

General

- 1.1. For the purpose of these Terms, "the Seller" means J.Hersbach B.V. (listed in the Commercial Register under number 24279000) who, as provider, seller or performer, is party to the legal actions and agreements mentioned in paragraph 2. "The Buyer" means the prospective buyer, prospective client and generally the Seller's contract party to the legal acts and agreements referred to in paragraph 2.
- 1.2. These General Terms of Sale and Delivery are applicable to all offers, quotations, agreements concluded and yet to be concluded, and to all other (legal) acts of the Seller with respect to the sale and/or delivery of goods and the provision of services by the Seller.
- 1.3. Any trade terms used in these General Terms of Sale and Delivery, quotations, order confirmations or otherwise shall be interpreted in accordance with the most recent version of the Incoterms produced by the International Chamber of Commerce in force at the time of concluding the agreement.
- 1.4. If a written provision in an agreement between the Buyer and the Seller is in conflict with a provision of these General Terms of Sale and Delivery or with a provision of an applicable Incoterm, the written provision of the agreement shall take precedence.
- 1.5. Where these General Terms of Sale and Delivery or the law stipulates the formal requirement that something must be in writing, this shall also include email messages.
- 1.6. For the purpose of these General Terms of Sale and Delivery, "force majeure" means: any defective performance arising from circumstances beyond the control of the defaulting party, including in any event defective performance as a result of power outage, disruption of telecommunications, cyber criminality, fire, sanction laws, restrictions on import and export, strikes, machine failure, and disruption of operations at or defective performance on the part of suppliers involved in the performance of the agreement and other third parties.

Agreement

- 2.1. All quotations, price lists and other communications from the Seller regarding the goods and/or the services are subject to contract.
- 2.2. If there is a discrepancy between the Buyer's order and the Seller's confirmation only the Seller's confirmation shall be binding.
- 2.3. Any verbal commitments, agreements and supplements, and amendments to an agreement concluded between the parties shall only be binding on the Seller if confirmed by Seller in writing.
- 2.4. Where, in the reasonable opinion of the Seller, the Buyer's financial situation so requires, the Buyer shall, at the Seller's first request, immediately prepay or provide security for the amount due to the Seller; the Seller may suspend performance of the agreement wholly or in part until he has received this.
- 2.5. If, due to an event of force majeure, the Seller is unable to timely perform an agreement, the applicable delivery period shall be extended with a period equal to the duration of the event of force majeure.
- 2.6. The Buyer shall keep confidential all information that comes to his knowledge in connection with the sale and/or delivery of goods and/or provision of services by the Seller, also in respect of prices and commercial matters, of which he can reasonably understand that it is confidential, and shall only use this information in the performance of the relevant agreement.
- 2.7. The goods delivered by the Seller shall be deemed to be in conformity with the agreement if they possess the agreed written specifications. Unless quality standards and deviating arrangements are agreed in writing, the goods shall only have to conform with the requirements of EU product legislation as it is applicable in the Netherlands. Illustrations, descriptions, or information about price, weight and properties of the goods as included in price lists, on websites, or in other general publications of the Seller or of third parties should not be relied upon. The Seller shall not be responsible for the fitness of the delivered goods for any purpose for which the Buyer intends to process, treat or use the goods or have them processed, treated or used, unless the Seller has explicitly acknowledged the fitness for that purpose to the Buyer in writing. Samples are provided by way of indication only. Minor deviations that are acceptable in the trade or that are unavoidable from a technical point of view, and any differences in quality, colour, dimensions, weight or finishing shall not result in defective performance.
- 2.8. The Buyer warrants that (i) when disposing of the goods, irrespective in what manner (by way of sale, lease, processing, or otherwise) he shall comply with all applicable laws and regulations, specifically all EU and UN export controls and systems of sanctions, and (ii) that the goods are not directly or indirectly exported or might not be possibly intended for a country on which sanctions are imposed in respect of the goods under UN or EU legislation, unless the Buyer has been granted exemption or received authorisation to do so from a competent authority designated by the UN or EU. The Buyer shall include this warranty by way of a perpetual clause in any subsequent agreements under which the goods are disposed of.

Delivery periods

- 3.1. All agreed delivery dates and times are at all times by way of approximation only.
- 3.2. If delivery cannot be made at the agreed date and time or, as the case may be, within the agreed period, the Seller shall be entitled to make partial deliveries and the Buyer shall allow the Seller a reasonable period of time to perform as yet by way of a formal notice.
- 3.3. The Buyer shall not be entitled to any compensation if a delivery time is not met.

Complaints, liability, warranty

- 4.1. Unless otherwise agreed, the Seller warrants that the goods are in conformity with the agreement for a period of 12 months from delivery. This warranty is without prejudice to the Seller's right to invoke the other provisions of this Article 4 and force majeure.
- 4.2. Immediately on delivery the Buyer shall check whether the delivered goods are in conformity with the agreed requirements. Deficiencies, if any, must be noted on the way bill or consignment note. The Seller must be notified in writing of such deficiencies and of any other defects that are visible upon delivery within ten days of delivery. The Seller must be notified by the Buyer in writing of any non-visible defects within ten working days after he has discovered or ought to have discovered them.
- 4.3. If the Seller is not notified of any defect within the applicable term of warranty or in accordance with paragraph 2, the Buyer may no longer invoke this defective performance. The Buyer shall place the defective goods at the Seller's disposal and shall give the Seller the opportunity to examine the goods. Submitting a complaint does not entitle the Buyer to suspend his payment obligations. Any legal action on the part of the Buyer must be brought within one year after the timely filing of a complaint, on pain of forfeiture of rights.
- 4.4. The Seller's obligations in the event of defects to the delivered goods and/or provided services shall be limited, at the Seller's discretion, to repair, re-delivery, or refunding the amount invoiced with respect to the defective goods and/or services.
- 4.5. Any advice the Seller gives in connection with the use, properties, or applicability of the goods, is given to the best of his abilities. The Seller shall not be liable for the inaccuracy and/or incompleteness of such advice. If an advice is erroneous, the Seller shall only be obliged, at his own discretion, to give a new advice, or, where the advice is invoiced separately, to refund the amount invoiced for the advice.
- 4.6. The Seller shall not be liable for any damage the Buyer has incurred, irrespective of whether such damage arises from defective performance, wrongful act, or any other legal ground.
- 4.7. The Seller shall not be liable for any defective performance as a result of force majeure.
- 4.8. The Seller shall in no event be liable for any indirect loss, including loss of profit, loss of sales, installation costs, loss of goodwill, damages (including fines) owed to third parties, and loss caused by delays.

- 4.9. The Buyer's right to claim that a good is defective lapses if:
- the goods have been exposed to extreme circumstances, or are not handled in accordance with the instructions of use or are otherwise handled carelessly or ineptly; and/or
 - the goods have been stored longer than is normal and it is likely that quality loss has occurred as a result.
- 4.10. In so far as the Seller cannot by law invoke paragraphs 4, 5, 6, 7 or 8 of this Article, the Seller's liability shall be limited to (a) the amount paid out by the insurer to the Seller in respect of the event, plus the Seller's deductible under the insurance policy concerned, or (b) if no payment is made under the insurance, to the amount the Seller has received in respect of the good or service to which the liability pertains.
- 4.11. Employees, directors, representatives, suppliers and ancillary workers engaged by the Seller shall similarly be entitled to invoke the limitations of liability of this Article 4.
- 4.12. The Buyer shall indemnify the Seller against any third-party claims for compensation of loss or otherwise, and against any costs incurred or to be incurred and loss suffered or to be suffered by the Seller directly or indirectly arising from or related to the goods sold, delivered or to be delivered and the services provided or to be provided by the Seller to the Buyer, including any work and advice.
- 4.13. Nothing in these General Terms of Sale and Delivery is intended to exclude or limit liability for loss caused by the intent or deliberate recklessness of the Seller's management.

Transport and delivery

- 5.1. If the goods are ready for collection by the Buyer, and if the Seller has informed the Buyer accordingly, the Buyer shall be required to collect the goods forthwith. If the Buyer fails to meet this requirement, the Seller shall be entitled either to store the goods, or to keep them stored, at the Buyer's risk and expense, and to invoice the Buyer without the possibility of a refusal of payment thereafter on account of pending collection, without prejudice to the Seller's other rights.
- 5.2. Where the Buyer is required to load or unload the goods, he shall do so immediately. If this requirement is not met, the provisions set out in clause 5.1 shall apply by analogy.
- 5.3. All deliveries are ex works (Incoterms), unless explicitly agreed otherwise.

Price and payment

- 6.1. All prices quoted by the Seller are based on the information, if any, provided with the request and are exclusive of VAT and other charges and are based on delivery ex works.
- 6.2. In the event of an increase of one or more cost price factors after the date of concluding the agreement but before the delivery date, the Seller shall be entitled to increase the agreed price accordingly, even if this is due to foreseeable circumstances.
- 6.3. All payments are due within thirty days after delivery, net in cash or by way of prepayment, and without the Buyer being entitled to any discount or set-off that has not been explicitly agreed. Different payment conditions must be agreed in writing. The Buyer's right to set off any claims he may have on the Seller or to suspend his obligations is explicitly excluded.
- 6.4. All payment periods are firm periods. The Buyer shall be deemed to be in default immediately on expiry of this period. If the Seller has reason to believe that the Buyer is in a dire financial state or if a moratorium or bankruptcy has been applied for, or is pronounced, the Buyer shall be immediately in default and all debts of Buyer shall become immediately payable.
- 6.5. If the Buyer is in default he shall owe the statutory commercial interest. If the Seller has to take (extra)judicial measures in connection with late payment, including sending a demand for payment, the relevant costs shall be for the Buyer's account, which shall be at least 15% of the outstanding amount, with a minimum of EUR 150.
- 6.6. The Seller may suspend the delivery of goods if and for as long as the Buyer fails to fulfil any of his obligations to the Seller under the agreement, or to fulfil these in full, properly, or on time.

Ownership and Retention of Title

- 7.1. Any goods delivered shall remain the Seller's property until such time as the Buyer has complied with all his obligations in consideration for the goods delivered or to be delivered by the Seller to the Buyer under any agreement, or in respect of any work also conducted or to be conducted on behalf of the Buyer under such agreement, and any amounts due to failure to perform such agreements. Until such time the Buyer shall be required to keep the goods which the Seller has delivered separated from other goods, clearly identified as the Seller's property, and to properly insure the goods and keep them properly insured and may not proceed to treat or process the goods.
- 7.2. If the Buyer fails to fulfil any of his obligations towards the Seller under Article 7.1 or if the Seller has reason to fear that the Buyer will not fulfil the aforesaid obligations, the Seller shall be entitled, without any notice of default being required, to repossess the delivered goods forthwith, regardless of where they are located. The related costs shall be for the Buyer's account.
- 7.3. The Buyer shall not be entitled to dispose of the goods in question or to create a lien or pledge, either possessory or non-possessory, on them or to encumber them in any other way until the above-mentioned amounts are paid.

Termination

- 8.1. In addition to his statutory rights, the Seller may terminate any agreement with the Buyer with immediate effect and without judicial intervention being required, and without owing any compensation of any loss, if:
- the Buyer applies for a moratorium, files a petition for bankruptcy or if a petition for bankruptcy is filed against the Buyer;
 - the Buyer (being a natural person) dies, or (being a legal entity or undertaking) is wound up and/or dissolved; and/or
 - the Seller has reason to suspect that the goods are directly or indirectly intended for a country on which sanctions are imposed in respect of the goods under UN or EU legislation, unless the Buyer has been granted exemption or received authorisation to do so from a competent authority designated by the UN or EU.
- 8.2. In addition, both the Buyer and the Seller may terminate the agreement by written notice in the event that the force majeure on the part of the Seller as referred to in article 2.5 has lasted for more than three (3) months, but solely for that part of the agreement that has not yet been performed. In that event the parties shall not be entitled to any compensation as a result of the loss they have suffered or will suffer due to the termination.

Disputes

- 9.1. All agreements and (legal) acts to which these General Terms of Sale and Delivery are applicable are governed by and shall be interpreted in accordance with Dutch law. The provisions of the UN Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) shall not apply, nor any existing or future international regulations for the sale of goods the applicability of which can be excluded by the parties.
- 9.2. All disputes related to agreements and (legal) acts to which these General Terms of Sale and Delivery are applicable that may arise between the parties shall be exclusively settled by the competent court in the Netherlands in whose area of jurisdiction the Seller has his domicile, on the understanding that the Seller may still submit a dispute to the court that would have been competent in the absence of this provision.
- 9.3. In so far as these General Terms of Sale and Delivery are also available in a language other than Dutch, the Dutch version shall take precedence at all times in the event of any discrepancy.