



# Scandia<sup>®</sup>

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STANDARD TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT

of

the private companies with limited liability

**SCANDIA STORES B.V.**

and

**SCANDIA SUPPLY B.V.**

registered office and place of business located in Spijkenisse

filed with Rotterdam District Court on 27 November 2002.

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## **1. Clause 1 - Definitions**

In these terms and conditions the following definitions apply:

- 1.1 the "Standard Terms": the Standard Terms and Conditions of Sale, Delivery and Payment as set out below.
- 1.2 "Scandia": the users of these Standard Terms, the private company with limited liability Scandia Stores B.V., whose registered office is located in Spijkenisse, The Netherlands and whose place of business is established at no. 18 Einsteinweg in Spijkenisse, which is entered in the trade register of the Rotterdam Chamber of Commerce under file number 24255651, and the private company with limited liability Scandia Supply B.V., whose registered office is located in Spijkenisse and whose place of business is established at no. 18 Einsteinweg in Spijkenisse, which is entered in the trade register of the Rotterdam Chamber of Commerce under file number 24255650.
- 1.3 the "Buyer": any natural or legal person who receives from Scandia an offer for the sale and delivery of goods and/or services and/or places an order for these with Scandia and/or concludes a contract with Scandia for the sale and delivery of goods and/or services.
- 1.4 the "offer": the offer made by Scandia to the Buyer exclusively in writing, under which Scandia declares itself willing in a given instance or on a given occasion to sell and to deliver any good and/or any service subject to certain conditions.

- 1.5 the “order”: the written order placed by the Buyer for the delivery of goods and/or services.
- 1.6 the “order confirmation”: the written confirmation from Scandia to the Buyer for the delivery of goods and/or services, as a result of which a contract is formed between Scandia and the Buyer.

## **2. Clause 2 - Scope**

- 2.1 These Standard Terms govern all offers made by Scandia, all orders placed by the Buyer with Scandia and all contracts formed between Scandia and the Buyer, as well as all commitments, of any nature whatsoever, further to or arising from these.
- 2.2 Additions and/or amendments to and/or departures from these Standard Terms will only take effect if and to the extent that Scandia and the Buyer have agreed them in writing.
- 2.3 An addition and/or amendment to and/or departure from any provision(s) of these Standard Terms as referred to in subclause 2.2 will in no way affect the applicability of the other provision(s) of these Standard Terms.
- 2.4 The applicability of these Standard Terms rules out that of any other terms and conditions, whatever they may be called, in particular those of the Buyer.
- 2.5 Provided they do not conflict with these Standard Terms, any terms and conditions employed by the Buyer will apply only after Scandia has given notice of its acceptance of them in writing to the Buyer. Scandia's Standard Terms will prevail at all times, even if the Buyer's terms and conditions contain a similar provision.

## **3. Clause 3 - Offers**

- 3.1 All offers and quotations made by Scandia are without engagement, unless explicitly stated otherwise in writing.
- 3.2 All price lists, brochures and other details accompanying an offer are without engagement, unless Scandia actually states prices in its offer or declares prices applicable to the offer.
- 3.3 The quotations apply to delivery ex Scandia warehouse in Spijkenisse, exclusive of value added tax and other taxes and/or levies (government-imposed or other).

#### **4. Clause 4 - Formation of contract**

- 4.1 A contract is only formed when Scandia accepts an order from the Buyer, whether or not preceded by an offer from Scandia.
- 4.2 If a contract is not concluded in writing, Scandia's invoice will constitute the order confirmation.
- 4.3 If the Buyer introduces any amendments and/or reservations to the order compared with the offer, the contract will not be formed until after Scandia has explicitly agreed to these amendments and/or reservations in writing.

#### **5. Clause 5 - Prices**

- 5.1 Any prices quoted by Scandia (including those in catalogues) are without engagement, unless agreed otherwise in writing.
- 5.2 If after an offer has been made cost or other prices rise, Scandia has the right to increase its price accordingly, in compliance with any legal provisions that may apply in this respect. If the authority to increase prices is not conferred by any statutory regulation, the Buyer will in this case be entitled to cancel the order placed and to confine itself to paying for any good or service already delivered on the basis of the daily rates applicable before the increase, provided it does so immediately, but at any time within 7 days, after receiving notice of the price increase.
- 5.3 Unless stated otherwise, the prices quoted in the offer are:
- based on the cost prices applicable on the date of the offer or order confirmation, e.g. purchase prices, wages, wage costs, social security contributions and government-imposed charges, and any other costs;
  - based on delivery ex Scandia warehouse in Spijkenisse or other storage facility;
  - exclusive of value added tax and other taxes, levies and duties;
  - exclusive of the costs of loading and unloading, transport and insurance.
- 5.4 Scandia may also retrospectively correct and on-charge any manifest mistakes in price quotations and/or invoicing which can be proved on the basis of a valid price list.

#### **6. Clause 6 - Transport**

- 6.1 Scandia will decide the method of transport and packaging, unless the Buyer has issued written instructions concerning this which Scandia has accepted and confirmed in writing.

6.2 Goods will at all times be shipped at the Buyer's expense and risk, even if deliveries are carriage paid and even if the carrier requires that waybills, etc. contain a clause stating that any transportation damage is at the sender's expense and risk.

## **7. Clause 7 - Delivery**

7.1 Delivery will be made ex Scandia warehouse in Spijkenisse, unless agreed otherwise in writing.

7.2 Unless a deadline delivery date has been explicitly agreed in writing, the agreed delivery date will be considered to be approximate. If the delivery date is not met, the Buyer must set another reasonable period for Scandia in writing within which delivery is to be made, except in the event of circumstances beyond Scandia's control as set out in Clause 12.

7.3 If circumstances beyond Scandia's control as referred to in Clause 12 arise and Scandia can demonstrate that it is impossible to make delivery on time, the delivery period will be extended by the duration of the delay caused by these circumstances.

7.4 Late delivery will at no time entitle the Buyer to rescind the contract.

## **8. Clause 8 - Inspection upon delivery**

8.1 The Buyer has a duty to inspect the goods carefully immediately upon receipt. Any complaints about the delivered goods must be communicated to Scandia in writing within eight days of their receipt.

8.2 Failure by the Buyer to communicate any complaints to Scandia in writing within eight days will be considered to be unconditional acceptance by the Buyer.

8.3 Quality marks, quality or other certificates, or other specifications relating to the products carried and/or delivered by Scandia generate no rights whatsoever for the Buyer. Clauses 11.1 and 11.2 remain explicitly in force.

## **9. Clause 9 - Transfer of ownership and risk**

9.1 Ownership of the delivered goods does not pass to the Buyer until the Buyer has paid all amounts receivable by Scandia in connection with the delivery, including interest and costs, in full.

9.2 The Buyer has a duty to inform its client in writing, when Scandia first so requests, that Scandia has retained ownership of the delivered goods and at the same time to provide Scandia with a copy of this notice.

- 9.2 A failure to perform the contract attributable to the Buyer will entitle Scandia to repossess and retain the goods in which it has ownership without court intervention and with the right to sell them itself. In this case, these goods will serve for recovery by Scandia of the amounts owed to it by the Buyer, without prejudice to the Buyer's duty to make good all it owes or will owe Scandia now or in the future in the matter of its failure to perform the contract, including compensation for the loss of value of the goods. The Buyer declares now that if this situation arises it will give Scandia free access to all facilities where the aforementioned goods will be stored or where the aforementioned goods are located.
- 9.3 The Buyer may dispose of the delivered goods in the normal course of its business, unless a bankruptcy petition, an application for protection from its creditors (temporary or otherwise) or an application for implementation of the debt rescheduling scheme has been filed. The Buyer is required to inform Scandia immediately in writing if a petition of this kind is filed.
- 9.4 The Buyer may not, however, pledge the delivered goods to third parties or offer them as security unless it has the prior consent in writing of Scandia.

## **10. Clause 10 - Payment**

- 10.1 Net payment in cash must be made on delivery or into a bank account designated by Scandia within 30 days of the invoice date. In the latter case, the date this account is credited will be considered the date of payment. If no other currency has been agreed in writing, payment must be made in euro.
- 10.2 Failure to pay on time will render the Buyer in default by operation of law, without notice of default being required. The Buyer will then be liable for default interest at a rate of 1.5% per month, including a part of any month, on the outstanding amount. No prior notice of default will be required for this.
- 10.3 If the Buyer defaults, it will also be liable for all damages and costs connected with collection, both in and out of court, seven days after written notice of default is served by Scandia. The out-of-court collection costs will amount to 15% of the amount due, with a minimum of € 500,00. The court costs include the costs of legal counsel, as well as any other legal costs Scandia is forced to incur.
- 10.4 Scandia has the right at any time to demand payment from the Buyer in advance or the provision of adequate security for the performance of its obligations. If the Buyer fails to comply directly with a request to this effect from Scandia, Scandia will be entitled to

immediately suspend or discontinue the delivery of goods and/or services and the Buyer will be in default, without any notice of default being required.

- 10.5 Comments on invoices must be communicated to Scandia in writing, giving reasons, within fourteen days of the invoice date. Failure by the Buyer to do so will be considered to be acceptance of the invoice.

**11. Clause 11 - Liability**

- 11.1 Scandia is not liable for any direct or indirect losses sustained by the Buyer or third parties in connection with the offers made by Scandia or the goods supplied and/or services provided. Any liability on the part of Scandia for any losses whatsoever, including any consequential losses, loss of profits or personal injury, is expressly ruled out.
- 11.2 The Buyer will hold Scandia harmless against any third-party claims – and any costs incurred by Scandia arising in connection with these and related *inter alia* to goods supplied to or services provided by Scandia for the Buyer – regarding any losses as referred to in Clause 11.1 of these Standard Terms and for which Scandia has ruled out its liability.
- 11.3 If Scandia has a commitment arising from a contract between Scandia and the Buyer that consists of rendering services, e.g. consultancy services, this will be a commitment to perform to the best of Scandia's ability and not a commitment to guarantee a certain result. Clauses 11.1 and 11.2 apply *mutatis mutandis*.

**12. Clause 12 - Force majeure**

- 12.1 If circumstances beyond its control (force majeure) prevent Scandia temporarily or permanently from performing or continuing to perform the contract, Scandia may at its discretion and without incurring liability for compensation or having recourse to the courts rescind all or part of the agreement or may suspend performance of the agreement, continued or otherwise.
- 12.2 Force majeure includes any circumstance Scandia could not reasonably be expected to take into account when concluding the contract and as a result of which normal performance of the contract cannot reasonably be required of Scandia. It includes, but is not limited to, default on the part of its suppliers, default on the part of carriers employed in the performance of the contract, labour strikes and disasters (e.g. war, the threat of war, mobilisation, riots, natural disasters, storms, fire and theft at Scandia), as well as accidents or illness suffered by Scandia's workforce or any other disruption of Scandia's operations.

### **13. Clause 13 - Rescission**

- 13.1 Without prejudice to the other provisions of these Standard Terms, Scandia may rescind the agreement without being required to give written notice or having recourse to the courts and without any notice of default being required, the moment the Buyer:
- is declared bankrupt;
  - applies for temporary protection from its creditors;
  - is granted protection from its creditors;
  - applies for implementation of the debt rescheduling scheme;
  - loses the power of control of some or all of its assets due to seizure, being placed in receivership or otherwise;
  - ceases to carry on its business for any reason whatsoever;
  - fails to pay an invoice or part of an invoice within the period set;
  - contravenes or fails to comply with any provision of these Standard Terms.
- 13.2 If the Buyer rescinds a contract, it will be liable to Scandia for an amount of not less than 25% of the purchase price for costs incurred and loss of profits. If the costs actually incurred and the loss of profits amount to more than the aforementioned percentage, the Buyer will be liable to Scandia for the costs actually incurred and the loss of profits.
- 13.3 If Scandia has purchased, manufactured and/or processed (which includes but is not limited to embroidering or covering) the goods ordered by the Buyer especially for the Buyer, then contrary to Clause 13.2 the Buyer will be liable for the full purchase price if it rescinds the contract.

### **14. Clause 14 - Governing law**

- 14.1 All contracts, offers and negotiations subject to these Standard Terms are governed exclusively by the laws of the Netherlands.

### **15. Clause 15 - Competent court**

- 15.1 Any dispute pertaining to the formation, interpretation or performance of a contract, further contracts which may arise from it, as well as any other dispute in matters of or related to a contract, an offer and/or an order, whether legal or factual and without exception, will in first instance be settled by the competent Court in Rotterdam or – at Scandia’s discretion – by the Court that has jurisdiction pursuant to the applicable Convention and/or statutory provisions.

15.2 A dispute will exist if one of the parties gives the other party notice to this effect in writing.

**16. Clause 16 – Final clause**

16.1 In the event of alleged differences between the Dutch text and the English translation of these Standard Terms, the Dutch text will prevail.

16.2 If pursuant to any statutory provision, court ruling or for any other reason one of more of these Standard Terms fails to remain in force, this term or these terms will be replaced by a provision that approximates as closely as possible the term or terms no longer in force, such in accordance with statutory provisions, usage or custom. In this case, the other provisions of the Standard Terms will remain in force.

16.3 These Standard Terms are also available on Scandia's web site: [www.scandia-stores.com](http://www.scandia-stores.com).

16.4 Scandia is at any time entitled to amend these Standard Terms. Amendments will be applicable 1 month after the amendments are published on the website of Scandia. If the Buyer doesn't accept the amendments, the Buyer is entitled to cancel the order or to rescind the contract as long as he does so before the amendments will be applicable. In that case the order will be cancelled and/or the contract will end at the moment when the amendments will be applicable.

These terms will replace all prior terms of Scandia.

These Standard Terms were filed with the Clerk of the Rotterdam District Court on 27 November 2002.