



**Sigma Oil Seeds**  
*exotic oils and proteins*

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## General Terms and Conditions

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As of 1st January, 2020

# General Terms & Conditions

Sigma Oil Seeds BV – Version 01.01.2020



## General Terms and Conditions of Sale

These General Terms and Conditions of Sale (“**Terms**”) are issued by Sigma Oil Seeds B.V. (“**Seller**”), apply to all sales of goods and services offered by Seller (“**Products**”) to a buyer (“**Buyer**”), and form an integral part of, and are incorporated into: (i) all quotations and offers made by Seller; (ii) all acceptances, acknowledgments, and confirmations by Seller of any orders by Buyer; (iii) and all contracts (each a “**Contract**”), relating to the sale by Seller and purchase by Buyer of Products.

- 1 **Acceptance.** Buyer, by: (a) placing an order for Products pursuant to quotations or offers made by Seller referencing these Terms; and/or (b) making payment for Products pursuant to any sales orders and/or invoices referencing these Terms, shall be deemed to have: (i) accepted these Terms; and (ii) the incorporation of these Terms into the Contract for such Products. These Terms take precedence over Buyer’s supplemental or conflicting terms and conditions. Neither Seller’s commencement of performance of the Contract nor delivery of Products shall be deemed or construed as acceptance of Buyer’s supplemental or conflicting terms and conditions.
- 2 **Orders.** All purchase orders issued by Buyer are subject to acceptance by Seller, and Seller may, at its sole discretion, refuse to accept any purchase order. Buyer is responsible for ensuring that purchase orders (i) are issued correctly; (ii) specify the volume and type of Products required; and (iii) specify the requested delivery date and location.
- 3 **Price and Payment**
  - 3.1 The price of Products (“**Price**”) shall be set by Seller in its sole discretion and will be notified by Seller to Buyer from time to time (including without limitation in a price list, sales agreement, sales order, or tax invoice). The Price is exclusive of Value Added Tax (VAT) and similar taxes, customs duties (if applicable), and any other taxes or duties, and Buyer shall bear all taxes and duties where required.
  - 3.2 In consideration for the sale of Products to Buyer, Buyer shall pay the Price to Seller (as stated on Seller’s invoice or any other applicable document) without any deduction, withholding, set-off or counterclaim whatsoever. Such payment shall be made in the manner and within the time stipulated by Seller. If Buyer fails to make payment on or before the due date, Seller shall be entitled to: (a) charge interest on all outstanding amounts from the day after the due date for payment until the date on which it is actually paid in full, at the rate of 12% per annum calculated daily; (b) require Buyer to make payment in advance of any delivery not yet made; and/or (c) suspend any further deliveries to Buyer. Without prejudice to the foregoing, Buyer shall reimburse Seller for any costs incurred in collecting any late payments (including without limitation legal fees and expenses).
- 4 **Delivery; Duty to Inspect**
  - 4.1 Seller will deliver, or procure the delivery of, Products to the place stipulated by Buyer (“**Delivery Place**”) in accordance with the terms agreed between the parties. All delivery dates are estimates only and are not binding on Seller, and time shall not be of the essence. Seller shall not be liable for any late delivery, nor shall any delay of delivery constitute a breach of the Contract.
  - 4.2 Products shall be deemed to have been inspected by Buyer on the date of delivery. Any claims relating to missing or incorrect Products or to defects or damage which are apparent on a reasonable inspection of Products must be made to Seller within three (3) days from the date of delivery, and any other claims relating to defects or damage which are not apparent on a reasonable inspection of Products must be made to Seller

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within thirty (30) days from the date of delivery. If any such claims are made, Buyer shall: (a) preserve the relevant Products in the state in which they were delivered; (b) submit photographs and other evidence of such defects or damage to Seller (if applicable) upon Seller's request; and (c) if requested by Seller, allow Seller to inspect the relevant Products at the location of Products and/or return the relevant Products to Seller at Seller's costs in the same condition as when the relevant Products were first delivered to Buyer.

- 4.3 Provided that Buyer has fully complied with clause 4.2 and that Seller is satisfied with Buyer's claim, Seller will at its sole discretion replace the missing, incorrect, defective or damaged Products (as the case may be) or provide a credit for such Products.
- 4.4 Seller's liability to Buyer in respect of missing, incorrect, defective or damaged Products is limited to replacement or credit in accordance with clause 4.3.
- 4.5 If, for any reason, Buyer fails to accept delivery of any Products, or if Seller is unable to deliver any Products to the applicable Delivery Place because Buyer has not provided appropriate instructions, documents, licenses, or authorizations, then risk of loss to such Products shall pass to Buyer, such Products shall be deemed to have been delivered, and Seller, at its option, may store such Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6 The quantity of Products as recorded by Seller on dispatch from its place of business or such other location as nominated by Seller is conclusive evidence of the quantity received by Buyer on delivery, unless Buyer can provide conclusive evidence proving the contrary.

## 5 Title and Risk of Loss

- 5.1 Title. Title to all Products passes to Buyer upon delivery of Products to the Delivery Place. Notwithstanding any such delivery, Seller shall be entitled to maintain an action against Buyer for any unpaid Price of Products without prejudice to any other right or remedy available to Seller.
- 5.2 Risk of loss. If Seller and Buyer have agreed to apply Incoterms or similar terms to the sale of Products, risk of loss passes to Buyer according to the Incoterms or similar terms. If Incoterms (or similar terms) do not apply but parties have reached agreement on the passing of risk, risk of loss passes to Buyer as agreed between the parties. If none of the foregoing apply, risk of loss passes to Buyer upon delivery of Products to the Delivery Place.

## 6 Buyer's obligations and restrictions

- 6.1 Buyer shall: (a) immediately notify Seller, upon being aware: (i) of any actual or potential defect in any Products; (ii) of any matter concerning any Products which could have an impact on Seller; and/or (iii) of all complaints or claims relating to any Products; (b) not admit liability on behalf of Seller in respect of any complaint or claim relating to any Products; (c) not resolve or settle any complaint or claim relating to any Products which may result in Seller incurring any liability (whether to a customer, Buyer or any other person), unless written permission has been given by Seller; (d) observe all laws relating to the regulations, codes, use or sale of any Products; (e) support and comply with the requirements of any product recall program initiated by Seller or any government agency and all reasonable directions of Seller in respect of such product recall program. Buyer shall not voluntarily initiate any recall without the prior written consent of Seller; (f) not alter, obscure, remove, replace, conceal or otherwise interfere with any identifier or batch number applied to any Products by Seller for the purpose of tracking the relevant Product; (g) not make any representation, or give any warranty, in relation to any Products not expressly authorised in writing by Seller; (h) not engage in any advertising, marketing or promotional activities in relation to Products without the prior written consent of Seller; (i) not do anything which might adversely affect the goodwill or reputation of Products and/or Seller or any of its products; and (j) not make any representation or statement that it is the exclusive or sole distributor or importer of any Products.
- 6.2 Buyer shall at all times carry on its business as principal and arrange and conclude sales of Products on its own behalf and in its own name. Seller shall not be liable (except as provided at law) to any purchaser of Products from Buyer.

## 7 No warranty; Exclusion of liability

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- 7.1 Seller warrants to Buyer that Products will conform substantially to Seller's specifications for each Product.
- 7.2 Apart from the warranty set out in clause 7.1, Seller makes no other representations or warranties (whether express or implied) whatsoever with respect to Products (including, without limitation, any warranties of merchantability, fitness for a particular purpose, or non-infringement, whether arising by law, course of dealing, course of performance, usage of trade, or otherwise). Save for the warranty in clause 7.1, Seller hereby specifically disclaims and excludes all representations and warranties (whether express or implied) with respect to Products to the maximum extent permitted by law.
- 7.3 To the maximum extent permitted by law, Seller excludes all liability for any losses or damages which Buyer or anyone else suffers, incurs or is liable for, in connection with the sale or supply of any Products.
- 7.4 Seller's sole liability for breach of any warranty or obligation implied or conferred by law which cannot be excluded shall be limited to the replacement or repair of applicable Products or the payment of the costs of replacing or repairing such Products.
- 7.5 To the maximum extent permitted by law, in no event shall Seller be liable to Buyer or any third party for any: (a) loss of business, sales, contract, opportunity, profit or anticipated profit, income, and/or revenue; (b) consequential, indirect, incidental, special, exemplary, punitive and/or enhanced damages and/or losses; (c) diminution in value; (d) increased costs and/or (e) loss of and/or damage to goodwill or reputation, regardless of whether any of the foregoing items (a) to (e) were foreseeable and whether or not Seller was advised of the possibility of any of the foregoing items (a) to (e).
- 7.6 Seller's maximum aggregate liability to Buyer for any claim, whether arising out of or related to breach of contract, tort (including negligence), or otherwise: (a) where the claim is related to Products, shall not exceed the Price attributable to the relevant Products which are the subject of the claim; or (b) where the claim is not related to Products, shall not exceed the total Price actually received by Seller in the three (3) months preceding the date on which the alleged cause of action arose.
- 7.7 Nothing herein shall have the effect of limiting or excluding Seller's liability for fraud, any breach of the obligations implied by law which cannot be excluded, death or personal injury resulting from its own negligence, and/or any other liability (if any) to the extent the same may not be limited or exceeded as a matter of law.
- 7.8 All defect and liability claims howsoever arising are subject to a limitation period of one (1) year from statutory commencement of the limitation period, or where the foregoing is not permissible under the relevant law, for the shortest period permitted thereunder.
- 8 **Intellectual Property Rights.** Buyer acknowledges and agrees that Seller or its licensors are the sole and exclusive owners of all Product IPR. In these Terms, "**Product IPR**" means all intellectual property rights in relation to, embodied in, or in connection with Products, including without limitation all trade marks used in relation to Products. Buyer acknowledges and agrees that it does not own, and does not obtain, any right, title or interest in or to any Product IPR and/or any intellectual property rights of Seller or its licensors. Buyer undertakes not to attack, cancel, revoke, invalidate, remove, permit or cause any act to affect the validity of, question, and/or seek to impeach: (a) any Product IPR; (b) any intellectual property rights of Seller or its licensors; (c) any goodwill associated with any Product IPR or any intellectual property rights of Seller or its licensors; and/or (d) any goodwill in relation to Products or owned by Seller or its licensors, nor permit, authorise or assist any third party to do any of the foregoing acts. Buyer undertakes not to apply to register, register, or seek any rights in relation to: (i) any Product IPR; and/or (ii) any intellectual property rights of Seller or its licensors. Buyer undertakes and agrees to take any steps reasonably required by Seller and/or its licensors to maintain the validity and enforceability of any Product IPR or any intellectual property rights of Seller or its licensors.
- 9 **Indemnity**
- 9.1 Buyer shall indemnify, defend, and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Parties**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind (including legal fees, costs, the fees of enforcing any right to

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indemnification under these Terms, and costs of pursuing any insurance providers) incurred by or awarded against any of the Indemnified Parties, relating to, arising out of, resulting from or occurring in connection with: (a) any breach of these Terms and/or the Contract; (b) any violation by Buyer of applicable laws or regulations; and/or (c) any negligence or wilful misconduct on Buyer's part.

## 10 Force Majeure

10.1 Where an act of God, war, epidemic, pandemic, revolution or any other unlawful act against public order or authority, an industrial dispute including strike or other labour disturbances, a governmental restraint, a shortage or unavailability of raw materials, production capacity or transportation, and/or any other event or situation which is not within the reasonable control of Seller (collectively, "**Force Majeure**") prevents or delays Seller from performing an obligation under any Contract, that obligation is suspended as long as the Force Majeure continues and Seller will not be liable for any delay or non-performance during the period of suspension.

## 11 Confidentiality

11.1 In these Terms, "**Confidential Information**" means: (a) all information, including trade secrets, know-how, scientific, technical, current and future product, market or pricing information, customer lists, product or service plans, business plans, business activities, supplier lists, marketing plans, equipment types, financial projections, business forecasts, sales and merchandising information, processes, designs, engineering plans, processes, data, prices, costings, strategies, formulae, recipes, raw materials, and operating conditions, relating to Products and/or Seller; and (b) all information that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, disclosed or made available by Seller to Buyer.

11.2 Buyer undertakes and agrees: (a) to keep all Confidential Information confidential; (b) not to disclose any Confidential Information to any other person or entity; (c) not to use any Confidential Information for any purpose other than for or in connection with the performance of its obligations under the Contract; and (d) to forthwith return, on request by Seller, any documents or materials containing any Confidential Information.

11.3 Buyer's confidentiality obligations contained in clause 11.2 shall not apply to any information which: (a) is or becomes part of the public domain through no fault or breach of these Terms by Buyer or its employees, agents or representatives; (b) is already in the possession of or known to Buyer prior to disclosure to Buyer provided that such information is not subject to any confidentiality obligations; (c) is received by Buyer by a third party who is not under, or in breach of, any confidentiality obligations in disclosing the same; (d) is independently developed by Buyer whether on its own or jointly with a third party without use of or reference to any Confidential Information; (e) is disclosed pursuant to an order of a court of competent jurisdiction provided prompt written notice of such order is given to Seller; or (f) Seller authorises, in writing, for release.

11.4 Buyer is permitted to disclose Confidential Information only to its representatives and employees who are required to have access to or be in possession of Confidential Information for the purposes of performing Buyer's obligations under the Contract, provided always that: (a) any Confidential Information is disclosed only on need-to-know basis; (b) Buyer may only disclose such portion of Confidential Information strictly necessary for the performance of Buyer's obligations under the Contract; and (c) Buyer must take all necessary precautions and actions to cause and ensure that all such representatives and employees fully comply with the confidentiality obligations imposed on Buyer under clause 11.2. Buyer shall be and remain liable for any breach of this clause 11 by its representatives and employees.

11.5 The confidentiality obligations set out in this clause 11 shall survive the termination of the Contract.

11.6 Buyer acknowledges and agrees that any breach or threatened breach of this clause 11 may result in substantial, continuing, and irreparable injury to Seller. Buyer acknowledges and agrees that monetary damages alone would not be an adequate remedy for the breach or threatened breach of this clause 11. Therefore, Buyer hereby acknowledges and agrees that, in addition to any other remedy that may be available to Seller, Seller shall be entitled to seek injunctive relief, specific performance or other equitable relief concerning any breach or threatened breach of this clause 11 without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach.

11.7 Nothing in this clause 11 shall grant Buyer any right or licence over any Confidential Information.

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## 12 General

- 12.1 Governing law and jurisdiction. These Terms and the Contracts shall be governed by and construed in accordance with the laws of Netherlands. The applicability of the 1980 Vienna Convention on the International Sale of Goods is excluded. Seller and Buyer each irrevocably agrees that the courts of the Netherlands shall have exclusive jurisdiction to hear, settle and/or determine any dispute, controversy or claim (including any non-contractual dispute, controversy or claim) arising out of or in connection with these Terms and any Contract, including any question regarding their existence, validity, formation or termination. For these purposes, Seller and Buyer each irrevocably submits to the jurisdiction of the courts of the Kingdom of the Netherlands.
- 12.2 Invalidity. A provision of, or the application of a provision of, these Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction. If any provision in these Terms is or becomes invalid, unenforceable or illegal for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such invalidity, unenforceability or illegality, or if that is not possible, then such provision shall be severed from these Terms without affecting the remaining provisions of these Terms.
- 12.3 Independence. Each party is an independent contractor and not a manager, employee, partner or agent of the other party. Nothing in these Terms or any Contract will create, constitute or evidence any partnership, joint venture, agency, fiduciary obligation, trust or employer-employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. Unless agreed elsewhere, a party has no power or authority to bind, act for, or to incur any obligation on behalf of the other party, impose any obligation on the other party for the benefit of any third party, or constitute the other party as its commercial agent.
- 12.4 Third Party Rights. An entity or person who is not a party shall not have any rights to enforce any of the provisions of these Terms or any Contract.
- 12.5 No Waiver. The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right or prevent the subsequent enforcement of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. No waiver by a party of any power or right under these Terms or any Contract will be effective unless it is in writing and signed by that party.
- 12.6 Prevalence. No term or condition contained in any request for quotation, purchase order, acknowledgement or other form of writing issued by Buyer (whether printed, typed or handwritten) shall apply to any sale of Products hereunder unless accepted in writing by an officer of Seller.

## OF:

### **Sigma Oil Seeds B.V.**

Gerrit Verrijstkade 2  
3059 SK Rotterdam  
The Netherlands

hereinafter to be referred to as: user

## **Article 1 Definitions**

1. In the present general terms and conditions, the following terms are used in the sense given below, unless explicitly indicated otherwise.

Seller: Sigma Oil Seeds B.V.

Buyer: the Seller's opposite party, acting in the course of a business or in the course of a profession.

Agreement: the agreement between the Seller and Buyer.

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## Article 2 General

1. The stipulations of the present terms and conditions shall apply to each and every offer and agreement between Seller and Buyer, to which Seller has declared the present terms and conditions applicable, insofar as parties have not explicitly deviated from the present terms and conditions in writing.
2. The present terms and conditions shall also apply to all agreements with Seller, the execution of which calls for the services of third parties.
3. Any terms and conditions applied by the buyer, by whatever name, are explicitly rejected and are not applicable to this agreement unless these conditions or any provision is explicitly accepted by the user in writing.
4. If one or more stipulations in the present general terms and conditions should be null and void or declared null and void, then the other stipulations of the present general terms and conditions shall remain fully applicable. The case ensuing, user and buyer shall enter into negotiations to agree upon new stipulations replacing the null and void conditions, or, as the case may be, the conditions declared null and void, whereby the purpose and the meaning of the original conditions shall be heeded as far as possible.

## Article 3 Offers and Tenders

1. All offers shall be free of obligation unless the offer contains an acceptance term.
2. The offers made by Seller shall be free of obligation; they shall be valid for a period of 1 month, unless indicated otherwise. Seller shall only be bound by the offers if the acceptance thereof is confirmed in writing by the buyer within thirty days.
3. Terms of delivery given in Seller's offers shall only be tentative and exceeding these terms of delivery shall not entitle buyer to dissolution or damages, unless explicitly agreed upon otherwise.
4. The prices given in above-mentioned offers and tenders shall be exclusive of VAT and other government levies, as well as of shipment costs and possible packaging and administration costs, unless explicitly stated otherwise.
5. If the acceptance deviates (on secondary items) from the offer given, Seller shall not be bound by it. The agreement shall in such event not be concluded in accordance with said deviating acceptance, unless Seller indicates otherwise.
6. A compound quotation shall not oblige Seller to execute part of the assignment against a corresponding part of the given quotation.
7. Offers and tenders shall not apply automatically to repeat orders.

## Article 4 Execution of the Agreement

1. Seller shall execute the agreement to the best of his knowledge and ability.
2. If and in so far required for the proper execution of the agreement, Seller shall have the right to have certain work done by third parties.
3. The buyer shall see to it that user shall be provided in due time with all data which user has said to be necessary or which the buyer must in all reasonableness understand to be necessary to the execution of the agreement. If user has not been provided in due time with the data necessary to the execution of the agreement, user shall have the

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right to suspend the execution of the agreement and / or to charge the buyer for the additional costs resulting from the delay at the generally accepted rates.

4. User shall not be liable for damage of whatever nature caused by the fact that user worked on the basis of incorrect and / or incomplete data provided by the buyer, unless user should have been aware of said incorrectness or incompleteness.

5. If parties have agreed that the agreement will be executed in stages, user can suspend the execution of the parts belonging to a following stage until the buyer has approved in writing the results of the stage prior to it.

6. If user or third parties engaged by user within the scope of the assignment do work at buyer's site or at a site designated by buyer, buyer shall provide the employees having to work there free of charge with all facilities desired in all reasonableness by said employees.

7. Buyer shall safeguard user against possible claims filed by third parties who may sustain damage attributable to buyer in connection with the execution of the agreement.

## **Article 5 Delivery**

1. Delivery shall be made ex warehouse of user.

2. If delivery is made on the basis of the "Incoterms", the "Incoterms" valid at the moment the agreement is concluded, shall apply.

3. Buyer shall be held to take delivery of the goods the moment that user delivers them to him or has them delivered, or the moment at which the goods are put at buyer's disposal under the agreement.

4. If the buyer refuses to take delivery or fails to give the information or instructions necessary to the delivery, user shall be entitled to store the goods at buyer's risk and expense.

5. If the goods are serviced, user shall be entitled to charge possible service charges. Said service charges shall then be invoiced separately.

6. If, in the framework of the execution of the agreement, user requires data to be given by the buyer, the term of delivery shall commence after the buyer has provided user with said data

7. If user has given a term of delivery, it shall only be indicative. A given term of delivery shall therefore never constitute a term to be observed on penalty of forfeiture of rights. If a term is exceeded, the buyer must give user notice of default in writing.

8. User shall be entitled to deliver the goods in parts, unless such is deviated from in writing in the agreement or if the partial delivery does not represent an independent value. User shall be entitled to invoice the thus delivered goods separately.

9. If execution of the agreement in stages has been agreed upon, user can suspend the execution of the parts belonging to a following stage until the buyer has approved in writing the results of the stage prior to it.

## **Article 6 Samples**

1. If a sample has been given to buyer, then the assumption is that such has been given by way of indication only, unless parties agree explicitly that the product to be delivered shall correspond with it.

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## Article 7 Inspection & Complaints

1. Buyer shall be held to examine the delivered goods (to have the delivered goods inspected) the moment of delivery (handing over), but in any case in as short a period of time as possible. In this respect, buyer must examine whether the quality and the quantity of the delivered goods comply with what was agreed upon, or at least whether they meet the requirements applying to said goods in normal (business) transactions.
2. Possible visible shortcomings must be communicated in writing to user within three days following delivery. Non-visible shortcomings must be reported within three weeks following their detection but no later than 3 months following delivery.
3. If in accordance with the previous paragraph, buyer files his complaint in due time, he shall still be held to take delivery and effect payment of the goods purchased. If buyer wishes to return defect goods, he shall do so following prior consent in writing from user.

## Article 8 Remuneration, Price and Costs

1. If user and buyer have agreed upon an administered price, user shall nevertheless be entitled to increase the agreed price, even when the price was not given under subject.
2. User shall be allowed among others, to charge on price increases if changes in price have occurred between the moment the offer was made and the moment of execution of the agreement with respect to, e.g., exchange rates, salaries and wages, raw material, semi-finished products or packaging material.
3. The prices given by user shall be exclusive of VAT and other government levies, as well as of the other expenses to be possibly made within the scope of the agreement, including shipment and administration costs, unless stated otherwise.

## Article 9 Changes to the agreement

1. If it is shown during the execution of the agreement that the work to be done needs to be changed and / or supplemented in order to ensure its proper execution, parties shall adapt the agreement accordingly in due time and in mutual consultations.
2. If parties agree that the agreement needs to be changed and / or supplemented, this decision may influence the time of completion of the execution. User shall inform the buyer thereof as soon as possible.
3. Should the change and / or supplement to the agreement have any financial and / or qualitative consequences, user shall inform buyer thereof in advance.
4. If a fixed rate has been agreed upon then user shall indicate the degree to which the change or supplement to the agreement will result in an increase of said fixed rate.
5. Contrary to the conditions governing this matter, user shall not be able to charge additional costs if the change or supplement is the result of circumstances attributable to user.

## Article 10 Payment

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1. Unless indicated otherwise payment must be made within 30 days from the date of invoice, in a way to be indicated by user and in the currency in which the goods were invoiced. Contestation of the amount of the invoices shall not suspend the fulfilment of the payment obligation.
2. If buyer fails to fulfil his payment obligation within the term of 30 days, then buyer shall be in default by operation of law. In that event, buyer shall owe an interest of 1% per month, unless the statutory interest rate is higher, in which case the statutory interest rate shall apply. The interest on the amount due and payable shall be calculated as from the day the buyer is in default until the moment he has paid the full amount.
3. User's claims against buyer shall become due on demand in the event that buyer is wound up, attached, declared bankrupt, or if a suspension of payment is granted.
4. User shall be entitled to have the payments made by the buyer go first of all to reduce the costs, subsequently to reduce the interest still due and finally to reduce the principal sum and the current interest. User shall have the right, without this leading user to be in default, to refuse an offer for payment, if the buyer designates a different sequence of attribution. User shall be entitled to refuse full payment of the principal sum, if said payment does not include the interest still due, the current interest and the costs.
5. User has the possibility to charge a credit limitation surcharge of 2%. This surcharge will not be charged if payment is made within 7 days from the date of invoice.

## **Article 11            Retention of Title**

1. All goods delivered by user, possibly also including designs, sketches, drawings, films, software, (electronic) files, etc., shall remain user's property until buyer has fulfilled all of his obligations under all agreements concluded with user.
2. Buyer shall not be authorised to pledge or encumber in any way the goods falling under the retention of title.
3. If third parties seize goods delivered subject to retention of title or wish to establish or assert a right to them, buyer shall be held to inform user thereof as soon as can reasonably be expected.
4. The buyer shall undertake to insure the goods delivered subject to retention of title and to keep them insured against damage caused by fire, explosion and water as well as against theft and make this insurance policy available for inspection on first demand.
5. Goods delivered by user falling under the retention of title by virtue of the stipulations under 1. of the present article, may only be sold on within the framework of normal business activities and must never be used as instrument of payment.
6. In the event that user wishes to exercise his ownership rights mentioned in the present article, buyer shall give user or third parties to be appointed by user, now for then, unconditional and irrevocable permission to access all sites and locations where user's property might be found and to take these goods back.

## **Article 12            Guarantee**

1. User shall guarantee that the goods to be delivered shall meet the usual requirements and standards that can be set for and made upon them and that they shall be free of any defect whatsoever.

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2. The guarantee mentioned under 1. shall equally apply if the goods to be delivered are destined for use abroad and if the buyer explicitly informed user of this use in writing the moment the agreement was entered into, together with any foreign special regulations that could affect the contract and its performance by the user .
3. The guarantee mentioned under 1 shall be valid for a period of 3 months following delivery.
4. If the good to be delivered does not comply with said guarantee, user shall, at his discretion, replace or see to the repair of the good, within a reasonable period of time following receipt thereof, or, if the good cannot be returned in reason, following notification of the defect by the buyer. In the event the good is replaced, the buyer shall already now undertake to return the replaced good to user and to transfer ownership to user.
5. The guarantee mentioned for this purpose shall not apply when the defect originated as the result of injudicious or improper use or when the buyer or third parties have introduced changes or tried to introduce changes to the good without user's consent in writing or if they have used it for purposes for which the good was not intended.
6. If the guarantee given by user concerns a good produced by a third party, the guarantee shall be limited to the guarantee given by the producer of the good.

## **Article 13          Collection Charges**

1. If the buyer fails to fulfil his obligations (in due time) or defaults on them, then all reasonable costs incurred to have all extrajudicial costs and debts paid shall be borne by the buyer. In any case the buyer is responsible for the costs in case of a debt collection. The collection costs are calculated in accordance with the collection rates advised by the Dutch Bar Association in collection.
2. If user demonstrates that he has incurred higher expenses, which were necessary in reason, said expenses shall also qualify for reimbursement.
3. The reasonable judicial and execution costs possibly incurred shall equally be borne by buyer.
4. Buyer shall owe interest over the made collection charges.

## **Article 14          Suspension and Dissolution**

1. User shall be authorised to suspend the fulfilment of the obligations under the agreement or to dissolve the agreement, in the event that:
  - buyer does not fulfil or does not fully fulfil his obligations resulting from the agreement
  - after the agreement has been concluded, user learns of circumstances giving good ground to fear that the buyer will not fulfil his obligations. If good ground exists to fear that the buyer will only partially or improperly fulfil his obligations, suspension shall only be allowed in so far the shortcoming justifies such action.
  - buyer was asked to furnish security to guarantee the fulfilment of his obligations resulting from the agreement when the contract was concluded and that this security is not provided or insufficient. As soon as security is furnished, the authorisation to suspend shall lapse, unless said fulfilment has been unreasonably delayed because of it.

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2. User shall furthermore be authorised to dissolve the agreement (have the agreement dissolved) if circumstances arise of such a nature that fulfilment of the obligations becomes impossible or can no longer be demanded in accordance with the requirements of reasonableness and fairness, or if other circumstances arise of such a nature that the unaltered maintenance of the agreement can no longer be demanded in all reasonableness.

3. If the agreement is dissolved, the user's claims against the buyer shall be forthwith due and payable. If user suspends fulfilment of his obligations, he shall retain his rights under the law and the agreement.

4. User shall always retain the right to claim damages.

## **Article 15 Return of Goods Put at Buyer's Disposal**

1. If user has put goods at buyer's disposal during and in connection with the execution of the agreement, buyer shall be held to return the delivered goods within 14 days in their original state, free of defects and in their entirety. If buyer fails to fulfil this obligation, all resulting costs shall be at buyer's expense.

2. If, for any reason whatsoever, buyer still remains in default to fulfil the obligation mentioned under 1. after being warned to do so, user shall be entitled to recover the resulting damage and costs, including replacement costs, from buyer.

## **Article 16 Liability**

1. If the goods delivered by user are defective, user's liability vis à vis the buyer, shall be limited to the arrangements made in this article.

2. If user is liable for direct damage, then said liability shall be limited to the maximum of the invoice amount for the material supplied.

3. Direct damage shall be understood to be exclusively:

- the reasonable costs incurred to establish the cause and the volume of the damage, in so far said establishment relates to damage in the sense of the present terms and conditions
- the reasonable costs possibly incurred to have user's faulty performance meet the conditions of the agreement, unless such faulty performance cannot be attributed to user;
- the reasonable costs incurred to prevent or limit the damage, in so far buyer demonstrates that said costs have led to the limitation of direct damage as meant in the present general terms and conditions.

4. User shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business stagnation.

5. The limitations of liability for direct damage contained in the present terms and conditions shall not apply if the damage is due to intentional act or omission or gross negligence on the part of user or his subordinates.

## **Article 17 Transfer of Risk**

1. The risk of loss of, or damage to the products being the subject of the agreement, shall be transferred to buyer the moment said products are judicially and/or actually delivered to buyer and therefore fall into the power of buyer or of third parties to be appointed by buyer.

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## **Article 18 Force Majeure**

1. Parties shall not be held to fulfil any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action or generally accepted practice.
2. In addition to the provisions of the law and the judge-made law in this respect, force majeure shall in the present general terms and conditions furthermore be understood to be any external circumstance, be it envisaged or not, on which user cannot have any influence but which prevents user from fulfilling his obligations. Industrial action at user's company shall also be understood to be a circumstance of force majeure.
3. User shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfilment of the obligation(s) impossible, commences after the point in time on which user should have fulfilled his obligation.
4. Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfilment of their obligations. If this period lasts for more than two months, either of the parties shall be entitled to dissolve the agreement without any obligation to pay the opposite party damages.
5. Insofar user has already partially fulfilled his obligations resulting from the agreement at the moment the circumstance of force majeure commenced or shall be able to fulfil them and insofar separate value can be attributed to the part already fulfilled or still to be fulfilled respectively, user shall be entitled to invoice the part already fulfilled or still to be fulfilled respectively. The buyer shall be held to pay this invoice as if it were a separate agreement.

## **Article 19 Safeguarding**

1. The buyer shall safeguard user against claims filed by third parties concerning intellectual property rights on material or data provided by the buyer, which shall be used for and during the execution of the agreement.
2. If the buyer provides user with information carriers, electronic files or software etc., the former shall guarantee that said information carriers, electronic files or software are free of viruses and defects.

## **Article 20 Intellectual Property and Copyrights**

1. Without prejudice to the other stipulations of the present general terms and conditions, user shall reserve the rights and authorities to which user is entitled under the Copyright Act.
2. The buyer shall not be allowed to introduce changes to the goods and material provided, unless the nature of the delivered goods and material dictates otherwise or if agreed upon otherwise in writing.
3. The designs, sketches, drawings, films, software and other material or (electronic) files, possibly produced by the user within the framework of the agreement, shall remain user's property, irrespective of the fact whether they have been handed over to the buyer or to third parties, unless agreed upon otherwise in writing.
4. All documents, such as designs, sketches, drawings, films, software, (electronic) files, etc., provided by user, shall be destined to be used by buyer exclusively and must not be reproduced, made public or brought to the notice of third parties by buyer without prior consent from user, unless the nature of the documents provided dictates otherwise.
5. User shall reserve the right to use the knowledge gained due to the execution of the work for other purposes, in

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so far no confidential information shall be brought to the notice of third parties when doing so.

## **Article 21      Secrecy**

1. Both parties shall be bound to secrecy of all confidential information they have received within the scope of their agreement from each other or from another source. Information shall be considered to be confidential if the other party has indicated so or if the confidential character results from the nature of the information.

2. If a statutory provision or a judicial decision compels user to convey confidential information to third parties designated by law or by the court and user cannot for that purpose invoke a legal right to refuse to give evidence or such a right acknowledged or allowed by the competent court, user shall not be held to pay damages or compensation and the opposite party shall not be entitled to demand the dissolution of the agreement on the ground of any damage resulting from said circumstance.

## **Article 22      Non-employment of the opposite party's personnel**

1. Throughout the duration of the agreement and for one year following termination thereof, buyer shall not in any way, hire or employ in any other way, be it directly or indirectly, staff of user or of enterprises whom user has engaged to execute the present agreement and who are (were) involved in the execution of the agreement, without prior proper businesslike consultation on this matter, all this in accordance with the requirements of reasonableness and fairness.

## **Article 23      Disputes**

1. The Court in user's place of business shall have exclusive jurisdiction to hear actions, unless the District Court is the competent Court. User shall nevertheless be entitled to submit the dispute to the Court deemed competent by the law.

2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.

## **Article 24      Applicable Law**

1. Dutch law shall apply to each and every agreement between user and the buyer. The Vienna Sales Convention shall be explicitly excluded.

## **Article 25      Changes to the Terms and Conditions, interpretation and their location**

1. The present terms and conditions have been filed at the office of the Chamber of Commerce in Haarlem, Holland, nr. 34120412.

2. The Dutch version of these general terms and conditions prevails at all time in case of disputes with regard to the interpretation and purpose of these terms and conditions.

3. The most recently filed version shall always apply, or, as the case may be, the version valid at the time the agreement was concluded.