

# **GENERAL SALE AND DELIVERY TERMS AND CONDITIONS OF CHOOSE YOUR SHOES NEDERLAND BV**

## **Article 1 Applicability**

- 1.1 In these general terms of sale and delivery, the following terms will have the following meaning:
  1. "CYS": CYS Nederland BV, registered in the Dutch Commercial Register under number 50380494. or one of its affiliated companies;
  2. "product" or "products": customized orthopaedic shoes, parts thereof and products related to orthopaedic shoes offered or supplied by CYS;
  3. "service" or "services": services offered or supplied by CYS, such as providing advice and contributing to the development of customized orthopaedic shoes;
  4. "purchaser": a (potential) purchaser of products and services provided by CYS.
- 1.2 These terms apply to all quotations of CYS and/or to all agreements concluded with CYS, as well as all other legal relationships between the parties. These general terms are also applicable to changes of any agreement and new agreements between parties.
- 1.3 These terms are applicable to the exclusion of any terms used by the purchaser or a potential purchaser.

## **Article 2 Quotations, orders and agreements**

- 2.1 All quotations by CYS are free of engagement. Orders and acceptances of quotations by the purchaser are irrevocable.
- 2.2 CYS is only bound if it has confirmed acceptance of the offer in writing or has commenced its performance.
- 2.3 Any inaccuracies or alleged inaccuracies in CYS's order confirmation should be communicated by the purchaser to CYS in writing within five days after the date of the confirmation, failing which the order confirmation will be considered to be an accurate and complete representation of the agreement and the purchaser will be bound to it.
- 2.4 Verbal undertakings or agreements by or with its staff will only bind CYS after and in so far as CYS has confirmed this in writing.

## **Article 3 Information and Conformity**

- 3.1 Any statements in offers and agreements, except in so far it is orthopedically necessary, are estimates and are not binding. Samples and models are indicative. The purchaser is aware that the used materials concern natural products that may deviate from one another. There could be deviations in size, colours, quality, performance and other characteristics of the products and materials. Deviations are not to be considered a shortcoming unless they affect the orthopaedic character of the product.

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- 3.2 The purchaser guarantees the accuracy, completeness and reliability of information and data supplied by the purchaser or on his behalf to CYS. CYS will not be obliged to perform or continue performing the agreement until the purchaser has provided all data and information reasonably requested by CYS.
- 3.3 The purchaser must ensure that the products ordered and/or to be ordered by the purchaser as well as the accompanying packaging, labelling and other information provided with such products are in accordance with all government regulations imposed in the country of destination. The purchaser will bear the risk of the use of the products and the conformity thereof with government regulations.

#### **Article 4 Intellectual property and Confidentiality**

- 4.1 All intellectual and industrial property rights in respect of the products and the products' names and anything else developed, produced or supplied by CYS, including packaging materials, advertising materials and descriptions, accede and resign to CYS. The purchaser is obliged to cooperate on a transfer of intellectual property on the request of CYS if the purchaser has received any copyright, design right or trademark.
- 4.2 The purchaser can use, offer, sell and deliver the products exclusively under the brand, logo and with the packaging that is assigned by CYS, in conformity with more detailed guidelines given at the moment.
- 4.3 The purchaser is obliged to confidentiality towards third parties with respect to the content of the agreement including all appendices and all information and knowhow acquired via CYS with regard to the agreement in the broadest sense.

#### **Article 5 Prices**

- 5.1 CYS charges for every order the prices as indicated by the applicable pricelist on the day of order.
- 5.2 The indicated prices or agreed prices are excluding transport, VAT, other taxes, travel and accommodation expenses and other reimbursements, unless explicitly stated otherwise.
- 5.3 The delivery will take place Ex Works (Incoterms 2010). The transportation costs from the production site in the Philippines to the indicated address of the purchaser are to be carried by the purchaser.
- 5.4 In case that there is a change in the factor influencing the pricing after the offer or the conclusion of an agreement, CYS retains the right to adapt the prices.
- 5.5 In case there is a currency change after the offer or the conclusion of an agreement, through which the prices in euro are higher, CYS retains the right to charge the higher prices to the purchaser.
- 5.6 In case that CYS has provided services, without having an explicit indication of the price in the order confirmation or the agreement, CYS retains the right to charge a reasonable compensation to the purchaser.

## **Article 6 Delivery time and delivery targets**

- 6.1 CYS will make efforts to deliver orders on the following delivery dates targets:
- 21 working days in case of customized orthopaedic shoes;
  - 14 working days in case of an express delivery of customized orthopaedic shoes;
  - 14 working days in case of lasts, supplements and trial shoes;
  - 7 calendar days in case of lasts or casting moulds based on CAD/CAM.
- 6.2 The by CYS stated and agreed delivery times are approximately and may not be considered deadlines. If a delivery date is exceeded, CYS will not be obliged to pay damages and will not entitle the purchaser to the non-performance or suspension of any obligations following from the agreement.
- 6.3 The delivery time is based on the applicable working conditions at the time of the conclusion of the agreement and on the timely delivery of the items required for the performance of the agreement by CYS. If as a result of a change in working conditions and/or late delivery of items required by CYS any delays occur, the delivery time will be extended where necessary.

## **Article 7 Delivery of products**

- 7.1 Unless agreed otherwise in writing, CYS determines the manner in which and by whom the products will be transported.
- 7.2 In the event that the product ordered by the purchaser is no longer available and cannot be delivered within a reasonable time, CYS will deliver a product of the same value for the same price if this is reasonably possible.
- 7.3 In case that the purchaser does not take delivery of the products or does not designate another party to take delivery of the products on its behalf, the products will be stored as long as it is deemed desirable by CYS on the account and risk of the purchaser. CYS has at all times the right to ask for performance of the agreement, to terminate the agreement and the right to ask for compensation for the inflicted damage as well as loss of profit, which includes the costs for storage.
- 7.4 CYS is not required to honour the purchaser's request to redeliver the goods or the purchaser's request to make a subsequent delivery. If CYS nevertheless honours such a request, all related costs will be for the purchaser's account.
- 7.5 CYS is entitled to perform an agreement in parts and to claim payment of that part of the agreement that has been performed.

## **Article 8 Services**

- 8.1 CYS determines the manner in which and by whom the services will be performed.
- 8.2 The purchaser is responsible for the designs and calculations that are made by him as well as for the suitability of the prescribed materials.
- 8.3 The order will be considered carried out/delivered, when (i) the purchaser has approved the work, (ii) the product, on which the work has been carried out is fully or partially in use by the purchaser or (iii) the purchaser does not

approve of the work on the grounds of minor defects or missing parts, which can be remedied or to make a subsequent delivery within 30 days.

### **Article 9 Exclusion of Liability**

- 9.1 Work carried out by CYS related to research about and/or repair of defects caused by normal use, improper use or non-compliance with the by CYS given instructions, regulations or (replacement)advices or due to other grounds which cannot be attributed to CYS, shall be paid by the purchaser in accordance with the current applicable tariffs of CYS.
- 9.2 Work carried out by CYS related to products older than 12 months, shall be paid by the purchaser in accordance with the applicable tariffs of CYS on that moment.

### **Article 10 Force Majeure**

- 10.1 If CYS is not able to fulfil the agreement by reason of force majeure, CYS is entitled to suspend performance of the agreement or by the choice of CYS terminate the agreement if CYS will not be able to fulfil its obligations within 8 weeks due to force majeure. In that case, the purchaser does not have a right to claim compensation for loss, costs or interest.
- 10.2 The following situations, among others, count as force majeure: fire, excess water, adverse weather conditions (including but not limited to hurricanes, volcano eruptions, floods), accident or sickness of personnel, operational failure, stagnation in transport, problems regarding production or transport and non-timely delivery of goods and services provided by third parties.
- 10.3 If CYS has already partially fulfilled its obligations when the force majeure situation occurs or if it can fulfil its obligations only partly, CYS is entitled to invoice separately for the part which has already been delivered or, as the case may be, is available for delivery, and the purchaser is obliged to pay this invoice as if it related to a separate agreement.

### **Article 11 Defects and claims**

- 11.1 If defects occur in the products supplied by CYS as a result of manufacturing and/or material faults, then CYS will repair these defects (or have them repaired) or will supply the components necessary for repair (or have them supplied), replace all or some of the products in question or make a reasonable price reduction, at the option and solely at the discretion of CYS. This guarantee will apply for a period of 6 months after delivery of the products by CYS.
- 11.2 This guarantee does not cover defects that arise during this period of 6 months and which are the full or partial consequence of (i) subject to normal wear and tear, (ii) the purchaser's or its staff's transport, storage, maintenance or use of the products in an improper manner or in contravention of CYS' instructions, (iii) the use in another condition of the product than the original condition, (iv) designs, drawings or other modifications by the purchaser of customized products and delivered products or (v) vandalism, weather or others external factors. CYS cannot be held liable for damage as a result of the defects

- 11.3 The purchaser has to accurately inspect the delivered products and services immediately after the receipt of the products and services. Any complaints regarding the delivered products supplied and transport related damage should be registered on the bill of lading or consignment note upon delivery, failing which the bill of lading or the consignment note will constitute conclusive proof against the purchaser of the fact that the correct products were received and that these products were in good condition and free of any transport related damage.
- 11.4 The purchaser must submit any complaints regarding the products or the performance of the agreement to CYS within 14 days after the date on which the (hidden) defect is discovered or reasonably should have been discovered. If a complaint is not made on time, all claims against CYS will lapse.
- 11.5 If the purchaser complains, he is obliged to give CYS the opportunity to carry out an inspection to ascertain the shortcoming. The purchaser is obliged to keep the products about which a complaint has been made available to CYS in, failing which every right will lapse.
- 11.6 Consignments of sold products to CYS is only permitted after obtaining CYS' express written permission. The transport and all the costs in relation to the transport are to be borne by the purchaser. The products are at all times at the risk and expense of the purchaser.
- 11.7 Possible defects with regards to a part of the delivered products do not provide the purchaser with the right to reject the whole consignment of delivered products.
- 11.8 The purchase should report any inaccuracies in CYS' invoices in writing to CYS within 10 working days of the invoice date, failing which the purchaser will be considered to have approved the invoice.
- 11.9 Complaints will not suspend the purchaser's payment obligations.

## **Article 12 Liability**

- 12.1 Except for Article 11, the purchaser does not have any claim against CYS because of faults in or relating to the products and/or services delivered by CYS.
- 12.2 CYS is not liable for personal injury, property damage, emotional damage, consequential damage (including but not limited to loss of income and business interruption loss ) and other indirect damage, resulting from any cause, except in the case of gross negligence or wilful misconduct of CYS.
- 12.3 CYS is not liable in the aforementioned manner for the acts or omissions of its employees or other persons who fall within the area of responsibility of CYS.
- 12.4 Damage to products caused by damage to or destruction of packaging is for the account and at the risk and expense of the purchaser.
- 12.5 Possible advice given by CYS and all notifications and information are completely free of obligation and are given without any guarantee.
- 12.6 In all cases in which CYS is obliged to pay compensation, this compensation will never be higher than the invoice value (excl. VAT) of the delivered products and/or services in connection to which the damage is caused, with a maximum of EUR 5000,-. If the damage is covered by CYS's business

- liability insurance, the compensation will never be higher than the amount that is actually paid by the insurer.
- 12.7 Every claim on CYS, unless acknowledged by CYS, lapses due to the mere expiry of a period of 12 months after the inception of the claim.
  - 12.8 The purchaser indemnifies CYS and its employees for claims of third parties, who suffer damage as a result of the inaccuracy or incompleteness of the information and/or unsafe situations in his company or organisation provided by or on behalf of the purchaser.

### **Article 13 Reservation of ownership and securities**

- 13.1 CYS retains ownership of the products delivered or to be delivered, until its claims relating to the products delivered or to be delivered have been met in full by the purchaser, including the claims resulting from failure to comply with one or more agreements.
- 13.2 If the purchaser fails to comply with his obligations, CYS has the right to recover the products belonging to it (or have them recovered) from the place where they are located, at the expense of the purchaser.
- 13.3 The purchaser does not have the right to pledge products which have not yet been paid for or to transfer ownership of them, other than in the context of normal business practice. By this condition the transferability of the claims of the purchaser are excluded in accordance with art. 3:83 section 2 of the Dutch Civil Code ("Burgerlijk Wetboek").
- 13.4 The Purchaser is obliged to keep the products which are delivered under reservation of ownership with the due care and to keep them as identifiable property of CYS.
- 13.5 CYS has the right of pledge and right of retention on all products and documents that CYS has in possession or will receive and on all claims that CYS has or will receive with on the purchaser. The purchaser is not entitled to any right of retention on the products delivered by CYS.

### **Article 14 Payment**

- 14.1 CYS has the right to check every customer on credibility.
- 14.2 CYS has the right to impose a EUR 2.000,00 credit limit on new customers.
- 14.3 Unless otherwise agreed in writing, payment of the invoices from CYS must be made within 30 days after the invoice date, in the currency stated on the invoice and solely in the way indicated on the invoice.
- 14.4 At all times CYS has the right to request full or partial payment in advance and/or otherwise to obtain security for payment.
- 14.5 If a payment is not received on time, the purchaser will, without further notice of default, owe 2% interest on the invoice amount per month, starting from the day the invoice was due, up to and including the day the payment is fully covered.
- 14.6 All costs related to collection will be borne by the purchaser. The extrajudicial collection costs will be determined by the "Besluit vergoeding voor buitengerechtelijke incassokosten" (Order for the compensation of extrajudicial costs).
- 14.7 The purchaser waives any right to set off any mutual amounts. CYS is always entitled to set off what it owes the purchaser from what the

- purchaser and/or companies affiliated to the Purchaser owes/owe CYS, whether or not due and payable.
- 14.8 The entire invoice amount is immediately and in full payable without further notice of default if an agreed instalment is not paid promptly on the due date, and if the purchaser is declared bankrupt or requests (temporary) suspension of payment.

### **Article 15 Cancellation**

- 15.1 De purchaser may not cancel a given order.

### **Article 16 Data protection**

- 16.1 When collecting and processing data in relation with the purchaser and with regards to the agreement, CYS shall fulfil its responsibilities and take appropriate measures in accordance with the General Data Protection Regulation (Algemene Verordening Gegevensbescherming (AVG)), the Implementing law GDPR (Uitvoeringswet AVG), and from the entering into force thereof the ePrivacy Regulation as well as connected laws and regulations.
- 16.2 In case that CYS deems itself to be a processor in light of the GDPR, the purchaser shall on the first request of CYS, in addition to what is laid down in the article, conclude a written process agreement in conformity with a model agreement provided by CYS.
- 16.3 The purchaser indemnifies CYS for all claims of third parties (including in any case users and government agencies), financial governmental sanctions and costs, that result from a breach of any statutory provision by the purchaser with regard to processing of personal data.

### **Article 17 Representation**

- 17.1 If the purchaser is acting on behalf of one or more other parties, it will be liable vis-à-vis CYS as if it were the purchaser itself, without prejudice to such other parties' liability.

### **Article 18 Final provisions**

- 18.1 The nullity or voidability of any provision of these conditions or of any agreements to which these conditions apply will not affect the validity of the other provisions. CYS and the purchaser will be obliged to replace any nullified or voided provisions by valid provisions the purport of which is as similar as possible to that of the nullified or voided provisions.
- 18.2 The place of performance of the agreement will be the location of CYS' registered office.
- 18.3 Disputes between the parties arising out of these terms and conditions and/or agreements concluded by CYS will be exclusively governed by Dutch Law (the Netherlands) and the United Nations Convention on Agreements for the International Sale of Goods (CISG 1980) ("Het Weens Koopverdrag") unless CYS explicitly makes another choice of law.

18.4 All disputes that arise between CYS and the Purchaser will be exclusively adjudicated by the competent court in the district court of Limburg, location Roermond, the Netherlands. In deviation hereof, CYS may submit a dispute to the court in the district where the purchaser is residing or has its registered office.

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