



## CHARLES DISTRIBUTION NV GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY (hereinafter referred to as the ‘GTC’)

### 1. TAAL, LANGUE, LANGUAGE, SPRACHE

**Nederlands:** Deze AV zijn op eenvoudig verzoek beschikbaar en zijn tevens te consulteren op [www.charles.eu](http://www.charles.eu), in het Nederlands, Frans, Engels en Duits. De Nederlandstalige versie van deze AV is de enige authentieke.

**Français :** Ces Conditions Générales de Vente et de Livraison (nommées ci-après “AV”) sont disponibles sur simple demande et peuvent aussi être consultées sur le site [www.charles.eu](http://www.charles.eu) en néerlandais, français, anglais et allemand. La version en néerlandaise de ces AV est la seule version authentique.

**English:** These General Terms and Conditions of Sale and Delivery (hereinafter: “AV”) are available on request and can also be consulted on [www.charles.eu](http://www.charles.eu) in Dutch, French, English and German. Only the Dutch version of these AV is legal valid.

**Deutsch:** Diese Allgemeinen Verkaufs- und Lieferbedingungen (im Folgenden: “AV”) sind auf einfache Anfrage verfügbar und können auch auf [www.charles.eu](http://www.charles.eu) in niederländischer, englischer, französischer und deutscher Sprache eingesehen werden. Die niederländischsprachige Version dieser Allgemeinen Verkaufs- und Lieferbedingungen ist die einzige Originalversion.

### 2. DEFINITIONS

**‘CHARLES DISTRIBUTION’:** the limited liability company (VAT BE 0474.981.482), with registered office at Sint-Jansveld 14, B-2160 Wommelgem, hereinafter referred to as ‘CD’.

**‘Registered Letter of Complaint’:** a registered letter addressed to CD, with an accurate indication of the products purchased, a detailed statement of the complaint, non-conformity, and/or defect, and quoting the reference number of the following documents: the Client’s order and the delivery note/invoice.

**‘Client’:** Any (legal) person who purchases a product and/or places an order with CD, as well as anyone who purchases a product and/or places an order with CD in the name and/or on behalf of another (legal) person.

**‘New Client’:** Any Client who purchases a product and/or places an order with CD for the first time.

**‘Foreign Client’:** Any Client whose registered office is located outside Belgium and any Client who places an order to be delivered outside Belgium.

### 3. APPLICATION OF THE GTC AND APPLICABLE LAW

All commercial transactions between CD and the Client shall be governed exclusively by (in hierarchically descending order): (1) the special terms and conditions agreed in writing between the Client and CD, in a separate agreement; (2) these GTC; (3) Articles 4-88 of the United Nations Convention on Contracts for the International Sale of Goods (CISG); (4) the UNIDROIT Principles of International Commercial Contracts; (5) Belgian law, excluding Articles 1-3 and 89-101 of the CISG.

These GTC take precedence over the Client’s general and/or other terms and conditions, even if they indicated that they are the only applicable terms and conditions.

### 4. ORDERS AND CANCELLATION

#### 4.a General rules applicable to each Client

All quotes and price catalogues from CD do not imply any obligation/commitment on the part of CD, and may be withdrawn at any time. The Client’s order is registered electronically by a CD sales representative with the Client’s approval, and is legally binding for the Client from this moment onwards. In case of cancellation of an order (by or at the expense of the Client), the Client is liable to pay a fixed compensation of 35% on the total invoice amount, without prejudice to CD’s right to prove higher damage. CD is free to choose the parties with whom it wishes to enter into an agreement, and always has the right to evaluate the creditworthiness of a (potential) Client, before accepting its order.

If certain products are out of stock, CD always has the right to (without any right of recourse against CD): (1) cancel the relevant order; and/or (2) replace the out-of-stock products with an equivalent. Any additional cost associated with this shall be charged to the Client. CD only accepts orders for a minimum amount of EUR 300 per order. Orders for a lower amount cannot bind CD in any way.

#### 4.b Special rules regarding a New Client’s first order

Each New Client is obliged to completely and correctly fill in a client sheet emanating from CD before this New Client can place a first order with CD. The data entered on this client sheet, including the Client’s preference regarding the delivery day, cannot impose any obligation on CD. CD always has the right to, unilaterally and at its own discretion, change all data mentioned in this client data sheet with regard to logistics and commercial agreements, without any right of recourse against CD.

#### 4.c Special rules for foreign clients

Each Foreign Client is obliged to pay the total invoice amount of each order in advance. CD shall not start execution of such an order until CD has received payment of the respective invoice amount in full.

### 5. PRICE AND COSTS

All prices are VAT-exclusive and are expressed in euros. If the Client is not present at the time CD wishes to deliver the goods, and/or in the event of any other delay caused by the Client, the additional transport costs shall be charged in full to the Client.

CD may always require an advance payment, may oblige the Client to fulfil all its payment obligations towards CD by direct debit from a bank recognised by CD, has the right to request a bank guarantee from the Client before accepting an order from the Client, and has the right to require an advance payment of the full invoice amount before accepting the Client’s order/delivering the purchased products.

Currency fluctuations, increases in material prices, prices of auxiliary materials and raw materials, wages, salaries, social security contributions, government-imposed costs, levies and taxes, transport costs, import and export duties, insurance premiums, as well as any other increase in costs relating to the obligations of CD towards the Client occurring between the placement of the Client’s order and the delivery of the products sold give CD the right to increase the agreed price proportionally.

### 6. DELIVERY, RISK, CHARACTERISTICS OF THE PRODUCT

Deliveries within Belgium are always done in accordance with the Incoterm<sup>®</sup> Delivered Duty Paid. Deliveries outside Belgium are always done in accordance with the Incoterm<sup>®</sup> Ex-Works with the agreed place of delivery being: Sint-Jansveld 14, B-2160 Wommelgem.

The agreed delivery terms are always interpreted in accordance with the most recent Incoterm<sup>®</sup> version in effect at the time CD is bound by an order in conformity with Article 4 of the GTC.

Once delivery has taken place, the Client bears full responsibility for the purchased products, including constant monitoring of the refrigeration of the purchased products.

The delivery periods stated by CD are always indicative. With regard to regular deliveries, CD shall always be entitled, without any right of recourse against CD, to change, unilaterally and at its sole discretion, the working day on which the goods are usually delivered, either for one or more of the Client’s orders or for all of the Client’s future orders.

A delay in delivery can never oblige CD to pay any damages or fines, and can, under no circumstances, give rise to the dissolution of the order.

Changes to the Client’s order shall automatically result in the expiry of the predetermined delivery times.

Any delivery not explicitly provided for in the Client’s order shall be deemed to be an additional delivery at the Client’s request, and shall be charged as such. CD is entitled to deliver the purchased products in several batches. The Client is deemed to be aware of all the characteristics of the products it has purchased, and cannot derive any rights from the information, samples, or models that CD may provide on its own initiative or at the Client’s request.

### 7. ACCEPTANCE, COMPLETION, AND COMPLAINTS

All complaints regarding visible defects and/or non-conformant deliveries must be made in writing by formulating a conditional statement on the delivery note.

During the first working day after delivery, the Client must carry out a thorough inspection and report any complaints or visible defects to CD by Registered Letter of Complaint. After the expiry of this first working day, the Client loses the right to invoke any visible defect and/or non-conformity. Any hidden defects concerning the delivered products must be reported by the Client to CD by Registered Letter of Complaint without delay and, at the latest, within a period of three working days after their discovery and, at the latest, within fourteen calendar days after delivery.

In any case, the Client loses the right to invoke any defect and/or non-conformity as soon as the Client and/or a third party uses, processes, repackages, and/or resells the purchased products.

In case a defect or non-conformity is properly reported to CD within the stipulated timeframe, CD shall, at its own discretion:

- (1) replace all or part of the non-conformant and/or defective products; or
- (2) credit the faulty part at the price of the order and/or written delivery note. The Client acknowledges that these measures both individually constitute full and adequate compensation for any possible damage due to a non-conformity or defect.

Under no circumstances may the Client return products or make a cover purchase. CD reserves the right to determine the defects and the causes thereof itself, or to have its delegate do so, on site.

Complaints and defects (regardless of whether they are accepted by CD) shall in no way release the Client from its payment obligations in accordance with Article 10. The Client is obliged to reimburse costs incurred as a result of unjustified complaints.

### 8. LIABILITY

Notwithstanding Article 6.3(1) and 6(2) of the Civil Code, the Client may not bring an extra-contractual claim against CD or any auxiliary person of CD, including but not limited to its directors, employees, mandated persons, independent employees, and subcontractors. The Client may only bring a contractual claim against CD. The liability of CD or any auxiliary person to the Client and third parties for any damage, loss, or expense directly or indirectly resulting from the acts or omissions of CD and/or its auxiliary persons shall, in any event, be limited to the lesser of the following two amounts:

- (1) the invoice amount or
- (2) the amount effectively paid to CD under its liability insurance, except in the case of intentional fault or fraud on the part of CD.

CD shall, under no circumstances, be liable for indirect damage (including loss of turnover), damage caused by the Client and/or third parties, damage resulting from the (incorrect) use/processing of the purchased products, nor for damage resulting from the Client’s failure to comply with statutory and/or other obligations. The Client shall fully indemnify, defend, and hold CD harmless against all possible claims and proceedings resulting from the (incorrect) use/processing of the purchased products, nor for damage resulting from the Client’s failure to comply with statutory and/or other obligations.

### 9. FORCE MAJEURE AND HARDSHIP

CD is not liable for any failure in its obligations caused by force majeure and/or hardship in the broadest possible sense of both legal terms, including social unrest, traffic jams, weather conditions, technical defects, scarcity of raw materials, price fluctuations, etc. In case of force majeure and/or hardship, CD may, without prejudice to Article 5, last paragraph, at its own discretion: (1) temporarily suspend the performance of its obligations; (2) terminate the agreement with the Client; (3) invite the Client to negotiate new, amended terms and conditions.

### 10. INVOICE AND PAYMENT

#### 10.a General rules applicable to each Client

Complaints relating to invoices must be reported to CD within three working days after receipt of the invoices by Registered Letter of Complaint.

Unless otherwise stated on the invoice, all invoices are net and payable within 30 days of the invoice date at CD’s registered office.

If, on the due date of one of the invoices, CD has not received payment of the respective invoice amount or has not received payment in full, ipso jure, without prior notice of default, and without prejudice to CD’s right to prove greater damages, the following shall apply:

- (1) an interest rate of 10% to be capitalised annually, whereby each month started shall be considered a full month;
- (2) the Client shall owe liquidated damages equal to 10% of the invoice amount, with a minimum of EUR 125.

- (3) all invoices, including those not yet due, become payable immediately;

- (4) CD has the right to make the (further) execution of the relevant and/or one or more other orders: (a) conditional on full payment in cash at the time of delivery; (b) conditional on the prior payment of the total invoice amount; (c) to suspend said orders; and/or (d) to dissolve these extrajudicially. Points (3) and (4) also apply in case of imminent bankruptcy and judicial or conventional dissolution, application of the Belgian law on the continuity of enterprises dated 31 January 2009, prolonged payment delays, or any other event that would cause CD to reasonably lose confidence in the Client’s creditworthiness. No discounts shall be allowed for cash payments. The Client is not allowed to make payments to intermediaries. Only receipts signed by persons authorised to legally bind CD are valid.

The Client acknowledges approving and accepting this invoice upon (partial) payment of an invoice.

Acceptance of a (partial) payment is always made subject to all rights, and is charged as follows: (1) collection costs; (2) damages; (3) interest; (4) principal sums.

The entry of an invoice into CD’s outgoing invoice book is deemed to be a presumption of sending and receiving this invoice.

**10.b Special rules regarding the first four deliveries to a New Client** A trial period applies to each New Client, which is equated to the period during which the first four deliveries from CD to the respective New Client take place. With each of these first four deliveries, the respective New Client is obliged, notwithstanding Article 10.a of these GTC, to pay the invoice amount due in cash upon delivery.

### 11. RETENTION OF TITLE

All products sold remain the property of CD until the principal, as well as any interest and costs, has been paid in full. If the Client already resells the purchased products before the aforementioned amounts have been fully and correctly paid, the aforementioned right automatically passes onto the resulting sales price.

In the event of non-payment or incomplete payment on the due date of one of the invoices, CD shall be entitled to reclaim the products already delivered from the Client, ipso jure and without prior notice of default. Upon CD’s receipt of the products, and provided that these goods are still found to be in good condition (this includes evaluating the correct cooling of these products), the amounts already paid shall be refunded to the Client less: (1) the loss of profit, estimated at a flat rate of 15% of the total invoice amount; and (2) liquidated damages of 5% on the total invoice amount, for the (additional) management and administration costs. All this is without prejudice to CD’s right to prove greater damages.

### 12. COMPENSATION

In accordance with the Financial Securities Act dated 15 December 2004, CD and the Client automatically and ipso jure offset and settle all currently existing and future debts vis-à-vis each other. This means that, in the permanent relationship between the two of them, only the largest claim remains per balance. In any event, this debt settlement shall be enforceable vis-à-vis the trustee and other concurrent creditors, who shall therefore not be able to object to this debt settlement.

### 13. ESTOPPEL

The (repeated) non-application by CD of any right can only be considered as tolerating a certain state of affairs and does not lead to estoppel.

### 14. COMPETENT COURT

All disputes between CD and the Client fall under the exclusive jurisdiction of the courts of Turnhout.

### 15. INVALIDITY OR NULLITY – CONTRADICTION

If one or more stipulations or clauses of these GTC should be void, invalid, or unenforceable, this shall not affect the validity and enforceability of the other clauses of these GTC. CD and the Client undertake to replace such void, invalid, or unenforceable clause by mutual agreement and without delay with a clause that approaches the scope of the original clause as much as possible. In case of a contradiction between the different language versions of these GTC, the Dutch text, which is the only authentic one, shall prevail.

### 16. AMENDMENTS

CD reserves the right to amend these GTC at any time. CD shall notify the Client of any amendments made. The Client accepts that the publication of the amended GTC on the website [www.charles.eu](http://www.charles.eu) counts as notification. In the absence of a written protest within fourteen days of notification of the amended GTC, the Client shall be deemed to have agreed to the amended GTC and the amended GTC shall bind the Client for the future.