



## **General Terms and Conditions of Sale**

Version 3  
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# General Terms and Conditions of Sale

Tape Converters Holland B.V.

## Article 1: Scope of application

1. These conditions apply to every offer from and every contract assigned to Tape Converters Holland B.V. for the sale and supply by Tape Converters Holland B.V. of products and/or services as well as every agreement with Tape Converters Holland B.V. in relation thereto.
2. The applicability of the terms and conditions of Tape Converters Holland B.V.'s co-contracting party is hereby expressly excluded.  
Any stipulations in derogation from these terms and conditions may only be relied on if and insofar as Tape Converters Holland B.V. has accepted such stipulations in writing.
3. In the case of conflict between the content of the contract of sale and these general terms and conditions, the provisions of the contract of sale will prevail.
4. If at any time one or more provisions of these terms and conditions are either fully or partially null and void or nullified, the other provisions will continue to apply in full. The parties will then enter into joint consultations in order to lay down new provisions to replace the voided provisions, whereby the original aim and purpose will be preserved as much as possible.
5. Tape Converters Holland B.V. reserves the right to unilaterally modify and/or make additions to the general terms and conditions of sale. Any modifications will be communicated to the co-contracting party in writing and will take effect at a time to be determined by Tape Converters Holland B.V.
6. Individual agreements between Tape Converters Holland B.V. and the co-contracting party will prevail over the general terms and conditions of sale. Individual agreements only apply if these have been accepted by Tape Converters Holland B.V. in writing.
7. If Tape Converters Holland B.V. fails to consistently demand strict compliance with these terms and conditions, this does not mean that the provisions thereof do not apply or that Tape Converters Holland B.V. loses the right to demand compliance with the provisions of these terms and conditions in other cases.

## Article 2: Definitions

Services	Where reference is made in these terms and conditions to 'services', this refers exclusively to services performed by Tape Converters Holland B.V.
Products	Where reference is made in these terms and conditions to 'products', this refers exclusively to goods supplied by Tape Converters Holland B.V.
Written	Where reference is made in these terms and conditions to 'written' or 'in writing', this refers exclusively to communication by letter, email or any other form of communication which, bearing in mind the state of the art and the generally accepted standards, may be deemed equivalent.
Co-contracting party	The party entering into an agreement with Tape Converters Holland B.V. to which these terms and conditions apply. If several parties are involved in any agreement, every party other than Tape Converters Holland B.V. will be considered a co-contracting party.

### **Article 3: Formation of a contract to supply products or perform services**

1. An agreement is formed once the co-contracting party has accepted the offer made by Tape Converters Holland B.V. and Tape Converters Holland B.V. has subsequently confirmed the assignment with the co-contracting party in writing. If the co-contracting party's acceptance differs from the offer, an agreement will not be formed until Tape Converters Holland B.V. has agreed to this modification in writing.
2. Should the co-contracting party provide Tape Converters Holland B.V. with an assignment or place an order without an offer having first been made, Tape Converters Holland B.V. will only be bound to this order once it has confirmed this to the co-contracting party in writing.
3. Should the co-contracting party have accepted an offer from Tape Converters Holland B.V. in writing or have placed an assignment or order, the co-contracting party may no longer modify or cancel this offer, assignment or order.
  - a. At the co-contracting party's request, Tape Converters Holland B.V. may cancel any order placed by the co-contracting party, in which case this cancellation will only be legally valid if confirmed by Tape Converters Holland B.V. in writing.
  - b. At the co-contracting party's request, Tape Converters Holland B.V. may modify any order placed by the co-contracting party, in which case this modification will only be legally valid if confirmed by Tape Converters Holland B.V. in writing.
4. Tape Converters Holland B.V. is only bound to oral agreements after these have been confirmed to the co-contracting party in writing.
5. Tape Converters Holland B.V. is only bound by modifications of or additions to terms and conditions or any agreement after such modifications and/or additions have been confirmed by Tape Converters Holland B.V. to the co-contracting party in writing.

### **Article 4: Offers and provision of information**

1. Offers and quotations are without obligation. In accordance with paragraph 3.1, the co-contracting party may not derive any rights from an offer or quotation.
2. In derogation from paragraph 1 of this article, if Tape Converters Holland B.V. makes an offer with an end date and the co-contracting party accepts this offer in writing before this end date has passed, the co-contracting party will be entitled to enforce an agreement in accordance with paragraph 3.1.
3. Product recommendations made by Tape Converters Holland B.V. should always be verified by the co-contracting party. If a recommendation made proves to be suboptimal or incorrect, Tape Converters Holland B.V. cannot be held liable for any damage suffered as a result.
4. Photographs or video footage shown in catalogues, price lists, offers or other media are only indicative, and no rights may be derived therefrom. In all cases, the sizes, colours, weights, quantities and other specifications referred to in the product specifications, offers and/or order confirmations shall be taken as the guiding principle.
5. Under no circumstances shall the customary room for manoeuvre and deviations entitle the co-contracting party to terminate the agreement or suspend its obligations to us under the agreement.
6. The offers we make, as well as any drawings, calculations, descriptions, models, tools, etc. we produce, remain our property, even where these have been charged for. The co-contracting party warrants that without our express consent, no information in relation to the offers or the manufacturing and/or construction method we have used will be copied, disclosed to third parties, made public or used.

7. Offers and quotations apply to the offer in its entirety and do not apply if different quantities and/or articles are ordered.
8. Offers and quotations with an end date are only valid once, and no rights in respect of subsequent orders may be derived from the terms offered.
9. A combined offer or quotation constitutes a whole, and Tape Converters Holland B.V. cannot be obliged to implement only part of an offer or quotation for the price specified in the combined offer or quotation.
10. If the offer is based on data and/or documents provided by the co-contracting party, and these data and/or documents prove to be false or incomplete or subsequently change, Tape Converters Holland B.V. will be entitled to adjust the prices, rates and/or delivery periods stated in the offer.
11. The following applies to plans, drawings, models, printing proofs, die-cuts, etc.:
  - a. Purchasers will be charged for plans, drawings, models, printing proofs, die-cuts, etc., which are not the object(s) of any order;
  - b. Plans, drawings, models, printing proofs, die-cuts, etc., which have been manufactured by Tape Converters Holland B.V., as well as any intellectual property rights thereon, will remain the property of Tape Converters Holland B.V., even if the purchaser has paid for the costs hereof;
  - c. The items referred to under 11a and 11b will only remain securely stored by Tape Converters Holland B.V. for three years from their last use;
  - d. Plans, drawings, models, printing proofs, die-cuts, etc. which are the property of the purchaser and which are made available to the seller, remain at the purchaser's risk when in Tape Converters Holland B.V. areas.

#### **Article 5: Price**

1. Unless stipulated otherwise in writing, our prices are excluding transport, insurance, turnover tax, and any levies and taxes imposed by the government.
2. Unless stipulated otherwise in writing, all prices are offered in accordance with Incoterms EXW 2010.
3. We expressly reserve the right to adjust the prices agreed to any cost increases such as, but not limited to, increases in wage and material costs, social insurance contributions and other government charges, import and export duties, taxes, changes in exchange rates, etc.
4. In deviation from paragraph 3 of this article, adjustment of sales prices will not apply to offers with an end date of up to one month in the future, from the date the offer or quotation was provided.
5. In the case of supplies of products which have been manufactured especially for the co-contracting party, Tape Converters Holland B.V. is entitled to supply and invoice 10% more or less than has been ordered by the purchaser.
6. Discounts are always deemed to have been given on a one-off basis. Where future agreements are concerned, we are in no way whatsoever bound by discounts previously given.
7. Should the co-contracting party have doubts about the invoice amount for any product or service supplied by Tape Converters Holland B.V., then any challenge in respect thereof shall be received in writing by Tape Converters Holland B.V. within 30 days of sending the invoice. After this time, the co-contracting party loses any right to adjustment of the invoice amount.

## **Article 6: Delivery times**

1. Any delivery periods issued are indicative, and are in no way final deadlines. Delivery periods are set as accurately as possible, yet may occasionally depend on circumstances beyond our control.
2. Should documents, data and suchlike, to be provided by the co-contracting party, be required for the implementation of the assignment(s) and should the co-contracting party provide such information later than agreed, Tape Converters Holland B.V. will not be obliged to meet the confirmed delivery date. Following receipt of all of the information required, a new delivery period will be issued. As there is no relation between the delay in the provision of the information and the new delivery period, this date may lie further in the future than the delay caused by the co-contracting party.
3. In the absence of any supplementary agreements in respect of the dates by which the necessary documents, data and suchlike as referred to in paragraph 7.2 should be delivered, these dates will be set at the moment when the co-contracting party places the assignment and/or order.
4. The delivery period commences on the last of the following points in time:
  - a. when the assignment has been accepted in accordance with the provisions of article 3;
  - b. when all formalities have been completed;
  - c. when all of the documents, data, licences and suchlike required for the implementation of the assignment are in our possession;
  - d. when we have received all advance payments owed under the agreement.
5. Should the stipulated delivery period be exceeded by more than two months for any reason other than force majeure, both the co-contracting party and Tape Converters Holland B.V. shall be entitled to terminate the agreement, without either of them having the right to receive or the obligation to pay compensation, except in the case of wilful misconduct or gross negligence.
6. Goods ordered by us from a third party on the instructions of or on behalf of the co-contracting party shall be taken delivery of by the co-contracting party within a period to be set by us. Cancellation by the co-contracting party is not permitted.
7. In the case of persistent force majeure and once such force majeure has continued for three months, the co-contracting party and Tape Converters Holland B.V. are entitled to terminate the agreement without either party having a right to receive or the obligation to pay compensation for that reason.
8. Force majeure includes: any circumstance beyond the control of either/both of us, even where such might have been anticipated when the agreement was concluded, which prevents the performance of the agreement either temporarily or permanently, as well as, where such is not covered by the foregoing, war, the danger of war, civil war, riot, industrial action, lockout, transport difficulties, sub-standard production, rejection, fire and atmospheric or climatological circumstances causing serious hindrance.
9. Force majeure also includes force majeure on the part of our suppliers or those on whose performance we depend for delivering our performance.

## **Article 7: Delivery**

1. Products are put at the co-contracting party's disposal at Tape Converters Holland B.V.'s production site, in accordance with Incoterms EXW 2010.
2. If delivery carriage paid has been agreed in deviation from paragraph 1, we will not be obliged to do anything further than bringing the item(s) for delivery as close as possible to the destination as can be reached by lorry.  
The co-contracting party shall arrange for unloading in accordance with the carrier's terms and

conditions. Risk transfer in respect of products and services takes place when we put these at the co-contracting party's disposal.

3. Should the co-contracting party fail to provide us with any further instructions, we will decide to the best of our ability on the means of transport and packaging of the goods sold, without accepting any liability for doing so. We are not obliged to take back any packaging. Additional expenses arising from the co-contracting party's instructions will be charged on to the co-contracting party, even in the case of products delivered carriage paid.
4. If it is not possible to make any delivery due to a lack of information from the co-contracting party, Tape Converters Holland B.V. will be entitled to store the goods in its own warehouse at the co-contracting party's risk and expense. The costs of storage will be charged on to the co-contracting party.
5. The co-contracting party is obliged to inspect the item(s) or products delivered immediately on their delivery, to claim immediately for short delivery, and in such cases, to register this on the freight documents. In any case, the co-contracting party's right to claim for short delivery lapses 5 days from the delivery of the item(s) or products to it.

#### **Article 8: Warranty**

1. The co-contracting party is obliged to inspect the item(s) or products immediately on delivery. In any case, the co-contracting party's right to claim for outwardly visible defects or deficiencies lapses 8 days after the delivery of the item(s) or products to it.
2. In any case, the co-contracting party's right to claim for non-outwardly visible defects or deficiencies lapses 8 days after the defect or deficiency became apparent to it, or would (or should) have become apparent to it on sufficient inspection. Any right on the co-contracting party's part in respect of alleged defects or deficiencies lapses 6 months from delivery.
3. Should it become apparent within the period set in paragraphs 1 and 2 of this article that the product or service has not been sound, then Tape Converters Holland B.V. itself will decide whether the product is to be redelivered or repaired or the service re-performed, or whether a proportion of the amount invoiced for delivery of the product or performance of the service is to be credited. If goods or services have been provided whose processing has involved materials supplied by the co-contracting party, the co-contracting party shall resupply such materials at its own risk and expense.
4. Should Tape Converters Holland B.V. decide to repair a product in accordance with paragraph 3, then this product shall be sent to Tape Converters Holland B.V. at the co-contracting party's risk and expense.

#### **Article 9: Payment**

1. Payment, including payment for partial deliveries, shall be made within the term stated in the offer. In the absence of payment terms in the offer, payment shall be made within 30 days of the invoice date or the date of delivery, depending on which arrives first.
2. Payment may only be made by means of transfer to a bank account number to be provided by us.
3. Exceeding of the payment term will result in the co-contracting party's being in default without any notice of default being required, and in its owing us at least the statutory interest and all of the costs Tape Converters Holland B.V. has to incur in order to recover the outstanding amount.

4. Each of our claims in respect of the co-contracting party are immediately due and payable as soon as the co-contracting party is in default to us or loses its right to dispose of its property either fully or partially.
5. Regardless of the co-contracting party's instructions, we may set payments off against our oldest claims in respect of the co-contracting party. Setoff between the co-contracting party and ourselves is excluded, except where we have given our prior consent for this.

#### **Article 10: Retention of title**

1. All goods supplied by Tape Converters Holland B.V. will remain the property of Tape Converters Holland B.V. until the co-contracting party has met all of its obligations towards Tape Converters Holland B.V.  
The co-contracting party may not sell, pledge, encumber or use as a means of payment the goods it has purchased as long as these remain the property of Tape Converters Holland B.V., where such is not in keeping with the co-contracting party's normal business operations.
2. The co-contracting party is expected to do everything that it might reasonably be expected to do in order to safeguard Tape Converters Holland B.V.'s rights of ownership.
3. If any third party levies an attachment on the products supplied under retention of title or wishes to create or enforce rights thereto, the co-contracting party will be obliged to inform Tape Converters Holland B.V. hereof immediately.
4. The co-contracting party undertakes to insure the items supplied under retention of title, and to keep them insured, against fire, explosion and water damage and theft, and to allow Tape Converters Holland B.V. to inspect the policy document of this insurance/these insurances immediately on request. Where any payment is made under the insurance policy, Tape Converters Holland B.V. is entitled to such payment. The co-contracting party declares in advance that it is prepared to provide its assistance in everything required in respect hereof.
5. Should Tape Converters Holland B.V. wish to exercise its rights of ownership as referred to in this article, the co-contracting party will give its unconditional and irrevocable consent in advance to Tape Converters Holland B.V. and any third parties engaged by it to enter any and all sites at which Tape Converters Holland B.V.'s property is located, and to take such property back.
6. Once the co-contracting party has met all of its obligations, the retention of title will lapse. Should at any future time the co-contracting party fail to meet its obligations under another agreement, the retention of title on previous supplies will be revived, and all goods supplied by Tape Converters Holland B.V. will fall under this retention of title.

#### **Article 11: Liability**

1. Apart from the cases referred to in these general terms and conditions, there is no other and further liability towards the co-contracting party on our part, except where there has been wilful misconduct or gross negligence on our part. In any case, the extent of Tape Converters Holland B.V.'s liability is limited to the invoice price of the products supplied or services performed, in relation to or as a direct consequence of which we can be held liable.
2. The co-contracting party indemnifies Tape Converters Holland B.V. against all third-party claims in relation to the use of Tape Converters Holland B.V.'s products or services, including its recommendations.
3. Under no circumstances can Tape Converters Holland B.V. be held liable for consequential damage, including loss of production, lost profits, and transport costs.

4. Notwithstanding the foregoing, all liability on our part lapses if and when the co-contracting party has engaged third parties to carry out work on the goods supplied without our written consent.
5. Where we work with materials which are the property of the co-contracting party, we will under no circumstances be responsible for the costs of these materials should they be lost. This is also the case where the materials have been lost due to any error on the part of Tape Converters Holland B.V., except in the case of wilful misconduct or gross negligence.

#### **Article 12: Returns**

1. We do not accept returns, except where our prior written consent has been granted. All goods shall always be returned in the original packaging.
2. The provisions of paragraph 1 apply equally to goods that we have taken receipt of; accordingly, the mere taking receipt of goods does not imply their acceptance.
3. Goods which have wrongly been returned remain at the co-contracting party's risk and disposal; any transport and storage costs are for its own account. This also applies to any returns in respect of which complaints have proven unjustified.

#### **Article 13: Third-party patents and brands**

1. If, when acting in accordance with drawings, models or instructions provided to us by the co-contracting party, we infringe the patent rights, copyrights or similar rights of third parties as a result, the co-contracting party will be obliged to indemnify us against any third-party claims resulting therefrom. In such cases, we reserve the right to terminate the work commenced and to demand compensation from the co-contracting party, without ourselves being obliged to pay anything to the co-contracting party.

#### **Article 14: Intellectual property rights**

1. Tape Converters Holland B.V. retains the copyrights and rights of ownership on all offers, drawings, images, prototypes and suchlike made by Tape Converters Holland B.V. These rights may only be transferred with Tape Converters Holland B.V.'s written consent.
2. Even where Tape Converters Holland B.V. has requested payment for the production thereof, the rights referred to in paragraph 1 remain exclusively and entirely the property of Tape Converters Holland B.V.
3. Without Tape Converters Holland B.V.'s written consent, the co-contracting party is not permitted to produce copies of the items covered by paragraph 1 or to show the originals thereof to third parties. Should the co-contracting party nevertheless do so, then that party will owe an immediately due and payable penalty of EUR 10,000. Compensation may be demanded in addition to this penalty.
4. The co-contracting party shall return the items covered under paragraph 1 to Tape Converters Holland B.V. immediately on the latter's request. The time limit for doing so will be agreed in joint consultation. Should the parties fail to agree a time limit, whether or not this is due to disagreement, the time limit will be set at 4 weeks. Should the time limit be exceeded, Tape Converters Holland B.V. will be entitled to charge a penalty of EUR 500 for each day during which the co-contracting party remains in default, and will also be entitled to charge the co-contracting party for any damage it suffers as a result.



**Article 15: Security**

1. Regardless of the payment terms agreed, immediately on Tape Converters Holland B.V.'s request, the co-contracting party is obliged to provide the security for payment that Tape Converters Holland B.V. deems adequate, within a reasonable period. Should the co-contracting party fail to do so, it will immediately be in default. Tape Converters Holland B.V. will then be entitled to terminate the agreement and recover the damage from the co-contracting party.
2. Tape Converters Holland B.V. has rights of pledge and retention in respect of everyone who desires the surrender thereof, on all items of the co-contracting party which it holds in possession or is as yet to receive, and for all those amounts that are owed or may be owed to it by the co-contracting party.

**Article 16: Termination of the agreement**

1. If the co-contracting party wishes to terminate an agreement without there having been a breach in the performance thereof by Tape Converters Holland B.V., the agreement may only be terminated with the written consent of Tape Converters Holland B.V. In that case, Tape Converters Holland B.V. will be entitled to compensation for all damage suffered. Damage suffered includes, but is not limited to, costs incurred and lost profits.

**Article 17 Disputes and applicable law**

1. This agreement is governed exclusively by Dutch law.
2. The Vienna Convention on Contracts for the International Sale of Goods (CISG) is not applicable, nor are other international arrangements permitting exclusion.
3. The Dutch court in the place where Tape Converters Holland B.V. has its registered office has exclusive jurisdiction to hear disputes, except where this is in contravention of mandatory law.