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## **Article 1 Definitions**

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

Empire: Empire Solutions B.V., having its registered office in Zevenaar, or affiliated companies.

Other party: the party, which, based on an offer or quotation (or otherwise) and acting in a professional capacity or as a company (or otherwise), purchases items from, or delivers items to, Empire, or instructs Empire to carry out work (or have others carry out work).

Contract: the contractual agreement between Empire and the Other Party.

## **Article 2 General**

1. These terms and conditions apply, to the exclusion of all other terms and conditions, to all offers, quotations and Contracts between Empire and the Other Party and to all additional or renewed Contracts, regarding which Empire has stated that these terms and conditions apply, insofar as these terms and conditions have not been deviated from by the parties expressly and in writing.

2. These terms and conditions apply exclusively. The applicability of any purchase conditions or other terms and conditions of the Other Party is therefore expressly rejected.

3. These general terms and conditions also apply to all Contracts with Empire that require the involvement of third parties for their fulfilment.

4. Any deviations from these general terms and conditions are only valid if these have been agreed between the parties expressly and in writing. In the event of a conflict with the provisions of the general terms and conditions, agreements made in the Contract take precedence over the general terms and conditions.

5. If one or more of the provisions in these general terms and conditions are fully or partially null and void, or may fully or partially be declared null and void at some future time, the other provisions of these general terms and conditions continue to apply in full. In such cases, Empire and the Other Party will enter into consultation in order to agree new provisions in substitution for the partially or fully null and void provisions, or the provisions that have been fully or partially nullified, subject to taking into account the purpose and essence of the original provision(s), as far as possible and to the greatest possible extent. In the case of a provision that is partially null and void, or becomes partially null and void at some future time, the remaining stipulations of the provision continue to apply fully at all events.

6. If a situation arises between the parties that is not governed by the provisions of these general terms and conditions, this situation must be assessed in the spirit of these general terms and conditions.

7. No rights can be derived from the headings above the articles. These are purely indicative of the content of the provisions of these general terms and conditions.

## **Article 3 Offers and quotations**

1. All offers and quotations are made without obligation, unless an acceptance period has been specified in the offer.

2. The contract becomes effective when Empire confirms the order/contract to the other party, or as soon as Empire takes any action for the purpose of contract fulfilment.

3. The prices in the offers and quotations referred to above are exclusive of BTW (Dutch VAT) and

other charges imposed by the government, as well as costs that may be incurred for fulfilment of the Contract, including shipping and administration costs, unless agreed otherwise in writing.

4. Empire may not be obliged to honour its quotations or offers, or a part thereof, if the Other Party, subject to normal standards of reasonableness and fairness and generally accepted social standards, could have been expected to understand that the offer or quotation, or a part thereof, obviously contained a mistake or slip of the pen.

5. The (delivery) periods stated in quotations by Empire are general and indicative, and not binding for Empire.

6. Empire is not bound if the acceptance differs from the offer proposed in the quotation (regardless of whether this applies to trivial points or not). In cases where the acceptance deviates as referred to above, no Contract is entered into, unless Empire indicates otherwise.

7. A price specification for multiple items does not oblige Empire to fulfil a part of the Contract, or deliver part of the items specified in the quotation, at a proportionally calculated percentage of the stated price.

8. Offers or quotations do not automatically apply for future repeat orders.

#### **Article 4 Contract fulfilment**

1. Empire may request a financial advance before initiating delivery of the items, or starting work in order to fulfil the Contract. The items shall only be delivered, or work shall only start on Contract fulfilment, after payment of the advance.

2. Empire shall fulfil the Contract to the best of its understanding and abilities and in accordance with the standards of good craftsmanship. This shall be subject to the level of scientific knowledge available at that time.

3. If and inasmuch as proper fulfilment of the Contract requires, Empire is entitled to have certain work carried out by third parties.

4. The Other Party ensures timely delivery to Empire of all the details, which Empire has indicated are required, or which the Other Party could reasonably be expected to know are required for fulfilment of the Contract. If the details required for fulfilment of the Contract are not provided to Empire in good time, Empire is entitled to suspend fulfilment of the Contract and/or charge the extra costs ensuing from the delay to the Other Party at the normal rates that apply for this.

5. Empire is not liable for damage of whatever type that arises due to the fact that Empire bases its work on incorrect and/or incomplete details that have been provided by the Other Party, or due to the fact that these details have not been provided on time, unless Empire could have been expected to be aware that these details were incorrect or incomplete.

#### **Article 5 Rates and prices**

1. If Empire has agreed a firm sales price with the Other Party, Empire is nevertheless entitled to increase the price in the cases listed below.

2. Empire may charge price increases if Empire can demonstrate that significant price changes have taken effect during the period from the time of the offer to the time of fulfilment of the Contract with regard to, for example, exchange rates, wages, raw materials, semi-finished goods or packaging materials.

3. If the price increase amounts to more than 10%, the Other Party is entitled to dissolve the Contract, unless this price increase is a result of a change to the Contract or ensues from a legal

obligation.

4. The prices applied by Empire are exclusive of BTW (Dutch VAT) and possible other taxes, as well as costs that may be incurred in fulfilment of the Contract, including shipping and administration costs, unless agreed otherwise in writing.

## **Article 6 Payment**

1. Payment must be made within 14 days from the date of invoice, unless expressly indicated otherwise by Empire. Furthermore, payment must be effected in the manner to be specified by Empire and in the currency stated on the invoice.

2. If the Other Party fails to make payment within a period of 14 days, the Other Party is legally in default. From that time, the Other Party owes a (contractual) rate of interest of 1% per month, unless the statutory rate of interest for commercial transactions is higher, in which case the statutory rate of interest for commercial transactions applies. The interest on the payable amount shall be calculated from the time when the Other Party is in default to the time when the complete amount owed is paid, without prejudice to any further rights possessed by Empire.

3. The receivables owed to Empire by the Other Party become immediately payable if (i) the Other Party goes into liquidation, (ii) a provisional or definitive moratorium on payments is granted to the Other Party, (iii) bankruptcy of the Other Party is petitioned for, or the Other Party is declared bankrupt, (iv) an attachment is levied against the assets of the Other Party, or (v) any other circumstance means that the Other Party is no longer able to freely dispose of its assets.

4. Empire is entitled to deduct the payments made by the Other Party firstly from the costs, then from the accumulated interest arrears and finally from the principal sum and the accruing interest.

5. Empire may, without thereby defaulting, refuse an offer of payment if the Other Party indicates a different sequence for allocating the payment.

6. Empire may refuse total repayment of the principal sum if the accumulated interest arrears, accruing interest and costs are not also covered by this payment.

7. Any objections to the amount of the invoice will not suspend the payment obligation.

8. In addition to the prohibition relating to suspension as described in paragraph 7 of this article, the Other Party, who is not able to appeal to Part 6.5.3 of the Dutch Civil Code (Sections 6:231 to 6:247 6 of the Dutch Civil Code (*Burgerlijk Wetboek or BW*)), also does not have the right to suspend the payment of an invoice for any other reason.

9. The Other Party is never entitled to apply setoff to the amounts it owes to Empire.

10. Empire may charge a credit limitation supplement of 2%. This supplement need not be paid if payment takes place within 30 days after the date of invoice.

11. If further fulfilment of the Contract is not possible due to a circumstance for which Empire is not responsible, and other than as a result of premature termination on the part of the Other Party, and if Empire at that time has indeed partially complied with its obligations ensuing from the Contract, or is in a position to comply with those obligations and the part that has been complied with, or the part that is still to be complied with, can respectively be assigned an independent value, Empire is entitled to raise a separate invoice for the part that has been complied with, respectively the part that is still to be complied with. The Other Party must pay this invoice as if a separate Contract were involved.

12. If the Other Party consists of multiple (legal) persons, each of those (legal) persons is jointly and severally obliged to make timely payment of the amounts owing pursuant to the Contract.

**Article 7 Debt collection costs**

1. If the Other Party is in payment default or has failed to fulfil one or more of its obligations, all reasonable costs associated with achieving extrajudicial settlement are for the expense of the Other Party. If the Other Party continues to default in making timely payment of an amount of money, it shall become liable to pay an immediately exigible fine of 15% of the amount that is still owed . This is subject to a minimum of €175.00.
2. If Empire incurs higher costs, which can be reasonably considered to have been necessary, the actual costs qualify for repayment.
3. Any reasonable judicial and foreclosure costs that are incurred shall also be charged to the Other Party.
4. The Other Party is also liable to pay the interest rate stated in article 6, paragraph 2 of these general terms and conditions in relation to the debt collection costs that have been incurred.

**Article 8 Retention of title**

1. All items delivered by Empire, which may also include samples or models, remain the property of Empire until the Other Party has duly complied with all of its obligations ensuing from the Contract(s) it has entered into with Empire.
2. The Other Party is not authorised to pledge or encumber in any other way the items that are subject to retention of title.
3. If third parties seize the items delivered subject to retention of title, or wish to establish or enforce rights in respect of those items, the Other Party must immediately inform Empire thereof.
4. The Other Party undertakes to take out and maintain insurance for the items delivered subject to retention of title in respect of fire, explosion damage, water damage and theft and make this policy available for scrutiny at the first request.
5. Items delivered by Empire, which are subject to retention of title pursuant to the provisions of paragraph 1 of this article, may not be resold or used as a means of payment.
6. During the period that the Other Party has the items under its care and title has not yet transferred, it shall mark them visibly as the property of Empire and keep them clearly separate from other items at its premises or other business inventory or stocks. The Other Party shall not present itself as the owner of the items vis-à-vis third parties during this period.
7. In the event that Empire wishes to exercise its right of title as described in this article, the Other Party now for then unconditionally and irrevocably gives permission to Empire, or to third parties appointed by Empire, to enter the areas where the property of Empire is stored and take those items back.

**Article 9 Delivery and shipping**

1. Items are delivered on an ex-works basis by Empire.
2. Empire decides the means of transport, shipping, packing and so on. Shipping/transportation of items always takes place for the account and risk of the Other Party and is not included in the agreed price for the items to be delivered by Empire, unless indicated otherwise.
3. The Other Party must take delivery of the goods at the time they are made available to it.
4. If Empire requires information from the Other Party in order to fulfil the contract, the delivery period starts from the time when the Other Party has made this information available to Empire.
5. If Empire has indicated a delivery date, that date is indicative. An indicated delivery date may

therefore never be considered to be a firm deadline. If a delivery date is not met, the Other Party must give Empire written notice of default.

6. Empire expressly draws the other party's attention to the fact that the delivery period is strongly dependent on external factors which lie outside the sphere of control of Empire. If a delivery period that has been communicated by Empire (which is never a firm deadline) is exceeded as a result of, or partially as a result of, external factors of this type, the delivery overrun can never result in an imputable fault. This applies in full in the case of an overrun in respect of a period set following a default, unless this would also be unreasonable when considered in the spirit of this provision.

7. If the Other Party refuses to take delivery or neglects to provide information or instructions that are necessary for the delivery, Empire is entitled to store the goods at the Other Party's risk and expense.

**Article 10 Investigation, complaints regarding items that have been delivered or made available**

1. The Other Party must inspect the goods (or have the goods inspected) immediately at the time when the goods are made available to the Other Party. When doing so, the Other Party must investigate whether the quality and quantity of the delivery correspond to what has been agreed, or otherwise comply with the standards that apply for normal (commercial) transactions.

2. Any visible faults or defects must be reported to Empire in writing within a period of five days after delivery. Concealed faults or defects, must be reported in writing immediately, however at all events also no later than within eight days after their discovery and no later than two months after delivery.

3. If a complaint is submitted in good time in accordance with the provisions of the previous paragraph, the Other Party continues to be obliged to accept and pay for the purchased items.

**Article 11 Suspension and dissolution**

1. Empire is authorised to suspend compliance with its obligations or dissolve the Contract, if:

- the Other Party does not, or not completely, comply with its obligations ensuing from the Contract, or is late in doing so;
- Empire, after entering into the Contract, becomes aware of circumstances that give Empire adequate grounds to fear that the Other Party shall not fulfil its obligations;
- at the time of entering into the Contract, the Other Party has been requested to provide security with regard to fulfilment of its obligations ensuing from the Contract, and this security is not given or is insufficient;

2. A good reason to fear that the Other Party shall not fulfil its obligations is considered to exist at all events if one of the following situations occurs: (i) a temporary or definitive moratorium on payments is granted to the Other Party, (ii) bankruptcy of the Other Party is petitioned for, or the Other Party is declared bankrupt (iii) an attachment is levied against the assets of the Other Party, or (iv) any other circumstance means that the Other Party is no longer able to freely dispose of its assets.

3. Furthermore, Empire is authorised to dissolve the Contract (or have it dissolved) if circumstances arise of such a nature that fulfilment of the Contract becomes impossible, or may no longer be demanded subject to standards of reasonableness and fairness, or if any other circumstances arise that are of such a nature that Empire may not, in all reasonableness, be expected to uphold the Contract.

4. If the dissolution can be imputed to the Other Party, Empire is entitled to compensation of the resulting damage by the Other Party, including the direct and indirect costs incurred as a result.
5. If the Contract is dissolved, the receivables owed to Empire by the Other Party are immediately payable. If Empire defers fulfilment of its obligations, it retains its claims based on the law and the Contract.
6. If Empire initiates suspension or dissolution, it is in no way obliged to pay for any associated damage and costs that arise in whatever way.
7. Empire always retains the right to demand damage compensation.

## **Article 12 Liability**

1. If the event that Empire may be found liable, its liability is limited to that described in this provision, unless determined otherwise in these general terms and conditions.
2. The total liability of Empire on the grounds of an imputable failure to comply with the Contract, or pursuant to any other reason, is limited to payment of direct damage up to a maximum of the amount that has been negotiated for the Contract (excluding BTW (Dutch VAT)). Furthermore, the liability is always limited to a maximum of the amount covered for the case in question by the insurance company with which Empire has taken out liability insurance.
3. Direct damage is exclusively understood to mean:
  - the reasonable costs that are incurred in order to establish the cause and extent of the damage, insofar as the determination relates to damage as defined in these terms and conditions;
  - the possible reasonable costs that are incurred in order to ensure that the defective performance on the part of Empire is made to comply with the Contract, unless these cannot be attributed to Empire.
  - reasonable costs incurred in order to prevent or limit damage, insofar as the Other Party demonstrates that these costs have led to limitation of direct damage as defined in these general terms and conditions.
4. Empire shall never be liable for indirect damage, including consequential damage, loss of profit, savings that could not be achieved, loss of goodwill and damage due work stoppages.
5. Empire is not liable for any damage suffered by the Other Party or any other third party, of whatever nature and whatever cause, which is the result of incorrect and/or in expert use on the part of the Other Party or any third party of the items delivered by Empire.
6. Empire is not liable for damage or destruction of items during shipping or during delivery by the Postal Service, regardless of whether shipping or delivery by post is arranged by or on behalf of the Other Party, Empire or third parties.
7. The Other Party may only invoke the consequences of an imputable fault in complying with a Contract agreed with Empire after the Other Party has sent Empire notice of default in writing and Empire continues to default after the associated reasonably determined period of grace has elapsed.
8. Any entitlement to damage compensation is always conditional to the Other Party reporting the damage to Empire in writing as soon as possible after it has occurred.
9. A series of related events that have resulted in damage are considered to be a single event for the purpose of applying this article.
10. The liability limitations for direct damage stipulated by these general terms and conditions do not apply if the damage can be attributed to malice or gross negligence on the part of Empire or its subcontractors.

**Article 13 Intellectual property and copyright**

1. All rights of copyright and all other possible rights of intellectual or industrial property in the matter of or in relation to the items delivered and/or made available to the Other Party by Empire, are solely vested in Empire.
2. The Other Party shall only acquire the rights of use that are expressly assigned to it by these general terms and conditions and by the law.
3. The Other Party is not permitted (and if necessary, this applies additionally to the rights of copyright held by Empire as referred to in paragraph 1 of this article) to copy the items delivered by Empire, or make them a matter of public knowledge, fully or partially, without first obtaining prior written permission from Empire. Neither is the Other Party permitted to copy the information and/or documentation that has been provided in association with the items delivered by Empire, or make that information and/or documentation a matter of public knowledge, fully or partially, without first obtaining prior written permission from Empire.
4. Insofar as Empire, for the purpose of fulfilling the Contract, needs to use items, brands, images, symbols, etc. to which the Other Party has exclusive rights of intellectual or industrial property, or rights of use, the Other Party shall grant to Empire a non-exclusive right of use for the duration of the Contract and within the context of fulfilment of the Contract.
5. In the matter of items delivered to Empire by the Other Party, the Other Party grants to Empire a non-exclusive, perpetual, irrevocable, global and transferable right of use. This right of use also includes the right to grant the same right of use to (possible) purchasers or to other third parties with which Empire maintains relations in connection with conducting its business.
6. The Other Party involved by Empire guarantees that use (including reselling) of the items it has delivered shall not infringe upon intellectual property rights or other (property) rights of third parties.

**Article 14 Indemnifications**

1. The Other Party indemnifies Empire against all third party claims which are directly or indirectly associated with the Contract.
2. The Other Party on its part indemnifies Empire against all claims for (compensation of) damages, of whatever kind, due to the fact that Empire has based its work on incorrect and/or incomplete information provided by, or at the request of, the Other Party for the purpose of fulfilling the Contract.

**Article 15 Transfer of risk**

1. The risk of loss or damage of items that are the subject of the Contract transfers to the Other Party at the time when these are juristically and/or actually delivered to the Other Party and therefore brought under the control of the Other Party or of third parties that are to be appointed by the Other Party.

**Article 16 Force majeure**

1. Empire is not obliged to fulfil any obligation towards the Other Party if Empire is prevented from doing so due to a circumstance not attributable to any wrongful act on its part or chargeable to it in accordance with the law, any juristic act or generally accepted practice.
2. In these general terms and conditions, 'force majeure' is, in addition to what is understood in this

respect in the law and in case law, to be understood to mean all foreseen and unforeseen external factors upon which Empire cannot exert any influence, due to which however Empire is unable to fulfil its obligations. Force majeure is at all events understood to mean: force majeure in respect of the suppliers of Empire, delay or confiscation of items by the customs authorities in a country due to non-compliance on the part of suppliers of Empire with customs and other formalities that must be fulfilled in order to deliver the items, measures enforced by the government, power failures, non-availability of Internet, breakdowns in computer networks or telecommunication facilities, war, factory sit-ins, strikes, general shipping problems and the non-availability of one or more members of staff.

3. Empire is also entitled to claim force majeure if the circumstances that prevent (further) fulfilment arise after the time when Empire should have fulfilled its obligations.

4. Empire may suspend the obligations ensuing from the Contract for as long as the situation of force majeure continues. If this period lasts longer than two months, each of the parties shall be entitled to dissolve the Contract without obligation to pay the other party for any damage suffered.

#### **Article 17      Secrecy and confidentiality**

1. Both parties have an obligation to keep secret all confidential information that they have acquired for the purposes of the Contract from the other party, or from another source. Information is considered to be confidential if the other party indicates this, or if the nature of the information is such that its confidentiality is self-evident.

2. If the Other Party receives confidential information from Empire, it shall solely use this information for the purpose for which it was provided.

#### **Article 18      Samples and models**

1. If a sample, model or design is shown or provided to the Other Party, it must be understood to have been provided on a purely indicative basis, unless it is expressly agreed in writing that the item that is to be delivered must comply with the sample, model or design.

#### **Article 19      Disputes**

1. The court in the town where Empire has its registered office has exclusive jurisdiction in the matter of disputes, also disputes pursuant to an unlawful act, unless the law imperatively prescribes otherwise. Nevertheless, Empire is entitled to submit the dispute to the court which has jurisdiction according to the law.

2. The parties shall not apply to a court until they have done their utmost to reach amicable settlement of the dispute.

#### **Article 20      Applicable law**

1. Dutch law applies exclusively to each Contract between Empire and the Other Party. The possible applicability of the Vienna Sales Convention is expressly excluded.

#### **Article 21      Explanation and location of the terms and conditions**

1. These terms and conditions are filed at the office of the Chamber of Commerce.

2. In the event that explanation is required of the content and meaning of these general terms and conditions, the Dutch language version always prevails over other language versions.

3. The most recently filed version always applies, or the version that was effective at the time when the Contract was entered into.

4. Empire is entitled to change these terms and conditions unilaterally at any time.