

## 1. General

1.1 These General Terms and Conditions contain the following definitions:

- **Agreement:** every agreement resulting in the delivery of goods or services and/or the performance of work by Zytec, in which form or under which title whatsoever, including but not limited to the sale, Product and maintenance of an Product and everything in connection thereof, in the broadest sense.
- **Buyer:** every party with whom Zytec enters into an Agreement, or to whom Zytec delivers directly or indirectly goods or services.
- **General Terms and Conditions:** these general terms and conditions of sale of Zytec, including all its amendments.
- **Product:** the contact-free magnetic coupling or any other device or product as described in the order confirmation (or in absence whereof the proposal) of Zytec, and/or all other agreed goods and services, all in the broadest sense.
- **Warranty:** the warranty applicable on the Product, as referred to in article 9 of these General Terms and Conditions.
- **Zytec:** the company with limited liability (de besloten vennootschap met beperkte aansprakelijkheid) Zytec B.V., registered with the Chamber of Commerce under number 64810240.

## 2 Applicability

- 2.1 These General Terms and Conditions apply to all legal relationships between Zytec and Buyer, including but not limited to all Agreements, offers, proposals, deliveries, services, performances and other legal acts of Zytec. provides the Buyer (that is both the direct and the indirect other party or customer of Zytec) with any goods and/or services whatsoever and however described. These General Terms and Conditions form an integral part of the Agreement.
- 2.2 Zytec is at any time authorized to amend these General Terms and Conditions. Amendments enter into force 30 days after the notification thereof by Zytec. If Buyer does not agree with the amendment, Buyer is then (only) entitled to terminate the Agreement within two weeks after such notification, without any compensation of damages being due.
- 2.3 The Agreement can only be amended in writing, after written approval of Zytec.
- 2.4 Any general terms and conditions of the Buyer do not apply to the Agreement and are herewith expressly rejected.
- 2.5 If any provision of these General Terms and Conditions is null and void or is voided, the other provisions of these General Terms and Conditions will remain in effect in full. In such case, Zytec and the Buyer will agree new provisions to replace the void or voided provisions. In doing so, the purpose and meaning of the void or voided provision will be taken into account to the extent possible.
- 2.6 If any provision of these General Terms and Conditions are contrary to a provision of the Agreement, the provision of the Agreement shall prevail.

## 3 Offers and conclusion of the Agreement

- 3.1 All offers and other statements issued by Zytec, in any form whatsoever, are without obligation and subject to contract, except where specified otherwise in writing by Zytec.
- 3.2 Any offer of Zytec will be cancelled within 14 days, unless it is being accepted in full and unconditionally.
- 3.3 If Zytec intends to charge the Buyer for making an offer, the Buyer will be informed in advance.
- 3.4 The Agreement will only be concluded after the written, unconditional and complete confirmation by the Buyer of the offer of Zytec, or the written, unconditional and complete confirmation by Zytec of the order of Buyer, or at the moment Zytec starts the execution of the Agreement.

## 4 Execution of the Agreement

- 4.1 Zytec shall execute the Agreement on a best effort basis and in conformity with applicable statutory rules.
- 4.2 Zytec only delivers the agreed Product by making it available to the Buyer and is not responsible nor guarantees the correct functioning within Buyer's or Buyer's customer's installation or premises or in conjunction with other installations or products. The Buyer is solely responsible for such correct functioning, including but not limited to the installation, integration, assembly and/or placement of the Product. Any responsibility of the Buyer does not affect Zytec's responsibility and liability under this Agreement.
- 4.3 Any applicable technical or other requirements for the Product or the goods and services to be delivered, whether or not deviating of the ordinary requirements, should be confirmed by the Buyer to Zytec in writing prior to the conclusion of the Agreement. The Buyer shall at all times exercise the greatest possible care, to ensure that the requirements that Zytec's Products must meet, are described accurately and comprehensively.

- 4.4 The Buyer guarantees the accuracy and completeness of the information that it submits to Zytec and on which Zytec bases its offer and the Agreement. Measurements and information stated in drawings, pictures, catalogues, websites, quotations, advertising material, standard sheets etc. shall not have a binding effect on Zytec, except where explicitly specified otherwise by Zytec.
- 4.5 If Zytec shows a model, sample or example, this is meant to be showed as example only: the characteristics of the Product or the goods and services to be delivered can deviate.
- 4.6 Zytec is entitled to involve subcontractors or other third parties for the execution of the Agreement, at its sole discretion.
- 4.7 Zytec is entitled to deliver goods and services that do not materially deviate from the agreed form, fit and function.
- 4.8 The Buyer shall ensure that all i) information, data, authorisations, permits and other documentation, ii) Products, connections, energy and tools, and iii) persons, capacity and know how, required for the proper performance of the Agreement, will at its own cost be (made) available to Zytec in time.
- 4.9 If it is agreed that the Agreement will be executed in parts of phases, Zytec can only be obliged to execute the next phase, after prior written approval of the previous phase by the Buyer and after prior payment of all outstanding invoices.
- 4.10 The Buyer is responsible for and bears the risk in connection with any of its requirements, specifications, designs, proposals, constructions, drawings, calculations, materials and the use of specific subcontractors, suppliers or other parties provided or prescribed to Zytec and in connection with any approved designs of Zytec.
- 4.11 The Buyer is responsible for any damages to and the loss of any material, tools and parts made available or present at the place of work.

## 5 Delivery

- 5.1 Unless otherwise agreed, deliveries shall be made ex works/warehouse Zytec (EXW). All terms of delivery shall be in conformity with the Incoterms (EXW), latest version.
- 5.2 All Products are deemed to be delivered once the Buyer has been notified to be ready for transport, or in absence of such notification once the Products has left Zytec's warehouse. All risks connected to the Products are then being transferred to the Buyer. The Buyer is obliged to accept the delivery of the Products as per the ready-for-transport notification and arrange for the necessary, adequate and timely transport and insurances for its own risk and account.
- 5.3 If the Buyer fails to accept timely acceptance of the delivery or fails to arrange for adequate and timely transport, the products shall be stored for the risk and account of the Buyer. The Buyer is then liable for all costs related thereto, including but not limited to storage and handling costs.
- 5.4 The Buyer is obliged to check the delivered products at the date of delivery, including but not limited to quantity, quality and whether the delivered Products are in conformity with the Agreement. Visible defects should be reported and notified in writing to Zytec within 48 hours after delivery. Invisible defects should be reported and notified to Zytec within 10 working days after installation of the Products, but no longer than 4 weeks after delivery. Notifications should be in writing substantiated with the relevant defects, the date of discovery, all available proof and a description of possible measures to be taken. In absence of such notification, the Products are deemed to be delivered in good order, in conformity with the Agreement and accepted by the Buyer, in which case the Buyer can no longer claim for defects.
- 5.5 Also the Buyer is deemed to have accepted the Products delivered i) after its confirmation to that extent, and ii) after Product or use of the Products delivered.
- 5.6 All (delivery) periods and (delivery) dates agreed or specified by Zytec shall be non-binding, non-fatal and merely be indicative, established to the best of the Zytec's knowledge on the basis of the information available to it at the time of entering into the agreement. Zytec shall to the best of its ability observe the time of delivery agreed upon. Zytec shall make every reasonable effort to observe final (delivery) periods and final (delivery) dates wherever possible. Zytec can in no event be bound by a (delivery) period or (delivery) date, final or otherwise, that can no longer be achieved as a result of circumstances outside of Zytec's control or that occurred after the date on which the Agreement was concluded. Zytec shall also not be bound by a (delivery) date or (delivery) period, final or otherwise, if the parties have agreed on a change to the content or scope of the Agreement (included but not limited to additional work, change in specifications etc.) or a change in the approach to the execution of the Agreement. If there is a risk that a time period will be exceeded, Zytec can consult with the Buyer the possible implications for the planning. Zytec is not liable for damages caused by late delivery.
- 5.7 The mere fact that a (delivery) period or (delivery) date, final or otherwise, specified by Zytec or agreed between the parties has been exceeded, shall not mean that Zytec is in default. In all cases – including but not limited to the event that a final (delivery) period or (delivery) date has expired– Zytec shall not be in default until the Buyer has given Zytec a written notice of default including a reasonable term to perform of at least 30 days. The notice of default must contain a comprehensive and detailed description of the breach as possible, in order to ensure that Zytec has the opportunity to respond adequately.
- 5.8 Unless Zytec's performance or delivery is not separable, Zytec shall be entitled to effect partial deliveries within the time of delivery agreed upon and, if an order is performed in partial deliveries, to invoice each partial delivery separately.
- 5.9 The Buyer is responsible for the onsite installation of the Products, which will be for its own risk and account of the Buyer, unless explicitly agreed otherwise. Zytec is not liable for any damages in connection with the Product of the Products.
- 5.10 If, in relation to the performance of the agreement, Zytec needs particulars to be supplied by the Buyer or if Zytec has stipulated a payment guarantee and these particulars or payment guarantee have not been received prior to the date of delivery agreed upon, Zytec shall not be obliged to deliver until a reasonable time after the required particulars or stipulated payment guarantee have been received.
- 5.11 The Buyer located in an EU Member State other than the Netherlands shall inform Zytec in writing about his VAT identification number. Furthermore, the Buyer shall provide all necessary information and documents that Zytec requires as proof that the Products have been delivered in an EU Member State other than the Netherlands. The Buyer will indemnify Zytec and hold Zytec harmless for all claims and damages resulting from not or not entirely complying with the provisions in this article.



- 5.12 The Buyer shall, at its sole expense, obtain any and all import licenses and governmental approvals that may be necessary to permit the performance by Zytec under the Agreement and the acceptance thereof by the Buyer.
- 5.13 The Buyer shall be responsible for ensuring that all Products delivered comply with all health, safety, environmental and other standards, specifications and other requirements imposed by law in the country the Buyer has delivered the Products.
- 5.14 The Buyer shall examine whether the Products and the product information meet all the requirements of the applicable legislation in the country the Products are delivered to. The Buyer shall inform Zytec immediately, should any Product or product information not meet any such requirement. Should the Buyer fail to provide Zytec with such information, the Buyer will indemnify and hold Zytec harmless against any claims from third parties (including governmental bodies) and damages related to the non-compliance of the Products with the local legislation and regulations and against all damage and costs that Zytec will suffer or incur in relation to such a claim.

## **6 Transport and Packing Material**

- 6.1 The Products will be delivered in Zytec standard packing material. Should the Buyer request for different packing material due to the method of transport, this is for the risk and account of the Buyer. In the event that Zytec makes loan packing material available, it must be returned to Zytec free of charge forthwith in a reasonable state and without any product remains. If this loan packing material has not been returned within the applicable term, has been returned in damaged state and/or with product remains, the costs of extra rental, replacement, repair, cleaning and/or removal will be charged to the Buyer.
- 6.2 From the moment of dispatch by Zytec until the moment at which the loan packing material will be back in Zytec's possession, the Buyer shall be fully liable for all damages to the loan packing material, as well as for all damages which the Buyer or any third person might suffer in any way.
- 6.3 Packing material that has become the property of the Buyer shall only be capable of being used in commercial traffic if the company name and logo of Zytec its trademark and other indications have been made unrecognizable. Transportation vehicles that are the property of or have been made available by Zytec must be discharged or unloaded immediately after arrival.
- 6.4 The transport and packing material made available by the Buyer shall be clean and comply with the statutory requirements and standards for safe and reliable transport. If the equipment or packing material does not comply with such requirements and standards, Zytec is authorized to refuse to load or use equipment and packing material made available by the Buyer, without being responsible or liable for the consequences resulting thereof.

## **7 Prices**

- 7.1 All prices are exclusive of any taxes, including but not limited to value-added tax (VAT), duties, fees or other charges imposed by any governmental authority, domestic or foreign, in connection with the Agreement.
- 7.2 Except where explicitly agreed otherwise, all prices are in euros all payments must be effected in euros.
- 7.3 The costs of Zytec's packing material for single use, if any, are included, unless agreed otherwise.
- 7.4 Any financial consequences of amendments of the Agreement and additional/less work shall be for the account of the Buyer and charged by separate invoice or by the final invoice, at Zytec's sole discretion.
- 7.5 Zytec is entitled to adjust the applicable prices until 3 business days prior to the contractual date of delivery. If the Buyer does not wish to agree to this change, the Buyer shall be entitled to terminate the agreement in writing within 3 business days after the said notification with effect to the date on which the change is due to enter into force but only in so far as it has not yet been performed at the time of Zytec's notification of the change in price.
- 7.6 Zytec shall at all times be entitled to change prices if the event of cost raising events, including but not limited to government measures or prescriptions, the raise of purchase prices, salaries, charges, costs or other cost price elements outside Zytec's direct influence. The Buyer is not entitled to terminate the Agreement as a result of such cost raising event, unless Zytec's total price raises with more than 25% in which event the Buyer is entitled to terminate the Agreement by written notification within 8 calendar days after the announcement of the price change. The Buyer shall then pay Zytec for the executed work and/or deliveries made against the applicable tariffs and rates of Zytec and, if a fixed price has been agreed, pay a pro rata parte part thereof.

## **8 Payment**

- 8.1 All payments must be effected by the method of payment agreed and within the time the parties agreed upon.
- 8.2 Unless agreed otherwise, the payment term of invoices are 8 calendar days after the date of invoice. Advance invoices should be paid prior to the execution of the Agreement.
- 8.3 Payments should be made without any discount, postponement or set off. Payments by the Buyer shall first be used to pay any interest and costs being due, thereafter the longest outstanding invoices, even if the Buyer uses another description or designation with the payment.
- 8.4 Parties can agree that Zytec's performance shall be paid on calculation-basis in whole or in part. In such case Zytec will provide the Buyer with an estimation based on the applicable hourly rates and the estimated material costs. In absence thereof, the normal reasonable hourly rates and material costs of Zytec apply.
- 8.5 Zytec is at any time entitled to request payment by sending advance invoices, interim invoices or final invoices, at its sole discretion.
- 8.6 If the Buyer fails to pay the amounts due or to pay the amounts due within the payment term, the outstanding amount will be immediately due and payable without any further demand or notice being required. The outstanding amount will then be raised with the applicable statutory commercial interest (as referred to in article 6:119a of the Dutch Civil Code) and costs for extra-judicial debt collection costs, without prejudice to Zytec's other rights and entitlements.
- 8.7 The amount of the extra-judicial debt collection costs are equal to the following amount:



- 15% over the first EUR 10.000
- 10% over the remainder until EUR 50.000
- 5% over de remainder

with a minimum amount of EUR 750,00. If Zytec proves higher costs have been made, these higher costs will be compensated in full.

- 8.8 If the Buyer still fails to pay the due and payable amount, Zytec may refer the debt for collection and start legal proceedings, in which case the Buyer shall also be obliged to pay all in-court expenses in addition to the total amount due, including all attorney and other legal costs and costs of external experts.
- 8.9 If payment by way of L/C has been agreed upon, this L/C must be irrevocable, confirmed and cover the entire Agreement price and it must be opened by the Buyer with a leading bank within 15 days after the Agreement has been concluded. Confirmation must be effected by a bank specified by Zytec. The L/C will be subject to the "Uniform Customs and Practice for Documentary Credits, 1993 Revision", ICC publication nr 500.
- 8.10 Zytec's administration will provide for complete proof concerning the outstanding balance by the Buyer, unless the Buyer proves the contrary.

## 9 Warranty

- 9.1 Zytec provides a Warranty on the Product to the extent this is explicitly agreed in the Agreement, which Warranty shall then be subject to the applicable warranty provisions and the warranty period as mentioned in the Agreement and in this article. If no specific warranty or warranty period has been agreed on the Product, a warranty of one year applies.
- 9.2 During the agreed warranty period, Zytec shall – at its sole discretion – repair or replace defect or defective parts of the Product at its own costs, or give the Buyer a reduction on the price. In the event of a repairing or replacement, Zytec is only obliged to replace the respective part, if and after Zytec has made several efforts to repair the part, without result, and the defect is sufficiently serious to require the part being replaced. Defect or defective parts should be delivered at Zytec's warehouse, where it will be repaired or replaced and made available to the Buyer. Replaced parts shall become the property of Zytec and can be used for further investigation or development purposes. The Warranty does not include any work to be done or services to be delivered at the Buyer's location and shall in case necessary be charged separately, including but not limited to dismantling, (un)Product, assembly, investigation and testing. Travel costs will also be charged separately.
- 9.3 Any claims under the Warranty should be made directly after the defect or damage has been discovered, but not later than one week after discovery. The Buyer shall then take all necessary measures to avoid further damages, immediately stop the Product, start an investigation, collect evidence (like photos) and notify Zytec as soon as possible. A claim under the Warranty should be made in writing to Zytec, substantiated with a description of the defect, damage, problem and relevant circumstances and all available evidence. As soon as possible after a claim under the Warranty is being made, the Buyer will offer the defect or defective part to Zytec for further investigation to the defect, defective part, problem or damage or for reparation or replacement at Zytec's location, duly transported, packed and delivered free of charge. If the Products can not be delivered at Zytec's location, Zytec will be invited at the location of the Product. Any additional costs, including travel or other costs made by Zytec in connection therewith, will be for the account of Buyer and Zytec can demand the advance payment thereof. Zytec is also entitled to start an investigation on the location (at Buyer's or Buyer's Customer's premises) where the problem occurred and collect the necessary evidence. The Buyer will provide Zytec access to that location or premises.
- 9.4 If Zytec has received a valid claim under the Warranty and Buyer has offered the respective part to Zytec, Zytec shall do its best endeavours to investigate the claim and if the claim is being accepted, start the repairing or replacement and/or execute its (other) obligations under the Warranty. Thereafter the Product shall be made available to the Buyer and delivered in accordance with clause 5 of these General Terms and Conditions.
- 9.5 There is no warranty on batteries or repaired or replaced parts. The warranty does not include defects, defective parts or damages caused by disaster, including but not limited to thunder, lighting, currents, floods, destruction, sabotage, attacks or other external circumstances or conditions outside Zytec's control.
- 9.6 The Warranty does not or no longer apply and any claim is not valid, if:
- at the delivery the defect, problem or damage was visible or could have been visible after investigation and has not been mentioned on the delivery report;
  - the type- or serial number of the Product has been removed or changed;
  - the Product has been (un)installed by an uncertified installer;
  - the Products has been modified, changed or repaired without written approval of Zytec;
  - the claim is caused by or related to incorrect, incompetent or unauthorized use of the Product, or the manual, instructions or guidelines provided by Zytec has not been followed or complied with;
  - the claim is caused by or related to unauthorized repairing, (un)Product or (de)assembly by any other than a certified partner of Zytec;
  - the claim is caused by or related to normal wear and tear, or the lack of proper and periodic maintenance;
  - the claim does not (solely) concern the Product's functional or technical characteristics, but concerns colour, design, form, shape, noise or other characteristics;
  - under the provisions of the Agreement, the defect, problem or damage should be for the account of the Buyer;
  - the Buyer has assisted Zytec insufficiently in resolving the claim, has granted Zytec insufficient access, the Buyer has not fulfilled its obligations under the Agreement, or the claim has been made in bad faith;
  - the Buyer complies with the applicable Warranty provisions, including the provisions in this article.



## 10 Security and Retention of Title

- 10.1 If during or after the conclusion of the Agreement Zytec has reasons to believe that the Buyer will not completely or timely fulfil its obligations under the Agreement, Zytec is entitled to demand (additional) security for Buyer's existing or future obligations. As long as the Buyer fails to provide the requested (additional) security, Zytec is entitled to postpone its obligations under the Agreement and – after the Buyer has been put in default – rescind the Agreement.
- 10.2 All delivered goods by Zytec to the Buyer shall remain the sole property of Zytec, until the Buyer has fulfilled all its obligations towards Zytec under any and all applicable Agreements, including but not limited to all its existing or future payment obligations during the term of the Agreement, or other obligations. As long as the retention of title is applicable, the Buyer is entitled to use the delivered goods in the normal conduct of his business, but shall not be entitled to sell, vest a right of pledge or any other right on the respective goods. The Buyer is obliged to forthwith inform Zytec if third parties exercise rights in respect of goods to which the property is still retained by Zytec. As soon as Zytec has any grounds for presuming that the Buyer will be in default of payment or fail to pay in good time, Zytec shall be irrevocably authorized, without notice of default being required, to remove or cause to remove the products in which property is retained by Zytec from the premises where they are located.
- 10.3 The Buyer is obliged to store the Products that have been delivered subject to retention of title with the necessary care and in such a manner that the Products can be identified as property of Zytec.
- 10.4 If the Buyer creates a new item (partly) from or with items delivered by Zytec, the Buyer shall only create this item for the benefit of Zytec and the Buyer shall retain the newly created item for Zytec until such time as the Buyer has paid all amounts due pursuant to the agreement; in this case Zytec shall remain the owner of the newly created item until the Buyer has fulfilled its payment obligations in full.
- 10.5 As long as the retention of title is applicable, the Buyer has the obligation to i) keep the respective goods full insured against fire, explosion, water, demolition and theft and provide Zytec a copy of the insurance policy on its first request, ii) to pledge all claims under the insurance policy in favour of Zytec as described in article 3:239 of the Dutch Civil Code, iii) to pledge the proceeds of any sale of the respective goods in favour of Zytec, as described in article 3:239 of the Dutch Civil Code, iv) to fully cooperate with any further securing of the rights of Zytec.

## 11 Services

- 11.1 All services provided by Zytec are on a best effort basis, based on the knowledge available with Zytec and the information provided by Buyer. Services can include consultancy, engineering, courses etcetera. Zytec is free to determine the content of the Services within its obligations under the Agreement, but is not responsible or liable for the content or the consequences of its services, nor for the follow up by its customer(s). The services can not be considered as an advise, representation or warranty.
- 11.2 In the execution of its Services, Zytec is not obliged to follow Buyer's instructions, which concern the content of the Services.
- 11.3 If no term of delivery for the Services has been agreed, Services will be delivered within a reasonable term after the signing of the agreement.
- 11.4 Except where agreed otherwise, services shall only be delivered during working hours and working days.
- 11.5 The content of the Services are confidential for which the confidentiality clause in clause 15 applies. The Buyer, its customer or participants shall not make the content of the Services available to third parties or the public.

## 12 Termination

- 12.1 Zytec is in any event authorised to postpone the execution of the Agreement, or to terminate the Agreement in full or in part, with immediate effect, in writing without being liable for any damages, compensation or costs, in the following events:
  - 12.1.1 If the Buyer has been declared bankrupt, a moratorium of payments has been declared, provisionally or otherwise, if a winding-up petition is filed in respect of the other party or if the other party's company is wound up or terminated for reasons other than restructuring, reorganisation or merger of companies, if the Buyer's assets has been seized or otherwise loses the control over its equity;
  - 12.1.2 If the Buyer does not comply with or perform its obligations under the Agreement properly, in full and/or on time;
  - 12.1.3 If after the entering into the Agreement, Zytec has become aware of circumstances giving good cause for concern that i) the Buyer will not comply with its obligations under the Agreement, ii) Zytec can not perform under the Agreement as a good contractor;
  - 12.1.4 If after the entering into the Agreement, there is a change of circumstances, based upon which Zytec is no longer prepared or able to execute the Agreement, or no longer under the same conditions;
  - 12.1.5 If the Buyer does not provide the form of security, as requested by Zytec;
- 12.2 If any of the event in clause 12.2 occur, all claims and accounts receivable of Zytec are immediately due and payable The Buyer then is obliged to return all delivered but unpaid products and materials and Zytec will have unlimited access to the premises of the Buyer or the Buyer's customer.
- 12.3 The Buyer shall only be authorised to rescind or terminate in part or in full the agreement, as a result of an attributable failure to perform under this agreement if the Buyer has given Zytec a written notice of default including a reasonable term to perform of at least 30 days. The notice of default must contain a comprehensive and detailed description of the breach as possible, in order to ensure that Zytec has the opportunity to respond adequately.
- 12.4 The Buyer shall only be entitled to terminate the agreement, in writing without notice of default if the other party is, provisionally or otherwise, if a winding-up petition is filed in respect of the other party or if the other party's company is wound up or terminated for reasons other than restructuring, reorganisation or merger of companies. Zytec shall under no circumstances be obliged to reimburse any amount that have already been received or to pay any compensation in the event of such termination.



12.5 In the event that the Buyer commits or is subject to any one of the circumstances referred to in paragraph 2 of this Article, all Zytec receivables and claims will immediately become due and payable and Zytec shall have the right to suspend or cancel any other agreement for the supply of Products and services concluded with the Buyer.

### 13 Force Majeure

13.1 In the event the performance of the agreement is impeded through circumstances beyond Zytec's control (force majeure), Zytec shall have the right to demand in writing, without judicial intervention, that the agreement is adapted to the circumstances or that the performance of the agreement is suspended or to cancel the agreement in its entirety or in part, without being obliged to pay any compensation.

13.2 For the purposes of this agreement force majeure is understood to mean any circumstance which Zytec could not reasonably have taken into account and as a result whereof the normal performance of the agreement cannot reasonably be required by the Buyer such as, to the extent not already included therein, natural and environmental disasters, war, danger of war, civil war, riots, strikes, partial or complete non-performance by third parties which were to supply products or services, lack of raw material, semi-manufactured articles, auxiliary material and/or energy, transport problems, fire and other calamities at Zytec or at its suppliers.

13.3 In the event that partial or complete suspension as referred to in paragraph 1 of this article would affect the significance of the later performance of Zytec vis-à-vis the Buyer to such extent that acceptance by the latter could no longer be reasonably required, the Buyer shall be released from this obligations to take further delivery.

13.4 Performance in one or more instances during circumstances as referred to in paragraph 2 of this article does not invalidate the right to suspension or cancellation in other instances.

### 14 Liability

14.1 Representations made by or on behalf of Zytec in respect of the quality, composition, properties, use and the like of the Products sold shall only be binding upon Zytec if explicitly been agreed upon in writing.

14.2 Zytec is only liable for damages i) as a result of intent or gross negligence of Zytec or its staff, and ii) after Zytec has been put in default by the Buyer within 14 days after discovery of the non-performance and Zytec has been granted the possibility to remedy such non-performance within 30 days after the notice of default. Zytec is not liable for damages if these has been caused by i) the lack or absence of a security plan, the non-observance of applicable rules, guidelines and laws, or ii) incomplete or incorrect information provided by the Buyer.

14.3 If Zytec is liable for damages, this liability is limited to direct and material damages being solely caused by the attributable non-performance of a written obligation of Zytec under the Agreement. Zytec is not liable for any form of indirect or consequential damage, including but limited to i) delay damage, ii) loss of turnover, profit, (cost)savings, capacity, staff or productions means, iii) operating failures or interruptions, iv) installation or deinstallation costs, or v) business closure, nor for immaterial damage.

14.4 All Buyer's claims in connection with complaints with respect to the Products delivered are legally barred from pursuing in case the Buyer has not observed its obligations in this article and in article 9.6 (Warranty exclusion grounds) and the time periods that are part thereof. Furthermore, any claim towards Zytec, except those recognized by Zytec, lapses after a period of 3 months from the time the claim arose.

14.5 Any liability of Zytec shall at all times be limited to the amount of the net invoice value of the respective goods related to the liability.

14.6 The total liability of Zytec for direct damage or loss, for any reason whatsoever, shall, however, under no circumstances exceed EUR 20,000 (twenty thousand euro) per event or series of event with a maximum of EUR 60.000 per calendar year, unless in the event of intent or gross negligence of Zytec or its staff.

14.7 The liability of Zytec for loss as a result of death or physical injury shall under no circumstances exceed EUR 1,250,000 (one million two hundred and fifty thousand euro) and EUR 50.000 for liability towards visitors of its premises.

14.8 Notwithstanding the above limitations, any liability of Zytec is limited to the amount covered under the insurance policy of Zytec.

14.9 The Buyer shall indemnify Zytec against and hold Zytec harmless for all claims by third parties in connection with the performance of this Agreement and the possible damages caused, including but not limited to claims of staff, subcontractors or customers.

14.10 Due to product liability as a result of a fault in a Product or system delivered by the Buyer to a third party and that partly consisted of materials provided by Zytec, unless and to the extent the Buyer is able to prove that the damage or loss was caused by these materials.

14.11 The provisions of this article and all other restrictions and exclusions of liability referred to in these general terms and conditions shall also apply in favour of all (legal) persons that Zytec engages to execute the Agreement.

### 15 Confidentiality and Intellectual Property Rights

15.1 The Buyer shall keep strictly confidential, and shall not disclose to any person other than a party to this Agreement, any information that was received or obtained in connection with the entry into or performance of this Agreement, the negotiations relating to this Agreement or the investigations and provision of information preceding this Agreement, and that relates to the provisions or subject matter of this Agreement or any document referred to in this Agreement including the purchase price or technical data or specifications of the Product or the goods or services delivered by Zytec. The Buyer shall a) keep the confidential information strictly secret, confidential and at a secure location; b) not, without Zytec's prior written consent, use, disclose, disseminate or distribute any confidential information; c) not use any confidential information for any other purpose than the purpose of the Agreement, nor design, develop, provide or market any product or service that would compete with any product or service of Zytec. The Buyer will protect any confidential information from any unauthorized use, disclosure, copying, dissemination or distribution. Without limitation of the foregoing, the Buyer shall: (a) make the confidential information available only to those of its employees, agents and other representatives who have a need to know the same for the purpose of the Agreement, who have been informed that the confidential information belong to Zytec and are subject to the Agreement, and who have agreed or are otherwise obligated to comply with the Agreement; (b) not disclose the confidential information to any third party; (c) make or copy the confidential information only as reasonably required for the purpose of the Agreement; (d) not deliver, distribute, display,



demonstrate or otherwise make available the confidential information to any third party except as provided in clause (a) above; (e) not reverse engineer, decompile or disassemble any computer program included in such confidential information or take any other steps to derive a source code equivalent thereof; and (f) not remove or obliterate markings (if any) on confidential information indicating its proprietary or confidential nature.

- 15.2 All confidential information provided are and remain the property of Zytec.
- 15.3 Zytec is the owner or holder of all intellectual property rights related to the Product, the goods and the services delivered and the Agreement, including but not limited to its parts, documents, designs, drawings, images and/or technical descriptions, and such intellectual property rights are not transferred by means of the Agreement. Without explicit written approval of Zytec, the Buyer is not authorized to copy, multiply, publish or otherwise make available to the public or third parties any information related to the intellectual property rights of Zytec, nor to make any patent or other registration of a comparable work, good or Product.
- 15.4 On first request of Zytec, the Buyer has the obligation to delete and destroy all confidential information and information regarding the intellectual property of Zytec and confirm such to Zytec in writing.

## **16 Applicable Law and Settlement of Disputes**

- 16.1 This Agreement and any obligations arising from it, to which these conditions apply in full or in part, shall exclusively be governed by the laws of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods (the 'Vienna Treaty') is not applicable.
- 16.2 In the event that any provision in these General Conditions of Sale is not applicable or in conflict with public order or the law, the relevant provision will be deemed not to have been laid down but otherwise the General Conditions of Sale will remain in full force and effect.
- 16.3 All disputes between parties that cannot be settled amicably shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute, unless clause 16.4 applies. The arbitral tribunal shall be composed of one arbitrator. The place of arbitration shall be in the city where Zytec has its registered address. The arbitral procedure shall be conducted in the English language. Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided in art. 1046 of the Netherlands Code of Civil Procedure, is excluded.
- 16.4 In addition to clause 16.3, Zytec is at all times entitled to bring disputes before the competent court in the district of the registered address of Zytec and the court that is competent by law or by virtue of the applicable international convention.

November, 2019

