

## TERMS & CONDITIONS OF SALE OF GOODS

### 1 Definitions

**1.1** In this document, "Spirotech" means Spirotech BV, Spiro Production BV, Spiro Innovation BV, SpiroPlus BV and/or any affiliate, as the case may be; "agreement" means these Terms & Conditions of Sale of Goods, together with the relevant order confirmation(s) and dispatch confirmation(s) issued by Spirotech, which set forth the terms and conditions for the delivery of Products by Spirotech to the Customer; "Product" or "Products" means the products and solutions to prevent and remove air and dirt in heating, ventilating and/or air conditioning (HVAC) and process systems, other products, spare parts, and all related documentation to be supplied by Spirotech; "Customer" means each person or entity that enters into an agreement with Spirotech.

### 2 Applicability

**2.1** These terms and conditions are applicable to the exclusion of any general terms used by the Customer. Different terms or conditions only apply if and in so far as they have been separately accepted by Spirotech expressly for each individual agreement.

### 3 Orders

**3.1** An order constitutes an offer to Spirotech to buy a Product. All orders must be in writing and are subject to acceptance by Spirotech, and Spirotech will confirm such acceptance to the Customer by sending an order confirmation (the "Order Confirmation"). The agreement between Spirotech and the Customer will only be formed when Spirotech sends the Order Confirmation. Spirotech is entitled at all times to reject an order.

**3.2** The agreement will relate only to those Products whose purchase Spirotech has confirmed in the Order Confirmation. Spirotech will not be obliged to supply any other Products which may have been part of the order until the purchase of such Products has been confirmed in a separate Order Confirmation.

**3.3** Spirotech shall not be bound by verbal undertakings or arrangements by or with its personnel or representatives until after and insofar as Spirotech has confirmed them in writing.

**3.4** Catalogues, price lists, prospects, advertisements, drawings, designs, pictures, photographs, prototypes, Product information, including statements with regard to size, weight, price and/or delivery time, calculations, graphics and other information is provided by Spirotech by way of non-binding information and Spirotech makes no representations or warranties of any kind, express or implied, about the availability of the Products and/or the completeness, accuracy or reliability of the information, unless explicitly laid down in the Order Confirmation.

### 4 Dispatch

**4.1** The Incoterms valid at the time are decisive for the meaning of the transport and delivery terms used by Spirotech. Unless otherwise agreed in writing, delivery is made EXW (Spirotech's warehouse mentioned in the Order Confirmation).

**4.2** Spirotech will inform the Customer about the expected delivery date by sending a dispatch confirmation (the "Dispatch Confirmation"). Spirotech will endeavour to fulfil the order within thirty days of the date of the expected delivery date as referred to in the Order Confirmation. Time will not be of the essence.

**4.3** In case the Customer has not provided Spirotech with all relevant information to fulfil the order, Spirotech's performance under the agreement is deemed to be suspended for the period that the Customer fails to provide Spirotech with such information and Spirotech will have an extension of time for performance for the duration of that period.

**4.4** The Products will be delivered to the delivery address provided by the Customer when placing the order. Unless otherwise agreed in writing, Spirotech is free in choosing the way and means of transport.

**4.5** In the event the ordered Product is not or no longer available, Spirotech is entitled to deliver a substitute product of at least the same quality for the same price.

**4.6** Spirotech may deliver the Products in parts. Spirotech is entitled to invoice partial deliveries separately.

**4.7** In the event that the Customer does not take delivery of the Products Spirotech may, at its discretion, store them at the Customer's cost and risk until they can be re-delivered at the Customer's cost. In such case Spirotech has the choice of either claiming specific performance of the agreement or to terminate the agreement without prejudice to its rights to damages for loss suffered and the loss of profit, including storage costs.

**4.8** Until full payment has been received by Spirotech, Spirotech retains title to the Products.

**4.9** In case of payment difficulties of the Customer, Spirotech is entitled to repossess the Products not (totally) paid for by the Customer. Spirotech will credit such Products to the Customer against the Product price, reduced with any costs made by Spirotech, provided that the Products repossessed by Spirotech are undamaged.

**4.10** The Customer shall insure the Products not (totally) paid for by the Customer and keep them insured against the risks of damage, including water damage, fire, explosion and theft with a reputable insurance company. The Customer is obliged to submit evidence of such insurance as soon as requested by Spirotech and to keep Spirotech informed of any changes.

**4.11** Unless otherwise agreed in writing, Spirotech may terminate or interrupt all or part of the agreement by giving notice to the Customer prior to the performance thereof and/or prematurely at any time. In such event Spirotech shall not have any liability

for any direct, indirect, special and/or consequential or other loss or damage to the Customer under or in connection with any termination or interruption of the agreement (howsoever arising, including any liability in tort).

## 5 Prices

**5.1** Unless otherwise agreed in writing prices of Products are agreed for delivery EXW (warehouse in the Netherlands) and exclusive of transport, VAT and any possible other costs or levies, except as expressly set out in the Order Confirmation.

**5.2** Prices are liable to change at any time, but changes will not affect orders in respect of which Spirotech has already sent a Dispatch Confirmation.

**5.3** Spirotech is entitled to require an adequate financial security (a bank guarantee or any other security) from the Customer. If the Customer fails to supply such security within thirty days upon Spirotech's request, Spirotech is entitled to terminate the agreement forthwith and with immediate effect without being liable for any direct, indirect, special and/or consequential or other loss or damage to the Customer under or in connection with such termination. All costs incurred by Spirotech in the execution of the agreement prior to such termination, including but not limited to costs of (raw) materials purchased by Spirotech and transport costs made by Spirotech, will be paid to Spirotech by the Customer.

## 6 Payment

**6.1** Payment for all Products must be made in instalments as set out in the Order Confirmation and must be made in full prior to the dispatch of the Products or, if Spirotech agrees to credit terms, within 30 days of the date of the invoice, unless otherwise agreed in writing.

**6.2** Payments must be made in the invoiced currency without deduction or set-off and without any suspension for alleged or actual shortcomings.

**6.3** In the event payment has not been received on time the Customer owes, without further notice of default, an interest payment of 3.0 percent above the statutory interest rate applicable in the Netherlands, as meant in Section 6:119a and Section 6:120 paragraph 2 of the Dutch Civil Code, per month on the invoice amount, calculated from the due date, up to and including the day of payment.

**6.4** Spirotech is entitled to dissolve the agreement completely or in part with immediate effect by means of a declaration in conformity with clause 13 and without notice of default if (i) the Customer fails to perform properly one or more of its contractual obligations, fails to perform them on time or does not perform them at all; (ii) the Customer becomes bankrupt, applies for a provisional or permanent payment moratorium, liquidates his business; or (iii) attachment is laid on all or part of the Customer's properties. In such event all amounts due to Spirotech by the Customer shall become immediately due and payable.

## 7 Risk and title

**7.1** The Products will be at the Customer's risk from the time of delivery.

**7.2** Ownership of the Products will pass to the Customer on delivery, subject to sub-clause 4.8 hereof.

## 8 Spirotech's properties

**8.1** All models, parts, drawings, designs, calculations, pictures, photographs, prototypes, tools, information (bearers) and other aids which are supplied by Spirotech to the Customer (the "Materials") are and remain the property of Spirotech. The Customer shall clearly mark such Materials as owned by Spirotech. No right of retention can be exercised to these aids by the Customer.

**8.2** All intellectual property rights with regard to the Materials vest and remain vested in Spirotech, its affiliate(s) and/or its licensors, also in case the Customer has paid for such Materials, unless otherwise agreed in writing.

**8.3** The Customer shall not use, copy, distribute or make available the Materials to any third party, unless Spirotech's prior written consent has been obtained.

**8.4** The Customer is obliged return the Materials to Spirotech on first demand.

**8.5** The Customer is not entitled to pledge or otherwise encumber or give on loan, deposit with a third party or otherwise put at a third party's disposal any goods owned by Spirotech, including the Materials, unless Spirotech's prior written permission has been obtained.

**8.6** The Customer shall keep the Materials in a good condition and insure and keep them insured against the risks of damage, including water damage, fire, explosion and theft with a reputable insurance company. The Customer is obliged to submit evidence of such insurance as soon as requested by Spirotech and to keep Spirotech informed of any changes.

**8.7** The Customer shall inform Spirotech immediately in case of any (impending) damage or attachment of the Materials.

## 9 Intellectual Property

**9.1** The Customer recognizes the ownership of Spirotech and/or its affiliate(s) of all patents, trademarks, trade names, logos, domain names and other intellectual and industrial property rights with regard to the Products and acknowledges that, except as explicitly agreed otherwise in writing, the Customer has no right in, or to use, any thereof.

**9.2** The Customer is not permitted to change or remove designations of patents, copyright notices, brands, trademarks, trade names or other intellectual property rights from any Product.

## 10 Confidentiality

**10.1** The Customer undertakes to observe strict confidentiality about the know-how, designs, drawings, prototypes, marketing plans, prices, information and other confidential business information of Spirotech of which it takes cognizance ("Confidential Information"). The Customer shall undertake all necessary precautions in order to observe the confidentiality of the Confidential Information. The Customer shall not in any way bring Confidential Information to the knowledge of third parties.

**10.2** Confidential Information does not include information of which the Customer can show that (a) it was in its possession before it was disclosed by Spirotech (b) it is public knowledge (c) it has been obtained lawfully from a third party, without infringing any confidentiality obligation towards Spirotech (d) it has been developed independently by it without direct or indirect use of Confidential Information.

## 11 Liability

**11.1** Spirotech warrants to the Customer that any Product purchased from Spirotech is of satisfactory quality and reasonably fit for the purposes for which the products are supplied.

**11.2** The following warranty periods, starting on the date of purchase of the Product by Customer from Spirotech, apply to the following Products:

- a.** brass Products suitable for temperatures up to and including 110 °C: the economic life of its first heating installation, with a maximum of twenty years;
- b.** brass Products suitable for temperatures higher than 110 °C: five years;
- c.** steel Products: five years;
- d.** vacuum deaerators: two years;
- e.** pressurization Products: two years;
- f.** chemical Products: no warranty;
- g.** accessories, spare parts and repairs: 6 months.

The above warranty periods only apply to Products from Spirotech's Standard Assortment and/or Special Assortment. The above warranty periods do not apply to Products from Spirotech's Custom Assortment, for which any specific warranty period will be mentioned in the Order Confirmation, if applicable.

**11.3** Not covered by any warranty are defects in Products designed and/or bought by Spirotech in accordance with the Customer's requirements, defects in Products containing parts designed and/or bought by Spirotech in accordance with the Customer's requirements, defects which occur due to or are (also) the result of normal wear and tear, damage which is the consequence of failing to comply with the user manuals or other published guidelines by Spirotech, servicing of the Product (cleaning, changing of spare parts) not in accordance with or as

specified in the user manuals or other published guidelines by Spirotech, improper or careless or abusive use or use for any purpose for which the Products are not intended, accidents, fire or other external cause, repair or other work by third parties or by the Customer without the prior written consent of Spirotech, installation and/or commissioning by a party not being a party certified or approved by Spirotech or a professional party. No warranty applies if the Product is stolen or if any label or identification number has been removed from the Product or has been changed. The warranty only applies to new and unused Products purchased by the Customer from Spirotech. The warranty will never exceed any warranty given by third parties to Spirotech with regard to Product parts.

**11.4** The Customer shall indemnify and hold harmless Spirotech from and against any and all liabilities, claims, costs, expenses, damages and losses related to or derived from defects which are not covered by the warranty.

**11.5** Any possible complaint regarding the quantity of the delivered Products needs to be recorded on the consignment note or delivery note at delivery, failing which the quantities as stated on the consignment note or delivery note shall be compelling proof against the Customer.

**11.6** Warranty claims need to be reported in writing to Spirotech within five working days of a defect occurring and must be accompanied by proof of purchase by the Customer and a serial number, if applicable. In the absence of a timely complaint in accordance with the foregoing any claim against Spirotech lapses.

**11.7** If the Customer submits a valid claim under the warranty, Spirotech will – at its option – repair the Product, replace the Product with a product that is at least functionally equivalent to the Product, or refund the purchase price in exchange for the return of the Product. In case of a refund of the purchase price and return of the Product, the transport costs of such return will be paid by the Customer or deducted from the credit amount if paid by Spirotech. The returned Products become Spirotech's property. Spirotech may decide, at its sole discretion, to return such Products to the Customer upon payment of the transport costs by the Customer.

**11.8** The Customer needs to satisfy itself that the Products and the accompanying packaging, manuals and the like meet all relevant regulations applicable to such in the country of destination or use. The use of the Products and whether such are in accordance with the regulations in force in the country of destination or use are for the risk of the Customer.

**11.9** Spirotech shall not have any liability to the Customer (howsoever arising, including any liability in tort) under or in connection with any agreement, in each case whether direct, indirect, special and/or consequential loss or damage, for (i) any loss of profits or anticipated savings; (ii) loss of revenue; (iii) loss of or damage to reputation or goodwill; (iv) loss of opportunity; (v) wasted management or other staff time; (vi) losses or liabilities under or in relation to any other contract; or (vii) for any other indirect, special and/or consequential loss or damage.

**11.10** In the event of any breach of sub-clause 11.7 hereof by Spirotech, any other breach of the agreement by Spirotech or any liability of Spirotech to the Customer howsoever arising under or in connection with any agreement and notwithstanding sub-clause 11.9 hereof, the remedies of the Customer shall be limited to damages which (including all losses, liabilities, claims, actions, demands, proceedings, costs, charges and expenses in respect thereof or in relation thereto) shall in no circumstances exceed the total amount of the purchase price (mentioned on Spirotech's invoice) of the Product(s) giving rise to such damages.

**11.11** In case of any conflict between this clause and any other clause of these terms and conditions, the provisions of this clause 11 shall prevail.

**11.12** For the avoidance of any doubt, this clause 11 shall remain in full force and effect notwithstanding the termination, repudiation or expiry of any agreement.

## **12 Product returns**

**12.1** All Product returns are subject to Spirotech's review and prior written approval. The Customer may not return any Product unless the Customer receives prior written authorization from Spirotech for such return. Products returned without Spirotech's prior written authorization will be refused. Unless otherwise agreed in writing and subject to clause 11.7, a Product can only be returned by the Customer to Spirotech in accordance with Spirotech's return policy set out in this clause 12. If the Customer fails to comply with Spirotech's return policy, the Customer shall be liable for and compensate Spirotech for all damage and costs incurred by Spirotech as a result of such non-compliance by the Customer.

**12.2** Not all Products are eligible for return. Only Products complying with all the following may be returned:

- a.** Products from Spirotech's Standard Assortment (Products from Spirotech's Special Assortment and/or Custom Assortment can not be returned, unless otherwise agreed in writing);
- b.** Products which are not older than 6 months as from the day of purchase of the Product by Customer from Spirotech;
- c.** Products which are unused and of which the packaging is in perfect condition.

**12.3** Subject to clause 12.2, Products may only be returned if the total nett Product price of the Products (net invoiced price by Spirotech after deduction of discounts and exclusive of VAT and other taxes) exceeds EUR 500.00 (five hundred Euro).

**12.4** All Products returned to Spirotech should be packaged to prevent damage in shipping and insured against damage or loss. Spirotech assumes no liability for damage to Products shipped to Spirotech. The Customer is responsible for all transport costs and Product damage incurred during transportation to Spirotech.

**12.5** Once Spirotech has reviewed and accepted the Customer's return, Spirotech will provide the Customer with a Return of Goods Reference Number and return instructions.

Returned Products must be accompanied by the original Order Confirmation and Dispatch Confirmation, invoice and/or packing slip and must include the Return of Goods Reference Number on the outside of the box.

**12.6** Upon approval of the return by Spirotech, and subject to the receipt of the Products in good order and the Customer complying with the return policy of this clause 12, Spirotech will credit the Customer's account at a basic value of 75% of the nett Product price valid at the time of return, unless otherwise agreed in writing. Transport costs will be paid by the Customer or deducted from the credit amount if paid by Spirotech.

**12.7** If any return is not made in accordance with Spirotech's return policy, the returned Products will not be credited and become Spirotech's property. Upon the Customer's request and upon payment of the transport costs by the Customer, Spirotech shall return such Products to the Customer.

## **13 Notices**

**13.1** All notices given by the Customer to Spirotech must be given at the address stated in the Order Confirmation. Spirotech may give notice to the Customer at either the e-mail or postal address provided by the Customer when placing an order. Notice will be deemed received and properly served 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

## **14 Transfer of rights and obligations**

**14.1** All agreements between Spirotech and the Customer are binding on their respective successors and assigns.

**14.2** The Customer may not transfer, assign, charge, sub-contract or otherwise dispose of an agreement, or any of its rights or obligations arising under it, without Spirotech's prior written consent.

**14.3** Spirotech may transfer, assign, charge, sub-contract or otherwise dispose of an agreement, or any of its rights or obligations arising under it, at any time during the term of the agreement.

## **15 Force Majeure**

**15.1** Spirotech will not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under an agreement that is caused by events outside Spirotech's reasonable control (a "Force Majeure Event").

**15.2** A Force Majeure Event includes any act, event, non-happening, omission or accident beyond Spirotech's reasonable control and includes in particular (without limitation): (i) strikes, lock-outs or other industrial action; (ii) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; (iii) fire, explosion, storm, flood, earthquake, subsidence, epidemic

or other natural disaster; (iv) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; (v) impossibility of the use of public or private telecommunications networks; (vi) the acts, decrees, legislation, regulations or restrictions of any government; (vii) defects in machinery; and (viii) the non-delivery or late delivery of products or services to Spirotech by third parties engaged by Spirotech.

**15.3** Spirotech's performance under any agreement is deemed to be suspended for the period that the Force Majeure Event continues, and Spirotech will have an extension of time for performance for the duration of that period.

**15.4** In the event that any Force Majeure Event continues for more than thirty consecutive days the parties will be entitled to terminate that part of the agreement which cannot be performed by serving written notice on the other.

**15.5** In case of suspension of the performance of the agreement in accordance with clause 15.3 and/or termination of (a part of) the agreement by Spirotech in accordance with clause 15.4, the Customer is not entitled to claim any compensation such as loss, damages, costs or interest.

**15.6** In case of termination of the agreement in accordance with clause 15.4, Spirotech is entitled to claim payment by the Customer of all costs incurred by Spirotech in the execution of the agreement prior to such termination, including but not limited to costs of (raw) materials purchased by Spirotech and transport costs made by Spirotech.

## **16 Waiver**

**16.1** If Spirotech fails, at any time during the term of an agreement, to insist upon strict performance of any of the Customer's obligations under the agreement or any of these terms and conditions, or if Spirotech fails to exercise any of the rights or remedies to which it is entitled under the agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve the Customer from compliance with such obligations.

**16.2** A waiver by Spirotech of any default shall not constitute a waiver of any subsequent default.

**16.3** No waiver by Spirotech of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to the Customer in writing in accordance with clause 13.

## **17 Severability**

**17.1** If any of these terms and conditions or any provisions of an agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

**17.2** The parties have not entered into the agreement in reliance upon any representation, warranty or promise and no such representation or warranty or any other term is to be implied in it whether by virtue of any usage or course of dealing or otherwise except as expressly set out in it.

## **18 The right to vary these terms and conditions**

**18.1** Spirotech has the right to revise and amend these terms and conditions from time to time.

**18.2** The Customer will be subject to the policies and terms and conditions in force at the time that it orders Products from Spirotech, unless any change to those policies or these terms and conditions is required to be made by law or governmental authority (in which case it will apply to orders previously placed), or if Spirotech notifies the Customer of the change to those policies or these terms and conditions before Spirotech sends the Dispatch Confirmation (in which case Spirotech has the right to assume that the Customer has accepted the change to the terms and conditions, unless it notifies Spirotech to the contrary within seven working days of receipt of the Products).

## **19 Law and jurisdiction**

**19.1** The agreement(s) between Spirotech and the Customer shall be governed by and construed in accordance with the laws of The Netherlands.

**19.2** In addition, the United Nations Convention on Contracts for the International Sales of Goods (Vienna Sales Convention, 1980) shall apply to the agreement(s) between Spirotech and the Customer.

**19.3** The courts in the district of Oost-Brabant, location 's-Hertogenbosch, the Netherlands shall have exclusive jurisdiction for all disputes arising out of or in connection with the agreement and any other agreement(s) between Spirotech and the Customer. In deviation from this provision, Spirotech will also and at all times be entitled to submit a dispute or claim to the competent court for the place where the Customer has its residence or registered or actual place of business.

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