

# Mobene B. V.

## General Terms of Sale and Delivery (as of 1<sup>st</sup> September 2014)

### 1. General:

All offers and agreements are based exclusively on these terms of sale and delivery. The inefficacy of a clause or part thereof does not affect the other part or other clauses. The buyer's potential (general) terms of purchase/sale and/or delivery are expressly excluded.

### 2. Prices, Payment, and Taxes:

The deliveries shall be calculated according to the agreed upon prices. Insofar, however, as no fixed price has been agreed upon, we reserve the right to change our prices as appropriate if, after the conclusion of the contract, there are decreases or increases in fees or taxes (e.g. value-added or energy tax). If the customer is a consumer, this provision applies insofar as three months have passed before the delivery and after the conclusion of the contract. In case the buyer is responsible for reduction in the contracted order amount, we reserve the right to charge the increased freight costs as appropriate. Payment shall be made immediately, without any deduction, or within an agreed time period; in case checks are accepted, these shall only count as payment once they have been cashed. In case of late payment, the legal regulations of article 119 et seq., book 6 of the Dutch Civil Code apply. In case of default of payment and other serious breaches of contract, we may rescind an extension or allowance of a payment plan at any time. We are also entitled to a rescission if there is serious reason to suspect a material deterioration of finances and this suspicion is not immediately disproved. The buyer is responsible for using the goods for the intended purposes according to tax and customs laws and to ensure that in case of untaxed deliveries, the taxable recipient has the required customs permissions. He is liable without fault for the tax and customs dues that we must pay due to the use of goods for unintended purposes or the lack of customs permissions.

### 3. Delivery and Shipment:

We are entitled with regard to companies to make partial deliveries as far as reasonable. The standard determination of measurement or weight shall take place at our delivery points. If the buyer requests official railway weighing at the departure station, then its costs shall fall to him. The choice of shipping route and type shall be made by us. We shall make every effort to accommodate the buyer's wishes; additional expenses thereby accrued shall be borne by the buyer.

### 4. Delivery Problems:

Acts of nature, no-fault operational disruptions, strikes, lock-outs, delivery deadlines missed by previous distributors, lack of raw material or energy, difficulties in obtaining means of transport and traffic problems as well as measures taken by the state shall exempt us from service obligations for the duration of the problem and the scope of its effects. If, in the abovementioned cases, we do not have access to sufficient quantities of goods, we are entitled to make equal cuts to all service obligations; furthermore, we are entitled to exemption from service obligations.

### 5. Incoterms:

In case of delivery abroad, the Incoterms apply in their currently valid version. Dutch law applies to the contract but to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

### 6. Offsetting:

An offsetting through counterdemands is excluded insofar as these are not acknowledged by the vendor or are not judicially determined to be legally binding. The buyer is entitled to a retention of goods only if his counterdemands are undisputedly determined to be legally binding or are acknowledged by us and fall under the same contractual relationship. The defense of lack of performance of the contract remains unaffected thereby.

### 7. Reservation of Proprietary Rights:

All goods delivered by the vendor at any point remain the property of the vendor until all the vendor's claims, which fall under the validity of article 92, book 3 of the Dutch Civil Code and which have been established on whatever legal grounds, are met through payment by the buyer regardless of when they are due and including interest and costs. The buyer is not entitled to pledge the goods to third parties or transfer ownership thereof before payment has been made in full, with the exception of the goods delivered by the vendor that the vendor transfers in the scope of his normal business activity. In case of a violation of this provision, the vendor has the right to retrieve or have someone else retrieve all goods delivered by the vendor from the place where they are located without requiring authorization from the buyer or from the court. Furthermore, at such a time, every claim of the vendor against the buyer shall be immediately due in full.

The buyer is, moreover, obligated to maintain the goods delivered under reservation of proprietary rights with the necessary care and recognizably marked as property of the vendor. The buyer is further obligated to insure the goods for the duration of the reservation of proprietary rights against damages from fire, water, and explosion and against theft; upon request, the buyer shall make the policies of such insurance available to the vendor for review.

In case the vendor enforces the rights listed in this article, the buyer shall give the vendor, or a third party appointed by the vendor, unconditional and irrevocable permission to enter all the locations where the vendor's property is or may be found and to retrieve said property. The resulting expenses shall be borne by the buyer.

### 8. Securities, Refusal of Service as well as Subsequent Cancellation:

In the case of factual evidence of a deterioration of finances during or after the conclusion of the contract or in the case of the buyer's default of payment, we may demand advance payments or securities as well as revoke payment plans that have been granted. If the buyer does not meet the demands, we may cancel the delivery reserving the right to continued claims. Insofar as securities exceed the demands by more than 10%, the vendor shall release securities not needed at the buyer's request.

In the case of the buyer's breach of contract, in particular default of payment, we are entitled to retrieve the goods subject to reservation of proprietary rights or, as the case may be, to demand the assignation of claims for surrender against third parties. Our retrieval as well as our pledging of the goods subject to reservation of proprietary rights does not constitute a rescission of the contract. Insofar as a contract is cancelled due to the buyer's wishes, we have claims to appropriate compensation. This amounts to 15% of the value of goods per cancelled order, a minimum, however, of 95.00 Euros plus the legal value-added tax. The buyer is expressly permitted to prove in a particular case that there is no cause for compensation or that the compensation is less than the stipulated flat price.

### 9. Returnable Packaging and Enclosures

Returnable packaging remains the property of the vendor; it may only be used for the transport and storage of goods delivered by us. If returnable packaging has been made available to the buyer, he shall be liable for any loss or damage, including damage by an act of nature, for the duration of the loan.

The buyer shall be liable for the damage or loss of enclosures (tank trucks, tank cars, and tank ships) entrusted to him or to third parties appointed by him from the day of the dispatch to the day of the return to the return address specified by us. The buyer shall empty the enclosures entrusted to him immediately, at the latest within 48 hours, and shall return them immediately, carriage prepaid and free of charge, and in clean condition to the return address. Otherwise, he shall pay, without regard to fault, the demurrage or delay charges and the enclosure rents. We are entitled to repair the enclosures at the buyer's expense. Further claims remain unaffected. The buyer is obligated to inspect the enclosures provided by him (especially tank cars or tank ships) for their suitability and cleanliness.

### 10. Guarantee and Liability:

Claims by contractors can only be considered if they are made immediately after the receipt of goods and can still be verified by the vendor. In the case of delivery of deficient goods, contractors merely have the claim to a replacement delivery. If this is also deficient, the buyer may, as he chooses, demand an appropriate reduction of the purchase price or cancel the purchase.

The buyer is responsible for the suitability of the packaging and equipment (e.g. cleanliness, impermeability, capacity, etc.).

In the case that there is no guarantee of quality or of durability, the vendor shall be liable, insofar as is permissible, to the contractors for a maximum of double the net purchase price. In the case of a contractor's contractual or legal claims to compensation, the vendor shall be liable only for direct personal injury or damages to property in the amount of up to double the net purchase price. Liability for financial loss and indirect damages as well as other claims by the buyer are excluded in any case.

If damage is caused by simply negligent breach of a material contractual obligation, that is, the simply negligent breach of an obligation that must be fulfilled for the proper execution of the contract, then the liability is limited to the damage as foreseeable at the time of the conclusion of the contract and as typical of the contract. Claims by contractors expire one year after the delivery of the goods.

### 11. Jurisdiction:

The legal place of jurisdiction applies for disputes. The vendor's suits may also be heard by the courts in his current administrative center if the buyer is a contractor, a corporate body under public law, or a separate estate under public law.

### Notes on Data Protection:

**Personal data incidental to the scope of our business relationship shall be processed and used by us and at places of delivery for relevant purposes. Furthermore, we save, alter, or transfer these data exclusively within the scope of article 6 ff. of the Dutch data protection law ("Wet bescherming persoonsgegevens").**

### Note on Distance Selling Act:

**No legal right to rescission exists in the case of the purchase of heating fuel by consumers according to the Distance Selling Act.**