

## TERMS AND CONDITIONS OF DELIVERY

### COUNTER FLOW PRODUCTS B.V.

#### Article 1 Definitions

- 1.1 In these terms and conditions of delivery, the following terms are used in the following sense, unless explicitly stated otherwise or if the context reveals anything else:
- a. the user of these terms and conditions: Counter Flow Products B.V., established at Bildtweg 4, in Eastermar, the Netherlands, registered with the Chamber of Commerce under number 76300005;
  - b. customer: the legal or natural person who acts in the exercise of his profession or whose company has entered into an agreement with Counter Flow Products;
  - c. agreement: the agreement between Counter Flow Products and the customer;
  - d. product: the product that Counter Flow Products supplies under the agreement.

#### Article 2 General

- 2.1 These terms and conditions of delivery apply to all offers of Counter Flow Products and to agreements between Counter Flow Products and the customer.
- 2.2 Any deviations from these terms and conditions of delivery are only valid if they have been explicitly agreed in writing or via e-mail.
- 2.3 The applicability of any purchase or other conditions of the customer is explicitly rejected.
- 2.4 Once these terms and conditions have been applicable to a legal relationship between Counter Flow Products and the customer, the customer is deemed to have agreed in advance to the applicability of these terms and conditions to agreements concluded and to be concluded afterwards.
- 2.5 If one or more of the provisions in these terms and conditions are invalid or should be destroyed, the remaining provisions of these terms and conditions will remain fully applicable. In that case Counter Flow Products has the right to substitute a provision that is not unreasonably onerous for the customer and that approximates the invalid provision as closely as possible.
- 2.6 If Counter Flow Products does not always require strict compliance with these terms and conditions of delivery, this does not mean that the provisions thereof do not apply, or that Counter Flow Products would lose the right to some extent to ensure strict compliance with the provisions of these terms and conditions.
- 2.7 Counter Flow Products has the right to change these terms and conditions. The customer will be notified in writing or via e-mail of the changed delivery conditions and the date of entry into force. The changed delivery conditions apply to all orders placed by the customer after the changed delivery conditions have entered into force.

#### Article 3 Offers and prices

- 3.1 Any offer from Counter Flow Products is made without obligation.
- 3.2 Counter Flow Products is not bound by its offer if there are apparent errors in its publications, such as price lists, quotations, order confirmations or (e-mail) messages.
- 3.3 The assortment of Counter Flow Products can be changed at any time.
- 3.4 The prices quoted do not automatically apply to future orders.
- 3.5 The prices quoted are in euros and are exclusive of VAT.
- 3.6 Counter Flow Products has the right to adjust its prices from time to time without prior publication.

#### Article 4 Conclusion of the agreement

- 4.1 The agreement is concluded when the customer has agreed to the quotation or when the customer has placed an order with Counter Flow Products in writing, by telephone or by e-mail.
- 4.2 After the agreement has been concluded, Counter Flow Products will send the customer a confirmation via e-mail.

#### Article 5 Execution of the agreement

- 5.1 Counter Flow Products will execute the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship.

- 5.2 Counter Flow Products has the right to have the agreement (partially) executed by third parties.

#### **Article 6 Obligations of the customer**

- 6.1 The customer ensures that all data of which Counter Flow Products indicates that these are necessary, or all data that the customer should reasonably understand to be necessary for the execution of the agreement will be provided to Counter Flow Products in time.
- 6.2 The customer guarantees the accuracy, completeness and reliability of the information provided by him, even if it originates from third parties.
- 6.3 If the information provided by the customer is incomplete and/or incorrect, this will be entirely at the expense and risk of the customer.
- 6.4 The customer is obliged to immediately inform Counter Flow Products about facts and circumstances that may be relevant in connection with the implementation of the agreement.
- 6.5 The customer indemnifies Counter Flow Products against any claim from third parties who suffer damage in connection with the implementation of the agreement, and which damage is attributable to the customer.
- 6.6 For the observance of all legal and other applicable regulations that apply in the country where the customer is established in connection with the possession, transport, storage, resale, installation and use, in whatever way, of the product, the customer is the only responsible.

#### **Article 7 Delivery**

- 7.1 Delivery is always Ex Works.
- 7.2 If the order is to be delivered outside the Netherlands, then, in addition to the transport costs, all costs, such as import rates, levies and/or customs costs will be charged to the customer.
- 7.3 The goods are delivered to the delivery location specified by the customer or collected from a Counter Flow Products production location. Counter Flow Products does not install the products. After delivery (or collection), the products are entirely at the risk of the customer and it is the customer's responsibility to prevent damage or theft of the products.
- 7.4 Counter Flow Products has the right to deliver an order in parts.
- 7.5 The customer is obliged to receive the ordered products. A possible exceeding of the delivery time does not change that.
- 7.6 If the customer refuses to purchase, Counter Flow Products is entitled to store the products for the account and risk of the customer.
- 7.7 The delivery time can never be regarded as a strict deadline. If Counter Flow Products knows or suspects that it cannot deliver on time, Counter Flow Products will inform the customer as soon as possible.
- 7.8 In the event that a delivery time agreed with the customer is exceeded as a result of an event that is in fact beyond the control of Counter Flow Products and cannot be attributed to her actions, as described in, among others, Article 12, then this period is automatically extended by the period that it was exceeded as a result of such an event.

#### **Article 8 Invoicing and payment**

- 8.1 Invoicing takes place at the time of delivery.
- 8.2 Invoices must be credited to the bank account of Counter Flow Products within 14 days of the invoice date.
- 8.3 If the customer does not pay an invoice on time, Counter Flow Products has the right to suspend further deliveries until the due invoices have been paid in full. Counter Flow Products cannot be held liable for any damage suffered by the customer as a result of such a suspension.
- 8.4 Payments must be made without discount or settlement.
- 8.5 If the customer does not pay on time, the customer will be in default and the statutory commercial interest will be charged to the customer from the moment of exceeding the final payment date until payment of the full amount due. All judicial and extrajudicial collection costs that Counter Flow Products incurs to collect the claim from the customer are for the account of the customer. The extrajudicial collection costs are set at 15% of the principal with a minimum of € 100,-.
- 8.6 In the event of liquidation, bankruptcy, seizure or suspension of payment of the customer, the claims of Counter Flow Products on the customer are immediately claimable.

- 8.7 Every payment by the customer first of all serves to settle the interest owed and then to settle the costs associated with the collection. Only after payment of these amounts does any payment by the customer serve to settle the outstanding principal sum.
- 8.8 Complaints do not suspend the payment obligation of the customer.

**Article 9 Retention of title**

- 9.1 All delivered and yet to be delivered products remain the exclusive property of Counter Flow Products until all claims (including collection costs and interest) that Counter Flow Products has or will have against the customer have been paid in full.
- 9.2 As long as ownership of the products has not passed to the customer, the customer may not:
- a. Pawn;
  - b. Grant any other right to third parties in connection to the products;
  - c. Resell or deliver outside of the normal business operations.
- 9.3 The customer is obliged to store the products that have been delivered under retention of title with due care and as recognizable property of Counter Flow Products. The customer must always do everything that can reasonably be expected of him to safeguard the property rights of Counter Flow Products.
- 9.4 If the customer does not or not fully comply with his obligations towards Counter Flow Products and in the event of dissolution of the agreement, for whatever reason, Counter Flow Products is entitled to take back all products that are subject to retention of title, without prior notice of default or judicial intervention, without prejudice to the right of Counter Flow Products to full compensation.
- 9.5 If Counter Flow Products wishes to exercise its right as described in this article, the customer is obliged to grant Counter Flow Products access to all locations where the products of Counter Flow Products are located.
- 9.6 In the event of seizure, suspension of payment or bankruptcy, the customer shall immediately inform Counter Flow Products and the seizing bailiff, administrator or trustee of the (property) rights of Counter Flow Products.
- 9.7 The provisions referred to in this article are without prejudice to the other rights vested in Counter Flow Products.

**Article 10 Complaints and guarantee**

- 10.1 The customer is obliged to check the delivered products immediately upon delivery. The customer must in particular check:
- a. Whether the correct products have been delivered;
  - b. Whether the correct amount has been delivered;
  - c. Whether there is transport damage.
- 10.2 If the delivered products do not match the order, the customer must inform Counter Flow Products immediately after delivery.
- 10.3 Transport damage must be notified to Counter Flow Products immediately after delivery by the customer.
- 10.4 If the customer does not report a defect in the order or transport damage to Counter Flow Products immediately after delivery, the order is deemed to have been received in good order and condition.
- 10.5 Counter Flow Products guarantees the proper functioning of the product for a period of two years.
- 10.6 Complaints or a claim under the guarantee can be submitted by telephone or e-mail to Counter Flow Products. A return shipment is only accepted if Counter Flow Products has given its permission for the return via e-mail. The costs for the return are at the expense of the customer.
- 10.7 The customer is obliged to give Counter Flow Products the opportunity to check a complaint or guarantee claim.
- 10.8 Complaints about the product will not be processed (further) and a guarantee claim will be rejected if:
- a. Defects are the result of improper use;
  - b. The product has not been installed in accordance with the applicable guidelines. Reference is made in particular to the ISSO Directive 30.4 (HEAT RECOVERY FROM SHOWER WATER. Installation guidelines for heat recovery from wastewater from showers in homes. ISBN number 90-5044-108-4) or the successor to this directive;

- c. Work carried out by the customer and/or a third party and/or changes and/or repairs to the product;
  - d. Defects are caused by external circumstances such as: natural disasters, explosions, dirt accumulation, landslides, floods and destruction;
  - e. Defects are the result of an application that falls outside the technically permitted specifications and or for which the product is intended;
  - f. Defects are the result of components and/or products not supplied by Counter Flow Products.
- 10.9 If the customer demonstrates that the product was defective at the time of delivery or the customer invokes the guarantee and the guarantee claim is accepted by Counter Flow Products, Counter Flow Products will deliver a replacement product. A successful complaint or a successful claim on the guarantee does not entitle the customer to compensation for incurred installation and removal costs or for consequential damage.

#### **Article 11 Liability and prescription**

- 11.1 Counter Flow Products cannot be held to compensate for any damage that is a direct or indirect consequence of:
- a. An event that is in fact beyond its control and cannot therefore be attributed to its actions, as described, among other things, in Article 12 of these terms and conditions of delivery;
  - b. Any act or negligence on the part of the customer, his subordinates, or other persons employed by or on behalf of the customer.
- 11.2 The customer is, under all circumstances, responsible for the accuracy and completeness of the data supplied by him. Counter Flow Products is never liable for any damage that is (partly) caused by the information provided by the customer being incorrect and/or incomplete. The customer indemnifies Counter Flow Products against all claims in this regard.
- 11.3 If the customer or a third party makes changes to the product, Counter Flow Products excludes any liability with regard to the operation and any (consequential) damage.
- 11.4 Counter Flow Products is not liable for any damage whatsoever due to incorrect or improper use of the products or due to incorrect installation of the products.
- 11.5 If Counter Flow Products, in its opinion, is obliged to take measures or to cooperate with recall actions to prevent (further) damage as a result of claims from end customers on the grounds of a lack of products supplied, the customer undertakes to comply with such measures. Counter Flow Products can never be held liable for damage suffered by the customer as a result of initiated recall actions.
- 11.6 Counter Flow Products is never liable for indirect damage or consequential damage, including but not limited to lost profit, lost revenue, reputation damage, missed savings, delay damage, water damage, transport costs, labour costs, company damage, stagnation damage and imposed fines.
- 11.7 If Counter Flow Products should be liable for any damage, the liability of Counter Flow Products is limited to the amount of the payment made by the insurer of Counter Flow Products. If in any case the insurer does not pay or the damage is not covered by the insurance, the liability of Counter Flow Products is limited to the amount that the customer has paid for the product to which the liability relates.
- 11.8 Claim rights and other powers of the customer vis-à-vis Counter Flow Products, for whatever reason, will in any case lapse after the expiry of one year from the moment a fact occurs on which the customer can use these rights and/or powers against Counter Flow Products.
- 11.9 If the customer is culpably not, not in time or not properly complying with his contractual obligations, or does not comply with his obligations arising from the law, or acts unlawfully towards Counter Flow Products, then the customer must compensate all damage that Counter Flow Products suffer or have suffered as a result.

#### **Article 12 Force majeure**

- 12.1 Counter Flow Products is not obliged to fulfil one or more obligations under the agreement if it is prevented from doing so due to force majeure. Force majeure includes: war and danger of war; terrorism; import and export prohibitions or barriers; measures by government bodies; strikes or work interruptions; epidemics; traffic disruptions; weather influences; natural disasters; transport difficulties; fire; theft; power failure; internet malfunction; failure in e-mail traffic; computer breach by a third party; changes in laws and regulations.

- 12.2 Force majeure should also be understood to mean a non-attributable shortcoming by a supplier of Counter Flow Products, or a third party engaged by Counter Flow Products.
- 12.3 Counter Flow Products also has the right to invoke force majeure if the circumstance that prevents (further) fulfilment occurs after Counter Flow Products should have fulfilled its obligation.

#### **Article 13 Suspension and dissolution**

- 13.1 Counter Flow Products is entitled to suspend the implementation of the agreement with immediate effect if, after concluding the agreement, Counter Flow Products has discovered that the circumstances give good reason to fear that the customer will not fulfil its obligations.
- 13.2 Counter Flow Products is entitled to terminate the agreement if the customer does not or not fully comply with the obligations under the agreement and the customer has not responded to a sent notice of default in which the customer is offered a reasonable period of time to comply. If compliance is permanently impossible, a notice of default is not required.
- 13.3 Furthermore, Counter Flow Products is entitled to terminate the agreement if circumstances arise that are of such a nature that fulfilment of the agreement is impossible or can no longer be demanded by standards of reasonableness and fairness, or if circumstances arise that the unaltered maintenance of the agreement cannot reasonably be expected.
- 13.4 Counter Flow Products is entitled to terminate the agreement if the customer requests suspension of payment or if this suspension of payment is granted to the customer, if the customer is declared bankrupt or if a request for this is submitted, if the customer is unable to pay his debts, terminates or liquidates his company, is placed under guardianship, or if an administrator is appointed.
- 13.5 If Counter Flow Products proceeds to suspension or dissolution, she is never obliged to compensate damage and costs arising in any way.
- 13.6 Counter Flow Products always reserves the right to claim compensation.

#### **Article 14 Confidentiality**

- 14.1 Both parties are obliged to maintain the confidentiality of all confidential information that they have received from each other or from another source in the context of their agreement. Information is considered confidential if this is stated as such by the other party or if this results from the nature of the information. The party that receives confidential information will only use it for the purpose for which it was provided.
- 14.2 If, on the basis of a legal provision or a court ruling, Counter Flow Products is obliged to also provide confidential information to third parties designated by law or the competent court, and Counter Flow Products cannot rely on a legal right of change or a right recognized or permitted by the competent court, then Counter Flow Products is not obliged to pay compensation or reparation, and the customer is not entitled to terminate the agreement on the basis of any damage caused as a result.

#### **Article 15 Intellectual Property Rights**

- 15.1 Any intellectual property rights, including copyright, with regard to the website of Counter Flow Products, photos, images, designs, drawings, texts, brands, trade names, corporate identity and logos, and with regard to data provided to the customer by Counter Flow Products, remain of Counter Flow Products.
- 15.2 The customer must always respect the intellectual property rights of Counter Flow Products.

#### **Article 16 Applicable law and competent court**

- 16.1 The agreement is governed by Dutch law. The applicability of the Vienna Sales Convention is excluded.
- 16.2 All disputes to which the agreement, these terms and conditions of delivery or the obligations arising therefrom could give rise, in particular regarding validity, interpretation, execution, termination or dissolution, will be settled, with the express exclusion of any other court, by the competent court in the district where Counter Flow Products is located.