including, without limitation, loss of profit, loss of opportunity, loss of savings) other than Direct Damages.
- 14.3 In all cases in which TDC is obliged to pay damages to Buyer, these damages shall never be higher than, at TDC's absolute discretion, either the Total Contract Value whereby or in connection with which the damage was actually caused or, if the damage is covered by an insurance policy of TDC, the amount that is actually paid out by the insurer with respect thereto. Any claim of Buyer towards TDC, except those expressly recognised by TDC in writing, lapses after a period of 12 months as of the time the alleged harmful event underlying the claim arose.
- 14.4 Conditions which limit, exclude or determine liability, to which TDC is subjected by its suppliers or subcontractors in connection with the Goods, can be imposed on and invoked by TDC against Buyer.
- 14.5 TDC's employees, or independent contractors brought in by TDC for the implementation of the Agreement and these General Conditions, including any and all agreements in connection herewith, can, towards Buyer, invoke all means of defence afforded by the

Agreement and these General Conditions as if they themselves were party to the Agreement and these General Conditions.

- 14.6 Buyer will hold harmless and indemnify TDC, its employees and independent contractors brought in for the implementation of the Agreement for each claim by third parties in connection with the implementation by TDC of the Agreement, insofar as those claims are greater than or different from those to which Buyer is entitled against TDC.

15 **FORCE MAJEURE**

- 15.1 In the event that TDC breaches or fails to perform any of the terms or conditions of the Agreement due to Force Majeure, TDC's obligations are suspended and TDC shall not be liable for any damages incurred by Buyer as a result of such breach or failure.

- 15.2 In case TDC is unable to perform its obligations as a result of a situation as referred in this Article 15.1 for more than 30 days, Parties shall meet to discuss what measures should be undertaken. However, if Parties cannot reach an agreement within 14 Working Days as from the expiry of the aforementioned period of 30 days, Buyer is authorized to terminate the relevant remaining part of the Agreement by a written declaration.

16 **SUSPENSION AND RESCISSION**

- 16.1 If Buyer does not fulfil one or more of its obligations, does not fulfil them on time or adequately, is declared bankrupt, requests (temporary) moratorium, or proceeds with the liquidation of its business, as well as when its assets are attached in whole or in part, TDC has the right to suspend the implementation of the Agreement or to rescind the Agreement in whole or in part by means of written statement, without prior notice of default, at its option and always reserving any rights to which it is entitled with respect to compensation for costs, damage and interest. In such case any claim from TDC is immediately due and payable.

- 16.2 If the agreement terminates pursuant to article 16.1 before the agreed Goods are finished or delivered, TDC is entitled to the full agreed price for those Goods, decreased by the savings arising directly from the termination.

17 **INTELLECTUAL PROPERTY RIGHTS**

- 17.1 Any Intellectual Property Rights (or the right to apply for registration of such rights) arising pursuant to the performance by either Party of its obligations under this Agreement shall be vested in TDC and such rights are herewith transferred to TDC in advance which transfer TDC herewith accepts. Buyer herewith grants TDC an irrevocable power of attorney to execute any document necessary to effect the transfer of such rights from Buyer to TDC, should additional requirements be satisfied.

- 17.2 Notwithstanding Article 17.1, all intellectual property rights and/or knowhow owned by or vested in Buyer and existing prior to the conclusion of this Agreement, such as

trademarks and trade names, logos and design elements, shall remain the property of Buyer. TDC shall not claim any right, title or interest, in or to such intellectual property. The burden of proof with respect to the existence of the intellectual property and/or knowhow prior to this Agreement, lies with Buyer.

17.3 Buyer shall only use the Intellectual Property Rights of TDC in so far as necessary for proper use of the Goods and Buyer shall at all times treat the Intellectual Property Rights of TDC as Confidential Information.

17.4 Buyer shall never register, directly or indirectly, any knowhow, design and/or inventions (whether registered or patentable or not) of TDC, anywhere in the world. If Buyer acts contrary to this obligation, Buyer shall assign any such registration to TDC and Buyer shall co-operate in any manner necessary to transfer and register any such registration to and in the name of TDC.

17.5 If Buyer entered into this Agreement with TDC pursuant to a request for proposal or similar process as initiated by Buyer with different third parties and if such third party has applied for or registered for any intellectual property rights or similar process, then Buyer shall indemnify TDC for any and all damages (including loss of profits) that may arise as a result of any such application or registration by such third party. For the avoidance of doubt, if the Goods infringe a third party right as aforementioned, that shall be Buyer's responsibility and shall not result in a default of TDC under the Agreement. In that case, TDC will no longer be obliged to continue the development and/or supply of such Goods.

18 **COMPLIANCE**

18.1 TDC covenants that all of its activities under or pursuant to this Agreement shall comply with the applicable laws, rules and regulations in the Netherlands.

18.2 Buyer covenants that all of its activities under or pursuant to this Agreement shall comply with the applicable laws, rules and regulations in the country wherein Buyer is established.

19 **CONFIDENTIALITY**

19.1 Each Party shall maintain strict confidentiality with respect to Confidential Information and shall:

- (i) not distribute, disclose or disseminate Confidential Information to any person other than those of its employees, who reasonably need to know such information for the purpose of the performance of the obligations under this Agreement;
- (ii) treat Confidential Information with the same degree of care as it itself observes towards its own information of like importance which is to be kept confidential;
- (iii) keep all documents and materials which constitute or contain Confidential Information in safe custody and restrict access to such documentation to

employees who reasonably need to have such access for the purpose of the performance of this Agreement;

- (iv) use the Confidential Information solely for the purposes for which such Confidential Information is disclosed to it.

19.2 The Parties shall impose the confidentiality obligations upon their respective employees by written agreement and shall see to it that their employees shall at all times fully comply with such obligations.

19.3 The confidentiality obligations shall not apply if and insofar as:

- (i) the disclosing Party consents in writing to the receiving Party disclosing such information to a third party or third parties (such consent not to be withheld unreasonably), provided that upon such disclosure the receiving Party shall impose the confidentiality obligations set forth in this Article on such third party or third parties; or
- (ii) the receiving Party is under a statutory obligation to disclose such information to the competent authorities.

19.4 Each Party may request the other Party to disclose Confidential Information if such a disclosure is necessary for a justifiable specific purpose. The other Party shall – subject to the nature of the specific purpose – not unreasonably withhold its consent.

19.5 This Article 19 (Confidentiality) shall continue to apply after the Agreement for a period of five (5) years.

20 **TAX**

20.1 If the Goods have a destination that lies outside of the Netherlands, Buyer is obliged to provide TDC with all documents required by the Dutch tax authorities to prove that the Goods have such destination and will co-operate with the Dutch tax authorities in case the Dutch tax authorities want to receive further information in respect thereof. TDC will inform Buyer about the required documents.

20.2 If TDC is obliged to pay penalties as a result of Buyer not fulfilling its obligations in this Article 20.1, or if TDC is obliged to pay extra value added taxes or withholding taxes with respect to the Goods, then Buyer shall reimburse TDC for that amount.

21 **APPLICABLE LAW AND JURISDICTION**

21.1 The Agreement and any agreements entered into pursuant to or in connection with the Agreement (including, without limitation, claims based on tort) shall be governed by and construed in accordance with the laws of the Netherlands. The application of the UN Sales Convention is explicitly excluded.

All disputes arising out of or in connection with the Agreement (including, without limitation, claims based on tort) or further agreements resulting therefrom shall be submitted to the exclusive jurisdiction of the competent court in Zwolle, the Netherlands.