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**1. General.**

**1.1 Definitions:**

- Conditions (written with a capital C): the General Terms and Conditions in question;
- Supplier (written with a capital S): the company who or on who's behalf these Conditions have been declared as applicable and also those who or on who's behalf these conditions have been or are applicable in a clearly recognizable and correct manner and to their representatives, proxy's and legal successors;
- Other Party (written with a capital O and a capital P): each natural person, legal body, partnership, limited partnership or other entity that enters into or has entered into an agreement with a Supplier, or to who an offer or proposal is or has been made or extended by or on behalf of a Supplier, or to who or by order of who a delivery is or has been made by or on behalf of a Supplier, or by order of or for the benefit of who one or more services is or has been performed by or on behalf of a Supplier.

1.2 These Conditions cover offers made, quotations produced, agreements entered into and the execution thereof, and deliveries and services performed by or on behalf of the Supplier. Departures from these Conditions will only be of force if agreed in writing by the Supplier and by the Other Party.

1.3 The application of general terms and conditions other than these Conditions is expressly forbidden, regardless of how such alternative general terms and conditions might be called and whatever form they might have, including the purchasing conditions and other general terms and conditions of the Other Party or those that might be employed by the Other Party and the suitability of any such alternative general terms and conditions is expressly rejected by the Supplier. The acceptance of an offer or quotation made by or on behalf of the Supplier, entering into an agreement with the Supplier, the acceptance of a delivery from or on behalf of the Supplier, or the acceptance of services performed by or on behalf of the Supplier means that the Other Party accepts unconditionally that these Conditions are of application and that the application of other general terms and conditions referred to in this Clause is out of the question, and for so far as is relevant the Other Party distances itself from the application of other general terms and conditions.

**2. Offers.**

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2.1 Each offer or quotation made by or on behalf of the Supplier is made without obligation and does not bind the Supplier except when and for so far as the Supplier has explicitly stated otherwise in writing or when the parties might have agreed otherwise in writing.

2.2 Price lists, brochures, catalogues, folders and other information provided by or on behalf of the Supplier are prepared as carefully as possible but they nevertheless bind the Supplier only when and for so far as they have been explicitly confirmed by the Supplier in writing. The Supplier is not obliged to provide detailed information unless this has been agreed otherwise in writing.

2.3 All brochures, catalogues, price lists and folders provided in connection with an offer or quotation and all associated (technical) information provided in the form of designs, drawings or other illustrations, models, samples, tables, schedules, etc, and all other data and information provided remains explicitly the industrial and intellectual property of the Supplier. The Other Party is expressly forbidden without the Supplier's permission previously given in writing from copying any material, data or information as meant in the previous sentence either wholly or partially and/or from making it known to third parties in whatever way and/or from allowing it to be used by third parties and/or from selling it or from placing it at anybody's disposal. The use of this material, data and information remains strictly limited to use by the Other Party within the framework of the order given to the Supplier. All the material, data and information meant here must be returned immediately to the Supplier at the first request from the Supplier or if, within the time limit of the offer, the Other Party does not enter into an agreement or if the Other party cancels this agreement.

2.4 If no agreement is entered into then the Supplier is entitled to pass on the costs made when preparing an offer or quotation to the Other Party.

2.5 Standard documentation such as factory drawings, descriptions, instructions and test certificates will be provided free of charge unless the Supplier indicates otherwise. The Other Party will be charged for extra copies of such standard documents and for other documents, which are not standard.

2.6 Any prices specified are only valid for the quantities offered.

#### **3. Realisation and content of an agreement.**

3.1 An agreement between the Supplier and the Other Party is realised at the moment that the Supplier confirms in writing the acceptance of an assignment or order from the Other Party; the scope and content of the agreement follows on from the written confirmation of the Supplier.

3.2 If an offer or quotation, in the light of the provisions of Clause 2.1, is not without obligation and a binding time period for the offer has been set then the agreement is realised at the moment that the offer or quotation is accepted within the time limit by the Other Party; in such a case the confirmation of the assignment, order or binding offer is deemed to correctly and completely represent the agreement.

3.3 An agreement binds the Supplier only when it has been entered into and when the written confirmation meant in Clause 3.1 has been signed by one or more persons who are authorised to commit the Supplier in such a manner and any agreements or additions and/or changes to them or in them and agreements, promises, etc., drawn-up or made by an employee or employees of the Supplier or by a representative, agent or other intermediary or by one or more other people who are not authorised to commit the Supplier in such a manner, whether or not these are made in writing, are not binding on the Supplier.

3.4 Any changes and/or partial cancellation or complete cancellation of an assignment or order by or on the request of the Other Party can only take place with the permission of the Supplier previously given in writing and on condition that activities already performed by the Supplier will be paid for, in full, by the Other Party; in the case of a change and/or partial cancellation requested by the Other Party, the Supplier is entitled to pass on any related (extra) costs to the Other Party and to redetermine the delivery time.

3.5 For activities or assignments where, because of their nature and size, no quotation or order confirmation is sent, the agreement will be realised at the moment the Supplier or someone on behalf of the Supplier actually begins to carry out the agreement and, in such cases, the invoice will be considered as the order confirmation and at the same time is deemed to correctly and completely represent the agreement.

3.6 An agreement with the Supplier is entered into under the condition that the suppliers and other contract partners of the Supplier fulfil their obligations on time and in the correct manner.

3.7 When entering into an agreement or after that and before beginning with the execution of the agreement on his part or continuing with the execution of the agreement the Supplier is entitled to demand the provision of sufficient certainty from the Other Party regarding timely settlement by the Other Party of his payment obligations and other obligations.

3.8 The Supplier is authorised to make use of third parties for the execution of the agreement; the costs involved will be passed on to the Other Party in line with the quotations provided.

#### **4. Prices.**

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4.1 Except when and for so far as binding prices apply all price quotations are without obligation.

4.2 Except when otherwise explicitly notified in writing prices are:

- based on purchase prices, wage rates, wage costs, social security and government costs, transport costs, insurance premiums and other costs prevailing on the date of offer or quotation or (if no offer or quotation is made) the date of the order;

- based on ex-works or ex-warehouse delivery from the Supplier;

- exclusive of VAT, import duties and other taxes, levies and duties;

- exclusive of the costs of packaging, loading and unloading, transport and insurance;

and

- exclusive of the costs of assembly, installation and commissioning unless otherwise explicitly stated, in which case the costs named here will be separately specified.

4.3 Unless specifically expressed otherwise prices stated or agreed will be in Euros (EUR).

4.4 In every case prices are stated or agreed upon under the condition that changes in exchange rates will be passed on if the official exchange rate at the moment of delivery deviates by more than 2 % from the exchange rate on the date when the offer or quotation was made, the latter exchange rate parity being considered as 100.

4.5 If there is an increase in one or more of the factors determining the cost price then the Supplier is entitled to increase the order price accordingly, with due observance of existing applicable legal requirements, on the understanding that any future price increases which the Supplier is aware of on the date of the order confirmation should be specified on this order confirmation.

#### **5 Risk.**

5.1 The risk with regard to the goods sold and/or delivered by or in the name of the Supplier to the Other Party is transferred to the Other Party: for goods supplied out of stock, this occurs at the moment these goods are segregated for the benefit of the Other Party; and for other goods, this occurs at the moment the goods are loaded for transportation to the Other Party or to a place indicated by the Other Party, except when and for so far as it might be otherwise agreed in writing.

5.2 Irrespective of what might otherwise be agreed with regard to the risk, any loading and unloading, transport, assembly, installation and commissioning of the goods will at all times be at the risk of the Other Party.

#### **6. Delivery and delivery time.**

6.1 Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Clause 4.2 of these Conditions, deliveries are made on a carriage paid basis to the Other Party or to another place specified timely by the Other Party. For orders or deliveries under a specified amount, the Supplier is entitled to pass on an amount covering the administrative costs to the Other Party.

6.2 Except when and for so far as it has otherwise been agreed in writing and without prejudice to the provisions in Clause 5 about the transfer of risk, the moment of delivery is the moment that the goods are unloaded or discharged at the place where they must be delivered (the actual transfer); this also holds good if the Supplier must assemble, install and/or commission the goods.

6.3 The Other Party must report any shortages, defects and damage, in writing, directly to the Supplier within 24 hours of the delivery and if nothing is reported then the goods will be regarded as having reached the Other Party in good condition, complete and without damage.

6.4 The Supplier is entitled to make partial deliveries, which can be invoiced separately, and, when this occurs, the Other Party is obliged to pay these separate invoices in accordance with the provisions specified in Clause 17 of these Conditions.

6.5 Except when and for so far as it has otherwise been agreed in writing, the delivery times specified by or on behalf of the Supplier in an offer or quotation are not intended to have a fatal effect, which means, amongst other things, that when a delivery is late the Other Party must explicitly notify the Supplier in writing before the Supplier can be held in default.

6.6 The Supplier is obliged to observe the specified delivery time or delivery period as much as possible, yet will never be liable if they are exceeded and when they are exceeded the Supplier is not obliged to provide any compensation for damages. Exceeding a delivery time or delivery term does not give the Other Party the right to terminate or to dissolve the agreement or to refuse to purchase goods. In cases where a delivery time or term is exceeded excessively the parties must consult with each other.

6.7 If goods are not purchased by the Other Party within the delivery time or period, or if the Other Party does not observe an agreed call off period then the Supplier is entitled to invoice the Other Party for the goods in question and, furthermore, the Supplier is entitled to store these goods at its own discretion but wholly at the cost and risk of the Other

Party. In the case where the Other Party does not purchase or call off within the agreed period the Supplier, according to his own choice, can demand fulfilment by the Other Party or can dissolve the agreement, without prejudice to the right of the Supplier, in either case, to claim damages.

**7. Transport and packing.**

7.1 Unless indicated in writing by the Other Party to the Supplier, the manner of packing, transport, shipment etc, of goods is a matter completely at the discretion of the Supplier and will be determined with the care which reasonably can be expected from the Supplier, this without prejudice to what is specified about the transport risk in Clause 5.2 of these Conditions.

7.2 Any specific wishes the Other Party may have with regard to packing and/or transport, including relocation within the company or company terrain, will only be performed if the Other Party pays the costs involved. Furthermore, the Supplier is entitled not to honour specific wishes from the Other Party with respect to packing and/or transport which have not previously been explicitly agreed.

7.3 If the invoiced value of the goods delivered is less than an amount to be specified by the Supplier, then the Supplier is entitled to pass on any administrative costs.

**8. Packaging.**

8.1 Only durable packaging, provided it is in a good and usable condition, can be taken back by the Supplier against cost price and only on the condition that this packaging is specified separately at cost price either on the delivery documents or on the invoice.

8.2 If the durable packaging meant in Article 8.1 is returned clearly in a poorer state than when it was used for the loading of the shipment to the Other Party, then the Supplier is entitled to request compensation from the Other Party. The Other Party is not entitled unilaterally to deduct the value of the packaging or any other amount relevant to the packaging from the amount owed to the Supplier.

**9. Force majeure (non-labile failing).**

9.1 If the Supplier, as a result of force majeure, is prevented from fulfilling any of his obligations to the Other Party and in the judgement of the Supplier the force majeure is of a permanent or long-lasting nature, then the parties can come to a settlement regarding the dissolution of the agreement in accordance with the rule of law and any consequences thereof.

9.2 If the Supplier, as a result of force majeure, is prevented from fulfilling any of his obligations to the Other Party and in the judgement of the Supplier the force majeure will be of a temporary or transitory nature, then the Supplier is entitled to postpone the execution of the agreement until the circumstance, cause or event causing the force majeure situation no longer arises.

9.3 Considered as "force majeure" are each circumstance, cause or event, wherever it is occurring, appearing or arising which temporarily or permanently prevents the correct, complete and timely fulfilment of any obligation of the Supplier or makes it impossible or unreasonably problematic, and each circumstance, cause or event which the Supplier, in all fairness, cannot be expected to prevent or which wholly or partially falls outside the sphere of influence of the Supplier or on which the Supplier can exercise no influence.

The following, amongst other factors, are considered as circumstances, causes or events resulting in force majeure: fire, explosion, lightning strike, ice break-up, low water, high water, tidal wave, spring tide, flood, earthquake, natural disasters; storm, tornado, cyclone, snow, frost and other weather conditions; strikes, work stoppages, excessive (sickness) absenteeism of personnel, labour unrest, lock-outs, boycotts; war (declared or not), mobilisation, siege, besieging, blockade, molestation; riots, revolution, social unrest; governmental actions and/or regulations which prevent, delay or otherwise hinder the fulfilment of obligations; lack of transport resources; unnavigability or unusability of any eligible transportation routes or means of transport; disturbances or interruptions in the provision, delivery or availability of energy; disturbances or interruptions in or of the functioning of any public utility; disturbances or interruptions or ending of the supply of raw materials, semi-finished and/or finished; disturbances or delay in or of, or interruptions or ending of the supply of parts, spare-parts and other articles; each circumstance, cause or event that is the result of or is associated with the so-called millennium problem; non-fulfilment of obligations by a debtor or contract partner of the Supplier (including the non-fulfilment of obligations by one or more third parties); technical disturbances and/or faults, delays, disturbances or interruptions to or with the repair of machines, material, equipment, tools and/or instruments; serious illness and illnesses of an epidemic character.

9.4 The results of the circumstances, causes or events meant in Clause 9.3 are also considered as "force majeure".

9.5 If the Supplier, as a result of force majeure, is prevented from fulfilling his obligations with regard to one or more of his customers or buyers but not his obligations with respect to all his customers or buyers then the Supplier is entitled to decide himself which of the obligations will be fulfilled and for which customers or buyers as well as the order in which they will be fulfilled.

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9.6 The Supplier is entitled to demand payment for all activities performed by or on behalf of the Supplier in the execution of the agreement with the Other Party before the force majeure circumstance, cause or event appeared or emerged.

#### **10. Guarantee/Service.**

10.1 With due observance to the provisions specified elsewhere in these Conditions the Supplier guarantees the quality of the materials used and their promised characteristics as well as the correct working of the goods provided by the Supplier. For new products this guarantee is valid for a period of twelve (12) months after delivery (including any "viewing period"), unless otherwise agreed in writing. A guarantee for goods purchased elsewhere by the Supplier is only given for and so far as it is provided by the original manufacturer(s). For products that are not new a guarantee is only valid for and so far as this has been explicitly agreed; with such a guarantee the provisions of these General Conditions apply except when and for so far as departures to them have been agreed in writing.

10.2 Faults in any goods supplied which fall under the guarantee will, exclusively at the discretion of the Supplier, be rectified or the goods will be replaced if the faults, in the opinion of the Supplier and/or manufacturer, are attributable to construction faults or faults in or any shortcomings of the materials used as a result of which the goods are unusable by the Other Party for the purpose for which they are can reasonably be thought of as intended.

10.3. In principle, guarantee work will be performed within the business of the Supplier (for example, by the service department) and during normal working hours. Activities associated with guarantees will only be performed outside normal working hours if a separate service contract has been entered into and only when and for so far as this is specified in this service contract.

10.4 The Supplier is entitled to allow guarantee activities to be performed outside his own business if this, in the opinion of the Supplier, is in the best interest of these activities or if the performance of such activities at the business of the Supplier in all reasonableness is not possible nor desirable.

10.5 Goods eligible for guarantee work must be sent carriage-paid to the Supplier. If the guarantee work is to be performed outside his own company then the Supplier is entitled to pass on the connected travel costs and expenses to the Other Party as well as any (special) costs of transport, packing and insurance and the costs of any testing equipment and materials used.

10.6 If, in the opinion of the Supplier, the goods tendered for rectification or repair exhibit no faults then all costs made will be passed on to the Other Party, also during the period under guarantee.

10.7 All guarantee agreements lapse if the Other Party itself makes changes and/or repairs to the product supplied or allows them to be made, or if the product supplied has not been or is not being used or treated exactly according to the supplied or applicable (manufacturers) directives or the user instructions, or is being used or treated injudiciously in any other way, or if a software change has been made in or with regard to the product supplied by a party other than the Supplier, or if the product supplied has been or is being used or applied for purposes other than for which it is intended, or if the product supplied has been or is being used in a way which the Supplier in all reasonableness could not have expected.

10.8 Faults resulting from or partly resulting from or connected with the so called millennium problem with regard to computers, semi-conductor products and software in the broadest sense, are not covered by the guarantee and with respect to such faults and their possible consequences no guarantee agreement exists.

10.9 No guarantee is provided for consumables.

10.10 If the Other Party does not fulfil one or more of his obligations then the Supplier is released from his guarantee obligations.

10.11 Satisfying the guarantee obligation is regarded as the only and complete compensation.

#### **11. Right of retention.**

11.1 If and for so long as the Other Party has not satisfied his obligations towards the Supplier then the Supplier has the right to retain all goods in his possession which have come from the Other Party or have come on behalf of the Other Party, no matter the origin or reason.

11.2 The Supplier is obliged to administer the goods meant in Clause 11.1 or to allow them to be administered in accordance with commercial practice but the Other Party has no right to press for damages or compensation in the case when the goods have completely or partially perished or been lost and/or been damaged when this is not the fault of the Supplier, and, furthermore, the risk associated with these goods remains with the Other Party.

#### **12. Liability.**

12.1 Except when and in as far as something else might otherwise ensue from the provisions of imperative law concerning (product) liability, the Supplier is not obliged to compensate or damage, of whatever nature, to any movable or immovable good or to any person,

including any loss of profits, at the Other party or any third party, this damage being caused directly or indirectly by or connected with any object or good supplied by or on behalf of the Supplier or being caused directly or indirectly by or being connected with any use or any application or operation of such an object or good or with the storage or keeping thereof, or with the assembly, installation or commissioning of such an object or good, and the Other Party explicitly indemnifies the Supplier against claims and demands which are based on such damage or are connected with it. Bearing in mind what is specified elsewhere in this Clause, the Supplier, in every case, is not liable for damage or loss directly or indirectly caused by:

- injudicious use of the product supplied or its use for a purpose other than what it reasonably could be considered suitable for or its use for a purpose other than what, to objective standards, it is suitable for or its use for any other purpose than what the Supplier reasonably could have imagined that it should be used for;
- careless conduct by the Other Party, of the personnel of the Other Party or anybody brought in the Other Party, or any other person on the part of the Other Party;
- infringement of any patent, usage model, brand, origin indication, model right, copyright or neighbouring right, right on a semiconductor product or the topography thereof, right on a database or other collection of data, or any other industrial or intellectual ownership rights or any other exclusive right, or infringement or violation of a licence under any such a right, which is the direct or indirect result of the use and/or application and/or publication or replication of data provided by or on behalf of the Other Party such as descriptions, drawings, models, designs, etc.

12.2 If the Supplier provides a helping hand during the assembly and/or commissioning and/or installation of the goods without this being explicitly mentioned in the assignment then this occurs wholly for the risk of the Other Party.

12.3 Except in the case of intentional or flagrant damage on the part of the Supplier, the Supplier is not liable for any damage as meant in Clause 12.1 which is caused by or is the result of any service performed by or on behalf of the Supplier.

12.4 With respect to any advice provided, the Supplier is only liable for normally foreseeable and avoidable shortcomings in the advice, on the understanding that this liability never exceeds the amount agreed upon and received for the advice.

12.5 Any liability on the part of the Supplier is at all times limited to directly caused damage and is at all times limited to the amount, in each case, made good by the liability insurer of the Supplier; if necessary, and at the request of the Other Party, the Supplier will provide information about the amount insured. If the Supplier has no liability insurance then any liability on the part of the Supplier is at all times limited to the net amount invoiced for the task or circumstance in question.

12.6 Settlement of the prevailing guarantee obligations and/or the pay out by the Supplier's insurer or payment by the Supplier (with due observance of the maximum amount meant in Clause 12.5) of the assessed damage is to be regarded as the only and complete compensation. For the rest the Other Party indemnifies the Supplier explicitly and completely.

12.7 Without prejudice to the provisions otherwise specified in this Clause, every claim for damages lapses one year after the damage has manifested itself or has been discovered or has been recognised or reasonably could have been expected to have been discovered or recognised, and, in all cases, three years after delivery.

12.8 With respect to goods for which the Supplier has involved third parties, the applicable (contract and/or guarantee) provisions applying to the respective transaction are also valid for the Other Party if and in so as far as the Supplier wants to make use of them.

### **13. Claims.**

13.1 Without prejudice to the provisions in Clause 6.3 of these Conditions, any claims can only be handled if they are received in writing by the Supplier within eight (8) days of the delivery. For hidden faults, claims are only possible within the guarantee period.

13.2 Contrary to the provisions in Clause 13.1 any claims with regard to goods for which a testing or inspection takes place must be made immediately on the date of testing or inspection and at the place where this testing or inspection occurs and, after that, confirmed at once to the Supplier in writing.

13.3 Claims can only be handled when the nature and grounds for the complaints are accurately stated.

13.4 Claims regarding invoices must be lodged in writing with the Supplier within eight (8) days of the date of the invoice.

13.5 If within the applicable time period no claim is made or no claim is made in the required manner then the delivery will be considered as completely satisfying the agreement and to be unconditionally accepted and approved by the Other Party; an invoice against which no claim has been lodged in the required manner within the period of eight days specified in Clause 13.4 will be regarded as having been unconditionally accepted and approved by the Other Party.

13.6. If a claim with regard to goods supplied by the Supplier is found to be legitimate then the Supplier is only obliged to replace or repair the unsound goods, the Other Party having no additional right to any other compensation.

13.7 Lodging a claim never discharges the Other Party from his payment obligations towards the Supplier.

13.8 Returning the product supplied or any part thereof, for whatever reason, can only take place after the previous explicit written approval and with the sending instructions of the Supplier.

**14. Permits etc.**

14.1 The Other party is responsible for ensuring that all permits, concessions, licences, consents and so forth that might be necessary for the delivery by the Supplier of the goods sold or for the Supplier to fulfil his obligations, are obtained on time and in the

correct form; the costs associated with obtaining such permits, concessions, licences, consents and so forth are to be born by the Other Party.

14.2 The absence of any permits, concessions, licences, consents and so forth as meant in Clause 14.1 will be considered as an accountable failing (failure) on the part of the Other Party and the Other Party will not be released from any of his commitments towards the Supplier nor can it be a reason for the postponement of the fulfilment of any obligation the Other Party has towards the Supplier.

14.3 The Other Party is liable for all damage which directly or indirectly may be caused by the absence of any permits, concessions, licences, consents and so forth as meant in Clause 14.1 and the Other Party indemnifies the Supplier against claims and demands connected with such damage.

**15. Intellectual ownership rights.**

15.1 The Other Party will employ the software (in its widest sense), peripheral equipment, technical data, wiring and/or work plans, user and/or operating instructions, drawings and all other essential documentation and other data and information supplied by or on behalf of the Supplier only for its own (internal) use and will not in any way pass it on or sell or make it available to third parties nor allow any third party to use it.

15.2 If in the unhopd for event that that a good sold by the Supplier to the Other Party in The Netherlands infringes an industrial or intellectual ownership right of a third party and the Other Party is held liable then the Other Party is obliged at once to inform the Supplier in writing of the situation and the Supplier can then choose either to procure the right to be able to use the good, or to provide a replacement good which does not infringe the right, or, once the Other Party has returned the good, refund the purchase price to the Other party after subtraction of reasonable compensation to cover the period when the good was available to the Other Party. With regard to infringements of industrial and intellectual property rights outside The Netherlands the Other Party can make no claim or demand whatsoever against the Supplier.

15.3 The Supplier cannot be held liable in any way with regard to the infringement of any industrial or intellectual property right or any other exclusive right which is the result of any change in or to a good sold or supplied by or on behalf of the Supplier or in the use or application of such a good which is different to that which the Supplier could have expected or assumed, or which is the result of its integration, use or application in combination with other goods not sold or supplied by or on behalf of the Supplier, or which is the result of a software amendment not made by the Supplier.

**16. Ownership reservation.**

16.1 Without prejudice to the provisions in Clause 5. of these Conditions regarding the risk and the transfer thereof, all the goods supplied by or on behalf of the Supplier remain the property of the Supplier until the moment that the debt owed by the Other Party to the Supplier has been settled in full, this debt being the amount that the Other Party has owed the Supplier since the realisation of the agreement inclusive of all interest and costs. (In the case of an account relationship the ownership of the goods supplied remains with the Supplier until the moment that the Other Party settles his account).

16.2 For so long as the ownership of the goods supplied by or on behalf of the Supplier remains, according to the provisions in Clause 16.1, with the Supplier, the Other Party is obliged to hold these goods separately from other goods in such a way that they can easily and clearly be identified as the goods of the Supplier.

16.3 In the case of non-payment by the Other Party of any amount due to the Supplier and, furthermore, when the agreement is ended, the Supplier will be entitled to demand the return of any goods for which ownership reservation applies and to take the measures associated with this, taking into account any payments already made for the goods, this without prejudice to the right of the Supplier to demand compensation for possible loss or damage. In the case of non-payment or termination of an agreement each claim which the Supplier has against the Other Party becomes immediately due.

16.4 At the first demand from the Supplier the Other Party must authorise the immediate return of the goods which have not yet been fully paid for where ever these may be.

16.5 The Other Party is entitled to sell or to use goods on which there is an ownership reservation in favour of the Supplier within the framework of normal business operations; however, no right of security can be bestowed on these goods, while, with regard to these goods, the Other Party must not perform any actions or allow any actions to be performed which result in these goods becoming a part or element of one or more other goods.

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When goods with an ownership reservation still in favour of the Supplier are sold on, the Other Party is obliged to reserve ownership for himself and at the first request from the Supplier to cede to the Supplier all demands against the debtor of the Other Party, up to the amount that the Other Party owes.

#### **17. Payment.**

17.1 Unless agreed otherwise payment, net cash, must be made on delivery or within thirty (30) days of the invoice date via a deposit or funds transfer into the bank account indicated by the Supplier. In the case of assembly or installation work, payment must be made within thirty (30) days of the date on which the assembly or installation work started or, if the (commencement of the) assembly or installation work is delayed through no fault of the Supplier, within thirty (30) days of the date on which the assembly or installation work, without the delay, should have begun, with the proviso that if the Supplier has demanded payment in instalments, in accordance with the provisions of Clause 31. of these Conditions, then payment will be made in the appropriate manner. The Supplier is entitled to grant a cash discount or payment reduction, which will be notified in advance.

The date on the Supplier's bank or giro statement when the payment is recorded as received applies as the date on which the payment has occurred.

17.2 Each payment by the Other Party will be used first for the settlement of any interest due and for any collection and administration costs and, after that, for the settlement of any open claims in order of age beginning with the oldest.

#### **18. Delay; interest and costs.**

18.1 The Other Party will be liable for ensuring that a payment or the settlement of any other obligation occurs on time without the need for a reminder, summons or in default declaration.

18.2 If the Supplier does not receive a payment due from the Other Party on time then, beginning from the day on which the payment should have been made, the Supplier will automatically charge the Other Party interest at a rate of one and a half (1½ %) per month, without prejudice to any further rights the Supplier has; when calculating the interest owed, months started but not completed will count as whole months. This so-called delay interest rate of 1½ % per month is a minimum rate and if this rate, when calculated on a yearly basis, is at any time less than 5% more than the officially applicable interest rate in The Netherlands then it will be automatically increased, so that, on a yearly basis, it is 5% higher than the official interest rate.

18.3 All the legal and extra-judicial costs incurred by the Supplier including the costs incurred by the Supplier for legal aid and legal advice are to be borne by the Other Party. The extra-judicial collection costs amount to 15% of the amount to which the Other Party is indebted inclusive of any interest due, without prejudice to the right of the Supplier to claim damages from the Other Party for the actual collection costs made if these are more than the 15% specified.

#### **19. Ending an agreement.**

19.1 In the case of non-observance by the Other Party the Supplier will be entitled to terminate and/or dissolve the agreement without judicial intervention and without prejudice to the right of the Supplier to claim damages, to make use of the rights resulting from ownership retention and to take other (legal) steps, and without prejudice to the right of the Supplier to demand fulfilment (with compensation) of the agreement instead of its termination.

19.2 The Supplier will terminate the agreement with the Other Party with immediate effect if:

- a. the Other Party is declared bankrupt, goes into administration, presents a request for suspension of payment, or if the Other Party (temporarily or definitely) is granted a suspension of payment or if there is a seizure of the total assets of the other Party or a part thereof;
- b. the Other Party, when this is a natural person, dies or is made a ward or if the merchandise of the Other Party is put under administration;
- c. if the Other Party, when this is a legal person, goes into liquidation or if a claim for the dissolution of the Other Party is made or a dissolution decision with respect to the Other Party has been or is taken.

19.3 If an agreement according to the provisions of this Clause is terminated or dissolved then the amount that the Other party owes to the Supplier at the moment of termination or dissolution remains as the full debt and the Other Party will be liable to pay interest and costs according to the provisions of these Conditions, without prejudice to the right of the Supplier to demand damages or any other rights due to the Supplier.

#### **20. Cancellation by Other Party.**

20.1 The Other Party has the right to annul the order or agreement in the following cases:

- if the Supplier after exceeding the delivery time again exceeds a new delivery time agreed by both parties without any justifiable grounds, provided that the Other Party has declared in writing before agreeing to the new term of delivery that he will refuse acceptance if the new delivery term is exceeded; and
- if the Supplier within a reasonable period of time cannot fulfil his delivery obligations and has made this known to the Other Party.



Cancellation as meant in this Clause will never result in the Other Party being compensated for any damages

**21. Changes in an agreement.**

21.1 Changes to an agreement are only valid if they are made in writing and where both parties have consented to the change(s).

**22. Titles of the Clauses.**

22.1 The titles of the Clauses of these Conditions are intended exclusively to simplify the construction and organisation of these Conditions and they have no other significance; in particular these titles cannot be used for any interpretation of these Conditions.

**23. Appropriate law; disputes.**

23.1 The Dutch Law is applicable to all offers, agreements, deliveries and services produced or brought out, entered into, performed or executed by or on behalf of the Supplier, with the exception of the applicability of the treaty of the United Nations concerning international trade agreements relating to movable goods (Vienna Trade Treaty).

23.2 All disputes also including those which are only considered as such by one party, resulting from or connected with an agreement to which these Conditions are applicable or the execution thereof and which cannot be solved amicably will be settled in the first instance by the District Court of the district in which the Supplier is located, with the proviso that if a particular judge is imperatively appointed as competent judge then the dispute will be decided in the first instance by the judge so appointed, one way or the other without prejudice to the right of the Supplier to seizure or from taking other provisional measures at the place(s) and before the legal bodies that the Supplier wishes.

23.3 The provisions of Clause 23.2 leave intact the right of the Supplier to bring the dispute before a judge qualified according to the normal competency rules or to obtain a settlement by means of arbitration or binding advice.

**24. Validity.**

24.1 If any provision in these Conditions is not completely valid or only partially valid and/or not enforceable as a result of any legal directive, judicial judgement or any directive, decision, recommendation or measure from any local, regional, national or supranational authority or body or otherwise then this will have no effect on the validity of the other provisions in these Conditions. If a provision in these Conditions might not be valid for one or other reason indicated in the previous sentence but would be valid if it had a more limited range or scope then this provision will be automatically valid with the most farreaching or extensive range or scope with which or within which it is valid.