

## GENERAL TERMS AND CONDITIONS TRISTAR

TriStar Industries Nederland B.V., with its registered office in Rijsbergen and principal place of business in (4706 PB) ROOSENDAAL at Ettenseweg 34, and registered in the trade register of the Chamber of Commerce under number 20079218, hereinafter referred to as: 'TRISTAR'.

### **1. Applicability and offers**

- 1.1 These general terms and conditions, hereinafter referred to as: 'General Terms and Conditions', apply to all offers and agreements in which TRISTAR offers or provides goods and/or services of any kind to the client, unless and insofar as expressly agreed otherwise in writing.
- 1.2 The applicability of any general terms and conditions or purchase conditions of the client is expressly excluded.
- 1.3 In the event that these General Terms and Conditions are in conflict with the general terms and conditions of the client, which the parties have declared applicable to an agreement, the provisions of these General Terms and Conditions will prevail.
- 1.4 In the event that a provision from the General Terms and Conditions were to be null and void or voided, the other provisions of these General Terms and Conditions will remain fully in effect.
- 1.5 TRISTAR reserves the right to impose further requirements for communication between the parties or the performance of legal acts by email.
- 1.6 TRISTAR reserves the right to reject orders without having to state reasons.

### **2. The offer**

- 2.1 All offers issued by TRISTAR are without obligation, unless expressly stated otherwise by TRISTAR.
- 2.2 If the client has accepted a no-obligations offer or quote from TRISTAR, TRISTAR reserves the right to withdraw such offer or quote within two (2) working days of receiving notification of the acceptance by the client.
- 2.3 Offers will clearly state whether the offer has a limited period of validity or is subject to conditions.
- 2.4 Offers shall contain a full and accurate description of the goods and/or services offered by TRISTAR. Such a description shall be sufficiently detailed to enable the client to get a good idea of the offer. Apparent mistakes or errors in an offer shall not be binding on TRISTAR.
- 2.5 The client guarantees that details submitted to TRISTAR by it or on its behalf, and on which TRISTAR bases its offer, are correct and complete.

### **3. Formation of agreements**

- 3.1 An agreement with TRISTAR is formed exclusively through written confirmation thereof by TRISTAR, thus taking the place of no-obligations offers or verbal agreements.
- 3.2 Changes or additions to an agreement can only be agreed on by the parties in writing.

### **4. Prices and price adjustments**

- 4.1 Unless stated otherwise, all prices are exclusive of turnover tax (VAT), excise duties and any other levies imposed by the government.
- 4.2 Government changes to taxes, duties, levies and the like may be passed on in the price of the products and/or services at any time after the conclusion of the agreement but before delivery.
- 4.3 With regard to business clients, TRISTAR reserves the right to pass on price increases resulting from changes in factory, raw material and/or importer's prices, exchange rates and/or inflation in the price of the products and/or services after the conclusion of the agreement but before delivery. In that case the business client shall not be entitled to terminate the agreement.
- 4.4 With regard to consumers, TRISTAR reserves the right to index the price of the products and/or services three (3) months after the conclusion of the agreement but before delivery, in accordance with the consumer price index, taking 2015 as the base year (2015=100). If this leads to a price increase, the consumer is entitled to dissolve the agreement in writing within ten (10) days of the notification of the price increase.
- 4.5 Insofar as possible, TRISTAR shall notify the client of changes to prices beforehand.
- 4.6 If the client cannot accept a price increase by TRISTAR, the client will be entitled to terminate the agreement with TRISTAR by submitting written notice of termination. If the client has not terminated the agreement within thirty (30) days after receiving notification of the price increase from TRISTAR, the client will be deemed to have accepted the price and/or rate increase.

### **5. Payment**

- 5.1 Payment must be made based on invoices sent by TRISTAR and in the invoice currency.
- 5.2 The client agrees to pay the amounts payable within fourteen (14) days of receiving the invoice, unless TRISTAR has specified a different payment term in writing in the order confirmation.
- 5.3 TRISTAR reserves the right to require advance payment of the agreed price. If advance payment has been stipulated, the client cannot exercise any kind of right regarding the execution of the order or service(s) in question before the agreed advance payment has been made.
- 5.4 All payments made by the client will first go towards covering any payable interest and costs. Only after such amounts have been settled will payments go towards settling the oldest outstanding invoices due, regardless of whether the client specifies on the payment order that the payment regards a later invoice.
- 5.5 The client will never be entitled to offset amounts payable to TRISTAR against amounts receivable from TRISTAR on any basis, unless TRISTAR has expressly consented to the client doing so in writing.
- 5.6 The client will never be entitled to suspend its payment obligations towards TRISTAR on any basis.
- 5.7 All payment terms specified by TRISTAR are final deadlines. In the event of late payment, the client will automatically be in default, without further notice of default being required.

- 5.8 TRISTAR is entitled to charge the statutory commercial interest rate or the statutory interest rate for consumer transactions from the invoice due date.
- 5.9 Invoice-related complaints must be submitted to TRISTAR in writing no later than eight (8) calendar days after the invoice date, clearly describing the complaint, failing which the invoice will be deemed to be correct.

### **6. Delivery periods / response times**

- 6.1 All delivery periods and/or response times specified by TRISTAR have been set in good faith based on the information available at the time of formation of the agreement. TRISTAR's delivery periods are target periods and not final deadlines.
- 6.2 TRISTAR will not be bound by a final or other delivery period or delivery date that, due to circumstances beyond TRISTAR's control occurring after formation of the agreement, can no longer be fulfilled. TRISTAR can neither be held to a final or other delivery date or delivery period if the parties have agreed on a change to the contents or scope of the agreement.
- 6.3 If failure to meet the periods specified is inevitable, TRISTAR will notify the client thereof as soon as possible, and the parties will then immediately enter into consultation.
- 6.4 The mere fact of exceeding a final or other delivery period or delivery date specified by TRISTAR or agreed upon by the parties will not lead to TRISTAR being in default. In all cases, and therefore also when the parties have agreed on a final delivery period or delivery date in writing, TRISTAR can only be held in default for exceeding a deadline after the client has sent TRISTAR a written notice of default and given TRISTAR a reasonable period of at least fourteen (14) days to comply. Such notice of default must contain a comprehensive and detailed description of the shortcoming, so as to enable TRISTAR to respond adequately.

### **7. Cooperation by the client**

- 7.1 If necessary for the execution of the agreement, the client will render cooperation by, for example, providing useful and required information on quantities, delivery address, etc.
- 7.2 The client is responsible for the correct application and use of the provided products and/or services at its company and for selecting the proper products and services for use at its company or for realisation of its business objectives, as well as for the security of persons and their data.
- 7.3 If data, materials, and/or cooperation needed for the execution of the agreement is not available to TRISTAR as agreed or not available to TRISTAR at the agreed time, TRISTAR will be entitled to suspend execution of the agreement in full or partially, as well as to charge the client extra costs based on current rates.
- 7.4 If an agreement involves having TRISTAR staff or third parties engaged by TRISTAR performing work on the client's premises, the client will provide, free of charge, the facilities that can in all reasonableness be required for these TRISTAR employees or third parties. The work area and facilities for such persons must comply with all applicable legal requirements and standards with respect to working conditions. The client will indemnify TRISTAR against claims from third parties, including TRISTAR staff or third parties engaged by TRISTAR, who suffer harm as a result of the actions or omissions of the client in relation to the execution of an agreement, or as a result of unsafe situations at the client's organisation. The client will inform deployed TRISTAR staff or third parties engaged by TRISTAR of internal company rules and security arrangements that apply within its organisation.

### **8. Engaging third parties**

- 8.1 TRISTAR reserves the right to engage third parties for the execution of the agreement.
- 8.2 If and to the extent that TRISTAR makes third-party products or services available to the client or provides third-party products or services to the client, these products or services will be governed by the terms and conditions of these third parties, replacing the provisions of these General Terms and Conditions. The Client agrees to accept said third-party terms and conditions. TRISTAR agrees to send the client a copy of such third-party terms and conditions upon the client's first request. If and insofar as such third-party terms and conditions are deemed not to apply to the relationship between the client and TRISTAR, or are excluded, for any reason, or in the event of a conflict, the provisions of these General Terms and Conditions will apply in full.

### **9. Warranty**

- 9.1 TRISTAR cannot guarantee that goods and/or services provided will always work without limitations, partly due to maintenance needs, shelf life and specific applications. TRISTAR will endeavour to resolve limitations as soon as possible, minimising any inconvenience caused to the client in doing so as much as possible.
- 9.2 If visible defects to the packaging or shortages are detected, the client must report these visible defects or shortages to TRISTAR immediately upon delivery by telephone and subsequently in writing within five (5) working days of delivery.
- 9.2 Non-visible defects to goods delivered must be reported to TRISTAR by the client immediately upon discovery by telephone and subsequently confirmed in writing within seven (7) days, on the understanding that such defects must be reported to TRISTAR by the client within thirty (30) days of delivery at the latest.
- 9.4 After discovering any defect, the client is obliged to immediately cease use of the product in question and furthermore to do and/or refrain from doing everything reasonably possible to prevent further damage.
- 9.5 If a defect is reported later, the client will no longer be entitled to repair, replacement or compensation, unless the nature of the product or the other circumstances of the case dictate a longer period.

- 9.6 If it has been established that a product is faulty and a claim has been made in time, TRISTAR will, at its discretion, replace the faulty product within a reasonable period after receipt of the returned product or, if return is not reasonably possible, after written notification of the defect by the client, TRISTAR will replace the product or arrange for its repair or pay a replacement fee to the client, at the choice of TRISTAR. In the event of replacement, the client is obliged to return the product to be replaced to TRISTAR and to transfer ownership thereof to TRISTAR, unless TRISTAR indicates otherwise.
- 9.7 If it appears that the client has made a wrongful claim under the warranty, all investigation and additional costs shall be for the client's account.
- 9.8 TRISTAR provides a thirty (30) day warranty from the date of acceptance on products produced by TRISTAR.
- 9.9 Any form of warranty will lapse if a defect has arisen as a result of or arising from injudicious or improper use.
- 9.10 Lodging a complaint/claim never releases the client from its payment obligations towards TRISTAR as described elsewhere in these General Terms and Conditions.
- 9.11 TRISTAR will charge for work performed and repairs that are not covered by this warranty based on the usual rates.
- 10. Intellectual property rights**
- 10.1 Copyright and all other intellectual and industrial property rights on all goods, results of services, as well as database rights, provided to the client, or made available by TRISTAR, will be held exclusively by TRISTAR or its suppliers.
- 10.2 The client is not allowed to remove or modify any kind of designation regarding the confidential nature or relevant copyright, brands, trade names, database rights, or other property rights including intellectual property rights.
- 10.3 TRISTAR will at all times retain the right to use and freely dispose of knowledge, techniques, ideas and materials, parts, general principles, designs, documentation, works, programming languages etc. obtained and developed for and/or applied to products or services provided to the client, including after delivery.
- 10.4 This obligation to indemnify will cease to apply if the alleged infringement relates to (i) databases, software, or materials made available by the client to TRISTAR for use, processing, treatment, or incorporation, or to (ii) changes the client has made to the software, website, databases, equipment, or other materials, or has had third parties make.
- 11. Force majeure**
- 11.1 Neither party shall be held to compliance with any obligation if compliance is made impossible by a situation of force majeure. Force majeure includes force majeure suffered by TRISTAR's suppliers, inadequate compliance with obligations on the part of TRISTAR's suppliers, as well as defective third-party items, materials, and software used for the execution of an agreement.
- 11.2 If a situation of force majeure has continued for over ninety (90) days, the parties shall be entitled to terminate the agreement by giving written notice of termination. In such case, any completed performance under the agreement will be settled proportionately, without either party owing the other any other compensation.
- 12. Liability and indemnification**
- 12.1 TRISTAR's liability will be limited as specified in this article.
- 12.2 TRISTAR's total liability on account of attributable non-compliance with an agreement is limited to compensation of direct losses sustained up to a maximum of the price agreed for the agreement, excluding turnover tax. If the agreement is primarily a continuing performance agreement with a term of at least one (1) year, the price agreed for the agreement will be set at the total of all payments, excluding turnover tax, agreed for one (1) year. Total compensation for losses will never exceed € 10,000.00 (in words: ten thousand euros).
- 12.3 Direct losses only include:
- 12.3.1 reasonable costs incurred by the client to ensure TRISTAR's performance complies with the agreement - such losses on account of costs incurred for replacement performance will, however, not be compensated if the agreement is terminated by or at the request of the client;
- 12.3.2 reasonable costs incurred to establish the cause and extent of losses, insofar as this relates to direct losses as specified in these terms and conditions;
- 12.3.3 reasonable costs incurred to prevent or limit losses, insofar as the client can show that these costs have indeed led to limitation of direct losses as specified in these terms and conditions.
- 12.4 Without prejudice to the provisions of Article 12.2, TRISTAR can only be held liable for losses if the client has reported the losses, while itemising the losses and providing explanatory notes, in writing within ten (10) days after the losses occurred. The provisions of this Article 12.4 will only apply between TRISTAR and the client if and to the extent that the client's invocation of any of the provisions of Article 12.3 is rejected lawfully.
- 12.5 TRISTAR's liability for indirect losses, consequential losses, loss of profits, loss of savings, reduced goodwill, losses due to business interruption, losses due to claims from the client's clients, losses relating to the use of third-party items and materials that TRISTAR is required by the client to use, losses relating to the engaging of suppliers required by the client, and all forms of losses other than those specified in Article 12.3 and 12.5, on whatever ground, is excluded.
- 12.6 TRISTAR's liability on account of attributable non-compliance with an agreement will only ever arise if the client holds TRISTAR in default in a proper manner and without delay, giving TRISTAR a reasonable term to restore compliance, and TRISTAR continues to fail to comply with its obligations after this term. Such notice of default must contain a comprehensive and detailed description of the shortcoming, so that TRISTAR is able to respond adequately.
- 12.7 Entitlement to compensation will always be conditional on the client reporting the losses to TRISTAR in writing as soon as possible after they arise. Any claim for compensation from TRISTAR will expire twenty-four (24) months after the claim arises.

- 12.8 The client will indemnify TRISTAR against all losses ensuing from third-party claims relating to products and services provided by TRISTAR, including: third-party claims following losses ensuing from the client's actions or omissions in executing the agreement or other causes that can be attributed to the client.
- 12.9 In the event of provision of products containing materials that are on the list of drug precursors, TRISTAR will always require an end-user certificate from the client. In the event of an order that is not consistent with the certificate, TRISTAR will be under an obligation to report the order to the appropriate authorities. The client will indemnify TRISTAR against any claim by a third party and/or government agency when using provided materials and/or products for improper and/or unlawful purposes.
- 13. Confidentiality & Privacy**
- 13.1 TRISTAR and the client are bound by confidentiality and will take all possible precautions to that effect for all business information that is of a confidential nature, including any formulae provided or made available by TRISTAR. Confidential information is all information that has been explicitly marked as such, as well as all information that can in all reasonableness be presumed to be confidential.
- 13.2 The client undertakes to keep the information confidential, not to disclose it to third parties or allow third parties to use it, and to only use it for the purpose for which it is been made available, subject to an immediately payable penalty of € 1,000.00 (in words: one thousand euros) for each violation as well as an amount of € 500.00 (in words: five hundred euros) for each day that the violation continues.
- 13.3 TRISTAR complies with the obligations under current legislation on the processing of personal data. TRISTAR will ensure appropriate technical and organisational controls are in place to protect personal data against loss or any kind of unlawful processing.
- 13.4 The client guarantees that all statutory requirements regarding the collection and processing of personal data, including requirements under the *Wet Bescherming Persoonsgegevens* [Dutch Personal Data Protection Act] are strictly complied with, and that all required registrations have been made and all required approvals for personal data processing have been obtained. The client agrees to provide TRISTAR with all information requested in this respect in writing and without delay.
- 13.5 The client will indemnify TRISTAR against any third-party claim against TRISTAR on account of an infringement of the *Wet Bescherming Persoonsgegevens* [Dutch Personal Data Protection Act] and/or other legislation regarding the processing of personal data that cannot be attributed to TRISTAR.
- 13.6 The client will indemnify TRISTAR against any third-party claims, including from government agencies, that are filed against TRISTAR on account of a breach of legislation on statutory retention periods.
- 14. Retention of title**
- 14.1 TRISTAR will under all circumstances retain title to all products delivered and to be delivered by TRISTAR as long as the client has not paid any amount payable to TRISTAR, including in any case the purchase price, extrajudicial costs, interest, penalties, and any other payables as specified in Section 3:92, sub-section 2 of the *Burgerlijk Wetboek* [Dutch Civil Code].
- 14.2 The client agrees to store delivered products that are subject to retention of title with due care and attention and clearly designate these products as TRISTAR's property.
- 14.3 The client is not authorised to pledge products delivered under retention of title to third parties before title has been transferred to the client, and neither to otherwise store or fully or partly transfer such products, except when such transfer is part of the execution of the client's usual business activities.
- 14.4 If the client defaults on payments to TRISTAR or TRISTAR has valid reasons to believe that the client will default on payments, TRISTAR will be entitled to recover goods delivered under retention of title. The client agrees to grant TRISTAR free access to its premises and/or buildings at any time for inspection of the goods and/or to exercise rights that fall to TRISTAR. After recovery of the products, the market value of the products will be refunded to the client, whereby market value will never exceed the original price agreed on by the client and TRISTAR, less expenses incurred by TRISTAR in recovering the goods.
- 15. Term and Termination**
- 15.1 If an agreement concerns the periodic or regular provision of services and/or products, the agreement will be entered into for the term agreed upon by the parties, and if the parties have not agreed upon a term, the term will be one (1) year. The agreement term will be renewed tacitly for another term of the same duration, unless the client or TRISTAR terminates the agreement in writing while observing a notice period of sixty (60) days before the end of the period in question. Notice of termination must be given by registered letter to the other party.
- 15.2 TRISTAR reserves the right to terminate the agreement with immediate effect in writing without prior written notice of default if:
- 15.2.1 the client imputably fails to comply with any of its obligations and is therefore in default;
- 15.2.2 the client has used the items delivered or made available by TRISTAR in a way that contravenes the applicable user rights or has breached any restrictions on use and/or any intellectual property right on the items delivered or made available;
- 15.2.3 the client has been granted suspension of payment, or has applied for suspension of payment;
- 15.2.4 the client has been declared bankrupt;
- 15.2.5 a request for debt rescheduling has been submitted for the client;
- 15.2.6 the client has been placed under guardianship or put into administration;
- 15.2.7 the client has ceased or otherwise wound up all or part of its operations;
- 15.3 TRISTAR reserves the right to terminate an agreement with immediate effect by giving written notice if:
- 15.3.1 they cease delivery of any deliverable products;
- 15.3.2 controlling rights in the client's company are fully or partly transferred to a third party.
- 15.4 In case of termination of the agreement, all amounts payable by the client to TRISTAR will be due on demand.

- 15.5 If the client has already received performance as part of the execution of the agreement when the agreement is terminated, such performance and associated payment obligation cannot be reversed, unless the client can prove that TRISTAR is in default in relation to the performance in question. Amounts invoiced by TRISTAR prior to termination of the agreement for work performed or items delivered as part of the execution of that agreement will, in accordance with the provisions of the preceding sentence, remain due and will be due on demand as soon as the agreement is terminated.
- 15.6 Termination of the agreement based on Article 15.2 will never lead to TRISTAR being held to pay the client any kind of compensation, without prejudice to TRISTAR's entitlement to full compensation from the client on account of the client's failure to meet its obligations as specified above and without prejudice to other rights falling to TRISTAR.

#### **16. Transfer of rights and obligations**

- 16.1 Without TRISTAR's prior written consent, the client will not be allowed to transfer any of its rights and obligations under the agreement to third parties.
- 16.2 TRISTAR reserves the right to transfer, in full or partially, rights and obligations under an agreement to a third party without the client's prior consent. The client is under an obligation to, at TRISTAR's first request to this effect, render all required cooperation in completing the above transfer.

#### **17. Distance purchase**

- 17.1 A distance agreement is any agreement concluded between TRISTAR and the client within the framework of an organised system for the distance selling of products, whereby, until the conclusion of the agreement, exclusive or joint use is made of one or more techniques for distance communication.

#### **18. Right of withdrawal**

- 18.1 The consumer may terminate the distance agreement for the purchase of one or more products during a cooling-off period of fourteen (14) days without giving reasons. TRISTAR may ask the client for the reason for the withdrawal, but may not require the client to provide reasons.
- 18.2 The fourteen (14) day cooling-off period commences on the day after the consumer, or a third party designated by the consumer in advance, has received one or more products.
- 18.3 Products made to the consumer's specifications, which are not prefabricated and are manufactured on the basis of an individual choice, decision or specifications of the consumer, or which are clearly intended for a specific person (personal nature) and products which cannot be returned due to their nature are excluded from the right of withdrawal.

#### **19. Obligations of the consumer during the cooling-off period**

- 19.1 During the cooling-off period, the consumer will handle the product and the packaging with care. He will only unpack or use the product to the extent necessary to determine the nature, characteristics and functioning of the product. The guiding principle here is that the consumer may only handle and inspect the product as he would be allowed to do in a shop.
- 19.2 The consumer is only liable for a decrease in value of the product that is a result of handling the product in such a manner that exceeds what is allowed in paragraph 1.

#### **20. Exercise of the right of withdrawal by the consumer and the costs thereof**

- 20.1 If the consumer exercises his right of withdrawal, he must notify TRISTAR of this within the cooling-off period by means of the model withdrawal form or in another unambiguous manner.
- 20.2 The consumer will return the product or hand it over to an authorised representative of TRISTAR as quickly as possible, but within fourteen (14) days of the day after the notification referred to in paragraph 1. This is not necessary if TRISTAR has offered to collect the product itself. In any case, if the consumer returns the product before the cooling-off period has expired he has complied with the return period.
- 20.3 The consumer will return the product with all delivered accessories, if reasonably possible in the original condition and packaging, and in accordance with the reasonable and clear instructions provided by TRISTAR.
- 20.4 The risk and burden of proof for the correct and timely exercise of the right of withdrawal lies with the consumer.
- 20.5 The consumer will pay the direct costs of returning the product, unless agreed otherwise.
- 20.6 TRISTAR will reimburse all payments already made by the consumer, including any delivery costs and excluding the direct costs of returning the product as referred to in paragraph 5, without delay but within fourteen (14) days after the day on which the consumer notifies TRISTAR of the withdrawal. Unless TRISTAR offers to collect the product itself, it may wait until it has received the product or the consumer demonstrates that he has sent the product back before refunding the consumer, whichever comes first.
- 20.7 TRISTAR will use the same means of payment for the refund as the consumer has used, unless the consumer agrees to a different method.

#### **21. Other provisions**

- 21.1 If one or several of the provisions in an agreement between TRISTAR and the client and/or these General Terms and Conditions are null or subject to annulment, this will not affect the validity of the agreement, the General Terms and Conditions or any other provisions.
- 21.2 All unavoidable expenses incurred by TRISTAR in preserving or exercising rights towards the client under the agreement and/or the General Terms and Conditions, with or without intervention of the courts, are payable by the client.

- 21.3 The parties can only agree on changes or additions to an agreement in writing.
- 21.4 These General Terms and Conditions are deemed to be divisible and if any part of them should be invalid or otherwise have no effect, for any reason, the other parts of these General Terms and Conditions will remain in full force and effect. The invalid part of these General Terms and Conditions will be deemed to have been replaced by provisions that have the same effect as the invalid part to the greatest degree possible and permissible.

#### **22. Applicable law and disputes**

- 22.1 All offers by and agreements with TRISTAR are governed exclusively by Dutch law. Applicability of the Weens Koopverdrag [Vienna Sales Convention] is excluded.
- 22.2 Any dispute between TRISTAR and the client arising from an agreement entered into by TRISTAR and the client, or third-party agreements resulting from such an agreement, shall, unless the law stipulates otherwise, be brought before and resolved by the competent court in Breda in the Zeeland West Brabant district.

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