

## **GENERAL SALES AND DELIVERY TERMS AND CONDITIONS**

Westmark B.V. – Arnhemseweg 87, 3832 GK LEUSDEN

Deposited at the District Court of Utrecht on June 20, 1998 under reference number 223/1998

### **Article 1 – Definitions**

#### **Other Party:**

Anyone who has accepted the general terms either by signing them or accepted their validity.

#### **General terms:**

One or more written conditions, which have been drawn up with the purpose of being used in several agreements.

#### **Products:**

Anything offered by a user as part of his company activities.

#### **Incoterms:**

Delivery conditions international business traffic, deposited at the international Chamber of Commerce in Paris, last edition 1990.

### **Article 2 – Application of these terms**

These terms are valid on any offer and any agreement between Westmark B.V., hereinafter Westmark, and a purchaser, to whom Westmark has declared these terms applicable, for as far as these terms have not been deflected from by parties.

### **Article 3 – Offers**

Offers brought out by Westmark are free of engagements; they are valid for 30 days, unless stated to the contrary. The prices stated in an offer exclude VAT, unless otherwise stated.

### **Article 4 – Delivery**

1. Unless otherwise agreed, delivery to a Dutch customer, established in the Netherlands, will take place at the warehouse in Holland. In the case of delivery to a foreign customer, established abroad, delivery will take place Ex Works ( Incoterm 1990) or f.o.b. When delivery conditions have been agreed upon according to “ Incoterms”, valid at the time of closing the agreement will be applied.
2. The Other Party is obliged to purchase the sold goods at the moment that they are delivered or at the moment that they are supplied to him according to the agreement. If the Other Party refuses purchase or is negligent in providing the information or instructions needed for delivery, the products shall be stored at risk of the Other Party. The Other Party shall owe all additional costs, in any case including storage costs.

### **Article 5 – Term of Delivery**

An agreed term of delivery is not equivalent to a deadline, unless expressly agreed upon. In the case of non-punctual delivery, the purchaser should hold Westmark liable in writing.

### **Article 6 – Technical demands , etc**

Statements made by or for Westmark, concerning quality, assembly, treatment in the broadest sense, application possibilities, properties, etc, of the products are not binding to Westmark, unless expressly given in the form of a written warrantee.

Technical demands that the purchaser makes of the products to be supplied, which diverge from the normal demands, are to be expressly stated by the purchaser when closing the purchase agreement.

### **Article 7 – Samples, models and examples**

If Westmark demonstrates or supplies a sample, model or example, this is only by way of indication. The properties of these products to be delivered may differ from the sample, model or example.

### **Article 8 – Differences in the products to be delivered**

Westmark is authorised to deliver products, which differ from the purchase agreements products in the following areas:

Changes to manufacture as a result of state of the art and/or legal definitions. If Westmark uses this possibility and supplies a product that substantially differs to the agreed product, the purchaser is authorised to dissolve the agreement. The purchaser retains this right for two weeks after he has detected the differences or could be expected to have detected the differences.

### **Article 9 – Termination of the agreement**

1. Westmark claims against purchaser are due on demand in the following cases:
  - If after closing the agreement, Westmark obtains information about situations which give Westmark good reason to fear that purchaser shall not hold to his obligations;
  - If Westmark has asked the purchaser when closing the agreement to provide collateral for the obligation and this collateral is not provided or is insufficient. In this case Westmark is authorised to suspend further execution of the agreement and/or to dissolve the agreement, with Westmark's right to compensation remaining in full force.
2. If circumstances occur concerning persons and/or material which Westmark needs to execute the agreement, and are of a such a nature that execution of the agreement is impossible or so inconvenient and disproportionately costly, that subsequent delivery can not be asked in all fairness, Westmark is authorised to dissolve the agreement.

### **Article 10 – Warrantee**

1. Westmark guarantees that the products, it delivers, apart from expressly mentioning that this excludes the supplied or to be supplied fuel catalysator MERGI, for as far as this is the object of the agreement, are free from design, material and manufacturing faults during a period of one year after delivery.
2. If the product has a design, material or manufacturing fault, the purchaser has a right to rectification. The purchaser can choose to replace the product if repair is not desired. The purchaser only has a right to replacement if repair is not possible.
3. Westmark is liable for damages caused as a result of faulty goods as in accordance with the definitions in Article 16 – Liability
4. The warrantee is not valid if the damage is a result of improper use. Improper use includes usage of a product for which it is not meant, which was known to parties at closure of the agreement.

### **Article 10A – Exoneration liability “fuel catalyst Mergi”**

Westmark accepts no liability for damages caused by faults in the products; fuel catalyst MERGI and RENERGI-Mergi or for use made of these products by the Other Party or third parties.

In the case of damages we refer you to the manufactures of this products:

1. Mergi marketing, Yve Krakenes 237, 5062 Krakenes, Norway;
2. Renergi AB, Västskustnes Flottservice AB, P.O. Box 13, 450 43 Smögen, Sweden

In the case of Westmark being found liable, despite what is defined here, if this liability is recognised by the judge, then Westmark's liability is limited to € 4500,00.

### **Article 11 – Ownership Reservations**

1. The products supplied by Westmark remain property of Westmark until the purchaser has fulfilled all obligations in the purchase agreement made with Westmark:
  - the remittance concerning what has been supplied or is to be supplied;
  - possible claims due to non fulfillment of the purchase of a purchase agreement(s).
2. Products supplied by Westmark that fall under clause 1 of the ownership reservations, may only be resold in the normal activities of a normal company. The buyer is not authorised to pledge goods or to establish any other right on them.
3. For products delivered, that due to payment are already in possession of the purchaser and are still in possession of the purchaser, Westmark retains now and then the rights of distraint as in article 3;237 Dutch Civil Code other than the obligations in article 1 that Westmark may have, for whatever reason, towards the purchaser. The authorisation given by this article applies as well to products, supplied by Westmark which have been altered or changed, resulting in Westmark losing its ownership reservation.
4. If the purchaser does not fulfill his obligations or if there is grounded fear that he will not do so, Westmark is allowed to remove or to have removed, goods that have been supplied to the purchaser and which fall under the ownership reservation in article 1. The purchaser is obligated to fully co-operate, without which a fine of 10% of the worth of the articles will be owed per day.
5. If third parties want to claim any rights to the supplied products, falling under the ownership reservation, the purchaser is obligated to inform Westmark as soon as can be considered reasonable.
6. The purchaser is obligated at request of Westmark:
  - to insure the products supplied under ownership reservation and to keep insured again fire, explosion and water damage and against theft and to supply the policy from the insurance company for inspection;
  - to pledge all claims of the purchaser to insurers concerning the goods supplied under ownership reservation in the manner described in article 3;239 Civil Code;
  - to pledge to Westmark the receivables that purchaser is owed from its buyers by selling the products, supplied under ownership reservation by Westmark in the manner describer in article 3.239 Civil Code;
  - to afford Cupertino in all reasonable measures, that Westmark wishes to carry out for protection of its ownership's rights regarding the products and which do not unreasonably hinder purchaser in the normal day to day practice of its business.

### **Article 12 – Faults, term for complaints**

1. The purchaser is obligated to inspect the purchaser goods when they are supplied – or as soon as possible. The other party is also obligated to check if the products are according to contract as follows:
  - if the correct goods have been delivered;
  - if the quantity of delivered goods ( for example the number) is correct with what has been decided;
  - if the delivered goods meet the agreed quality demands or – if these were not decided – meet demands than can be made for a normal usage or business use.
2. If visible damage or deficiencies are noted, the purchaser should inform Westmark within fourteen days in writing.
3. The purchaser should inform Westmark of damage that is not visible within fourteen days after observation, yet within one year after receiving the goods.
4. In the case of the other party informing Westmark within the term, it is still obligated to pay for and receive other orders. Products can only be returned after previously obtaining written permission from Westmark.

### **Article 13 – Price increase**

If Westmark agrees on a certain price with the other party, Westmark is still permitted to raise the price:

Westmark may charge the price, on its price list valid at the time of delivery. If the price increase is more than 10%, purchaser has the right to dissolve the agreement.

### **Article 14 - Payment**

1. Payment should be effected within thirty days after receipt of an invoice by way of legal payment to Westmark's office;  
-or by transferring the money to bank account number 30.22.09.328 ( Rabobank at Amersfoort) in Westmark's name at Leusden.  
After the thirty days after invoice date the purchaser is in default; from the time of being in default the purchaser owes the amount plus legal interest, which is valid at that moment.
2. In case of 1 liquidation, bankruptcy or suspension of payment of the purchaser the obligations of purchaser shall be immediately due.
3. Payment must take place without discount or settlement.

### **Article 15 – Collecting charges**

1. If the purchaser is in default or neglects the fulfillment of one or more of its obligations, then all reasonable costs for collection of costs outside of court are for the purchaser. In all cases the purchaser owes:

- for the first	€ 2900.00	15%
- above and up to	€ 5900.00	10%
- above and up to	€ 14700.00	8%
- above and up to	€ 58990.00	5%
- above		3%

If Westmark can show that they have incurred higher costs, which were reasonably necessary, these can also be taken into account for compensation.
2. The purchaser owes Westmark all legal costs caused, in all instances, unless these are unreasonably high. This only applies to contract under these terms and conditions if Westmark and the purchaser conduct legal proceedings and a judicial ruling is in Westmark's favour and in which the purchaser is proved wrong.

### **Article 16 – Liability**

1. For faults in supplied products, the warranty as described in article 10 is valid= warranty of these terms.
2. Westmark only accepts liability for damages of the purchaser if and for as far as this liability is covered by its insurance, for the amount of the payment made by the insurance company. If the insurance company refuses payment for whatever reason, or if the damages are not covered by the assurance, liability is restricted to € 4500.00. The restrictions in this article are not valid if the damage is intentional or a result of gross negligence of Westmark or of its managing employees.

**Article 17 – Force Majeur**

1. Force Majeur will mean circumstances, which hinder the fulfillment of the agreement and for which Westmark cannot be held responsible. These shall include ( if and for in so far as these circumstances made the fulfillment impossible or unreasonable) strikes in other companies other than Westmark, lightning strikes or political strikes in the company of Westmark; a general lack of necessary materials and other needed for the agreed products or services; unforeseeable stagnation of suppliers or other third parties on whom Westmark relies and general transport problems.
2. Westmark has the right to claim force majeure, if the circumstance that hinders (further) fulfillment takes place after Westmark should have fulfilled its commitments.
3. During force majeure the delivery and other obligations of Westmark will be suspended. If the period in which force majeure prevents Westmark fulfilling its obligations is longer in duration than one month both parties are authorised to dissolve the agreement, in that case, there being no obligation for compensation.
4. If Westmark has partially fulfilled its obligations when force majeure occurs, or can only partially fulfil its obligations, it is authorised to invoice the already supplied or supplyable part and the purchaser is obliged to effect payment of this invoice as though it was a separate agreement. This does not apply if the already delivered parts or to be delivered part has no independent worth.

**Article 18 – General**

The purchaser is aware that the model and/or construction and/or composition of the offered products has an exclusive character and that infringement of these models and/or constructions and/or compositions constitute default and or unlawful practice under Dutch law. The purchaser shall in this case be held liable and the resulting damages shall be claimed.

**Article 19 – Settling disputes**

In defelction from the legal rules for the competence of the civil judge, any dispute between purchaser and Westmark, in a case in which the court is competent, will be settled at the District Court of Utrecht.

Westmark remains authorised to summons the purchaser according to the law or the applicable international treaty competent judge.

**Article 20 – Applicable law**

Dutch law shall govern all agreements between Westmark and purchaser.

**Article 21 – Amendments to the terms**

Westmark is authorised to amend these terms. These amendments will be in force from the appointed day of coming into operation. Westmark shall send amended terms to the Other Party on time. If no date of coming into operation is mentioned, amendments will be in force as soon as the Other Party has been informed of the amendments.