

GENERAL CONDITIONS OF SALES JOOST KERKLAAN B.V.

1. General conditions

- 1.1 Unless agreed otherwise in writing, these conditions apply to all offers and contracts between the AVAG member (hereinafter referred to as: the "Contractor") on the one hand and third parties (hereinafter referred to as: the "Client") on the other hand, with regard to the delivery of goods and/or the provision of services (including to mean: jobs and contracting of work). These conditions will also, after they have started to form a part of any contract between the client and the contractor, be a part of contracts concluded between the client and the contractor at a later date, even if no reference is made to the applicability of these terms and conditions at the time of the conclusion of those subsequent contracts, unless the parties have expressly stipulated otherwise in writing.
- 1.2 Provisions derogating from these conditions shall only be valid if they have been agreed upon in writing by competent representatives of the two parties, as shown by the information in the Trade Register [Handelsregister]. If, in addition to the applicability of these conditions, the applicability of the Uniform Administrative Conditions for the Execution of Works (UAV) has been agreed upon, in the event of a conflict between the various conditions, the AVAG conditions of sale will prevail.

2. Offers and contracts with the contractor

- 2.1 Any offer, including those contained in brochures and price lists of the contractor, is free of obligation and shall only be binding for the contractor at the time when the contract/ order has been confirmed in writing by a competent representative of the contractor, as shown by the information in the Trade Register [Handelsregister].
- 2.2 Any images, drawings, weights, dimensions and colours that form part of an offer by the contractor are not legally binding, unless the accuracy thereof has been guaranteed by the contractor in writing. Any images, drawings, weights, dimensions and colours shown on the website do not legally bind the contractor.
- 2.3 Any offer, insofar as available, is based on the drawings and data provided by the client.
- 2.4 The prices mentioned in an offer shall relate only to those activities and/or deliveries which are explicitly stated in the offer.
- 2.5 Oral agreements only legally bind the contractor from the moment of written confirmation thereof by a competent representative of the contractor, as shown by the information in the Trade Register [Handelsregister], subject to the condition that the information gathered by the contractor shows sufficient creditworthiness of the client. The contractor is nevertheless entitled to ask the client to furnish adequate security and the contractor is also entitled to suspend the implementation of the contract until this request has been complied with.
- 2.6 If a job is made dependent on the obtaining of licenses and/or financing and this financing and/or these licenses could not reasonably be obtained within a period to be determined by the contractor, the contractor is entitled to a compensation for loss of earnings if it should turn out that the client is giving the job or a substantial part thereof to a third party within eighteen months after the period prescribed for obtaining financing. The loss of earnings shall be deemed to be at least 10% of the contract value of the contract in which the conclusion was conditional, without prejudice to the right of the contractor to recover the actual loss of earnings.
- 2.7 The client is also legally bound to a job if the job is given to the contractor by an intermediary called in by the client, such as a consultancy or architect.
- 2.8 All deadlines specified in an offer or contract shall apply as target dates, unless agreed otherwise in writing.
- 2.9 All intellectual and industrial property rights with regard to the documents made available by the contractor to the client (such as, but not limited to: designs, explanations, technical descriptions, statistical calculations and construction drawings) and models will remain vested in the contractor. These documents may not be disclosed to third parties by the client without the prior written consent of the contractor.
- 2.10 Unless otherwise agreed in writing, the contractor remains entitled to all intellectual and industrial property rights which are acquired by the contractor in the context of the implementation of contract concluded with the client. After

delivery by the contractor, the client shall only acquire the non-exclusive right to use the documents and models created by the contractor in connection with the implementation of this contract in the context of normal operation of the latter company.

- 2.11 If, after the conclusion of the contract with the contractor, the client decides to terminate the contract in any way, the client shall owe the contractor a fine of 20% of the amount invoiced by the contractor to the client on the basis of the contract.

3. Provisions relating to building contracts

- 3.1 In the case where a building contract is concluded under the suspensive or resolutive condition that the necessary financing and/or necessary licenses can be obtained, the parties will take all reasonable measures to implement the contract, adapted to the available finances and/or the limitations of the licences, if the client demonstrates that he is unable to obtain the necessary financing and/or licenses within 18 months after the conclusion of the contract.
- 3.2 The agreement contains provisions regarding:
1. What will be built;
 2. The building site;
 3. The location and method of delivery of the building materials;
 4. For whose account and risk the transport takes place;
 5. The period during which the construction will take place;
 6. The contract price excluding VAT and the manner of payment.
- 3.3 In the implementation of the contract, those derogations will be allowed that have reasonably been deemed necessary, desirable or useful by the contractor, insofar as they do not substantially affect the functionality of the object to be realised. Materials described may, when not or not fully in stock, be replaced by the contractor by other materials which are comparable in quality, without informing the client thereof.
- 3.4 The client is required to ensure that the work can be carried out at the agreed times. The client also undertakes to ensure that the materials brought in by the contractor can be stored in such a way and at such locations that those

materials are reasonably safeguarded against damage or theft.

- 3.5 The client is responsible for the reliability of the constructions and practices prescribed by him, including the effect of the soil condition, as well as for the instructions given and tools and building materials made available by or on behalf of the client.
- 3.6 Unless otherwise agreed in writing, only materials of normal commercial quality will be used. All materials or remnants thereof left over after construction will be the property of the contractor and may be removed from the building site by the contractor, unless the contractor has used materials of third parties.

4. Rates

- 4.1 All prices are based on the price level at the time of conclusion of the contract and are ex works, excluding VAT, costs of transport and delivery, packing, insurance, taxes and levies, unless agreed otherwise in writing. The contractor is entitled to, after a period of 14 days after the conclusion of the contract has expired, change or adjust the prices without prior notice if cost-determining factors have changed. The contractor will submit a specification of the price increase to the client as soon as possible. The payment of any additional costs on the basis of this Article will be made in accordance with the provisions of Article 9 of these conditions. If the said total price increase amounts to more than 20% of the agreed price excluding VAT, the client will be entitled to terminate the contract before the end of the term, provided that he notifies the seller thereof without delay after being notified of the price increase. In the event of termination, the client is not entitled to compensation.

5. Completion

- 5.1 Delivery times agreed in writing shall be counted from the date when the contractor has confirmed the contract in writing, but not before the contractor has received all data, documents and goods from the client required in respect of the implementation of the job and has familiarised himself with those.
- 5.2 The delivery/completion date is determined in the expectation that the foreseeable conditions at the time of the conclusion of the contract remain the same during the execution of the work

and the necessary materials of third parties are delivered to the contractor in time. The client cannot hold the contractor liable for third parties which do not or not in a timely manner comply with their delivery obligations to the contractor.

- 5.3 Delays as a result of changes in circumstances and/or late delivery of materials by third parties mean that the delivery times can be extended by the duration of the delay.
- 5.4 The contractor is required to meet the delivery date insofar as possible, but, unless agreed in writing that a delivery period is fatal and without prejudice to the provisions of Article 12, cannot be held liable for the consequences of an overrun. An overrun of the delivery period does not entitle the client to claim damages or demand the payment of a fine whatsoever, to refuse delivery of the goods and/or the object, or to wholly or partially dissolve the contract. After the expiry of the time period, the client is however entitled to demand in writing that the contractor delivers within 30 working days. In the case of an extension of the time period on the grounds of any of the provisions of these conditions, the delivery period will not be deemed to have expired until after the expiry of the extended delivery time.
- 5.5 If the client owes a payment to the contractor, the contractor is at all times entitled to suspend the implementation of the contract. Insofar as a delivery period has been agreed, this will be counted from the date of receipt of payment.
- 5.6 In the case of a contract of purchase, the contractor is, if a part of the order is ready, entitled to, at its own discretion, deliver this part or wait until the entire order is ready. If it has not been expressly agreed that the delivery will take place from stock, the contractor is entitled to deliver from stock of third parties.
- 5.7 Unless agreed otherwise, delivery will be ex works.
- 5.8 Without prejudice to the provisions of Article 14 concerning force majeure, in the event of a contract of services, the delivery period will be extended with the same number of workable days as the number of days that, as a result of adverse weather conditions (including rain, hail, tornadoes, frost, snow, ice, fog or storms) or unworkable soil conditions at the building site in the period between

the conclusion of the contract and the delivery date, the contractor's installation/construction teams have not been able to carry out (installation) work, and the contractor's building schedule has been affected.

6. Retention of title

- 6.1 The contractor remains the owner of all goods delivered to the client until all money owed by the client to the contractor has been paid.
- 6.2 As long as the ownership has not transferred to the client, the client may not pledge these goods or give rights to third parties with respect to the goods, except as provided for in this Article.
- 6.3 The client undertakes to keep those goods delivered under retention of title separate, in such a way that they can be identified as being the property of the contractor, and store them with due care.
- 6.4 The client is required to take out insurance for the duration of the retention of title to cover the goods held against damage as a result of fire, explosion and water damage, as well as theft, and to make the policies of this insurance available for inspection by the contractor on first request. All claims by the client on the insurers of the goods under the insurance will, on first request of the contractor, be pledged to the contractor by the client in the manner as indicated in Article 3:239 of the Dutch Civil Code, as additional security for the fulfilment of the claims by the contractor on the client.
- 6.5 If the client fails to fulfil his obligations to the contractor or the contractor has good grounds to fear that the client will fail to sufficiently fulfil his obligations, the contractor is entitled to repossess goods delivered under retention of title.
- 6.6 After repossession, the client will be credited for the market value of the goods up to a maximum of the original purchase price less the costs incurred by the contractor for the repossession.
- 6.7 The client is allowed to sell and transfer the goods delivered under retention of title to a third party in the context of the normal operation of his business. In the event of sale on credit, the client is required to negotiate a retention of title with its customers on the grounds of the provisions of this Article.
- 6.8 The client undertakes to not assign or pledge claims it obtains on his customers to third parties without the prior written consent of the contractor. The client

furthermore undertakes to, as soon as the contractor so requests, pledge these claims to him in the manner as stated in Article 3:239 of the Dutch Civil Code, as additional security for the fulfilment of the contractor's claims of whatever nature on the client.

7. Risk

- 7.1 Upon receipt of goods/materials delivered by or on behalf of the contractor at the place of destination, the client is required to convince himself of the condition the goods are in. If it then turns out that the goods and/or materials are damaged, he is required to take all necessary measures to obtain compensation from third parties to the extent that these third party can be held liable by the client.
- 7.2 In the event of a purchase contract, the risk of the goods to be delivered by the seller transfers to the buyer from the moment the goods leave the works to be handed over for transport. If the contractor has concluded a transport contract for the benefit of the client with regard to the items to be delivered by the contractor, he will be deemed to have done so in the capacity of carrier, as referred to in Article 8:60 of the Dutch Civil Code. If the contractor himself performs the transport, the risk of the goods to be delivered by the contractor transfers to the client from the moment the goods have been delivered to the client.
- 7.3 In the event of a building contract, the risk of the materials transfers to the client as soon as these have been delivered at or near the building site at the designated location of unloading.
- 7.4 The client will be liable for all damage caused to materials after the delivery of those materials (such as damage, theft or misappropriation). The client is required to take out sufficient insurance against that risk.
- 7.5 During construction/assembly, the risk for the objects built/assembled is for account of the client. The client will immediately take out the customary insurance policies for the benefit of the objects built/assembled at the start of construction/assembly, unless otherwise agreed in writing, and will make the policy conditions of this insurance available for inspection by the contractor on first request.

8. Assembly

- 8.1 All mechanisms and/or facilities necessary for the set-up of the objects to be assembled and/or the correct operation and/or soundness of the goods in its assembled state are for the account and risk of the client, and fall outside the responsibilities of the contractor, except if the implementation of the said mechanisms and/or facilities by or on behalf of the contractor is carried out according to information provided and/or drawings made by or on behalf of the contractor.
- 8.2 Apart from this last exception, the client is fully liable towards the contractor for the proper and timely implementation and/or soundness of the said mechanisms and/or facilities.
- 8.3 The client will, for his own account and risk, ensure that:
1. The employees of the contractor can begin their work and in addition are at any time given the opportunity to carry out their work as soon as they arrive at the place of destination;
 2. The access roads to the place where objects are to be erected or built are suitable for transport;
 3. The designated building site is suitable for storage and assembly;
 4. The necessary lockable storage areas for materials, tools and other goods are made available;
 5. The necessary support and operating equipment and materials, gas, water and electricity are made available in good time, in the right place and free of charge;
 6. All the necessary safety and other precautions have been taken and are enforced.
- 8.4 In the event of loss of time, caused by delays as a result of the failure to comply with the stipulations of this article, such an extension of the delivery time is allowed as is reasonable, taking all circumstances into account.

9. Payments

- 9.1 All payments, unless otherwise agreed in writing and without prejudice to the provisions of Paragraph 6, are due and payable within eight days after the invoice date, without any setoff, at the premises of the contractor or by depositing the amount due into a designated bank account.

- 9.2 Claims because of deliveries made never entitle the client to suspend his payment obligations or to setoff.
- 9.3 If the payments have not taken place at the agreed times, the client owes to the contractor, without prejudice to his payment obligation, in any case on the unpaid amount from the due date, a compensation for loss of interest, payable at a rate of 2% above the promissory note discount rate, plus any surcharges, with a minimum interest rate on the basis of 12% per year, calculated on the total amount of the unpaid invoices, which compensation will be payable without notice being required, without prejudice to the right to submit additional claims on the grounds of the Law or under these conditions.
- 9.4 Payment of the price increase as referred to in Article 4 of these conditions or payment or setoff of additional or less work takes place in accordance with this Article.
- 9.5 If delivery, construction and/or assembly deviates from the original order and/or job at the request of the client and has been approved by the contractor, this derogation will be charged to the client in accordance with the price applicable at the time of delivery, construction and/or assembly.
- 9.6 Unless the parties have agreed otherwise in writing, invoices for the contract price will be sent as follows in case of a building contract relating to the construction of a building:
- 15% when starting the foundation;
 - 20% upon delivery of the steel construction;
 - 20% halfway the assembly of the steel construction;
 - 20% on delivery of the glass;
 - 15% halfway glazing the glass roof;
 - 5% when the building is fully glazed and on the start of the assembly of the mechanisms; - 3% at first completion; and - 2% at second completion.
- 9.7 Unless the parties have agreed otherwise in writing, invoices for the installations will be sent as follows in case of a building contract relating to the construction of a building:
- 35% after delivery of the materials or an important part thereof;
 - 35% on starting assembly or installation;
 - 20% on completing the assembly but before commissioning;

- 5% on initial inspection, or if the work is commissioned earlier, on commissioning;
 - 5% on re-inspection, or if the work is commissioned earlier, on commissioning;
- Payment of invoices must be made within 8 days after the invoice date.

10. Completion and claims

- 10.1 All claims against the seller on the ground of incomplete or incorrect delivery shall lapse if a claim in respect thereof is not received by the contractor in writing within seven days after receipt of the goods.
- 10.2 Without prejudice to the provisions of Paragraph 1, claims on the grounds of visible defects shall also lapse if the client does not immediately on receipt of the goods make a note of the alleged defect on the consignment note or proof of receipt.
- 10.3 With regard to the weights and dimensions and/or quality and soundness of all materials, the contractor applies the deviations as are customary for manufacturers who are charged with the manufacture of these materials.
- 10.4 In the case of a building contract, the inspection will take place within fourteen days after the work is completed, in other words: an inspection of the work carried out. The client is required to cooperate with the inspection.
- 10.5 The completion shall be deemed to have taken place if the installation or the work is complete and ready for use, and a test as part of an inspection has shown that the installation or the work conforms to the contract and has been approved by the client who attends the inspection and test.
- 10.6 During the inspection, a list can be drawn up of any defects at the request of the client. Any defects which do not prevent or hinder normal operation of the delivered goods in any meaningful way, are no reason for the client to withhold approval.
- 10.7 The contractor is required to correct these defects as soon as possible after the client has asked the contractor to do so in writing. The client is required to give the contractor the opportunity to make these corrections.
- 10.8 On inspection, a definitive assessment of additional and less work can also be made.

- 10.9 In the event that the client discovers defects at the time of inspection, not being the defects as listed in the second sentence of Paragraph 6, the client is required to notify the contractor thereof in writing within five days after the inspection. If he fails to do so, the installation or the work shall be deemed to have been approved.
- 10.10 The contractor must be given the opportunity to correct the defects discovered within a reasonable time established in mutual agreement. After the correction of the defects discovered by the client, a new inspection will take place.
- 10.11 In the event of re-inspection, other defects than those discovered at the first inspection are no reason to again withhold approval.
- 10.12 The work shall be deemed to have been delivered immediately after inspection by the contractor and approval of that inspection by the client and/or commissioning by the client.

11. Additional and less work

- 11.1 When, in consultation with the client, after the conclusion of the contract, the surface area of the building to be construction is increased or decreased than was originally established, or the installation or assembly of the good delivered is increased or decreased in scope, the contractor shall be entitled to charge the client the actual additional costs or to deduct the actual cost savings from the amount due, so that the contractor is not held to increase or decrease the original purchase price/contract price with an amount in proportion to the increase or decrease of the original object.
- 11.2 All changes to the work, either as part of a special assignment by the client or a consultancy called by the client and/or a person authorised by the client and/or changes in the work prescribed by the government, or those changes that have been proven to be necessary to prevent unforeseen difficulties or solve problems, including the reinforcement of the foundation of the building, shall, if these result in additional costs, be considered to be additional work and, insofar as the costs are reduced, as less work within the meaning of this Article.

12. Liability

- 12.1 If the contractor has attributable failed in the fulfilment of any of his obligations or has committed an unlawful act [onrechtmatige daad] under Dutch law against the client, the contractor, subject to his obligations under Article 13 (warranty), is only liable towards the client for damage incurred if the client can prove that such damage is only attributable to deliberate misconduct or gross negligence on the part of the contractor or his managing employees.
- 12.2 If liability on the part of the contractor under Article 12 Paragraph 1 should be assumed, the liability of the seller/contractor is limited to the amount of the purchase price or contract price, or the amount of the invoice in respect of the services provided, with the understanding that the liability of the contractor for indirect damage, such as, but not expressly limited to: loss of profit and loss of turnover, is excluded.
- 12.3 The contractor is also never liable for damage as a result of the quality of the materials processed or used by the client or the use of the materials and tools provided by the client to the contractor.
- 12.4 Notwithstanding the above, the total liability of the contractor will in any case never exceed an amount of €1,000,000 (in word: one million Euros) per event giving rise to damage, with a series of related events counting as one event.
- 12.5 The client indemnifies the contractor and any persons engaged by the contractor in the implementation of his obligations against all claims of third parties in respect of damage incurred by these third parties arising out of or related to the implementation of the contract by the contractor, the use by the client of the goods delivered, work realised and services provided by the contractor, unless in the case of deliberate misconduct or gross negligence on the part of the contractor and/or persons engaged in the implementation of the contract.

13. Warranty

Delivery of goods

- 13.1 With due regard for the restrictions laid down hereinafter, the contractor will warrant the soundness of the goods delivered by him.
- 13.2 Unless otherwise agreed in writing, a warranty period of one year applies to the greenhouses supplied by the contractor, starting from the date of

commissioning or completion, whichever date is earlier, while for the other goods delivered by the contractor, a warranty period of one year applies, starting from the date on which the client has received or, has started using the goods and/or installations delivered by the contractor, whichever date is earlier. If goods delivered do not meet the provisions of the contract, the client is entitled to claim repair or replacement of the delivered goods, or the contractor is entitled to take back the goods delivered under the obligation to (pro rata) refund the price paid by the client, without being held to deliver a replacement, at the discretion of the contractor. In the event of glass breakage, the foregoing also applies, on the understanding that, insofar as breakage occurs within the warranty period, repairs will only take place as part of the warranty offered after the client has demonstrated that the glass breakage is the result of a design fault of the contractor or any other failure which, under these conditions, is for the account of the contractor.

Provision of services

- 13.3 Where services are provided, the contractor¹ will carry out the job in accordance with generally applicable industry standards.
- 13.4 The contractor guarantees implementation of maintenance by him in accordance with the provisions of the preceding paragraph for a period of three months, starting from the date on which the equipment or installation which has been serviced by the contractor has again been placed at the disposal of the client.
- 13.5 If maintenance was not carried out adequately, the client will inform the contractor thereof in writing. The warranty stipulated in the preceding paragraph shall comprise that the proper maintenance work being carried out or, at the discretion of the contractor, the full or partial dissolution of the contract concluded with the client, without judicial intervention being required, insofar as it stipulates obligatory maintenance work in combination with a pro-rata credit.
- 13.6 The warranty stipulated in the preceding paragraphs shall not apply if the derogation or operation of the goods supplied according to the specification is the result of improper operation or

handling, such as, but not limited to: negligence, misuse, incorrectly or not following up the maintenance requirements, or, if the technical deviations could reasonably not have been avoided, imply a qualitative improvement or do not significantly restrict the functionality of the goods delivered, regarding the purpose for which the buyer is using the goods as part of normal business operations.

- 13.7 Materials and/or goods purchased from third parties by the contractor do not fall under any warranty provided by the contractor, other than the warranty provided by the relevant vendor or manufacturer to the contractor.
- 13.8 Claims in respect of defects which cannot be seen from the outside must be made in writing as soon as possible, but not later than ten days after the discovery of the defects, failing which, any claim against the contractor in respect of such defects will lapse.
- 13.9 After repair or replacement in the context of this warranty, the warranty period will not be extended and the warranty will end at the time of the original warranty period.
- 13.10 No warranty is provided with regard to defects which are wholly or partly the result of any government regulations concerning the nature or the quality of the materials applied.
- 13.11 If the client carries out, or has another party carry out, repairs or changes without the prior consent of the contractor during the warranty period, or does not fulfil his payment obligations, the warranty obligation on the part of the contractor will immediately lapse. In that case, the contractor may therefore, for instance, never be held to reimburse repair costs of third parties.
- 13.12 The goods for which the warranty is revoked, can only be returned by the buyer after prior consent of the contractor. Goods which are returned but which are deemed not to be defective, will be returned to the client at their expense, who will also be charged for any costs incurred by the contractor in respect of the investigation of this complaint.
- 13.13 The contractor will only provide a warranty and only assume liability for designs made by the contractor, so that the contractor will therefore never be

¹ The Dutch erroneously says 'opdrachtgever' here. The writer's intent is 'opdrachtnemer'

liable for defects in buildings constructed according to designs of the client or third parties, nor if it turns out that the information provided by the client is not totally correct or incomplete.

13.14 In the case of the sale of finished products – goods purchased by the seller and supplied without further processing – the goods are sold in the condition which they are in at that time. The contractor does not accept any warranty and liability for those products, unless expressly agreed otherwise in writing.

14. Force majeure

14.1 Without prejudice to the rights conferred onto him, the contractor is, if force majeure prevents him from fulfilling the contract or in a timely manner, entitled to suspend the fulfilment of the contract or to fully or partly terminate the contract, at the discretion of the contractor, without the contractor being held to pay any compensation or otherwise.

15. Expenses

15.1 All costs, both judicial and extrajudicial, which are incurred by the contractor for the purpose of obtaining payment for any claim that the contractor has on the client, shall be borne by the client. The extrajudicial collection costs include, amongst other things, all costs for warning letters, formal notices of default and file examination. The extrajudicial costs amount to at least 15% of the principal amount owed to the contractor in this respect, with a minimum of €300, which minimum percentage and amount are intended to stimulate the client to fulfil his obligations under the contract.

16. Dissolution

16.1 In case the client does not, not adequately or not timely fulfils his obligation toward the contractor, concludes a debt arrangement scheme with his creditors, asks for a suspension of payment or a comparable procedure, is declared bankrupt, terminates or transfers his company or dies or is placed under legal guardianship or, if his company [vennootschap] is dissolved, as well as if it is seized under a warrant of execution, he shall be deemed to be in default by operation of Law and the contractor will be entitled to, without formal notice and without judicial intervention being required, suspend the

fulfilment of the contract or to dissolve the contract fully or partly, or to terminate by giving notice, at the discretion of the contractor, without the contractor being held to payment of any compensation or warranty, but without prejudice to the contractor's other rights.

16.2 If the contractor suspends the fulfilment of the contract and later decides to fulfil it, the client is required to reimburse the damage incurred by the contractor.

16.3 If the contractor dissolves the contract, the client or his legal successor is required to pay the full purchase price/contract price to the contractor, after deduction of the cost price of the materials not yet used and wages not yet paid out as a result of the contract not or not fully being fulfilled by the contractor, the foregoing in accordance to the calculation of the contractor, which will be binding for the client, subject to proof to the contrary.

16.4 In the case the contractor dissolves the contract, if the client has the work executed by another contractor or purchases the goods bought from another seller after a job has been offered to the contractor, the damages which the contractor is entitled to in respect of the attributable failure by the client in this respect, will be fixed at 15% of the purchase price/contract value, regardless of the right to claim full compensation of damages, if this amount is higher.

16.5 Any claim which the contractor has on the client, or will have, in the case of an attributable failure on the part of the client, will be immediately due and payable.

17. Applicable law and dispute resolution

17.1 All disputes, including those which are only regarded as such by one of the parties, which arise as a result of the contracts concluded with the contractor to which these conditions apply, or other resulting contracts, will exclusively be brought before the competent court in The Hague, unless the contractor wishes to appoint another court or binding law provides otherwise.

17.2 Contracts concluded with the contractor are, with due observance of these conditions, governed by Dutch law, with the exclusion of the Vienna Sales Convention.

GENERAL CONDITIONS OF PURCHASE JOOST KERKLAAN B.V.

1. Definitions

- 1.1 In these general conditions, the following terms are to be understood as follows:
- Buyer: The private company with limited liability [besloten vennootschap] under Dutch law JOOST KERKLAAN B.V., entered in the trade register of the Chamber of Commerce under number 27234359, having its registered office in Berkel en Rodenrijs, the municipality of Lansingerland;
 - Supplier: Any natural or legal person with whom a contract is concluded for the supply of products.

2. Applicability of the general conditions

- 2.1 These general conditions of purchase are part of all contracts concluded between a buyer and a supplier and of all resulting agreements.
- 2.2 The buyer reserves the right to unilaterally change the conditions of purchase. The amended conditions shall come into effect from the moment when the supplier has had reasonable opportunity to take cognisance of them.
- 2.3 The applicability of the general conditions of the supplier is expressly excluded, unless the buyer and supplier have agreed otherwise in writing.
- 2.4 Insofar as the application of any clause in these conditions of purchase would be contrary to any provision in a written contract – not being general conditions – between the buyer and the supplier, the application of that clause will not be effected, however the other clauses in these conditions of purchase shall remain in full force and effect.
- 2.5 If any provision from these general conditions is null and void or is voided, the other provisions of these general conditions shall remain in full force, and the buyer and supplier will enter into consultations to agree upon new provisions to replace the null or voided provisions, taking the aim and scope of the null or voided provisions into account as far as possible.

3. Conclusion of the contract

- 3.1 All applications, orders or quotes made by the buyer or his employees, in any form whatsoever, are free of obligation, unless indicated otherwise in writing.
- 3.2 An order is understood to mean a written document, from the buyer, which

indicates a wish to received products from the supplier. This order can involve an acceptance of a quote by the supplier, but counts as an offer by the buyer if this order differs from the quote or if the buyer places an order without receiving a prior quote from the supplier.

- 3.3 An order confirmation is an acceptance by the supplier of the order by the buyer. A deviating order confirmation by the supplier shall be deemed to be an offer by the supplier.
- 3.4 A contract will only be concluded when it is confirmed in writing by the buyer within 48 hours after dispatch of the order confirmation or, if the offer is from the supplier, by written acceptance thereof by the buyer.

4. Rates

- 4.1 The agreed prices are expressed in Euros and are excluding VAT, but including the costs for packaging (excluding a returnable deposit), pallets (excluding a returnable deposit), insurance and unloading costs. An agreed price may not be increased by the supplier, unless the buyer has expressly given his consent in writing.

5. Amendments

- 5.1 The buyer may require that the volume and/or the properties of the goods to be delivered are amended. The nature and/or scope of the services provided by the supplier can also be changed by the buyer.
- 5.2 Any changes are agreed in writing. The supplier may not make or carry out changes without the prior written consent of the buyer.
- 5.3 If, in the opinion of the supplier, this has implications for the agreed price and/or quantity and/or delivery time, he will, before implementing the change, notify the buyer thereof in writing within 48 hours after having been notified of the desired change. If these consequences for the price and/or the delivery time are unreasonable in the opinion of the buyer, the buyer reserves the right to terminate the contract. However, the buyer is then required to reimburse any reasonable costs already incurred by the supplier. The supplier is not entitled to any form of compensation for damages.

6. Delivery

- 6.1 The delivery period specified by the supplier is a fatal deadline, unless the parties have agreed otherwise in writing. In the case of late delivery, default will occur by operation of Law and without prior notice being required.
- 6.2 Unless the parties have agreed otherwise in writing, delivery will be ex works.
- 6.3 As soon as the supplier knows or ought to know that he will be unable to fulfil the contract in a timely or correct manner, he will, as soon as possible, but within 12 hours, notify the buyer thereof in writing, with a statement of the reasons.
- 6.4 The supplier is liable for damage incurred by the buyer and its customers that is the result of the failure to deliver or late delivery by the supplier.
- 6.5 In the event of an untimely or incorrect fulfilment of the contract, the buyer is entitled to return the goods already delivered for the account and risk of the supplier.
- 6.6 The buyer is deemed to have made a reservation with regard to the quality and content of the delivery for each acceptance of a delivery. If the goods delivered do not meet the provisions of the contract, the buyer has the rights as established in Article 10.4.

7. Transfer of ownership

- 7.1 The ownership of the goods will transfer from the supplier to the buyer at the time of delivery as referred to in Article 6. Up to the moment when the ownership is transferred, the supplier will retain the goods for his risk and account.

8. Quality

- 8.1 The supplier guarantees that the goods delivered will meet the provisions of the contract, that they comply with the quality, requirements and specifications therein and that the goods are free from defects.
- 8.2 The supplier guarantees that the goods and/or services delivered comply with all the laws, resolutions and other regulations prescribed by public authorities that are applicable at the time of delivery.

9. Packaging

- 9.1 The goods should be properly packaged and loaded, and in normal transport should reach the place of destination in a satisfactory condition. The packaging must also be suitable for storage. If and

insofar as the supplier has not packaged the goods properly, the buyer is entitled to return these goods. The supplier is liable for damage caused by insufficient packaging.

- 9.2 If the buyer has provided requirements about the method of packaging, the supplier is required to follow these requirements.
- 9.3 At all times, the buyer is authorised to return the packaging materials and pallets to the supplier. Packaging materials are returned for the account and risk of the supplier to the address communicated to the buyer by the supplier and in the absence thereof to the nearest business address of the supplier.

10. Inspection

- 10.1 The buyer is entitled to inspect the goods before, during and after delivery. The supplier will offer his cooperation, inter alia by providing access to the location where the goods are stored and by granting access to the documents required for the inspection.
- 10.2 If the inspection shows that the goods delivered do not comply with the provisions of the contract before or during delivery and are therefore rejected, the buyer will notify the supplier thereof. The supplier shall then be required to take the necessary measures to comply with the provisions of the contract.
- 10.3 If the goods delivered are rejected after delivery, the buyer will notify the supplier thereof as soon as possible, but no later than seven days after delivery.
- 10.4 The buyer will simultaneously with the notification of rejection also notify the supplier of the consequences he attaches to the rejection of the goods. The buyer can choose:
- To return the goods delivered for the account of the supplier as well as demand fulfilment, whether or not in combination with compensation of damages;
 - The full or partial dissolution of the contract, whether or not in combination with compensation of damages;
 - A price reduction, with the understanding that the parties must reach an agreement on the extent of the price reduction.
- 10.5 The supplier is liable for all costs incurred by the buyer as a result of the rejection of

the goods delivered, including the costs of inspection.

- 10.6 From the moment of rejection of the goods, the ownership is transferred to the supplier. From that moment, the buyer will retain the goods for the account and risk of the supplier.
- 10.7 The fact that the goods have passed the inspection does not absolve the supplier of any liability, including damage suffered by the buyer as a result of hidden defects in the goods delivered.

11. Dissolution

- 11.1 In the event of a failure to fulfil his obligations under the contract or resulting agreements on the part of the supplier, or if the supplier is declared bankrupt, has applied for a suspension of payment, has his assets seized, has to cease operations, has his environmental licence withdrawn, is liquidated or finds himself in a similar situation, he is deemed to be in default by operation of Law and without notice being required.
- 11.2 In the cases referred to in Paragraph 1, the buyer is entitled to fully or partly terminate the contract and/or suspend the payment obligation and/or transfer the implementation of the contract fully or partly to third parties, without the buyer being held to the payment of compensation of damages and without prejudice to any further rights of the buyer, including the right to full compensation of damages and a refund of the purchase price.
- 11.3 In the cases referred to in Paragraph 1, all claims which the buyer has or might have on the supplier will become immediately and fully due and payable.

12. Force majeure

- 12.1 A party shall not be obliged to fulfil his obligations under the contract insofar as he proves:
- That the inability to fulfil his obligations is due to one or more events which are completely outside the sphere of influence of the relevant party, and;
 - That the relevant event was unforeseeable at the time of the conclusion of the agreement, and;
 - That the relevant party does not reasonably have to take liability for or accept the risks of the consequences of the conditions under a. and b. above.

- 12.2 In the case of force majeure, the obligations of both parties shall be suspended for the duration of the force majeure situation, with the exception of that part of the obligations which can be fulfilled. In such a situation, the buyer is solely required to make payments for the contractual obligations which have been fulfilled.

13. Payment

- 13.1 The buyer will pay the invoice within 30 days after receipt, provided that the goods delivered have been received and approved.
- 13.2 Payment by the buyer shall in no way constitute a waiver of rights. Payment does not exempt the supplier from any warranty and/or damages which he is required to according to the contract or by operation of Law.
- 13.3 The buyer is entitled to set off payments which he owes to the supplier for the goods and/or services delivered against the amounts owed by the supplier. Netting by the supplier is only permitted with the prior written consent of the buyer. The buyer is entitled to suspend the payments which it owes to the supplier for goods and/or services delivered without further notice in the event of non-fulfilment of obligations by the supplier towards the buyer, or to set them off against amounts owed by the supplier.

14. Liability

- 14.1 The liability of the buyer towards the supplier is limited to the purchase price of the goods in respect of which the (purchase) contract was concluded.
- 14.2 Without prejudice to the other provisions in these conditions, the buyer is still entitled to compensation if the supplier does not, not in a timely manner or not correctly fulfils his obligations resulting from the contract.
- 14.3 If the buyer suffers damage because of a failure to fulfil or untimely or incorrect fulfilment as a result of claims by third parties/clients, the supplier is liable for such damages.
- 14.4 If, because of the presence of undesirable residues or exceeding of the standards for substances (e.g., chemicals, minerals) in the goods delivered, the buyer incurs damage as a result of penalties imposed by the public authorities and/or claims of third parties, the supplier is liable for this damage.

- 14.5 The supplier is liable for and indemnifies the buyer against all damage of any nature suffered by the buyer or by third parties as a result of defects in the product of the supplier and the goods delivered by him, as a result of which they do not provide the safety which may be expected of them.
- 14.6 The supplier is liable for and indemnifies the buyer against all damage of any nature suffered by the buyer or by third parties as a result of an act or omission of the supplier, his employees or third parties engaged by him to fulfil the contract.
- 14.7 For the application of this Article, staff and employees of the buyer are also deemed to be third parties.
- 14.8 The supplier will take out sufficient liability insurance, as referred to in this Article, with the exclusion of recourse against the buyer or his customers. On request, the supplier will allow the buyer to inspect the insurance policy.

15. Intellectual property

- 15.1 The supplier warrants that the use of the goods supplied by him, or the devices bought or manufactured by him for the benefit of the buyer, will not infringe any patent rights, brand rights, design rights, copyright or other intellectual property rights of third parties.
- 15.2 The supplier indemnifies the buyer against claims arising from any infringement of the rights referred to in Paragraph 1 and will compensate the buyer for all damage incurred as a result of this infringement.

16. Transfer

- 16.1 The supplier will not, either in full or in part, transfer the rights and/or obligations arising under the contract to third parties without the prior written consent of the buyer. Any claims of the supplier on the buyer cannot be transferred, subject to the prior written consent of the buyer.
- 16.2 The supplier will not, either in full or in part, outsource the implementation of his obligations under the contract to third parties without the prior written consent of the buyer.

17. Applicable law and competent court

- 17.1 These general conditions of purchase and all other agreements between the buyer and the supplier are exclusively governed by Dutch law. The applicability of the Vienna Sales Convention (CISG)

or any other international treaties concerning the sale of movable property – insofar as possible under those treaties – is expressly excluded.

- 17.2 All disputes between the parties shall be brought before the competent court in The Hague, unless the buyer wishes to appoint another court or binding law provides otherwise.

These general conditions have been deposited with the Chamber of Commerce [Kamer van Koophandel] Haaglanden in The Hague. Previously deposited general conditions hereby expire, except for contracts which they already form a part of and in which the present general conditions cannot be incorporated.