

# General conditions

## GENERAL TERMS AND CONDITIONS OF VENDOR B.V. ESTABLISHED IN TILBURG

Registered under No. 340315340000

### I. General Provisions

#### Applicability

**Art. 1.1.** These general terms and conditions apply to and are part of all agreements concluded with VENDOR as well as the establishment thereof, to quotations offered by VENDOR and orders confirmations issued by VENDOR, regardless of whether the goods and/or services were procured or received directly from VENDOR or from third parties.

**1.2.** These general terms and conditions consist of the following Chapters:

Chapter I: General Provisions

Chapter II: Special Provisions that apply to quotations, order confirmations and agreements relating to purchase and sale.

Chapter III: Special Provisions that apply to quotations, order confirmations and agreements relating to rent and lease.

Chapter IV: Special Provisions that apply to quotations, order confirmations and agreements relating to the provision of service.

**1.3.** In case of conflict between the General Provisions in Chapter I and the Special Provisions in Chapters II, III and IV, the Special Provisions will prevail.

**1.4.** Deviations from these general terms and conditions and any terms and conditions of the client will be effective only if expressly accepted in writing by VENDOR.

**1.5.** These general terms and conditions have been filed with and can be obtained from the Chamber of Commerce in Tilburg under number 34031534 and apply to all companies of VENDOR, wherever these may be established. These general terms and conditions have been issued to the client on conclusion of the agreement between VENDOR and the client.

#### Conclusion of agreements

**Art. 2.1.** All quotations of VENDOR are without obligation and are only binding to VENDOR if a quotation is followed by a written confirmation from VENDOR that an agreement has been concluded. Representatives and/or agents do not have power of representation and cannot conclude binding agreements on behalf of VENDOR.

**2.2.** If the acceptance of a quotation issued by VENDOR contains reservations or changes to the quotation, the agreement will only be concluded if and when VENDOR has notified the client in writing to agree to these deviations from the quotation.

**2.3.** Officers and employees of the client are deemed to have power of representation with respect to legal acts which they perform in the context of the agreements concluded with VENDOR. The client is bound by these legal acts and cannot rely on there having been no power to represent or bind the client with regard to these legal acts.

#### Amendments

**Art. 3.1.** An agreement concluded with VENDOR may only be amended if VENDOR has confirmed the amendment in writing.

**3.2.** If changes to the agreement lead to an increase or decrease in costs, the resulting change in price must be confirmed in writing by VENDOR.

#### Notices

**Art. 4.1.** Claims for performance, notices of default, cancellations, notice of termination of the agreement and other communications relating to legal effect must be communicated by the client to VENDOR by registered letter.

Delivery periods

**Art. 5.1.** The delivery period, if agreed upon, will commence on the date on which VENDOR has confirmed the order in writing and has in its possession the necessary information for implementing the agreement.

**5.2.** If the agreed delivery period is exceeded, an additional delivery period of one month applies, within which period VENDOR is entitled to deliver the goods and/or carry out the work. If the delivery period is exceeded the client must demand performance by VENDOR in writing. The additional delivery period of one month commences on the day that the written demand of the client by registered letter is received by VENDOR. The client is only entitled to terminate this agreement after expiry of the aforementioned additional delivery period of one month.

**5.3.** If the delivery period as set out above is exceeded, no entitlement will arise for the client to any compensation payment, however it may be called.

### **Prices**

**Art. 6.1.** Unless otherwise agreed, all prices are exclusive of VAT and of the costs of assembly, delivery and transport.

**6.2.** Orders are executed on the basis of the price list determined by VENDOR that applies on the day of delivery. If prices are agreed upon on another basis, these will be binding.

**6.3.** Insofar as these prices are based on the then prevailing level of wages, social security contributions and government charges, freight and insurance premiums, commodity prices, costs of materials and components, exchange rates and/or other costs, VENDOR will be entitled in case of an increase or decrease in one or more of these price factors to increase or decrease its prices accordingly, in which case the client is entitled to terminate the agreement within eight days after written notice from VENDOR of this price change.

### **Payment and invoicing**

**Art. 7.1.1.** The client is obliged to pay all that the client owes VENDOR within fourteen days after the invoice date, unless otherwise agreed in writing.

**7.1.2** VENDOR reserves the right to invoice electronically.

**7.2.** If payment does not take place within thirty days after the invoice date, the client will owe VENDOR an interest of 1.5 % per month on the unpaid invoice amount, for the purpose of which a portion of a month is counted as one full month. In the event of late payment, the client will be in default by operation of law. The demand for payment of the amounts which the client owes VENDOR, plus the agreed interest, will be immediately due and payable without any notice of default being required. In that case the client will be liable for the damages suffered by VENDOR, including loss of profits, transport costs, storage costs, etc. and, if applicable, the cost of the notice of default.

**7.3.** If VENDOR institutes out-of-court measures on account of failure by the client to fulfil any obligation pursuant to the agreement, the costs of these out-of-court measures will be at the expense of the client. These costs will be at least 20% of the invoice amount and a minimum of €100. If the actual costs incurred exceed 20% of the invoice amount, the client will reimburse the actual costs.

### **Claims**

**Art. 8.1.** The client is obliged to notify VENDOR in writing of externally visible defects in the goods delivered or leased and/or repaired and/or cleaned by VENDOR as well as incomplete deliveries within eight days of delivery by VENDOR and give VENDOR the opportunity to arrange an expert's examination. In the absence of such notification the delivered goods will be considered to have been in accordance with what the client could expect on the basis of the agreement.

**8.2.** The client is obliged to notify VENDOR in writing of defects that are not externally visible immediately after they have been discovered, but not later than six months after receipt of

the goods. In the absence of such notification the delivered goods will be considered to have been in accordance with what the client could expect on the basis of the agreement.

**8.3.** For goods delivered directly to the client by third parties, VENDOR's time limits for claims will apply, unless these third parties have deviating time limits for claims agreed upon with VENDOR.

**8.4.** Each delivery will be considered a separate transaction in the sense that claims concerning a specific delivery will not give rise to rights on past or future deliveries.

**8.5.** After the expiry of the aforementioned terms and/or if the client does not act according to the guidelines set out by VENDOR in these general terms and conditions of delivery, all rights to submit a claim will expire.

### **Liability**

**Art. 9.1.** In the event of an attributable failure on the part of VENDOR vis-à-vis the client in the fulfilment of any obligation pursuant to the agreement, the client must immediately give VENDOR notice of default in writing and set a reasonable deadline for the fulfilment of the obligation, in the absence of which VENDOR can never be held liable for damages resulting from such failure.

**9.2.** VENDOR will not be liable for any loss other than replacement loss. VENDOR will therefore not be liable for indirect or consequential loss, which includes loss arising from or associated with the use of the goods or services delivered or made available by VENDOR, or loss due to loss of profit or loss due to a delay.

**9.3.** In the event VENDOR or any of its employees or agents commits a wrongful act against the client for which VENDOR can be held liable under the law, VENDOR will only be liable for the losses ensuing from the wrongful act if the losses were caused by intent or gross negligence.

### **Indemnity**

**Art. 10.1.** The client indemnifies VENDOR against third-party claims arising from the agreement concluded between VENDOR and the client or from the use of the goods or services delivered or made available by VENDOR.

### **Force majeure**

**Art. 11.1.** Force majeure on the part of VENDOR exists if VENDOR, after the conclusion of the agreement, is prevented from fulfilling or preparing to fulfil its obligations under this agreement as a result of war, threat of war, civil war, riots, acts of war, fire, water, flood, extreme weather, strikes, sit-ins, lockouts, and export restrictions, government measures, infectious diseases (including but not limited to bird flu and swine fever), defects in machinery and disruptions in the supply of energy, all of the above both at the company of VENDOR and at third parties from whom VENDOR must procure the materials or raw materials needed, as well as during storage or transport, whether outsourced or in own management, and furthermore all other causes beyond the fault or control of VENDOR.

**11.2.** If the execution of the agreement is delayed by more than two months on account of force majeure, both VENDOR and the client are entitled to terminate the agreement.

**11.3.** If force majeure occurs after the agreement has already been partially executed, the client is obliged, if implementation of the remainder of the agreement is delayed by more than two months on account of force majeure, to pay for that part of the agreement already executed and will only be entitled to terminate the agreement for the unfulfilled part.

**11.4.** In the event of force majeure, VENDOR is entitled to extend the agreed deadline for execution of the agreement by the period of time which VENDOR was prevented from fulfilling its obligations on account of force majeure.

**11.5.** In the event of a default on the part of VENDOR on account of force majeure, VENDOR will not be required to pay any damages.

### **Dissolution and compensation.**

**Art. 12.1.** In the event the client does not fulfil any of its obligations under this agreement or does not do so properly or in a timely manner, as well as in the event the client is declared bankrupt, applies for a suspension of payments (provisional or otherwise) or loses the control of all or part of its assets as a result of seizure, receivership or otherwise (and the receiver or administrator does not consider the obligations under this agreement to be estate debts and does not – subject to the provision of security – offer to fulfil these obligations) the client will be deemed to be in default by operation of law without notice of default being required.

**12.2.** In the cases described in the preceding paragraph, **VENDOR** is entitled to terminate the agreement in whole or in part without notice of default or judicial intervention being required and the client will be liable for the resulting loss suffered by **VENDOR**, including loss of profit and transport and storage costs. In the event that **VENDOR** proceeds to claim damages, the client must pay **VENDOR** an administration fee equal to 5% of what the client still owes **VENDOR**.

**12.3.** The foregoing does not affect **VENDOR**'s right to immediately suspend the conclusion of the agreement – at its own discretion – and to immediately claim full payment of all current or future amounts owed by the client pursuant to the agreement.

### **Repossession of goods**

**Art. 13.1.** In the event the client fails to meet any obligation entered into vis-à-vis **VENDOR** or fails to do so in time, **VENDOR** is irrevocably authorised by the client – through the mere fact of the applicability of these general terms and conditions and without prejudice to any of its other rights – to repossess the goods delivered by **VENDOR** to the client or made available to the client in the framework of lease or the provision of Service, including any goods delivered or made available which are affixed to any immovable property, subject to the obligation of the client to disassemble these goods at **VENDOR**'s first demand and to make them available to **VENDOR**, the above without notice of default or judicial intervention being required.

### **Provision of security**

**Art. 14.1.** Every agreement concluded between **VENDOR** and the client is entered into under the condition precedent that information to be gathered by **VENDOR** shows – in the opinion of **VENDOR** – that the client has sufficient creditworthiness. **VENDOR** is at all times entitled – even after having executed an order in whole or in part – to demand that the client provide security, to **VENDOR**'s satisfaction, for timely and full payment of all its payment and other obligations before proceeding with further deliveries.

### **Disputes and applicable law**

**Art. 15.1.** All disputes, including those which are only considered to be disputes by one of the parties, which may arise from the agreement belonging to these general terms and conditions or from any other agreement deriving from said agreement will be submitted to the judgment of the competent court in Breda, without prejudice to the right of parties to apply to the interim relief judge of the Court of Breda for a judgment in interim relief proceedings.

**15.2.** The agreement concluded between **VENDOR** and the client is subject to Dutch law.

## **II. Special Provisions that apply to quotations, order confirmations and agreements relating to purchase and sale.**

### **Quality and description**

**Art 16.1.** **VENDOR** undertakes vis-à-vis the client to deliver the sold goods to the client according to the description, quality and quantities as described in the quotation or, if applicable, the revised quotation.

**16.2.** **VENDOR** undertakes vis-à-vis the client to deliver goods that:

- a. Have been manufactured from sound materials and are of a solid construction;
- b. Are as similar as possible to any samples or models which have been provided or made

available by **VENDOR** and/or the client. Representations of **VENDOR** in illustrations, drawings, catalogues, etc. regarding size, capacity, performance or results are not binding: they are deemed to have been given as approximate representations only.

**16.3.** **VENDOR** warrants that the design, composition and quality of the goods to be delivered pursuant to the order are in full accordance with all relevant applicable requirements imposed by legislation and/or other government regulations issued in this regard and which are in force at the time of concluding the agreement.

**16.4.** The provisions of paragraph 3 of this article will apply only for normal use of the goods.

### **Packing and shipping**

**Art 17.1.** **VENDOR** undertakes vis-à-vis the client to pack the goods properly (unless this is not possible due to the nature of the goods) and to protect them in such a manner that they reach their destination in good condition with normal transport.

**17.2.** The goods will be delivered by **VENDOR** or shipped for delivery to the agreed destination or destinations in the manner set out in the quotation or the order confirmation or agreed upon at a later date.

**17.3.** If **VENDOR** has provided pallets, packing cases, crates, containers, etc. for packing and transport or has instructed a third party to do so – with or without payment of a deposit – the client is obliged (unless it is nonreturnable packaging) to return these pallets and packing materials to the address provided by **VENDOR** (carriage paid), failing which the client will owe **VENDOR** a compensation payment.

**17.4.** The cost of transport and transport insurance will be at the expense of the client. Deliveries will only be made free of carriage if they are delivered as a single delivery of which the determined value exceeds the then applicable price list, unless otherwise agreed in writing.

### **Time of delivery**

**Art. 18.1.** Deliveries are ex works or ex factory at the discretion of **VENDOR** and will be deemed to have taken place as soon as **VENDOR** has notified the client that the goods are ready for collection or that the work is completed. If goods have been ordered for delivery on demand on a specific date or specific dates, the delivery will be deemed to have taken place as soon as the client has been notified that the goods are ready for collection or that the work is completed, even if the client is not able to collect the goods on that date or those dates.

### **Risk and transfer of ownership**

**Art. 19.1.** The risk of the goods supplied by **VENDOR** will transfer to the client at the time of delivery, with all the legal consequences thereof.

**19.2.** Notwithstanding the provision in the previous paragraph, the ownership of the goods will only transfer to the client after the total amount payable to **VENDOR** in respect of this delivery, including interest and all additional costs, has been paid.

### **Reselling the goods**

**Art. 20.1.** When reselling the goods the client is not authorised to actively export or instruct third parties to export the goods.

**20.2.** When reselling the goods, the client is obliged to impose on its buyer the obligation not to export or instruct others to export the goods and to ensure that a similar export prohibition is imposed on all subsequent commercial buyers.

**20.3.** The client is entitled to place its own trademark beside that of **VENDOR** on the packaging, but is not allowed to do so in a manner that prevents the trademark of **VENDOR** from being recognised.

**20.4.** The client is not authorised to use the goods delivered by **VENDOR** as giveaway items or to have them used as such and must impose this obligation on all subsequent commercial buyers.

**20.5.** When reselling the goods to commercial buyers, the client is obliged to issue to and

impose on its buyer these general terms and conditions of VENDOR.

**20.6.** If the client defaults on any of the conditions of this article, it will forfeit to VENDOR a fixed compensation payment for each transaction which falls under one of the prohibitions mentioned therein. The amount of the compensation payment is fixed in advanced by the parties at an amount of €100 per item and an amount of €10,000 per transaction.

**20.7.** VENDOR is authorised to engage an independent auditor to perform an audit of the books of the client in order to ensure compliance with the provisions of this article.

#### **Warranty and liability**

**Art. 21.1.** VENDOR is responsible for the soundness and quality of the goods, materials and replacement parts delivered by VENDOR – subject to the provisions set out elsewhere in these terms and conditions – for a period of six months after delivery by VENDOR to the client, provided the goods have not been subject to improper use, vandalism, theft, or fire or water damage.

**21.2.** VENDOR will only be required to implement the aforementioned warranty if the goods have been used in accordance with their intended use and the instructions provided by VENDOR.

**21.3.** If a defect is discovered within the warranty period described in the preceding article, the client is obliged to notify VENDOR in writing of this defect within eight days of its discovery, under penalty of forfeiture of the warranty provided.

**21.4.** VENDOR's liability is limited to free repair of a defect in the goods or replacement of the defective goods or defective part thereof, at the discretion of VENDOR. Any further liability of VENDOR for direct and/or indirect loss suffered by the client is excluded.

### **III Special Provisions that apply to quotations, order confirmations and agreements relating to rent and lease.**

#### **Duration of the lease**

**Art. 22.1.** The lease is entered into for a period of three years and after expiry of that period is tacitly renewed by one year, unless either party terminates the lease by the end of the current period. In the event of termination, a notice period of at least six calendar months must be observed. The lease commences on the date specified in the lease. If an extension of the lease is agreed upon, the date stated on this signed lease will be taken as the starting date of a new period of three years.

**22.2.** In the event of termination of the lease before the end of the current lease period, the client will owe VENDOR a fixed compensation payment. This compensation payment is equal to the total rental income over the remaining period until the end of the current lease period. In addition, VENDOR is entitled to charge disassembly costs.

#### **Assembly**

**Art. 23.1.** Assembly will take place within two months after delivery of the machines.

**23.2.** In the event of termination of the lease within three years, VENDOR will charge the client for the costs of assembly and disassembly. In the first year of the lease, these costs are € 25 (excluding VAT) for each machine, and in the second year of the lease €17.50 (excluding VAT) for each machine, and in the third year of the lease €10.00 (excluding VAT) for each machine.

#### **Provided machines**

**Art. 24.1.** During the lease period, VENDOR will make the stated machines available to the client. The machines will at all times remain the property of VENDOR. They will not become the property of the client through accession of property.

**24.2.** During the term of the lease, VENDOR guarantees the proper functioning of the machines, except in the event that the machines have been subject to improper use, vandalism,

theft, or fire or water damage.

**24.3.** In the event that the machines have been subject to improper use, vandalism, theft, or fire or water damage, the machines will be replaced at the expense of the client at the current replacement value of the machines.

**24.4.** The client is obliged to take care of the goods with due care and in accordance with their intended use.

**24.5.** The client is obliged to purchase the consumables for the machines from VENDOR. If the client fails to do so, the warranty on the machines will lapse and the client will owe VENDOR a fixed compensation payment of €5,000.

#### **Prices**

**Art. 25.1.** VENDOR reserves the right to adjust the rental prices per item if necessary.

#### **Payment**

**Art. 26.1.** VENDOR will invoice in advance on a quarterly basis. Only in case of leases of which the weekly value exceeds €25 is it also possible to invoice in advance on a monthly basis. There will be no administration fee if the client pays the invoices by direct debit. If the client does not pay by direct debit VENDOR will charge an administration fee of €5 per invoice.

### **IV. Special Provisions that apply to quotations, order confirmations and agreements relating to the provision of (Total) Service.**

#### **Duration of the agreement**

**Art. 27.1.** The agreement regarding the provision of (Total) Service, in whatsoever form, is entered into for a period of three years and after expiry of that period will be tacitly renewed by one year, unless either party terminates the agreement by the end of the current period. If an extension of the service agreement is agreed upon, the date stated on this signed agreement will be taken as the starting date of a new period of three years. In the event of termination, a notice period of at least six calendar months must be observed. The agreement commences on the date specified in the agreement.

**27.2.** In the event of termination of the agreement before the end of the current contract period, the client will owe VENDOR a fixed compensation payment. This compensation payment is equal to the total service income over the remaining period until the end of the current contract period. In addition, VENDOR is entitled to charge disassembly costs.

**27.3.** For service agreements relating to towel dispensers and toilet paper dispensers, including delivery of the consumables, VENDOR is entitled to invoice at least 50% of the agreed amounts until the end of the agreement, with a minimum of €2.50 per week for each towel dispenser and €1.00 per week for each toilet paper dispenser.

#### **Start of the service**

**Art. 28.1.** The service will be started within two months after signing of the agreement.

**28.2.** In the event of termination of the service agreement within three years, VENDOR will charge the client for the costs of assembly and disassembly. In the first year of the agreement, these costs are €25 (excluding VAT) for each machine, and in the second year of the agreement €17.50 (excluding VAT) for each machine, and in the third year of the agreement €10.00 (excluding VAT) for each machine.

#### **Provided goods**

**Art. 29.1.** During the period of the service agreement, VENDOR will provide the client with the goods stated in the agreement, being machines and consumable items and supplies. The machines will at all times remain the property of VENDOR and must be returned to VENDOR upon termination of the agreement. During the contract period the client is obliged to use the consumables supplied by VENDOR, which consumables form part of the (Total) Service agreement. At agreed times during the term of the contract, the actual quantities of

consumables purchased will be compared with the indicated quantities and if necessary, the contract will be amended in consultation. The contract will only be amended if the deviation is greater than 5% above or below the indicated quantities. This may be deviated from in the individual agreements.

**29.2.** During the contract period, VENDOR guarantees the proper functioning of the items stated in the agreement, except in the event that the items have been subject to improper use, vandalism, theft, or fire or water damage

**29.3.** In the event that the items have been subject to improper use, vandalism, theft, or fire or water damage, the items will be replaced at the expense of the client at the current replacement value of the items.

**29.4.** The client is obliged to take care of the goods with due care and in accordance with their intended use.

### **Prices**

**Art. 30.1.** VENDOR reserves the right to adjust the service rates for each service on an annual basis.

### **Payment terms:**

**Art. 31.1.** VENDOR will invoice in advance on a quarterly basis. There will be no administration fee if the client pays the invoices by direct debit. If the client does not pay by direct debit VENDOR will charge an administration fee of €5 per invoice.

**Tilburg, February 2010**